



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# INFRASTRUCTURE AND CAPITAL INVESTMENT COMMITTEE

Wednesday 21 May 2014

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**INFRASTRUCTURE AND CAPITAL INVESTMENT COMMITTEE  
15<sup>th</sup> Meeting 2014, Session 4**

**CONVENER**

\*Maureen Watt (Aberdeen South and North Kincardine) (SNP)

**DEPUTY CONVENER**

\*Adam Ingram (Carrick, Cumnock and Doon Valley) (SNP)

**COMMITTEE MEMBERS**

\*Jim Eadie (Edinburgh Southern) (SNP)

\*Mary Fee (West Scotland) (Lab)

Mark Griffin (Central Scotland) (Lab)

\*Alex Johnstone (North East Scotland) (Con)

\*Gordon MacDonald (Edinburgh Pentlands) (SNP)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Margaret Burgess (Minister for Housing and Welfare)

Patrick Harvie (Glasgow) (Green)

James Kelly (Rutherglen) (Lab) (Committee Substitute)

**CLERK TO THE COMMITTEE**

Steve Farrell

**LOCATION**

The David Livingstone Room (CR6)



# Scottish Parliament

## Infrastructure and Capital Investment Committee

*Wednesday 21 May 2014*

[The Convener *opened the meeting at 10:02*]

### Housing (Scotland) Bill: Stage 2

**The Convener (Maureen Watt):** Good morning and welcome to the 15th meeting in 2014 of the Infrastructure and Capital Investment Committee. I remind everyone in the room to switch off their mobile phones and other devices because they affect the broadcasting system. I have received apologies from Mark Griffin and I welcome James Kelly, who is attending as his substitute.

Item 1 is continuation of our stage 2 consideration of the Housing (Scotland) Bill. We will go no further today than the end of part 5 of the bill. I welcome Margaret Burgess, the Minister for Housing and Welfare, and her officials. Patrick Harvie will join us for the debate on his amendments.

I remind members that the minister's officials are here in a strictly supportive capacity and cannot speak during proceedings or be questioned by members. Everyone should have a copy of the bill as introduced, the second marshalled list of amendments and the second set of groupings.

There will be one debate on each group of amendments. I will call the member who lodged the first amendment in the group to speak to and move the amendment, and to speak to all other amendments in the group. I will then call the other members who have amendments in the group; they should speak to their amendment and to the other amendments in the group, but they should not move their amendment at that point. Finally, the member who lodged the first amendment in the group will be asked to wind up the debate and to press or withdraw their amendment.

Members who have not lodged amendments in the group but who wish to speak should catch my attention in the usual way. If a member wishes to withdraw their amendment after moving it, I must check whether any member objects to it being withdrawn. If any member objects, the committee will immediately move to a vote on the amendment. If any member does not want to move their amendment when it is called, they should say, "Not moved". Any other MSP can move the amendment, but I will not specifically invite other members to do so. If no one moves the amendment, I will call the next amendment.

The committee is required to indicate formally that it has considered and agreed each section and schedule in the bill, and I will put a question on each section at the appropriate point.

#### Section 26—Register of letting agents

**The Convener:** The first group is on access to register of letting agents. Amendment 59, in the name of Alex Johnstone, is the only amendment in the group.

**Alex Johnstone (North East Scotland) (Con):** The reason for my amendment is simply to ensure that those who wish to consult the register can do so without a charge being levied. Members will be aware that I am the sort of person who often likes to see charges put in place to ensure that measures are self-financing. However, if the register of letting agents—and much of the bill—is to function effectively, it will rely on access to the register being given to people who may be of limited means or who may be experiencing hard times. For that reason, it is important that the bill contains a clear statement that access to the register will be without a fee.

I move amendment 59.

**The Minister for Housing and Welfare (Margaret Burgess):** Amendment 59, as we have heard, is aimed at preventing ministers from imposing a charge for making publicly available the information that the register contains. There is no provision in the bill that allows Scottish ministers to charge a fee. The register will be an online register that can be accessed by all, and there will be no charge for that access. The amendment is therefore not required, and I invite Alex Johnstone to withdraw it.

**Alex Johnstone:** I thank the minister for stating clearly that access to the register will be free. That is on the public record, and I therefore seek to withdraw my amendment.

*Amendment 59, by agreement, withdrawn.*

*Section 26 agreed to.*

#### After section 26

**The Convener:** The next group is on exemption for solicitor letting agents. Amendment 134, in the name of Mary Fee, is the only amendment in the group.

**Mary Fee (West Scotland) (Lab):** Amendment 134 concerns solicitor letting agents. Many solicitors are letting agents and have been providing services as such for many years. Solicitor letting agents operate after notifying the council of the Law Society of Scotland and work in accordance with standards of practice that the Law Society issues. Any breach of those

standards would mean that a solicitor would be guilty of professional misconduct and dealt with appropriately.

Solicitor letting agents are already registered with the council of the Law Society and are subject to its sanctions. My amendment would prevent dual regulation of solicitor letting agents. The Law Society takes the view that it is the body that should regulate and sanction its letting agents. I note the concerns that have been brought to my attention by Shelter and the Scottish Association of Landlords, and I would be happy to meet the minister to discuss how that sector could be recognised in registration.

I move amendment 134.

**Alex Johnstone:** I have looked at the situation that is likely to exist under the bill's current provisions, and there appears to be duplication in the case of solicitor letting agents. I am concerned that that may generate additional cost in the industry, in addition to the confusion associated with dual registration for solicitor letting agents.

I am aware that a single system of registration has its advantages, and I would be keen to hear whether the minister has any ideas about how the system might be simplified and aligned so that it may be easier to impose without duplicating costs in some cases.

**Margaret Burgess:** The Scottish Government is committed to improving standards across the letting agent industry. The bill's provisions are intended to give tenants and landlords confidence in a consistent standard of service. The bill will also improve the framework for dealing with disputes through a single authority, the first-tier tribunal, underpinned by a code of practice. I am clear that there will be a register for all letting agents, including solicitors. I am also clear that all letting agents must comply with the code of practice. That will ensure consistency of standards across the industry.

I appreciate that solicitors have their own redress arrangements, but I am not convinced that they should be exempted from the regulations that are set out in the bill. I recognise that solicitors must be registered with the Law Society of Scotland. I have already informed the Law Society that I will consider what may be done for solicitors in the registration process to avoid unnecessary duplication in the fit-and-proper-person test. However, I am clear that all those in the industry must be on the register. That includes solicitors who operate as letting agents.

The Scottish Government will work with stakeholders to develop the draft code of practice before it goes out to full public consultation. The Law Society and other professional bodies will therefore have an opportunity to help shape it,

taking account of their current requirements. If solicitors wish to operate as letting agents, they must be subject to the same rules as all other letting agents. That includes having the same code of practice and the same means of redress for consumers.

I am clear that there must be a consistent approach to regulating all letting agents. Amendment 134 would undermine that consistent approach, and it could result in confusion for landlords and tenants. Any complaint relating to a breach of the code of practice for letting agents should be taken to the first-tier tribunal.

The Scottish Government will continue to work with stakeholders to ensure that the regulation of letting agents works in a joined-up way with other regulatory regimes, minimising any potential overlap between the Scottish Legal Complaints Commission and the tribunal, for example.

The approach that will be taken will be comprehensive and as simple as possible for letting agents and clients.

I therefore ask Mary Fee to withdraw amendment 134.

**Mary Fee:** I listened carefully to the minister. Although I accept what she said about the consultation that is to be carried out, I do not feel that I have received the commitment that I was hoping to get regarding recognition of solicitor letting agents within the bill. I accept that there must be one code of practice, and that there must be one set of rules that everyone abides by. The Law Society of Scotland is simply looking for some form of recognition within the bill that it is a body that governs and rules its members and that it will comply with a code.

For those reasons, I press my amendment.

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

**Members:** No.

**The Convener:** There will be a division.

#### For

Fee, Mary (West Scotland) (Lab)  
Johnstone, Alex (North East Scotland) (Con)  
Kelly, James (Rutherglen) (Lab)

#### Against

Eadie, Jim (Edinburgh Southern) (SNP)  
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)  
MacDonald, Gordon (Edinburgh Pentlands) (SNP)  
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

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

*Amendment 134 disagreed to.*

*Sections 27 and 28 agreed to.*

### Section 29—Decision on application

**The Convener:** The next group is on registered letting agents: training requirements. Amendment 60, in the name of the minister, is grouped with amendment 69.

**Margaret Burgess:** At present, letting agents are not required to have any training before they can operate a lettings business. During stage 1, representatives of the sector argued strongly that all letting agents should have a level of training before they can be registered. I have listened to the points that were made, and I agree that training is an important element of raising standards across the sector as a whole.

For that reason, amendment 60 provides that training is required as a condition of registration for letting agents. Amendment 60 confers a power on the Scottish ministers to specify, in regulations, the content and timing of the training and those persons who must undertake it. That will be done in consultation with key stakeholders.

That will provide ministers with flexibility to take account of the views of the sector, to ensure that the training is fit for purpose and to change the training requirements to suit future circumstances within the sector. The power will also allow ministers to require other persons who are carrying out letting agent work, such as front-line staff, to undertake training, should that be considered necessary.

10:15

Amendment 69 will enable a letting agent to be removed from the register if the agent no longer meets the training requirements. Amendments 60 and 69 will ensure that a letting agent must demonstrate knowledge of letting agency work in order to be registered, thereby providing an important additional assurance to consumers, in addition to the fit-and-proper-person test.

I move amendment 60.

*Amendment 60 agreed to.*

**The Convener:** The next group is on register of letting agents: giving of reasons for decisions. Amendment 61, in the name of Alex Johnstone, is grouped with amendment 71.

