JUSTICE 2 COMMITTEE

AGENDA

13th Meeting, 2004 (Session 2)

Tuesday 20 April 2004

The Committee will meet at 2.00 pm in Committee Room 3.

1. Tenements (Scotland) Bill: The Committee will take evidence on the general principles of the Bill at Stage 1 from—

   Dr Douglas Robertson, the University of Stirling, and the Chartered Institute of Housing

   Jack Fulton, President, and Neil Watt, Past President, the Property Managers Association and Royal Institute of Chartered Surveyors in Scotland;

   Martyn Evans, Director, and Jennifer Wallace, Policy Manager, Scottish Consumer Council; and

   Councillor Douglas Reid, Housing Spokesperson, Councillor Sheila Gilmore, City of Edinburgh Council and Ron Ashton, Director of Housing, Angus Council, COSLA.


3. Draft arbitration bill: The Convener will report back on the recent meeting with the Hon. Lord Dervaird and Lord Coulsfield.

Gillian Baxendale / Lynn Tullis
Clerks to the Committee
Tel 0131 348 5054
The following papers are enclosed for this meeting:

**Agenda item 1 – Tenements (Scotland) Bill**

- Written submission from Dr Robertson, the University of Stirling  J2/S2/04/13/1
- Written submission from the Chartered Institute of Housing  J2/S2/04/13/2
- Written submission from the Property Managers Association  J2/S2/04/13/3
- Written submission from the Royal Institute of Chartered Surveyors in Scotland  J2/S2/04/13/4
- Written submission from the Scottish Consumer Council  J2/S2/04/13/5
- Proposed areas for questioning  J2/S2/04/13/6

*(PRIVATE PAPER – MEMBERS ONLY)*

**Agenda item 2 – Annual Report**

- Draft annual report  J2/S2/04/13/8

**Forthcoming Meetings:**

- Wednesday 21 April – Joint Justice 1 & 2 Committee Meeting (AM)
- Tuesday 27 April - Justice 2 Committee meeting (PM)
- Wednesday 28 April - Joint Justice 1 & 2 Committee Meeting (AM)
- Tuesday 4 May - Justice 2 Committee meeting (PM)
JUSTICE 2 COMMITTEE

13th Meeting 2004 (Session 2)

Tuesday 20 April 2004

Tenements (Scotland) Bill
Written submission from Dr Douglas Robertson, University of Stirling
TENEMENT (SCOTLAND) BILL STAGE ONE
The Scottish Parliament: Justice Committee Two

Dr DOUGLAS ROBERTSON

Director
Housing Policy and Practice Unit, University of Stirling

Introduction
I welcome the opportunity to offer evidence to the Scottish Parliament's Justice Committee in relation to the Stage 1 consideration of the Tenement (Scotland) Bill.

My submission draws on extensive research, which I have undertaken into the current failings of private flat management arrangements, both here in Scotland and in England and Wales. This research was funded by the Joseph Rowntree Foundation, and the Department of the Environment, Transport and the Regions, in relation to supporting leasehold reform and the introduction of commonhold in England and Wales. These various studies involved undertaking comparative studies of property management systems operating in both Australia and the USA, countries that share certain common legal heritage. This work, has built on earlier research for Scottish Homes (now Communities Scotland), which showed that despite substantial public investment in the renewal of Scotland's private tenements, owner occupiers were still failing to undertake regular property maintenance, which in time will cause major problems to the fabric of this housing. I have also produced an owners' guide to flat management and conducted a literature review on private common repair matters, both for the Scottish Executive.

Principles
The principal ambitions set for this Bill, which has been over twenty years in the making, is to provide a basic statutory system that governs both the ownership and management of various elements of a tenement building. In setting about this task the Bill defines the common elements that will become scheme property, and in doing so reforms the principle of common interest. It provides for a basic management scheme to facilitate better decision-making, and sets a legal requirement for building insurance.

What the Bill does illustrate is that ownership within tenement property is individualised, and not collective, as is the case in other jurisdictions. Scheme property signifies shared responsibilities, not shared or common ownership. This is because, within Scots law, commonhold would demand unanimity in decision-making.


between all owners. The Bill also makes it clear that the statutory default position only applies where the deed provisions are silent. In all other cases the deed provisions will take precedence, and this applies even when the default position would represent a marked improvement on the deed provisions. This is because retrospective legal provisions could fall foul of the ECHR.

As a result, the Tenement Bill will still allow for infinite variety in relation to title deeds. While this is probably unavoidable in relation to existing flatted property, such a situation should not be allowed to happen in relation to future flatted developments, which, within Edinburgh and Glasgow, represent the bulk of new housing development. There is an assumption that the basic provisions in the Bill will be incorporated into future title deeds, but there is no guarantee this will happen. The fact that the Development Management Scheme is deemed to be a reserved matter does not help in this regard, as the provisions it will contain are unknown.

This is something the Committee needs to address. Currently, there are an infinite variety of title deed provisions, which vary depending on when the property was built, where it was built, and what type of tenement property it is, whether purpose built or a conversion. Poor conveyancing practice has also contributed to these problems. As a result of these drafting problems, for large numbers of flats no agreed management system can operate, there are difficulties in making decisions and enforcement and payment issues cannot be enforced on all owners. So as a consequence, individual owners can easily avoid their responsibilities in relation to paying for regular maintenance. The Bill, after all, should help address the problem of disrepair, and the lack of maintenance being undertaken on flatted private property. But to do this effectively, it requires to achieve collective decision-making within an individualised ownership context. The governing principles of the Tenement Bill need to encourage better tenement property governance, that is the management and maintenance of these properties for the benefit of all owners. While there are legal constraints in doing that for existing flatted private properties, it can be achieved for all such property built in the future.

Uniformity and simplicity
The approach that should be adopted is to insist that all title deeds for new flatted property require to meet the basic statutory system set down by the Tenement Bill. This would ensure that a basic standard was established from 2005, and sets a benchmark which, over the years, can be improved upon. Having emphasised the need for a degree of uniformity and standardisation, as is the ambition of the Bill, it is important not to set in place a system that would be too inflexible. For new property, the basic statutory arrangements should always be in place, but that should not stop anyone from adding to these by creating better management arrangements, via considered title provisions. With this basic system in place, owners of existing flatted property might then choose to modernise their own deeds, especially if the housing market paid a premium for having the statutory arrangements in place. The danger is that if such an amendment does not come to fruition, then we could easily find ourselves back at square one because, while the majority of developers make perfectly acceptable arrangements, there will always be some whose arrangements turn out to be defective. Also given that most modern title deeds apply to recently built property, most of which is less than 20 years of age, the robustness of their management arrangements has yet to be tested in relation to major repair works.

For too long, tenement or flatted property has been viewed by consumers as a second best housing option, when compared to a detached or semi-detached home. The uncertainty about being able to get your neighbours to agree to repair works, because title provisions are often unclear and, therefore inoperable, largely explains
this concern. By ensuring that the owners of all new flats have the basic statutory system, as proposed by the Tenement Bill, in place, will resolve this problem, and enhance the reputation of what is a critical part of the Scottish housing market. Such an amendment would, therefore, represent a major advance for all house buying consumers.

There are other benefits that would result from this simple tidying amendment. One of these is to introduce transparency and clarity into the property purchasers, which is the prime ambitions of the entire Feudal Tenure reform package, of which the Tenement Bill is but the last part.

**Transparency and Clarity**

Having a standardised system of all flats, built after 2005, and for those which had had their deed amended to incorporate what would be the Tenement Act provisions, would introduce transparency and clarity to the operation of a proper management system. Rather than consumers being presented with an infinite variety of title provisions, there would be a standardised package covering the basic features.

**Education and advice role**

Having such a system would be ideal when developing educational and advice materials. As consumers need to understand the implications and scope of these reforms, there needs to be a commitment to ensuring proper education and advice support is readily available. Having a specific commitment to make this happen within the Tenement Bill should be an integral part of this legislative package. Having ready access to such information will help resolve any misunderstandings and will facilitate wider adoption of these provisions. Ready access to such information, through for example a dedicated web site, could encourage a new culture of flatted property governance to emerge. By ensuring the proposed system is simple to understand, easy to operate and as uniform as possible in its application, across all new flatted property, this education and advice role would be straightforward. This would also reduce the need for legal redress to sort out what are often basic management problems. There exists within Community Scotland the capacity to undertake this work through the excellent work of Homepoint.

**Business Development Template**

Having the statutory system, as outlined by the Tenement Bill, would also create a business development template for property managers. Given the current diversity of deed provisions, property managers require to first work out from the titles what they can and cannot do, and then decide whether they will be paid for the work. If the statutory system becomes the norm over time, they would then operate within a far more predictable business environment, which will benefit both themselves and the consumer. Further, this would also set down the basic parameters which would allow for the proper regulation of property managers (whether private businesses, housing associations or local authorities), an issue which is currently being examined by the Scottish Executive.

**Disputes resolution mechanism**

The only real area of weakness in the proposed legislation is in relation to disputes resolution. Evidence from my research indicates most people involved in day-to-day private property management do not consider the Sheriff Court a useful mechanism to deal with title provision disputes. It would be far better if there was a dedicated disputes resolution system in place that dealt with the bulk of these small disputes, similar to the arrangements for title commissioners in certain Australian States. If the powers of such an official in Scotland were linked into the education and advice role, detailed above, then a fast and effective decision-making tool would be put in place.
People currently do not use the current Court system to resolve such disputes because it is both expensive and time consuming. The need for fast inexpensive resolution of what are effectively neighbour disputes cannot be over estimated.

I hope this submission has highlighted the importance of ensuring this basic amendment is adopted. Further consideration needs to be given to the education and advice need of the legislation, and more thought has to be given to establishing a proper disputes resolution mechanism. These changes would ensure that the Bill’s ambitions are fully achieved. I would welcome the opportunity to expand upon any of these issues by giving evidence to the committee in person. I can be contacted at the address provided on the email.
JUSTICE 2 COMMITTEE

13th Meeting 2004 (Session 2)

Tuesday 20 April 2004

Tenements (Scotland) Bill
Written submission from the Chartered Institute of Housing
Chartered Institute of Housing in Scotland

Tenements (Scotland) Bill
Stage One – Written Evidence to Justice 2 Committee

The Chartered Institute of Housing in Scotland welcomes the opportunity to provide written evidence on the Tenements Bill. The Institute is supportive of the Bill’s policy intentions and welcomes the measures contained within.

However, the Institute would urge the Committee to consider the fact that the new system of tenemental management proposed in this Bill will not tackle the backlog of serious disrepair in tenement stock unless accompanied by measures to ensure early identification of repairs and methods by which work can be paid.