**Alex Johnstone:** We are getting on at tremendous speed, convener.

The purpose of amendments 61 and 71 is to ensure that anyone who is refused access to the register is made aware of the reasons for the refusal. It is reasonable to expect that such a person might want to consider their position and perhaps appeal against the decision, so it is important that the reasons for the refusal are made available at the earliest opportunity.

Amendments 61 and 71 would achieve that objective.

I move amendment 61.

**Margaret Burgess:** I thank Alex Johnstone for lodging amendments 61 and 71. Amendment 61 would require the Scottish ministers to provide a reason for their decision to refuse an application to the letting agent register or a renewal of application. Ministers would give reasons as a matter of good practice, but I accept that amendment 61 would ensure that that happened.

Amendment 71 seeks the same provision for ministers to provide reasons for their decision, but in the context of removing someone from the register.

The amendments ensure a consistent approach to the notification provisions, and I therefore support amendments 61 and 71.

**The Convener:** Do you want to wind up, Alex?

**Alex Johnstone:** There is nothing that I can say, except thank you very much.

*Amendment 61 agreed to.*

*Section 29, as amended, agreed to.*

### After section 29

**The Convener:** The next group is on register of letting agents: time limit for determining application. Amendment 62, in the name of the minister, is the only amendment in the group.

**Margaret Burgess:** Amendment 62 requires Scottish ministers to make a decision on an application for registration or renewal to the register of letting agents within 12 months of receiving the application. Scottish ministers will have the power to apply to the first-tier tribunal to extend the deadline. However, in practice, a decision would be made within a much shorter timescale. If Scottish ministers do not make a decision within 12 months, that will be taken as tacit approval of the application.

A person whose application has been tacitly approved will stay on the register for only one year before being required to reapply. The Scottish ministers will still have the power to remove such a person from the register under section 35 if they are not a fit and proper person to carry out letting agency work.

I move amendment 62.

**Mary Fee:** You say that the decision should be made within 12 months but that the reality is that it will be made within a much shorter timescale. What timescale are you referring to?

**Margaret Burgess:** Every application has to be considered on its merits, and a renewal will very

often be much quicker than a new application. The provision ties in with other forms of registration—it is exactly the same procedure that we have for landlord registration and so on. The application should not just lie there without a decision being taken. The idea is that, if there is a lot of work to be done and information to be gathered in order for a decision to be made because the applicant did not provide sufficient information, there is still an onus on ministers to make that decision within a 12-month period. However, as is the case with the other forms of registration, only in unusual circumstances would it take anything close to 12 months.

**The Convener:** The question is, that amendment 62 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

#### For

Eadie, Jim (Edinburgh Southern) (SNP)  
 Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)  
 Johnstone, Alex (North East Scotland) (Con)  
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)  
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

#### Against

Fee, Mary (West Scotland) (Lab)  
 Kelly, James (Rutherglen) (Lab)

**The Convener:** The result of the division is: For 5, Against 2, Abstentions 0.

*Amendment 62 agreed to.*

### Section 30—Fit and proper person considerations

**The Convener:** The next group is on register of letting agents: monitoring compliance. Amendment 63, in the name of the minister, is grouped with amendments 80 to 84.

**Margaret Burgess:** The committee's stage 1 report identified some concerns about how the regulatory regime will tackle unregistered letting agents. During an evidence session at stage 1, letting agent representatives put forward a strong argument for further powers to be added to the enforcement measures that are contained in the bill. I have listened to the committee and to stakeholders, and I considered their views carefully before deciding to lodge the amendments in the group.

Amendment 80 enables the Scottish ministers to serve a notice requiring a letting agent to provide information. Scottish ministers will use the power to get evidence of whether a letting agent is complying with the code of practice or the registration requirements. That may include information relating to how a letting agent manages its client accounts or the types of fees

that it may charge to tenants. However, it does not include information that it would be unlawful to disclose, for example where to do so would be a breach of confidentiality.

Amendment 81 allows Scottish ministers to authorise an inspection of a letting agent's business premises in order to check compliance with the regulatory requirements. The power could be used in situations in which ministers suspect that an unregistered letting agent is operating illegally or when it would be more appropriate to inspect for compliance with the code of practice on site.

Amendment 82 provides that a court can grant a warrant for entry in certain circumstances, including when access has been refused. A court may grant a warrant where it considers that there are reasonable grounds to do so.

Amendment 83 sets out further detail about the carrying out of inspections, including—in particular—provision about giving notice and providing evidence of authorisation.

Amendment 84 sets out offences, with fines at level 3 on the standard scale, for non-compliance with certain aspects of the new powers to obtain information and inspection.

Finally, amendment 63 ensures that if a letting agent fails to comply with an inspection or a request to provide information, that failure can be taken into account in determining whether the agent is a fit and proper person.

There is overwhelming support for letting agent regulation. I am clear that the regulatory framework should be robust, that regulation should have teeth and that it will be enforced. I want to see a regulatory system that boosts the confidence of landlords and tenants and raises the professional standards of the industry. I believe that the amendments will help to achieve that.

I move amendment 63.

*Amendment 63 agreed to.*

*Section 30, as amended, agreed to.*

### Section 31—Fit and proper person: criminal record certificate

**The Convener:** The next group is on fit and proper person: criminal record information. Amendment 64, in the name of Alex Johnstone, is grouped with amendments 65, 66 and 66A.

**Alex Johnstone:** The purpose of amendment 64 is to change “may” to “must”, which is a typical amendment that we see often enough. The function in this case is to ensure that the applicants for registration are required to provide a



criminal record certificate. Amendment 65 would have the effect of removing section 31(2).

However, the group also includes amendment 66, in the name of the minister, which will remove the section to which the previous two amendments would apply. As I expect amendment 66 to be agreed to, I have lodged amendment 66A, which is designed simply to make the change to the new provision that I proposed to make to the old, which is to remove “may” and replace it with “must” to ensure that the bill has the effect of requiring applicants to the register to provide a criminal record certificate.

I move amendment 64.

**Margaret Burgess:** I will speak to amendment 66, in my name, and respond to the amendments in Alex Johnstone’s name. Amendment 66 is a technical amendment to modify section 31, so that it better reflects operational practice. It will not change the intended effect of section 31, which aims to provide the Scottish ministers with access to information on criminal records where they have reasonable grounds to suspect that the information already provided to them under section 30(2) is false or has become inaccurate.

Amendments 64, 65 and 66A are intended to have the same effect, but the latter amendment would change my proposed replacement of section 31 rather than the existing section 31. The amendments would mean that the Scottish ministers “must” have regard to information that would normally be contained in a criminal record certificate where they have reasonable grounds to suspect that the information provided under section 30(2) is or has become inaccurate. I do not think that that change would create a proportionate process, as it would mean that ministers would have to look at criminal record information in every case, even in cases where the information provided under section 30(2) did not relate to a criminal offence.

Amendment 66, as currently worded, proposes that the Scottish ministers “may” have regard to that information. It is important to retain that discretion to enable the Scottish ministers to determine whether it is proportionate in the circumstances to have regard to what is highly sensitive information. Applicants will be required to provide information on any criminal offences when they make their application, and it is only in cases where it is thought later that that information was inaccurate or has changed that we would look to the provision that gives ministers discretion to look at an applicant’s full criminal record.

I ask the committee to support amendment 66 but not to support amendments 64, 65 or 66A, as they would create a disproportionate process.

**Mary Fee:** I ask the minister to clarify something relating to amendment 66, which would leave out section 31. Section 31(3) requires that, if a criminal record check has to be done, ministers have to wait until that check is back before proceeding, but amendment 66 will remove that provision, and I am a bit concerned about that. Why has the minister done that?

**Margaret Burgess:** Amendment 66 is a technical amendment about operational practices. Ministers are responsible for the system for disclosing criminal records, so ministers can get that information, if necessary, straight from Disclosure Scotland, rather than going by some circuitous route to get it. That is what we are saying. When someone applies, they have to disclose criminal information. If we think that it is not accurate, we can obtain criminal information direct from Disclosure Scotland. The amendment strengthens the provision and makes it more operationally effective than previously.

**Alex Johnstone:** Although it seems a bit strange, there is a strong likelihood that I will support amendment 66, in the name of the minister. However, for chronological consistency, I will press amendment 64.

**The Convener:** The question is, that amendment 64 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Fee, Mary (West Scotland) (Lab)  
Johnstone, Alex (North East Scotland) (Con)  
Kelly, James (Rutherglen) (Lab)

**Against**

Eadie, Jim (Edinburgh Southern) (SNP)  
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)  
MacDonald, Gordon (Edinburgh Pentlands) (SNP)  
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

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

*Amendment 64 disagreed to.*

*Amendment 65 not moved.*

*Amendment 66 moved—[Margaret Burgess].*

*Amendment 66A moved—[Alex Johnstone].*

**The Convener:** The question is, that amendment 66A be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Fee, Mary (West Scotland) (Lab)  
Johnstone, Alex (North East Scotland) (Con)  
Kelly, James (Rutherglen) (Lab)

**Against**

Eadie, Jim (Edinburgh Southern) (SNP)  
 Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)  
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)  
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

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

*Amendment 66A disagreed to.*

10:30

**The Convener:** The question is, that amendment 66 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Eadie, Jim (Edinburgh Southern) (SNP)  
 Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)  
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)  
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

**Against**

Fee, Mary (West Scotland) (Lab)  
 Johnstone, Alex (North East Scotland) (Con)  
 Kelly, James (Rutherglen) (Lab)

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

*Amendment 66 agreed to.*

*Section 31, as amended, agreed to.*

### **Section 32—Letting agent registration number**

**The Convener:** The next group is on letting agent registration number. Amendment 67, in the name of Alex Johnstone, is the only amendment in the group.

**Alex Johnstone:** Amendment 67 would make it obligatory to include the letting agent's registration number in all documentation. There is no practical reason why the registration number cannot appear in all the agent's documentation, and the requirement should be obligatory.

I move amendment 67.

**Margaret Burgess:** The bill requires letting agents to "take all reasonable steps" to include their registration number in communications with landlords and tenants and in adverts and other publications. That represents a stringent test for letting agents to adhere to. Failure to use the registration number contravenes the fit-and-proper-person requirements and could lead to the person's registration being revoked. Amendment 67 seeks to remove the qualification. It would mean that any failure not to include the registration number in a document, advert or publication would

become part of the fit-and-proper-person consideration. That would include situations in which, for example, the number had not been included because of an information technology failure or human error. I want a robust and effective regime in place, but the amendment seems a bit draconian. I consider that the qualification provides for a more equitable approach and should be left in place. I invite Alex Johnstone to withdraw his amendment.

**Alex Johnstone:** The brief discussion that we have had leaves a considerable gap between my position and that of the minister, and that still needs to be addressed. I am content to seek leave to withdraw amendment 67, but I reserve the right to bring back an amendment at stage 3 that seeks to fit into the gap that our discussion has quite obviously left open.

*Amendment 67, by agreement, withdrawn.*

*Section 32 agreed to.*

*Section 33 agreed to.*

### **Section 34—Duration of registration**

**The Convener:** The next group is on duration of letting agent registration. Amendment 135, in the name of Mary Fee, is grouped with amendment 136.

**Mary Fee:** Amendments 135 and 136 would change the duration of registration from three years to one, the result of which would be to tighten up the sector. The proposed change also sits well with the minister's comments earlier this morning on the length of registration.

We need a well-regulated private rented sector if those in the sector are to have confidence in it. Annual registration would ensure that we have a well-run, well-managed and well-regulated sector. Any breaches would be caught quickly and the potential for poor practice would be minimal, which would strengthen the sector and demonstrate good governance.

I move amendment 135.

**Margaret Burgess:** The bill provides that the duration of a letting agent's period of registration should be three years. Amendments 135 and 136 seek to reduce the registration period to one year. As it stands, the Scottish ministers are able to consider a breach of the fit-and-proper-person test or of the code of practice at any time during the three-year period of registration. Section 35 provides the Scottish ministers with the power to revoke a registration if the agent is no longer a fit and proper person. I consider the three-year registration cycle to be a proportionate approach that safeguards clients without placing an onerous burden on the industry. I therefore invite Mary Fee

to withdraw amendment 135 and not to move amendment 136.

**Mary Fee:** I note the minister's comments, but I reiterate that we need a well-run, well-maintained and well-governed private rented sector if the people within it are to have confidence in the sector. Amendment 135 would ensure that that would happen, so I will press it.

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

**Members:** No.

**The Convener:** There will be a division.

**For**

Fee, Mary (West Scotland) (Lab)  
Johnstone, Alex (North East Scotland) (Con)  
Kelly, James (Rutherglen) (Lab)

**Against**

Eadie, Jim (Edinburgh Southern) (SNP)  
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)  
MacDonald, Gordon (Edinburgh Pentlands) (SNP)  
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

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

*Amendment 135 disagreed to.*

*Amendment 136 moved—[Mary Fee].*

**The Convener:** The question is, that amendment 136 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Fee, Mary (West Scotland) (Lab)  
Johnstone, Alex (North East Scotland) (Con)  
Kelly, James (Rutherglen) (Lab)

**Against**

Eadie, Jim (Edinburgh Southern) (SNP)  
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)  
MacDonald, Gordon (Edinburgh Pentlands) (SNP)  
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

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

*Amendment 136 disagreed to.*

*Section 34 agreed to.*

### Section 35—Revocation of registration

**The Convener:** The next group is on register of letting agents: minor and technical amendments. Amendment 68, in the name of the minister, is grouped with amendments 70, 86, 88 and 89.

**Margaret Burgess:** Amendments 68 and 70 are technical amendments to maintain consistency of terminology in section 35 and amendments 86, 88

and 89 will ensure that certain key definitions apply throughout part 4.

I move amendment 68.

*Amendment 68 agreed to.*

*Amendments 69 and 70 moved—[Margaret Burgess]—and agreed to.*

*Amendment 71 moved—[Alex Johnstone]—and agreed to.*

*Section 35, as amended, agreed to.*

### After section 35

**The Convener:** The next group is on register of letting agents: cancellation of registration on request. Amendment 72, in the name of Alex Johnstone, is the only amendment in the group.

**Alex Johnstone:** The bill lacks provision for voluntary removal from the register of letting agents. A person might wish to be removed from the register for a number of reasons, including change of career, retirement and sale of the business. Amendment 72 would provide that the Scottish ministers could remove a person from the register at their request if they were satisfied that the letting agent had made adequate arrangements with respect to the business in hand and it was otherwise appropriate to do so.

I move amendment 72.

**Margaret Burgess:** Amendment 72 would provide a mechanism for a letting agent to apply to the Scottish ministers to terminate a registration; otherwise, an agent's registration will lapse after three years if no application to renew is made. Amendment 72 would require the Scottish ministers to grant termination if they were satisfied that the agent had made adequate arrangements for their letting agency work. I am sympathetic to the aim of amendment 72. However, it is important to get it right, in light of the significant consequences of not being registered, and to ensure the robustness of the register.

I would like to take time to consider the technical points and to return at stage 3 with an amendment addressing the issue that I am confident will work. I hope that Alex Johnstone will take that as a sufficient undertaking for him to withdraw amendment 72.

**Alex Johnstone:** I hear what the minister has said, and I am confident that, if I seek leave to withdraw the amendment, the minister will produce an alternative, or equivalent, proposal at stage 3.

*Amendment 72, by agreement, withdrawn.*

*Sections 36 and 37 agreed to.*

### **Section 38—No payment for letting agency work where refusal or removal**

**The Convener:** The next group is on letting agency work without registration. Amendment 73, in the name of Alex Johnstone, is grouped with amendments 74 and 75.

**Alex Johnstone:** Amendment 73 would void all contracts for letting agency work that are concluded between a landlord and a letting agent where the letting agent is refused access to, or is removed from, the register. The bill will prevent a proposed or former letting agent from recovering costs or charges that are incurred in respect of letting agency work that is carried out after a person has been refused registration or has been removed from the register. Those penalties do not affect the existence of a contract or letting agency work.

Amendment 73 would impose a real sanction on the proposed or former letting agent by reducing the contract by making it void. No contractual claims could then be made.

I move amendment 73.

**Margaret Burgess:** I understand the wish to deter unregistered letting agents from continuing to operate after the date of their deregistration. However, I have some concerns about amendment 73. First, although it might seem to be appropriate to make contracts void on the basis that the person should not be carrying out letting agency work, that could have unintended adverse consequences for third parties—for example, where a letting agent has entered into a contract with a landlord, after the relevant date, to provide letting agency services. If a letting agent then contracts a third party to undertake maintenance or cleaning of the property, that could have adverse consequences for the third party's contract, and it may affect the recouping of legitimate costs for that work.

I reassure the committee that there are already provisions for dealing with unregistered letting agents who continue to operate; section 39 makes it a criminal offence to do so. Amendment 75, in my name, seeks to increase the level of the fine from level 5 on the standard scale to a maximum of £50,000.

Additional amendments in my name are intended to set up a monitoring system, with powers for Scottish ministers to inspect and require information from persons who appear to be operating as letting agents. That will help to identify unregistered letting agents.

It is not clear what amendment 73 would usefully add. I therefore invite Alex Johnstone to seek to withdraw it.

I turn to my amendments in the group. Amendment 74 will amend section 38, which provides that letting agents are not able to recover costs where they have been refused entry to or removed from the register. The amendment makes it clear that costs that are incurred by a letting agent before they are removed from the register are still recoverable. That will allow letting agents, including those who allow their registration to lapse for a legitimate reason, such as their retiring from the industry, to recover costs that are still owed to them.

Amendment 75 seeks to increase to a maximum of £50,000 the level of fine for the offence of operating as a letting agent without registration. The amendment will provide a significant deterrent to that.

**Alex Johnstone:** I will press my amendment 73, but I look forward to hearing what the minister says on the subject at stage 3.

**The Convener:** The question is, that amendment 73 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Johnstone, Alex (North East Scotland) (Con)

**Against**

Eadie, Jim (Edinburgh Southern) (SNP)

Fee, Mary (West Scotland) (Lab)

Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)

Kelly, James (Rutherglen) (Lab)

MacDonald, Gordon (Edinburgh Pentlands) (SNP)

Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

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

*Amendment 73 disagreed to.*

10:45

*Amendment 74 moved—[Margaret Burgess]—and agreed to.*

*Section 38, as amended, agreed to.*

### **Section 39—Offence of operating as a letting agent without registration**

*Amendment 75 moved—[Margaret Burgess]—and agreed to.*

*Section 39, as amended, agreed to.*

*Section 40 agreed to.*

### **Section 41—Letting Agent Code of Practice**

**The Convener:** The next group is on letting agent code of practice. Amendment 76, in the

name of Alex Johnstone, is grouped with amendments 77, 137 to 144, 130, 126 and 127.

**Alex Johnstone:** Amendment 76 would replace a “may” with a “must”. Section 41 will give Scottish ministers discretion on whether they issue a code of practice for letting agents. The code is key to the scheme of regulation under the bill, and ministers should therefore not have the option not to issue such a code. Amendment 76 seeks to amend section 41 by removing that discretion.