The evidence below is therefore restricted to the sections of the Bill which the Institute believes need to be strengthened in order to ensure that the policy intentions of the Bill are introduced effectively including:

- Tenement Management Scheme (Section 4)
- Support and Shelter (Section 7-10)
- Insurance (Section 15)
- Long Term Maintenance Funds
- Common Factoring Schemes
- Owners Associations
- Regular Surveys

Tenement Management Scheme (Section 4)

The CIH believes that the Tenement Management Scheme (TMS) should apply to all tenements in Scotland, old and new, except where the Development Management Scheme is adopted.

The Bill sets out the principles of majority voting and equal apportionment of costs, however, if free variation of deeds continues, these principles will still not be applicable to many tenement owners. The Institute believes that these principles should be the foundation of all tenement management and if the TMS does not supersede title deeds then the current infinite variety of provisions will continue.

This is particularly the case in relation to new flatted developments as developers are free to vary from the Bill’s provisions if they see fit to do so. While the title deeds of most new developments are effective, it would be wrong to suppose that all are and that no developer will introduce a defective system of management.

Therefore the Institute believes that, rather than the Bill’s provisions being seen as a form of good practice which may or may not be followed, it should be seen as a basic statutory standard. This could be improved upon by developers by adding further provisions if necessary but would allow the formation of a foundation of standards which all owners of tenemental property have a right to expect.

Support and Shelter (Section 7-10)
The Institute supports the statutory re-statement of the rules on support and shelter. However there is a concern that the fact that an owner will not be obliged to maintain a part of a building if it would not be ‘reasonable’ may allow some owners to use the grounds of unreasonableness to delay necessary work and further guidance on measure is therefore urgently required.

**Insurance (Section 15)**

The Institute supports the recommendation of the Housing Improvement Task Force (HITF) for compulsory insurance based on a common policy for new flatted developments.

This could be enforced at various stages, for example mortgage providers requiring proof of insurance when setting up a mortgage and the forwarding of up-to-date insurance documents to them on an annual basis. Factors also have a role to play in enforcement and ensuring payment.

**Long Term Maintenance Funds**

While the Bill will introduce an adequate method of governance, the impact of this important legislation will be greatly lessened if no changes are made to the way repairs are funded. Fundamental changes are required to the culture of owners and their attitude towards funding repair work. This can only be done through far-reaching policies and the Institute therefore supports the introduction of mandatory Building Reserve Funds (BRFs).

The Tenements Bill is an early opportunity to tackle this issue in a pro-active manner. However the Institute recognises that it would be impractical to introduce such funds across the board over night and therefore suggests tying the establishment of such funds to a change in flat ownership. Every new owner entering into an agreement to buy a flat would be required to budget for payments while existing owners could opt into the scheme on a discretionary basis.

The establishment of a BRF should be mandatory in all new-build tenements. Action needs to be taken from such an early stage to ensure that the build-up of expensive repairs faced by existing tenements does not begin within new tenements.

On a voluntary basis the route to establishing the BRF would be as follows:
1. The majority of owners agree to a binding management agreement or the introduction of a clause, establishing a BRF, in the deed of conditions.
2. A suitable investment fund with adequate management provisions and safeguards is established.
3. Those owners who are willing and able to save commence to make regular contributions.
4. When these owners come to sell their properties, the incoming owners pay the property price plus the accumulated value of the BRF for that property.

The Institute is also concerned by the Executive’s case that, as interest rates are low then some owners may prefer to borrow to fund repairs when the arise rather than saving for repairs in advance. While this may currently be true, it is unwise for the repair of our tenemental stock to be dependent on the fluctuations of the wider economy.
Common Factoring Schemes

While the Institute supports the provisions in the Bill to allow a majority of owners to appoint or dismiss a property manager, we also believe that owners in a developments of eight properties over should be required to appoint a property manager. This could of course include the appointment of an owner.

The Institute accepts that in smaller developments owners may prefer to manage their own tenement. However, in larger developments where more complex and costly issues may arise, it is imperative to have an individual to drive the management of the tenement and ensure that repairs and maintenance are carried out to a satisfactory standard.

Owners Associations

The same arguments apply with regards to the establishment of owners associations and as such the Institute supports the HITF recommendation that all new residential developments of eight or more flats should be a required to establish an owners’ association.

Regular Surveys

While the Bill will introduce an adequate method of governance, the CIH believes that there are still inadequate provisions in the Bill to ensure that repair problems are identified at an early stage.

In most cases the need for a repair is not apparent unless a survey is completed while delays in work will usually cause a minor and relatively inexpensive repair to develop into something more serious and costly. That is why, as part of our submission to the HITF, the Institute proposed that five yearly property surveys be introduced for tenements to facilitate common repairs and maintenance. Such a scheme should be introduced as part of the Tenements Bill.

This response has been prepared by:

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JUSTICE 2 COMMITTEE

13th Meeting 2004 (Session 2)

Tuesday 20 April 2004

Tenements (Scotland) Bill
Written submission from The Property Managers Association Scotland Ltd
Dear Sir or Madam

Tenements (Scotland) Bill – Stage 1

We refer to the letter of 3rd February, 2004 from the Justice 2 Committee.

Property Managers Association Scotland Limited (“PMAS”) is pleased to have the opportunity to provide evidence to the Justice 2 Committee on the Tenements (Scotland) Bill (“the Bill”) as introduced to the Scottish Parliament.

PMAS is the trade association of Residential Property Managers and Factors in Scotland, and its members have in excess of 100,000 units of property under management.

PMAS welcomes the introduction of the Bill to the Scottish Parliament, and is largely supportive of the terms of the Bill.

PMAS continues to have certain concerns about the Bill as introduced and these are concerns which have previously been expressed to both the Scottish Law Commission and the Scottish Executive in their consultations on Reform of the Law of Tenement.

PMAS is concerned about the following matters:-

1. Section 3 (5) – PMAS feels that the chimneystack should be regarded as part of the roof and as such should be common to all the flats within the tenement. From a practical point of view the application of the arrangement specified in Section 3 (5) will be difficult to manage.

2. PMAS welcomes Section 11 which will go some way towards solving the problem of flats being sold with arrears of common charges for which a new owner has no responsibility. However PMAS considers that the introduction of Section 11 as drafted will lead to two separate classes of common charges. If common charges are due as a result of the implementation of the Tenement Management Scheme (which by definition is the default position) then a purchaser will be severally liable with the seller for the outstanding common charges. The anomaly will be that if the Tenement Management Scheme does not apply but the position is regulated by title conditions or burdens a purchaser will not be liable.

The incidence of arrears of common charges and particularly irrecoverable arrears where properties are sold without the Manager being advised of the sale lead to major problems in management. PMAS would respectfully suggest that the definition of “relevant costs” should be extended to be:-
(a) the share of any costs for which the owner is liable by virtue of the Tenement Management Scheme or would be liable if the Tenement Management Scheme applied to the flat; and

(b) any other costs for which the owner is liable by virtue of this Act.

3. With reference to Section 17 of the Bill, the Association disagrees with the proposal that where a tenement is only partially demolished the cost should be borne equally, but only by the owners of the flats which have been demolished. If the load bearing walls, external walls and roof are common parts of the tenement owned by all proprietors of the tenement then alterations to these items should be common. Even if a building is only partially demolished it will be common parts which are demolished. It follows that any partial demolition cost should be borne by all of the owners, and not only by the owners of those parts of the tenement which will cease to exist after the demolition has taken place. Those owners whose flats have ceased to exist after the partial demolition has taken place will continue to have a pro indiviso share of the solum. It should be borne in mind that partial demolition will benefit those proprietors whose properties are left after the partial demolition has taken place, although these proprietors may well have failed to contribute towards the maintenance of the common parts which has lead to the deterioration necessitating partial demolition.

4. PMAS feels that the timescales specified in the Tenement Management Scheme Rule 3.4 are not long enough to enable practical management to take place. Referring to Sub-Clause (f) (i) it may well be not possible to commence the maintenance by the 14th day after the proposed date for its commencement for a variety of reasons wholly outwith the control of a Manager or a group of owners who have arranged the maintenance. For example adverse weather conditions, material shortages, labour disputes and other reasons may prevent a contractor from commencing the works. PMAS recommends that there should be some leeway or alternatively the period should be considerably longer.

PMAS is prepared for these views to be made available to other consultees and interested parties as well as being available to the Committee.

Yours faithfully,

for Bishops
Secretaries
JUSTICE 2 COMMITTEE

13th Meeting 2004 (Session 2)

Tuesday 20 April 2004

Tenements (Scotland) Bill

Written submission from the Royal Institution of Chartered Surveyors in Scotland
10 June 2003

Ms Deirdre Duffy
2nd Floor West Rear
St Andrew’s House
Regent Road
Edinburgh
EH1 3DG

Dear Deirdre

Tenements (Scotland) Bill

The Royal Institution of Chartered Surveyors in Scotland (RICS Scotland) has noted the above consultation paper and is grateful for the opportunity to participate in this debate.

RICS Scotland is the principal body representing professionals employed in the land, property and construction sectors. The Institution represents some 9,000 members: 7,000 chartered surveyors, 200 technical members and 1,800 students and trainees. Our members practise in sixteen land, property and construction markets and are employed in private practice, in central and local government, in public agencies, in academic institutions, in business organisations and in non-governmental organisations. As part of its Royal Charter, the Institution has a commitment to provide advice to the government of the day and, in doing so, has an obligation to bear in mind the public interest as well as the interests of its members. RICS Scotland is therefore in a unique position to provide a balanced, apolitical perspective on issues of importance to the land, property and construction sectors.

RICS Scotland operates a Dispute Resolution and Mediation Service. RICS Scotland is the biggest appointing body in Scotland with around 400 commercial rent review appointments and around 80 adjudication appointments each year.

Having considered this consultation document at length, the Royal Institution of Chartered Surveyors in Scotland wishes to make the following comments on the discussion points outlined in the paper.

Discussion Points

Discussion point 1:
Do you agree that the existing common law rules of ownership within a tenement should be restated? Should they apply to all properties - existing and new? Should they be capable of free variation in the title deeds in future?
RICS Scotland agrees that the existing common law rules of ownership within a tenement should be restated. The rules should also apply to all properties, both old and new. The rules should also be capable of free variation in all future title deeds.

Discussion point 2: Do you agree with the proposed rules on the boundaries of ownership of tenement flats? If you do not, which do you disagree with, and why?

Agreed.