I move amendment 76.

**Margaret Burgess:** The bill currently provides that

“The Scottish ministers may, by regulations, set out a code of practice”

for letting agents. Amendment 76 would place a duty on Scottish ministers to do so.

Amendment 126, in my name, will require the first code of practice, and replacement codes, to be subject to affirmative procedure. If the amendment is accepted, Parliament will be required to approve regulations that set out the first and any future replacement code, before the regulations can be made. The Scottish ministers will not be able to make those regulations without parliamentary approval, so to put on ministers the duty that amendment 76 proposes would pre-empt Parliament’s ability to agree, or not to agree, the code. Therefore, it would not be appropriate to make the change. On that basis, I invite Alex Johnstone to seek to withdraw amendment 76.

The bill provides for ministers to develop a code of practice on professional standards, in consultation with stakeholders. At stage 1, Parliament called for further detail of what is to be included in the code of practice to be put in the text of the bill. Amendment 77 responds to that request and ensures that the important matters of client money protection and professional indemnity arrangements will be included in the code.

The bill provides that the code of practice will be subject to negative procedure. The Delegated Powers and Law Reform Committee expressed concerns about that; it considers that affirmative procedure would be a more suitable level of parliamentary scrutiny, given the significant legal consequences of failure to comply with the code. I have reconsidered the issue, and amendment 126 will apply affirmative procedure to the first code and to any replacement code. Any adjustments to the code will be subject to negative procedure. I believe that that is a balanced approach. Amendment 77 is therefore intended to reassure Parliament by providing in the text of the bill more detail on what the code will cover.

Amendment 126 will also allow for an increased level of parliamentary scrutiny of the first, and any

future, code. Patrick Harvie’s amendment 127 also aims to ensure that the code of practice for letting agents will be subject to affirmative procedure. That would mean that any change to the code, no matter how minor, would be subject to affirmative procedure. Amendment 126, in my name, provides for the first code and any full revision of the code to be subject to affirmative procedure, so I invite Patrick Harvie not to move amendment 127, in favour of the more balanced approach.

I turn to amendment 130, which is in the name of Patrick Harvie. I share his wish to see progress being made to develop the code of practice, but I want to ensure that the code is drafted with proper consideration of its aims, the desired outcomes and how it will be enforced. There is no question that there will be any delay on my part in implementing the code. It is, however, important that we allow sufficient time to enable the Scottish Government to consult fully the industry and the public.

Furthermore, the code cannot be finalised until the associated tribunals legislation has been commenced. The Tribunals (Scotland) Act 2014 was recently enacted by Parliament. Tribunal reform is progressing and the first-tier tribunal is expected to be up and running by 2016.

I wish to reassure Mr Harvie about my commitment to progressing development of the code, which I expect to be laid before Parliament within 18 months of the bill’s enactment. I ask him not to move amendment 130, because it does not allow sufficient time for the practicalities of full public consultation.

I turn to amendments 137, 138, 139 and 143. I have given careful consideration to the amendments because, like Mr Harvie, I too have heard of the many and varied practices of letting agents, and of the adverse effect that they can have on tenants. That is why we are proposing regulation of the letting agent industry.

However, matters such as rent, deposits, providing documentation and compliance with the repairing standard are legal responsibilities of the landlord. There are already a number of legal requirements relating to such matters. For example, the Tenancy Deposit Schemes (Scotland) Regulations 2011 set out what the legal obligations on a landlord are if they choose to take a deposit. Letting agents need to comply with the law when managing a property and acting on behalf of a landlord. That is why it is important that the code of practice will set out the standards that both tenants and landlords should expect, and why it is important that letting agents can demonstrate that they have the necessary training for registration.

Let me make it clear that I want the regime to be effective. I am willing to consider what people have to say on the important issues that are covered by the amendments in the group and their views on what should be included in the code of practice, but I think that the right time to do that will be when we consult on the draft code. It will be subject to public consultation, and because it is to be dealt with using affirmative procedure, the committee will have an opportunity to consider the detail of the code once it is drafted. I therefore cannot support amendments 137, 138, 139 and 143.

I turn to amendments 140, 141 and 142. I sympathise with people who are struggling to find affordable rented property while they are in receipt of state benefits, and with people whose immigration status is uncertain. However, there are a number of practical difficulties with the amendments. It is ultimately for the landlord, not the letting agent, to decide to whom they will let their property, although the letting agent may provide advice and support to the landlord. I am not clear about how amendment 140 could be enforced, because most landlords would want to check that the tenant could afford the rent.

On amendment 141, let me be clear that I disapprove of the use of the term “no DSS”. Discrimination and the other matters that Patrick Harvie raises in his amendments will be taken up by the Scottish Government with the letting agent industry through the process of developing the code of practice. The Scottish Government will encourage equal opportunities throughout the industry, in order to address the matters that Patrick Harvie raises. I therefore cannot support amendments 140, 141 and 142.

Amendment 144, in the name of Mary Fee, proposes a specific reference to the need for a letting agent to

“comply with the Letting Agent Code of Practice.”

However, the bill already provides for compliance with the code of practice to be a key aspect of the fit-and-proper-person test for registration. The code will be enforced by application to a tribunal, and decisions found against a letting agency will be reported back to ministers.

Like Mary Fee, and as I have already noted with reference to Patrick Harvie’s amendments, I know of the many and varied practices of letting agents who try to avoid protecting tenancy deposits with one of the three approved schemes. The tenancy deposit scheme has its own enforcement requirements, so proposed paragraph (a) in amendment 144 is unnecessary. Unintentionally, that proposed provision could also be problematic if a landlord wanted to receive the deposit from the

letting agent so that the landlord could put it into a scheme, which is permitted.

With regard to proposed paragraph (b) in amendment 144, I am well aware of letting agents who have charged premiums and of the effect that those charges can have on tenants. That is why we have already clarified the law to make crystal clear what is allowed.

On proposed paragraphs (c) and (d) in amendment 144, I sympathise with people who are struggling to find affordable rented property while they are in receipt of state benefits, especially families. All Scottish Government policies reflect Scottish values of fairness and opportunity, and promote equality and social cohesion. As I said in my response to Patrick Harvie’s amendments 140 to 142, the Scottish Government will discuss equality issues with the letting agents industry through the process of developing the code of practice. We will take that seriously. We encourage the discussion of equality issues, which will be part of the code of practice.

I invite Mary Fee not to move her amendment.

**Patrick Harvie (Glasgow) (Green):** I begin by acknowledging the extensive treatment of the amendments in this group by the minister.

On what we might call the procedural aspects—Alex Johnstone’s seeking a requirement that ministers make regulations setting out the code, and the minister’s objection that that is not compatible with affirmative procedure—I understand the minister’s argument, but I suggest that there should be, at the very least, a requirement that regulations setting out the code be laid before Parliament within a clearly defined period. I hope that the Government is comfortable with that, to some extent. It has been said by the minister that 18 months might be a reasonable expectation. I would have no objection to lodging an amendment at stage 3 that would set out more or less what my amendment 130 suggests, but which would set out a period of 18 months after royal assent, rather than a year. Accordingly, I will not move amendment 130.

Similarly, given the minister’s decision to apply affirmative procedure for the first code and revisions to it, amendment 127 will not be necessary, either.

My other amendments in the group seek to explore what the code will cover. It has been clear, during the course of the committee’s discussions, that the content of the code is going to be crucial to whether any of the bill will have the effect that is being sought. As the minister said, several of my amendments address matters that are legal requirements, or matters in relation to which some legal requirements exist. My intention in lodging amendments that engage with those issues is

simply to explore whether the code of practice will be a relevant instrument in a situation in which a letting agent has not complied with a legal requirement.

For example, we know of several workarounds—including some legal ones—whereby landlords can avoid complying with the intention of the deposit protection scheme. I want to ensure that, when tenants find themselves in that situation—at the mercy of the kind of letting agents whom most responsible letting agents want to see being challenged—they know that they can use the code of practice as their means of redress. The amendments on rent levels, deposits and the provision of information will help to ensure clarity that the code of practice will be relevant in those circumstances.

I am sure that members will acknowledge that, with regard to repairs, people often start off asking for repairs to be done and then eventually stop complaining about it because they figure out that they will just have to put up with basic repairs not being done. That applies to landlords as well as letting agents, but as we have before us a bill that will enable us to place requirements on letting agents, I suggest that we can make a start by setting out a clear time limit within which repairs must be done.

11:00

On the three amendments relating to discrimination—amendments 140 to 142—it is regrettable that the minister focused on the use of the term “no DSS”. I hope that we would all like use of the term to be ended, but more important than use of the term is the practice. If people stop using the term but continue the practice of discriminating against benefits recipients, we will not be much further forward.

I hope that the minister will give some indication that those matters will be addressed in the code when it is laid before Parliament. Discriminating against people purely because they receive benefits, not because they cannot afford the service that they seek to buy, is completely unreasonable and destructive to the social cohesion to which the Government has a commitment.

I will say something about amendment 142 on discrimination on the ground of immigration status. If the minister has a further chance to respond—I know that that is at your discretion, convener—I encourage her to say something more specific about that amendment.

Members will be aware of the statement of concern about the impact of the Immigration Act 2014 on housing as well as health, which are devolved matters. The United Kingdom

Government has passed immigration legislation that requires landlords to check immigration status.

A wide range of organisations—including the Scottish Association of Landlords and Shelter—and individuals have set out their serious concerns not only that it is inappropriate in principle for that requirement to be placed on the private rented sector, but that the measure has the potential to increase discrimination and inequality in our society. In particular, it potentially disadvantages prospective legitimate tenants whose status is unclear, those who are not able to produce required documents quickly, and people who are members of visible minority communities who seek accommodation.