Discussion point 3: Do you agree that the service test is the most appropriate apportionment of pertinents within a tenement? Or should all flats within the tenement be given an equal right of common property to all pertinents?

In order to ensure an equitable solution, all flats in a tenement property should retain an equal right of common property in all pertinents. This should apply to all properties, old and new, except where it is expressly outlined in the title.

Discussion point 4: Do you agree that each flat served by a pertinent should have an equal share in that part of the pertinent which serves it? Alternatively should all the flats served by a pertinent have an equal share in the whole pertinent?

RICS Scotland is of the opinion that all flats served by the pertinent should have an equal share of the whole pertinent.

Discussion point 5: Do you agree that the common close, stair and any lift should be owned equally by all the flats to which they give access?

Yes, as lifts, stairs and closes give access to parts of the property which are held in common ownership and are therefore of interest to all of the owners within the building.

Discussion point 6: Are you content with the different treatment of external paths or stairs compared with the internal pertinents of a tenement? Should fire escapes be treated like external paths, etc., or should they be owned equally by all the flats?

No. RICS Scotland believes that all common parts should be owned equally by all flats in the tenement.

Discussion point 7: Do you think the Tenement Management Scheme as currently drafted should apply to all tenements in Scotland, old and new, except where the Development Management Scheme is adopted?
RICS Scotland is of the opinion that the application of a Tenement Management Scheme to all tenement properties irrespective of age would be beneficial. There may however be exceptions to this where the title condition would prevail.

**Discussion point 8:** Do you think that the title deeds should always prevail over the Tenement Management Scheme? Or do you think that the Tenement Management Scheme should supersede the title deeds on all matters?

We are of the opinion that the title deeds should prevail in all matters as every situation is different and therefore cannot be legislated for. Although the adoption of Tenement Management Schemes is encouraging, we strongly feel that the Tenement Bill should under-pin and assist the clauses expressed in the title deeds.

**Discussion point 9:** Do you think that the Tenement Management Scheme should only apply to the extent that the title deeds are silent?

Agreed, refer to discussion point 8.

**Discussion point 10:** Do you think that the title deeds should prevail on the 2 specific matters of decision making and the apportionment of costs? Or do you think that the Tenement Management Scheme should supersede the title deeds on these 2 matters?

If the title deeds make specific provision on the matters of decision making and apportionment of costs, then the title deeds must apply. Otherwise, the Tenement Management Scheme should apply.

**Discussion point 11:** Do you agree with the concept of scheme property? Do you agree with the list of items to be included in scheme property?

RICS agrees with the concept of scheme property. In order to clarify the situation, we would however, like to stress that chimney heads and stacks are major structural elements. It is however, common practice for these to be treated as common with the individual owners being responsible for the pots and any flue liners. The flue is not an item itself, but merely a void in the structure. Roof skylights that serve roof voids should form part of scheme property and those skylights that serve space which is used should be private as should the flashings serving them. This is a complicated problem and we see no way in which every set of circumstances can be legislated for.

**Discussion point 12:** Do you agree that it should be an owner’s right to demand that his co-owners maintain their property?
Agreed, RICS Scotland is of the opinion that it is valid for an individual owner to demand that co-owners maintain their properties subject to proportionality / or some test of necessity.

**Discussion point 13:** Do you agree that the definition of maintenance should only include incidental improvement?

Yes, we agree that maintenance should only include incidental improvements.

**Discussion point 14:** Do you agree with the Commission’s provision for flats of equal size? Do you think that one and a half times is the right multiple to apply to this rule?

RICS Scotland believes that the 1.5 times is inadequate and that twice the floor area is a more realistic measurement. We would also suggest that the RICS Codes of Measurement should be applied. A copy of this code is enclosed with this response.

**Discussion point 15:** Do you agree with the recommendation of the Housing Improvement Task Force that there should be a requirement in the proposed Bill for the establishment of an owners’ association in all future developments where there are eight or more units in the development? Do you think that the provision in the Tenement Management Scheme would be sufficient even for larger developments?

We agree with the recommendation that an owner’s association should be established in future developments, however, we consider that 8 units is a relatively small number and should be amended to include larger developments. The Tenement Management Scheme is not appropriate for larger developments (above 16 units) and a suitable deed of conditions should be prepared for larger developments and a Development Management Scheme implemented.

**Discussion point 16:** The Housing Improvement Task Force has commented that it would be impractical to use the Tenements Bill to compel all owners to establish and contribute to reserve or sinking funds in either existing or new developments. Do you agree?

Agreed.

**Discussion point 17:** The Task Force decided against recommending that it should be a requirement for all title deeds for new developments to require owners to appoint a property manager. They did, however, recommend that the Scottish Executive should seek to provide advice to developers and their legal advisers on good practice on specifying property manager burdens in new title deeds. Do you agree with this approach?

Agreed.
Discussion point 18: Do you agree with the proposals in section 5 to allow applications to the sheriff for annulment of decisions taken under a management scheme which governs a tenement?

Agreed, however, it should be noted that this could result in unnecessary delays to the work being undertaken.

Discussion point 19: Do you agree that disputes in relation to management schemes and decisions by a majority of owners should be resolved by summary application to the Sheriff Court?

Agreed.

Discussion point 20: Do you agree with the proposed restatement of the duty to provide support and shelter in section 8? Do you agree that an owner should not be bound by the duties of support and shelter if the duty would be unreasonable having regard to the age and condition of the tenement and the likely cost?