The signatories of that statement said:

“Rather than targeting so-called ‘illegal’ migrants the tenant checking scheme may drive both those with irregular status and prospective legitimate tenants with unclear status or documents to unscrupulous landlords, boosting the rogue market”.

That is the opposite of what the bill is intended to achieve and it may be the consequence of the UK Government’s legislation, which clearly impacts on the devolved policy area of housing. If the minister could be encouraged to respond not only to my amendment 142 but to the concerns that have been set out by the wide range of organisations that are working in the private rented sector in Scotland that signed the statement, that would be helpful.

**Mary Fee:** Amendment 144 in my name relates to the code of practice. Working with Citizens Advice Scotland, I have drafted the amendment to clarify issues that I have previously acknowledged in relation to the introduction of a duty that any

“person carrying out letting agency work must comply with the Letting Agent Code of Practice.”

Amendment 144 would also ensure that anyone who is acting as a letting agent must comply with the Tenancy Deposit Schemes (Scotland) Regulations 2011 and section 120 of the Housing (Scotland) Act 2006.

Proposed paragraph (d) of the second subsection that my amendment would insert into section 41 would prohibit letting agents from discriminating against anyone receiving state benefits under the acts that are listed in the paragraph, and from discriminating against anyone who is responsible for a child. Citizens Advice Scotland has briefed me that it has cases in which potential tenants have been discriminated against because they have children or are in receipt of housing benefit.

I listened with interest to the minister’s earlier comments. However, amendment 144 would strengthen the bill and ensure that the code of

practice will be clear and unambiguous. More important is that it would ensure compliance.

**James Kelly (Rutherglen) (Lab):** There has been much discussion about the code of practice throughout consideration of the bill. Many people feel that it is important that the code of practice is meaningful and has teeth if it is to be effective. Mary Fee's amendment 144, which would establish absolute compliance with the code, would bring that into force.

Amendments 137 to 139 and 143, in the name of Patrick Harvie, deal with practical issues that we have discussed, and specify certain requirements in relation to advance rents, deposit levels, the requirement to provide a tenant with a standard tenancy, and repairs. Those changes would be meaningful and would make a difference.

Similarly, amendments 140 to 142, in the name of Patrick Harvie, address the issue of discrimination and set out specific provisions to ensure that people would not be discriminated against. The minister has expressed sympathy with many of the issues that the amendments raise. However, if we actually mean to make a difference in those areas, the code of practice must be more specific. The amendments seek to address some of the practicalities and would make a real difference.

**Margaret Burgess:** I will make a couple of comments in response to issues that Patrick Harvie raised. I anticipate that most of those issues will be part of the code of practice, which will go through affirmative procedure, which will give stakeholders, the public and the committee the opportunity to have their views heard.

As the committee is aware, immigration is a reserved issue, but the Scottish Government does not agree with the UK Government's position that landlords must check the immigration status of tenants. We have made that very clear to the UK Government. When the code of practice is developed and consulted on, all such matters will be taken into account, as will our position on the issue. We cannot break the law, but we have made it clear to the UK Government that we do not think that landlords should have to do that, and we will continue to make that argument. We anticipate that the code of practice will cover areas of discrimination and equality legislation, and the other issues that Patrick Harvie raised.

In response to Mary Fee's point, there is already provision in the bill to ensure that someone who breaches the code will lose their registration or be fined a considerable sum of money. What she proposes would not add to that.

I agree with James Kelly that the code of practice is important; it is right that we consult properly on what will be in it. I took on board the

earlier concerns, so we will take forward the code and any subsequent replacement code through affirmative procedure.

**Alex Johnstone:** It seems like quite a few minutes ago now, but I listened with some interest to the minister's response to amendment 76 in my name. I accept that, because there is a procedural issue, it is appropriate for me to seek leave to withdraw the amendment at this stage, with a view to coming back and having another crack at it at stage 3. So, I seek leave to withdraw amendment 76.

*Amendment 76, by agreement, withdrawn.*

*Amendment 77 moved—[Margaret Burgess]—and agreed to.*

*Amendment 137 moved—[Patrick Harvie].*

**The Convener:** The question is, that amendment 137 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Fee, Mary (West Scotland) (Lab)  
Kelly, James (Rutherglen) (Lab)

**Against**

Eadie, Jim (Edinburgh Southern) (SNP)  
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)  
Johnstone, Alex (North East Scotland) (Con)  
MacDonald, Gordon (Edinburgh Pentlands) (SNP)  
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

**The Convener:** The result of the division is: For 2, Against 5, Abstentions 0.

*Amendment 137 disagreed to.*

*Amendments 138 to 143 moved—[Patrick Harvie].*

**The Convener:** The question is, that amendment 138 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Fee, Mary (West Scotland) (Lab)  
Kelly, James (Rutherglen) (Lab)

**Against**

Eadie, Jim (Edinburgh Southern) (SNP)  
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)  
Johnstone, Alex (North East Scotland) (Con)  
MacDonald, Gordon (Edinburgh Pentlands) (SNP)  
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

**The Convener:** The result of the division is: For 2, Against 5, Abstentions 0.

*Amendment 138 disagreed to.*



**The Convener:** The question is, that amendment 139 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Fee, Mary (West Scotland) (Lab)  
Kelly, James (Rutherglen) (Lab)

**Against**

Eadie, Jim (Edinburgh Southern) (SNP)  
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)  
Johnstone, Alex (North East Scotland) (Con)  
MacDonald, Gordon (Edinburgh Pentlands) (SNP)  
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

**The Convener:** The result of the division is: For 2, Against 5, Abstentions 0.

*Amendment 139 disagreed to.*

**The Convener:** The question is, that amendment 140 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Fee, Mary (West Scotland) (Lab)  
Kelly, James (Rutherglen) (Lab)

**Against**

Eadie, Jim (Edinburgh Southern) (SNP)  
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)  
Johnstone, Alex (North East Scotland) (Con)  
MacDonald, Gordon (Edinburgh Pentlands) (SNP)  
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

**The Convener:** The result of the division is: For 2, Against 5, Abstentions 0.

*Amendment 140 disagreed to.*

**The Convener:** The question is, that amendment 141 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Fee, Mary (West Scotland) (Lab)  
Kelly, James (Rutherglen) (Lab)

**Against**

Eadie, Jim (Edinburgh Southern) (SNP)  
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)  
Johnstone, Alex (North East Scotland) (Con)  
MacDonald, Gordon (Edinburgh Pentlands) (SNP)  
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

**The Convener:** The result of the division is: For 2, Against 5, Abstentions 0.

*Amendment 141 disagreed to.*

**The Convener:** The question is, that amendment 142 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Fee, Mary (West Scotland) (Lab)  
Kelly, James (Rutherglen) (Lab)

**Against**

Eadie, Jim (Edinburgh Southern) (SNP)  
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)  
Johnstone, Alex (North East Scotland) (Con)  
MacDonald, Gordon (Edinburgh Pentlands) (SNP)  
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

**The Convener:** The result of the division is: For 2, Against 5, Abstentions 0.

*Amendment 142 disagreed to.*

**The Convener:** The question is, that amendment 143 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Fee, Mary (West Scotland) (Lab)  
Kelly, James (Rutherglen) (Lab)

**Against**

Eadie, Jim (Edinburgh Southern) (SNP)  
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)  
Johnstone, Alex (North East Scotland) (Con)  
MacDonald, Gordon (Edinburgh Pentlands) (SNP)  
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

**The Convener:** The result of the division is: For 2, Against 5, Abstentions 0.

*Amendment 143 disagreed to.*

*Amendment 144 moved—[Mary Fee].*

**The Convener:** The question is, that amendment 144 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Fee, Mary (West Scotland) (Lab)  
Kelly, James (Rutherglen) (Lab)

**Against**

Eadie, Jim (Edinburgh Southern) (SNP)  
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)  
Johnstone, Alex (North East Scotland) (Con)  
MacDonald, Gordon (Edinburgh Pentlands) (SNP)  
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

**The Convener:** The result of the division is: For 2, Against 5, Abstentions 0.

*Amendment 144 disagreed to.*

*Amendment 130 not moved.*

*Section 41, as amended, agreed to.*

*Section 42 agreed to.*

### **Section 43—Applications to First-tier Tribunal to enforce code of practice**

**The Convener:** The next group is on enforcement of code of practice. Amendment 131, in the name of Patrick Harvie, is grouped with amendments 78, 132, 79, 133 and 145.

11:15

**Patrick Harvie:** The amendments in my name in this group are somewhat simpler than the previous ones, as members will be glad to know.

My proposals have two basic objectives. One is captured in both amendment 131 and amendment 132, which is to ensure that a tenant who wishes to apply to the first-tier tribunal for a determination that their letting agent has failed to comply with the code of practice can authorise someone to do that on their behalf. I do not specify who that might be, but we can envisage a range of voluntary organisations or support services that might wish to take on that role.

There will clearly be tenants who are assertive enough and clear enough in their own minds to raise a complaint about their letting agent failing to comply with the code, but there will be others who do not feel competent enough or who feel that they need a bit of help, and it seems reasonable that that initial application could be made by somebody on their behalf who can work with them. I hope that the Government will be willing to accept that.

Amendment 133 is a little more substantial. It suggests that, when a letting agent has been found in breach of the code and has an enforcement order against them, the tenant will not be due to pay any rent for the period until the enforcement order is complied with. It may be that the Government is sympathetic to the intention of my amendment but would like to apply it in different circumstances, or limit its application, but I hope that the minister will acknowledge the argument that, when there has been a serious breach of the code and when an enforcement order has been made, for the time between that enforcement order and the order being complied with, the letting agent should not be under any expectation that they can charge rent for that period to a tenant who is not having a service delivered to the standard that we all hope to set.

I hope that the minister will respond positively to both my suggestions.

I move amendment 131.

**Margaret Burgess:** I begin by responding to amendments 131 and 132, in the name of Patrick Harvie.

The bill already provides for a tenant or landlord to apply to the first-tier tribunal for a determination that a letting agent has failed to comply with the code of practice. I know that there may be cases in which a tenant needs some support to make an application to the tribunal, but amendments 131 and 132 propose that tenants should be able to authorise third parties to act for them in that regard, and I do not believe that putting that provision in the bill is necessary.

The arrangements for representation would be a matter for the tribunal's rules in due course, and I made it clear at the previous meeting that there would be an expectation that people could be accompanied at a tribunal. There is nothing in the bill as drafted to prevent a tenant from seeking support from a third party in assisting them with progressing a complaint. I therefore ask Patrick Harvie to withdraw amendment 131 and not to move amendment 132.

Amendments 78 and 79, in my name, seek to expand the provision in section 43 to allow the Scottish ministers to make an application to the first-tier tribunal. That will strengthen the enforcement provisions in the bill by enabling the Scottish ministers to act on information obtained either through their own compliance checks or from information received from third parties, including tenants.

I have some concerns about amendment 133, in the name of Patrick Harvie. The stopping of rent until the letting agent complies with the enforcement order could primarily penalise the landlord, rather than the agent. I accept Patrick Harvie's intention in lodging the amendment, but we are dealing here with the letting agent and the code of practice. If the applicant is the tenant and they are suffering, or have suffered, a loss as a result of the letting agent's failure to comply with the code of practice, the tribunal could make an order under section 43(8)(b) to provide compensation to the tenant.

There are other enforcement measures that the Scottish ministers can take if a letting agent does not comply with an enforcement order that would have a greater impact on the letting agent than the stopping of rent payments would. The tribunal is able to inform the Scottish ministers of the failure to comply, which could result in the letting agent's registration being revoked. In addition, it is an offence to fail to comply with an enforcement order, and that could result in a fine upon conviction. On the basis that there are other penalties in the bill that rightly target the letting agent rather than the landlord, I therefore invite Patrick Harvie not to move amendment 133.

I turn to amendment 145. In the context of the fit-and-proper-person test, the Scottish ministers currently have discretion over whether they wish to

take into account a contravention of an enforcement order and are not required to do so. However, amendment 145 seeks to compel the Scottish ministers to deregister a letting agent who commits an offence by not complying with an enforcement order.

Any letting agent that fails to comply with an enforcement order without reasonable excuse commits an offence under section 46. The Scottish ministers will be able to deregister a letting agent in those circumstances. Through the regulations, we will take a robust line with letting agents to promote compliance, but ministers should retain discretion on this matter to ensure that there is a proportionate response that is dependent on the circumstances of each case.

Amendment 145 goes on to require the Scottish ministers to note the deregistration in the register and to make provision thereafter for the consequences of that deregistration for tenants of properties managed by the agent. However, it is more appropriate for the landlord to make those arrangements rather than the Scottish ministers.

I appreciate that Mary Fee wants to ensure that there is a robust consequence for failing to comply with an enforcement order, but the bill already provides for a robust approach. I therefore ask Mary Fee not to move her amendment.

**Mary Fee:** The convener will be glad to hear that my comments on my amendment 145 will be brief. The amendment would provide extra protection for potential victims of rogue letting agents who may be acting outside the code. It provides that anyone found to be acting in such a manner must be removed from the register by the Scottish ministers and that that must be noted on the register.

The amendment would also allow for ministers to make provision for tenants in properties where an agent has been removed from the register, because it is currently unclear what the circumstances would be if that were to happen.

I heard the minister's comments about enforcement but come back to my previous point, which is that we must make the sector as strong as possible. The rules surrounding regulation have to be clear and unambiguous and my amendment would strengthen the bill. I also support the other amendments in the group.

**Patrick Harvie:** On amendment 133 about the stopping of rent, I understand the minister's concern that, in effect, what looks like a penalty could be passed on to the landlord rather than borne by the letting agent, but it seems to me that that is a matter between the landlord and the letting agent. If the agreement between a landlord and a letting agent specifies that the letting agent will pay the landlord for every month that it

manages the property, the stopping of rent would fall to the letting agent and not to the landlord.

The priority should surely be to ensure that tenants who are not being given the service that they have a right to expect should not have to pay for it during that period. However, I am content not to move the amendment on the basis that I will revise it and come to the chamber at stage 3 with an amendment that tries to take account of the concerns that the minister has expressed.

I am a wee bit disappointed that the Government does not accept the relatively small change proposed in amendments 131 and 132. Enabling tenants to authorise someone else to make an application to the tribunal on their behalf goes further than simply allowing somebody to be accompanied or supported during that process. Some people will, for whatever reason, find it beyond their level of confidence to make an application, but somebody else would be able to do it for them.

I have been aware of situations in Glasgow in which a number of students have been treated badly by the same letting agents in similar circumstances but, because they have been due to move on shortly, they have not thought that it is worth the hassle or the time to make any kind of formal complaint. However, if the amendments were passed, a third party, such as the student welfare rights service, could make an application on behalf of all of the affected students. That would not only give the application greater weight with the tribunal but ensure that the treatment of all tenants in that circumstance—rather than just that of a small minority who are willing to raise the matter themselves—can be addressed in the application.

In short, I will not move amendment 133, but I will seek to return to the issue at stage 3. For the moment, I will press amendment 131.

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

**Members:** No.

**The Convener:** There will be a division.

#### For

Fee, Mary (West Scotland) (Lab)  
Kelly, James (Rutherglen) (Lab)

#### Against

Eadie, Jim (Edinburgh Southern) (SNP)  
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)  
Johnstone, Alex (North East Scotland) (Con)  
MacDonald, Gordon (Edinburgh Pentlands) (SNP)  
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

**The Convener:** The result of the division is: For 2, Against 5, Abstentions 0.

*Amendment 131 disagreed to.*

*Amendment 78 moved—[Margaret Burgess]—and agreed to.*

*Amendment 132 not moved.*

*Amendment 79 moved—[Margaret Burgess]—and agreed to.*

*Amendment 133 not moved.*

*Section 43, as amended, agreed to.*

*Sections 44 and 45 agreed to.*

### **Section 46—Enforcement orders: offence**

*Amendment 145 moved—[Mary Fee].*

**The Convener:** The question is, that amendment 145 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

#### **For**

Fee, Mary (West Scotland) (Lab)  
Kelly, James (Rutherglen) (Lab)

#### **Against**

Eadie, Jim (Edinburgh Southern) (SNP)  
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)  
Johnstone, Alex (North East Scotland) (Con)  
MacDonald, Gordon (Edinburgh Pentlands) (SNP)  
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

**The Convener:** The result of the division is: For 2, Against 5, Abstentions 0.

*Amendment 145 disagreed to.*

*Section 46 agreed to.*

### **After section 46**

*Amendments 80 to 84 moved—[Margaret Burgess]—and agreed to.*

*Sections 47 to 50 agreed to.*

### **Section 51—Meaning of letting agency work**

**The Convener:** The next group is on meaning of letting agency work. Amendment 85, in the name of Alex Johnstone, is grouped with amendments 87 and 128.

**Alex Johnstone:** Sometimes, when you are reading a bill section by section, in the appropriate order, something leaps out at you that just does not seem right. Amendment 85 is inspired by such an experience.

Amendment 85 would leave out section 51(1)(b). Section 51 provides the definition of letting agency work. Section 51(1)(a) is clear when it describes letting agency work as

“things done by a person in the course of that person’s business in response to relevant instructions”

so that a landlord can

“enter into a lease or occupancy arrangement”.

11:30

However, section 51(1)(b) is more problematic because it includes in letting agency work activities such as

“repairing, maintaining, improving, insuring or otherwise managing a house which is ... subject to a lease”.

Such a range of activity is not really letting agency work and would bring many people into the regulatory net who should not be included, such as roofers, painters, decorators, builders, insurance companies, house factors and possibly many others. Accordingly, I propose that we remove subsection (1)(b) from section 51 to clarify that. I look forward to hearing how the minister interprets it.

I move amendment 85.

**Margaret Burgess:** Amendment 87 adjusts the existing power in section 51(3) to change the meaning of “letting agency work” through secondary legislation. It makes it clear that the Scottish ministers can specify that work carried out by certain bodies or work under certain types of schemes is to be excluded from the regulatory regime. The power to exempt schemes is limited to schemes that are for the purpose of helping people to secure tenancies in the private rented sector and which are operated by a body on a not-for-profit basis.

Such schemes may include rent deposit guarantee schemes, which carry out activities such as facilitating lettings—which is “letting agency work” within the meaning of part 4. The schemes are not intended to be brought under the letting agent regulatory regime and so that power to exempt is needed.

The power to specify bodies is intended to allow the Scottish ministers the option of excluding organisations such as not-for-profit bodies whose letting agency work includes activities other than those relating to rent deposit schemes. The powers are required to allow ministers to respond flexibly to any future changes in the letting agency sector, and amendment 128 will enable provision of that kind to be made in an order subject to negative procedure.

An order that otherwise modifies the meaning of letting agency work will continue to be subject to the affirmative procedure as before.

I turn to amendment 85 from Alex Johnstone. I am aware that, at stage 1, the Law Society raised some concerns about the definition of letting

agency work in section 51. I have considered those concerns, and I am satisfied that the definition captures all the activity that should be regulated. Alex Johnstone talked about roofers, slaters and various workmen, but the key factor is that that work has to be done in the managing of the property. It is not about someone doing work as another contractor; it is work that is involved with the managing of the property, and that is in the bill as it stands.