RICS Scotland agrees with both of these suggestions.

Discussion point 21: Do you agree with the proposed restatement of the obligation to refrain from any alterations to, or work on, a tenement which might interfere with support or shelter or with natural light? Do you agree that tenants should have negative obligations (but not positive ones) enforced against them?

RICS Scotland agrees with both of these suggestions, however, the wording appears to suggest that only natural light to a building may be affected. We would suggest that natural light to shared widows in a tenement stair should be included.

Discussion point 22: Do you agree with the proposal in section 10 that the cost of work carried out under the positive obligation to provide support and shelter should be recovered from the other proprietors as if the work had been carried out under the management scheme in force for the tenement?

In principle we would agree to this proposal. However, consideration must be given to what is expressed in the title deeds and how the share of the cost would be allocated.

Discussion point 23: Do you agree that sellers should remain liable for repair costs which arose during their period of ownership even if they have now sold the property? Do you agree that new owners should be severally liable with the old owner, but should have a right of relief against the old owner?

RICS Scotland believes that sellers should remain liable for repair costs, which arose during their period of ownership. We also agree that the new owner should be jointly and
severally liable with the previous owner, but should have right of relief against the previous owner. RICS Scotland welcomes these proposals and believes that they will have a significant impact on tipping the balance in favour of owners proceeding with repair work when there is a bad payer in the building.

Discussion point 24: Do you have any other suggestions as to how to trace missing owners?

Missing owners should be a thing of the past due to the legal means now available to track them down. The Register of Sasines / Electoral registers should be able to pinpoint missing owners.

Discussion point 25: Do you agree that an obligation to pay a cost should prescribe after 5 rather than 20 years?

RICS Scotland agrees that 5 years is sufficient.

Discussion point 26: Do you agree that the common law right of recovery should no longer apply in circumstances where a management scheme is in place?

Agreed.

Discussion point 27: Do you agree with the proposals in section 14 of the draft Bill on access for maintenance purposes? Do you agree with the proposed safeguards on the proposed right of access?

RICS Scotland agrees with both of these proposals.

Discussion point 28: Do you agree that there should be a minimum standard of statutory insurance based on a duty to insure and a list of risks to be prescribed by Scottish Ministers? Do you have any views on how this duty is to be enforced?

RICS Scotland agrees with this suggestion, however we believe that insurance premiums should be pro-rated on the amount of cover. We have no comment to make on how this can be enforced.

Discussion point 29: What are your views on a statutory obligation to have a common insurance policy for a tenement? Do you think that these should be made mandatory? Do you agree with the Housing Improvement Task Force that common insurance policies should be mandatory for new developments?

Mandatory insurance for all new developments would be beneficial and a common policy would be the most suitable.
Discussion point 30: Do you agree with the proposals in the draft Bill on the placing of television aerials and satellite dishes?

Agreed, however further definition of commercial interested should be provided (ie. mobile phone masts and further broadcasting equipment)

Discussion point 31: Are you content with the proposals for the installation of gas and other services in tenements?

Any services placed in tenements should be designed and installed to the highest safety standards, especially in the case of gas installation. As these services are normally located within the common stair enclosure, which usually serves as the main means of escape for all occupants, then perhaps national minimum standards (regulations) should be introduced to address this problem and provide a consistent safe approach. It is accepted that the gas engineer’s expertise and legislation should provide control but it is not accepted that gas engineer’s expertise extends to construction, fire protection and means of escape in the event of a fire.

Discussion point 32: Do you agree that the demolition of a tenement should not affect the ownership of the site?

Agreed, ownership should not be affected by a demolition.

Discussion point 33: Do you agree with the proposals on liability for the cost of demolishing a tenement building? In particular, do you agree that:

The proposals appear to have taken no account of the reasons why part demolition may take place. In the past this has been mainly because a building has become dangerous but there have been viable businesses such as public houses on the ground floors. In these instances it would have been much cheaper to demolish to the ground than to roof over above the ground floor. The normal procedure was for the ground floor proprietors to either pay the excess cost of part demolition or to meet the full cost in return for the transfer of the upper floor proprietors’ interest in the solum.

(a) except where the titles provide otherwise, the cost of demolition should be borne equally by the owners of flats in the tenement;

    Agreed.

(b) where a tenement is only partially demolished, the cost should be borne equally but only by the owners of the flats which have been demolished; and

    Disagree. The cost should be shared by ALL of the owners as the demolition is likely to include the removal of elements which are part of the scheme property (ie.
outer walls, roofs). It, therefore follows that any partial demolition cost should be borne by all of the owners and not only by the owners of those parts of the building that cease to exist after the demolition has taken place.

(c) where the floor area of the largest flat is more than one and a half times the size of any other flat, liability for cost should be based on floor area.

Agreed.

Discussion point 34: In relation to the site of a demolished tenement, do you agree that in the absence of a burden requiring rebuilding or agreement among the owners to rebuild, any owner of a former flat should be entitled to have the site sold with the proceeds being divided equally among the owners of the former flats (except where the floor space of the largest flat is more than one and a half times that of the smallest flat)?

In general, RICS Scotland agrees with this, however, the situation above assumes that all owners have an equal share of the solum. Clarification is required on sole ownership of the solum and what affects this would have on the other owners. The wording of any ground leases would also have to be investigated. If a property is to be demolished, does the lease terminate and the property revert back to the Local Authority? (as head landlord)

Discussion point 35: Do you agree that outstanding securities should be treated as securities over a share of the whole site of the former tenement, with the shares corresponding to the number of flats previously existing?

Agreed.

Discussion point 36: Do you agree that the sale of a derelict tenement by any one of its owners (with appropriate sharing of the proceeds among all the owners) is an acceptable way of resolving the impasse under the present law?

Agreed, but, attention should be given to the individual value of all of the properties affected. For example, in a mixed use development there could be a higher value use at ground floor.

Discussion point 37: Do you agree that non-owners should be treated as though they were owners of a part of a tenement which has been damaged but only for the purposes of founding a claim for the recovery of maintenance costs against the person who caused the damage?

Agreed.
Discussion point 38: Do you agree with the proposals on the meaning of "owner" and the determination of liability.

Agreed. However, we think that further consideration should be given to the definition of area by not disregarding storage use.

General Comments

RICS Scotland thanks the Scottish Executive for the opportunity to respond to this consultation and for the meeting which took place on Thursday 22 May at RICS Scotland which we found both helpful and interesting. In particular we would like to make specific reference to rule 2.4 of the Tenement Management Scheme which we feel is cumbersome, time consuming and virtually unworkable. It is true that there is a need for control but, we feel that the provisions set out in draft procedure will either deter owners from trying to promote repairs or, more likely, it will be ignored which could lead to even more problems. The scheme would be workable for major projects but would present major problems for property managers in the arrangement of routine repairs, many of which now require advance funding from the owners depending on the owners' payment record. We suggest that there should be a minimum cost per unit below which the Scheme decisions would not require the procedures set out in 2.4 and would suggest a limit of £100 per flat, variable from time to time by order of the Scottish Ministers.

RICS Scotland is gravely concerned at the time scales proposed in Rule 2.4 of the Scheme. In particular, the period of 14 days after the anticipated start date for the works, collected monies must be repaid if work has not commenced, is far too short. Intimating start dates is fraught with problems. It will encourage last minute payment and often late payment that could place a technical bar on the works going ahead. Also, managers will be unable to determine start dates in advance and intimating safe dates with inbuilt delay could create credibility problems.

It can take anything from three weeks to three months to collect advance payments and often longer if the owners require to be convinced that the only way that the work can go ahead is if they underwrite one of their number who cannot or will not pay. It is the reality of repairs management that even relatively simple jobs can take 3 to 6 months to complete. If pre-paid cash has to be handed back, even after two months, the whole process will have to be re-started if the late payers eventually lodge their payments. Far from facilitating repairs, this proposal will lead to further delays.

In the definition of Scheme Property we are of the opinion that any shared windows, doors and other elements should be included in the definition of Scheme Property.

On behalf of RICS Scotland, I hope that these comments are helpful. Please do not hesitate to contact me if you wish to discuss any point.
Kind regards

Yours sincerely

SARAH J REED
Head of Public Policy
sreed@rics.org.uk
JUSTICE 2 COMMITTEE

13th Meeting 2004 (Session 2)

Tuesday 20 April 2004

Tenements (Scotland) Bill
Written submission from the Scottish Consumer Council
Tenements (Scotland) Bill

The Scottish Consumer Council’s evidence to Justice 2 Committee on the Tenements (Scotland) Bill
About the Scottish Consumer Council

The Scottish Consumer Council (SCC) was set up by government in 1975. Our purpose is to promote the interests of consumers in Scotland, with particular regard to those who experience disadvantage in society. While producers of goods and services are usually well-organised and articulate when protecting their own interests, individual consumers very often are not. The people whose interests we represent are consumers of all kinds: they may be patients, tenants, parents, solicitors' clients, public transport users, or simply shoppers in a supermarket.

Consumers benefit from efficient and effective services in the public and private sectors. Service-providers benefit from discriminating consumers. A balanced partnership between the two is essential and the SCC sees its role as developing this partnership by:

- carrying out research into consumer issues and concerns
- informing key policy and decision-makers about consumer concerns and issues
- influencing key policy and decision-making processes
- informing and raising awareness among consumers.

The SCC is part of the National Consumer Council (NCC) and is sponsored by the Department of Trade and Industry. The SCC's Chairman and Council members are appointed by the Secretary of State for Trade and Industry in consultation with the First Minister. Martyn Evans, the SCC's Director, leads the staff team.

Please check our website at www.scotconsumer.org.uk for news about our publications.

The SCC assesses the consumer perspective in any situation by analysing the position of consumers against a set of consumer principles.

These are:

ACCESS

Can consumers actually get the goods or services they need or want?

CHOICE

Can consumers affect the way the goods and services are provided through their own choice?

INFORMATION

Do consumers have the information they need, presented in the way they want, to make informed choices?

REDRESS

If something goes wrong, can it be put right?

SAFETY

Are standards as high as they can reasonably be?

FAIRNESS

Are consumers subject to arbitrary discrimination for reasons unconnected with their characteristics as consumers?

REPRESENTATION

If consumers cannot affect what is provided through their own choices, are there other effective means for their views to be represented?

Published by the Scottish Consumer Council

March 2004

We can often make our publications available in braille or large print, on audio tape or computer disk. Please contact us for details.
Summary

The need for an information strategy
- The SCC argues that in implementing property reform, the Scottish Executive will need to consider the information needs of tenement owners, taking into account current low levels of awareness of rights and responsibilities in relation to common repairs and maintenance.
- In addition, we argue that the introduction of a sellers information pack could ensure that in future those buying tenement properties are aware of their rights and responsibilities from the outset.