Amendment 85 would remove on-going property management functions from the meaning of letting agency work when a property is being managed. I consider that those functions form a core part of the remit of many letting agents. The amendment could narrow the coverage of the regulatory regime, and therefore I cannot support it.

Accordingly, I invite Alex Johnstone to withdraw amendment 85, and I ask the committee to support amendments 87 and 128.

**Alex Johnstone:** I press amendment 85. I have absolute faith in the intent of the minister, but I am not 100 per cent confident that the wording that appears has the effect that the minister intends. As a consequence, we still need to clarify the issue. I therefore press my amendment and will continue to inquire into the matter before stage 3.

**The Convener:** The question is, that amendment 85 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Fee, Mary (West Scotland) (Lab)  
Johnstone, Alex (North East Scotland) (Con)  
Kelly, James (Rutherglen) (Lab)

**Against**

Eadie, Jim (Edinburgh Southern) (SNP)  
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)  
MacDonald, Gordon (Edinburgh Pentlands) (SNP)  
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

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

*Amendment 85 disagreed to.*

*Amendment 86 moved—[Margaret Burgess]—and agreed to.*

*Amendment 87 moved—[Margaret Burgess].*

**The Convener:** The question is, that amendment 87 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Eadie, Jim (Edinburgh Southern) (SNP)  
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)

Johnstone, Alex (North East Scotland) (Con)  
MacDonald, Gordon (Edinburgh Pentlands) (SNP)  
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

**Abstentions**

Fee, Mary (West Scotland) (Lab)  
Kelly, James (Rutherglen) (Lab)

**The Convener:** The result of the division is: For 5, Against 0, Abstentions 2.

*Amendment 87 agreed to.*

*Section 51, as amended, agreed to.*

#### **Section 52—Interpretation of Part 4**

*Amendments 88 and 89 moved—[Margaret Burgess]—and agreed to.*

*Section 52, as amended, agreed to.*

*Sections 53 and 54 agreed to.*

11:36

*Meeting suspended.*

11:45

*On resuming—*

#### **Section 55—Issue, renewal, transfer and transmission of a Part 1A site licence**

**The Convener:** The next group is on part 1A site licence: site inspection before issue or renewal. Amendment 146, in the name of Mary Fee, is the only amendment in the group.

**Mary Fee:** Amendment 146, in my name, is required to protect tenants and residents on mobile home sites. Licences must not be approved if concerns or complaints have been raised. To ensure that unscrupulous site owners do not continue to operate, the local authority must make an inspection to assess whether any issues are being addressed or have been resolved. Citizens Advice Scotland has briefed in favour of amendment 146, as clients have approached it over issues that could be tackled under the amendment. The amendment would improve governance in the sector and would provide additional safeguards for residents.

I move amendment 146.

**Margaret Burgess:** Amendment 146 seeks to impose further requirements on local authorities as part of their duties under the new licensing regime. I agree that local authorities should be thorough when considering whether a licence should be granted and that it is important for site visits to be carried out. However, I want to leave local authorities with some flexibility to focus resources on the most problematic sites. That is why I have lodged an amendment that will enable ministers to

issue guidance to which local authorities will have to have regard in carrying out their functions under the new licensing regime in the bill.

The Scottish Government will develop draft guidance in consultation with all stakeholders. The guidance will be able to cover site visits, including the issue of when they should be carried out, and to set out various circumstances in which a local authority is expected to inspect a site. I believe that that strikes the right balance between flexibility and the clear expectation that a site visit will be necessary in certain circumstances.

I reassure Mary Fee that I am keen to ensure that the regime is robust and that it is effectively enforced by local authorities. I believe that the guidance route will be effective. However, section 60 will allow ministers to make regulations on the procedure that is to be followed when licensing a site, and those regulations could include a requirement for local authorities to visit sites as part of the licensing process.

I understand the thinking behind amendment 146, but it would require a local authority to visit a site if there had been a single complaint and even if the local authority had already visited the site in relation to that complaint and found it to be without merit. I therefore believe that amendment 146 is not necessary, and I recommend that it be resisted.

**Mary Fee:** I thank the minister for her comments. In light of her points about developing guidance on when site visits should be carried out and considering the responsibilities that are put on local authorities, I am happy to seek to withdraw amendment 146, and I look forward to the guidance being published.

*Amendment 146, by agreement, withdrawn.*

**The Convener:** The next group is on part 1A site licences: giving of reasons for local authority decision. Amendment 90, in the name of the minister, is grouped with amendments 92, 96 and 97.

**Margaret Burgess:** During the Delegated Powers and Law Reform Committee's consideration of the bill, it highlighted the importance of a local authority providing reasons for its decisions. Although there are measures in the bill that will require local authorities to provide reasons in most situations, the DPLR committee believed that those should be applied more consistently. The amendments in this group were lodged in response to the committee's comments, which we considered carefully. They will place a consistent duty on local authorities to provide reasons for their decisions on licence applications, including on the renewal, transfer, and revoking of a licence.

Amendments 92, 96 and 97 will require local authorities to tell the relevant people about their decisions and provide reasons. Amendment 90 addresses the situation before a decision has been made, when a local authority is considering refusing to consent to a licence transfer. The authority will be required to indicate that to the applicant and set out its reasons, allowing the applicant 28 days to respond.

I move amendment 90.

*Amendment 90 agreed to.*

**The Convener:** The next group is on part 1A site licence: time limit for determining application. Amendment 91, in the name of the minister, is the only amendment in the group.

**Margaret Burgess:** The bill includes provision whereby, if a local authority does not make a decision on a site licence application within 12 months, the application will be deemed to have been approved. The measure was included as a backstop; the Scottish Government expects local authorities to make decisions in a shorter timescale.

At stage 1, stakeholders expressed concern that the approach would give local authorities an unacceptably long time in which to determine applications. In light of that, amendment 91 will remove the 12-month deadline from the bill and give the Scottish ministers the power to set time limits in regulations. That approach will enable the Government to consult the industry and local authorities about realistic timescales, which can be adapted as necessary. Amendment 91 will also enable ministers to set different timescales for different types of application. For example, a shorter timescale might be set for the renewal of an existing licence than would apply to an application for a new licence. That is a sensible way forward.

I move amendment 91.

**The Convener:** The question is, that amendment 91 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

#### For

Eadie, Jim (Edinburgh Southern) (SNP)  
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)  
Johnstone, Alex (North East Scotland) (Con)  
MacDonald, Gordon (Edinburgh Pentlands) (SNP)  
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

#### Against

Fee, Mary (West Scotland) (Lab)  
Kelly, James (Rutherglen) (Lab)

**The Convener:** The result of the division is: For 5, Against 2, Abstentions 0.

*Amendment 91 agreed to.*

*Amendment 92 moved—[Margaret Burgess]—and agreed to.*

*Section 55, as amended, agreed to.*

### **Section 56—Duration of a Part 1A site licence**

**The Convener:** The next group is on duration of part 1A site licence. Amendment 93, in the name of the minister, is the only amendment in the group.

**Margaret Burgess:** An issue that was raised at stage 1 was the move from a system in which licences run in perpetuity to one of fixed-term three-year licences. Fixed-term licences provide for a regular check that a site licence holder continues to be a fit and proper person, and give the opportunity to review and update site licence conditions. I therefore do not support a system in which licences run in perpetuity. The current system has proved to be weak and ineffective.

However, I listened to the points that stakeholders made at stage 1. In light of that, amendment 93 will provide that licence periods run for five years rather than three. The longer period will give greater stability to site owners and residents and reduce the administrative work for local authorities.

In its stage 1 report, the committee highlighted the importance of the provision of clear and accurate information to residents and site owners on what the changes will mean in practice. The Scottish Government has committed to providing such information when it puts the new licensing system in place.

Other Government amendments to the bill will further strengthen the right of residency that is provided by agreements under the Mobile Homes Act 1983, making it clear that the right will remain even if a site owner loses his or her licence.

Amendment 93 provides greater stability for residents, site owners and local authorities, while maintaining the important principle that a site licence runs for a specific period.

I move amendment 93.

**The Convener:** The question is, that amendment 93 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Eadie, Jim (Edinburgh Southern) (SNP)  
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)  
Johnstone, Alex (North East Scotland) (Con)  
MacDonald, Gordon (Edinburgh Pentlands) (SNP)

Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

**Against**

Fee, Mary (West Scotland) (Lab)  
Kelly, James (Rutherglen) (Lab)

**The Convener:** The result of the division is: For 5, Against 2, Abstentions 0.

*Amendment 93 agreed to.*

*Section 56, as amended, agreed to.*

### **Section 57—Duty to inform local authority where change**

**The Convener:** The next group is on duty to inform where change: period and offence. Amendment 94, in the name of the minister, is grouped with amendments 95, 107 and 108.

**Margaret Burgess:** These amendments will make it an offence not to provide a local authority with the relevant information on changed circumstances in specific timescales. If convicted of an offence, someone can be fined up to level 3 on the standard scale, which is £1,000.

The amendments strengthen the measures in section 57 that require a site licence holder to tell a local authority of any relevant changes in circumstances. With the move to licences for five years, rather than the three years that the bill originally proposed, it is even more important that licence holders are required to tell a local authority if their circumstances change. I ask the committee to support the amendments.

I move amendment 94.

**The Convener:** The question is, that amendment 94 be agreed to. Are we agreed?

**Mary Fee indicated disagreement.**

**The Convener:** I ask members to say no, please, and not just to shake their heads.

There will be a division.

**For**

Eadie, Jim (Edinburgh Southern) (SNP)  
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)  
Johnstone, Alex (North East Scotland) (Con)  
MacDonald, Gordon (Edinburgh Pentlands) (SNP)  
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

**Against**

Fee, Mary (West Scotland) (Lab)  
Kelly, James (Rutherglen) (Lab)

**The Convener:** The result of the division is: For 5, Against 2, Abstentions 0.

*Amendment 94 agreed to.*

*Amendment 95 moved—[Margaret Burgess].*

**The Convener:** The question is, that amendment 95 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Eadie, Jim (Edinburgh Southern) (SNP)  
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)  
Johnstone, Alex (North East Scotland) (Con)  
MacDonald, Gordon (Edinburgh Pentlands) (SNP)  
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

**Against**

Fee, Mary (West Scotland) (Lab)  
Kelly, James (Rutherglen) (Lab)

**The Convener:** The result of the division is: For 5, Against 2, Abstentions 0.

*Amendment 95 agreed to.*

*Section 57, as amended, agreed to.*

**Section 58—Revocation of a Part 1A site licence: fit and proper person**

*Amendments 96 and 97 moved—[Margaret Burgess]—and agreed to.*

*Section 58, as amended, agreed to.*

*Section 59 agreed to.*

**Section 60—Power to make provision in relation to procedure**

**The Convener:** The next group is on power to make provision in relation to decisions and appeals. Amendment 98, in the name of the minister, is grouped with amendments 99 to 104.

**Margaret Burgess:** Amendments 98 to 104 respond to helpful points that the Delegated Powers and Law Reform Committee made in its stage 1 consideration of the bill. It was concerned that the power in section 60 in relation to appeals is too broad and does not reflect our stated policy intention.

The amendments clarify our policy intention. The changes to section 60 that amendments 98 to 104 make will ensure that the Scottish ministers can make regulations that cover the administrative procedures that are to be followed for the various measures under the bill, such as procedures for issuing and renewing a licence and the procedure that is to be followed in relation to appeals.

I do not intend to go into further detail on the amendments at this stage. I ask the committee to support all the amendments in the group.

I move amendment 98.

**Mary Fee:** In general, I support what the minister is trying to achieve, but I am concerned about a lack of scrutiny, because amendment 98

relates to regulations that will be subject to the negative procedure. Will the minister comment further on that?

**Margaret Burgess:** As I said, the amendments arose from a concern of the Delegated Powers and Law Reform Committee. We will provide it with a detailed explanation in a supplementary delegated powers memorandum, which will be lodged on my behalf after stage 2. The main amendment is amendment 98, which adjusts the power's focus. The other amendments are consequential. We lodged the amendments to satisfy the Delegated Powers and Law Reform Committee's request. I have described how we will proceed.

12:00

*Amendment 98 agreed to.*

*Amendments 99 to 104 moved—[Margaret Burgess]—and agreed to.*

*Section 60, as amended, agreed to.*

**Section 61—Fit and proper person considerations**

**The Convener:** The next group is on part 1A site licence: fit-and-proper-person test. Amendment 105, in the name of the minister, is grouped with amendments 147, 148 and 106.

**Margaret Burgess:** Amendment 105 makes it clear that local authorities must have regard to whether a site owner has breached an agreement under the Mobile Homes Act 1983 in applying the fit-and-proper-person test for site licensing decisions. Those are personal contracts that individuals have with site owners, and local authorities are not usually involved with them, but they are very relevant to how site owners conduct their business. The amendment will ensure that local authorities can take into account all relevant factors when they make decisions about site licences.

Amendment 106 involves a technical change that specifically enables local authorities to share information that is relevant to the application of the fit-and-proper-person test as part of the process of making site licensing decisions. That will enable greater consistency of decision making across different local authorities and reduce the risk that a site owner may pass the test in one area but fail it in another due to a lack of relevant information.

Mary Fee's amendments 147 and 148 seek to make it explicit that a local authority must, when it is running the fit-and-proper-person test, take into account any issues around the site owner providing utilities to residents, such as a situation in which a site owner has profiteered from



providing utilities. We believe that such a situation is already covered in the bill, as a local authority “must have regard to all of the circumstances of the case”, which would include any profiteering from utilities. However, I recognise that some of the more important matters are set out on the face of the bill, and I am therefore happy to include this issue in that category.

There are some issues around Mary Fee’s amendments as they stand that we need to do some further work on. Specifically, I want to ensure that the correct guidance and the correct bodies are identified in the legislation. I am therefore happy to lodge an amendment at stage 3 that is specific on the matters that Mary Fee has raised but also takes into account the further work that we need to do on identifying all the relevant guidance. I hope that that undertaking is sufficient for Mary Fee not to move amendments 147 and 148.

I ask the committee to support my amendments 105 and 106.

I move amendment 105.

**Mary Fee:** I will be brief and will not rehearse the comments that I initially intended to make.

I am grateful for the minister’s comments on my amendments 147 and 148, which seek to provide additional protection for residents of mobile home sites who may be subjected to profiteering. I am happy not to move the amendments, given the assurances that she has given.

*Amendment 105 agreed to.*

*Amendments 147 and 148 not moved.*

*Section 61, as amended, agreed to.*

*Section 62 agreed to.*

#### **After section 62**

*Amendment 106 moved—[Margaret Burgess]—and agreed to.*

#### **Section 63—Offences relating to relevant permanent sites**

*Amendments 107 and 108 moved—[Margaret Burgess]—and agreed to.*

**The Convener:** The next group is on power to vary maximum fine. Amendment 109, in the name of the minister, is the only amendment in the group.

**Margaret Burgess:** Amendment 109 seeks to remove the power for ministers to vary the maximum fine for licence offences. I have noted the concerns about the power that were expressed by the Delegated Powers and Law Reform

Committee and supported by this committee in its stage 1 report, and the suggestions for amending it. However, as it is not clear how the provision can be amended to meet the Delegated Powers and Law Reform Committee’s views, I have concluded that the safest course of action is to remove the power to vary the maximum fines, which is what amendment 109 does.

I move amendment 109.

*Amendment 109 agreed to.*

*Section 63, as amended, agreed to.*

#### **Section 64—Improvement notices**

**The Convener:** The next group is on improvement notices and penalty notices. Amendment 110, in the name of the minister, is grouped with amendments 111 to 113.

**Margaret Burgess:** Amendment 112 addresses a concern expressed at stage 1 by removing the provision that residents do not need to pay the site owner for utilities such as gas and electricity in the event of a penalty notice being issued by a local authority. That could lead to utility bills not being paid and residents potentially having their services cut off. Although I recognise the need for appropriate penalties for site owners who do not comply with the terms of the legislation, I do not want such penalties to impact negatively on residents, and I think that amendment 112 achieves the right balance.

The remainder of the amendments in the group are technical ones that affect the period in which a licence holder must carry out steps to fulfil a local authority improvement order or penalty notice. An offence cannot be committed until the period set out in the notice has expired.

I ask the committee to support all the amendments in the group, and I move amendment 110.

*Amendment 110 agreed to.*

*Amendment 111 moved—[Margaret Burgess]—and agreed to.*

*Section 64, as amended, agreed to.*

#### **Section 65—Penalty notices**

*Amendments 112 and 113 moved—[Margaret Burgess]—and agreed to.*

*Section 65, as amended, agreed to.*

*Sections 66 to 69 agreed to.*

#### **Section 70—Part 1A of the 1960 Act: miscellaneous provision**

**The Convener:** The next group is on guidance on operation of part 5. Amendment 114, in the

name of the minister, is the only amendment in the group.

**Margaret Burgess:** Amendment 114 enables ministers to publish guidance on the operation of the bill's provisions with regard to mobile home site licensing, and requires local authorities to have regard to that guidance in carrying out their functions in relation to the licensing regime.

I have listened to concerns raised at stage 1 that there is not enough information about how the new regime will operate or how it will be enforced by local authorities, and I agree with the committee's recommendation about the importance of residents, site owners and local authorities having clear and accurate information. It has always been the Scottish Government's intention to provide information to accompany the new licensing system, including guidance for local authorities.

The Government's view is that local authorities should be able to take a risk-based approach and focus their work on sites with problems, and we feel that that work would be enhanced by a requirement on local authorities to take into account published guidance in carrying out their duties. However, the bill as drafted does not give ministers the power to issue guidance to which a local authority "must have regard", and amendment 114 seeks to address that.

I move amendment 114.

*Amendment 114 agreed to.*

**The Convener:** The next group is on agreements to which the Mobile Homes Act 1983 relates. Amendment 115, in the name of the minister, is grouped with amendment 116.

**Margaret Burgess:** The committee wanted to be sure that residents had a clear right to remain on a site if it lost its licence, and amendments 115 and 116 ensure that that is the case by replacing the bill's current provisions on residents' rights with a new, even stronger, section.

The amendments also make provision to address the committee's concern that the bill did not contain a measure to prevent the cost of enforcement action from being passed on to residents through pitch fees. As a result, if a local authority recovers the cost of enforcement action from a site owner, the site owner cannot pass the costs on to residents through pitch fees.

The amendments address two important areas of concern for residents, and I invite the committee to support them.

I move amendment 115.

*Amendment 115 agreed to.*

*Section 70, as amended, agreed to.*

*Section 71 agreed to.*

#### **After section 71**

*Amendment 116 moved—[Margaret Burgess]—and agreed to.*

**The Convener:** That ends today's consideration of amendments. Next week, the committee will consider the remaining amendments to the Housing (Scotland) Bill; petitions PE1425, on the closure of local Driver and Vehicle Licensing Agency offices in Scotland, and PE1481, on blacklisting; and its annual report.

*Meeting closed at 12:12.*

Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice to SPICe.

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