Finance for low-income flat owners
- The SCC is concerned that at present the Executive has not included mechanisms for support for repairs and maintenance to low-income flat owners and calls on the Executive to consider these issues further.

Owners Associations
- While accepting that the statutory duty to create an owners association may indeed be a reserved matter, the SCC reiterates its support for such associations and argues that local authority support will be an important component of their successful development. The Executive is therefore called upon to fund local authorities to undertake development work in this area.

Tenement Management Schemes
- The SCC argues that the rules within Tenement Management Schemes of majority decision making should be extended to all tenements, regardless of the existence of decision making structures in the title deeds. This would create a single, fair and simple system for all tenements in Scotland and reduce delays and disputes over repairs and maintenance.
- There is a lack of clarity over the sanctions that would be imposed if any individual flat owner refused the terms of the Tenement Management Schemes. The Scottish Executive should consider in more detail how the mechanisms will be enforced.

Applications to the Sheriff Court
- The SCC would argue more informal tribunal systems for tenement disputes should be developed.
- The SCC strongly supports the development of mediation services and argues that mediation would prevent many cases from approaching the Sheriff Court and thus reduce both the costs and time involved in such cases. We suggest that the Committee take a similar approach to the Additional Support for Learning Bill currently going through the Scottish Parliament which places a duty on local authorities to provide mediation services for this particular group without removing the essential voluntary nature of participation in a particular case.

Repairs: Costs and Access
- The SCC is aware that contacting absent owners can lead to delays for repairs and maintenance and supports the Executives continuing interest in developing policy with could ensure contact without breaching the data protection legislation.

Insurance
- The SCC supports the approach taken in the Bill to place a duty on tenement owners to purchase insurance for their property, in addition we would like to see further guidance as to what should be included within this insurance policy.
Introduction

1. The purpose of the Scottish Consumer Council is to make all consumers in Scotland matter. We do this by putting forward the consumer interest, particularly that of disadvantaged groups in society, and by working with those people who can make a difference to achieve beneficial change.

2. We very much welcome the Tenements (Scotland) Bill. We have argued, both in response to the Scottish Law Commission’s initial discussion paper and our response to the consultation on the Tenements (Scotland) Bill, that this legislation is long overdue in order to rationalize and clarify the law in this area and to ensure the quality and safety of the tenement housing stock.

3. The SCC position on the Tenements (Scotland) Bill has been developed from a long history in policy and research relating to repairs and maintenance issues for property owners. In 1984, the SCC published a guide for flat owners in Scotland\(^1\) which arose following research that identified high levels of dissatisfaction with factoring services. The guide dealt with a range of topics covering: owners’ rights and responsibilities; organizing repairs; dealing with problems of payment for common repairs; factoring; insurance and financial help. The SCC interest in the rights and responsibilities of owner occupiers has continued, two research reports in the late 1990s\(^2\) focused on the (often fraught) relationship between right to buy owners and local authorities. These reports highlighted the lack of information provided to Right to Buy purchasers with regards to their ongoing relationship with the local authority as co-owner of common areas and in many cases also as the tenements factor. Following on from this the SCC carried out research into the experiences of house buyers in Scotland\(^3\) which also found an alarming lack of information passed to new purchasers in relation to their rights and responsibilities regarding common property within tenements.

4. Earlier this year the SCC published a short discussion paper on what motivates owner-occupiers to repair and maintain their properties\(^4\). It was the conclusion of this research that at present, we have no information on the motivations for repair and maintenance in Scotland. The Scottish Executive may wish to consider this issue in more detail, particularly in relation to grants and financial assistance for home owners who wish to carry out repairs.

5. We therefore have a considerable interest in housing generally, we begin this report by outlining some general issues relating to the tenements bill. We then go on to consider the specific sections of the Bill in more detail.

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\(^3\) SCC (1999) *In a Fix: The views and experiences of owner occupiers sharing common repairs responsibilities with the council*, Glasgow: SCC

The need for an information strategy

6. In our response to the consultation on the Tenements (Scotland) Bill, we argued that the Scottish Executive should develop an information strategy to raise public awareness of the changes contained within not only the Tenements (Scotland) Bill, but also the Abolition of Feudal Tenure (Scotland) Act 2000 and the Title Conditions (Scotland) Act 2003, which on the current timetable are all to come into force on the 28th November 2004. Taken together, these three pieces of legislation make substantial changes to the housing law for owners and therefore the Scottish Executive should carry out an audit of information needs of flat owners generated by the property law reform.

7. The Home Truths research (SCC, 2000) referred to above found that only half of those buying a flat had been provided with the appropriate information on the title deeds, while over a third said that their solicitors had not explained the procedures through which common repairs and maintenance were organised. The SCC believes that any information strategy developed will have to take account of the low levels of awareness of the existing position with regards to what their title deeds contain as well as a lack of understanding of their rights and responsibilities.

8. The SCC supports the development of a sellers information pack. In our response to consultation on the Title Conditions (Scotland) Bill we argued that the pack could include information on title deeds, planning and building consents and guarantees for specialist work carried out. In addition, rights and responsibilities of owners in relation to the common property could be clearly stated within this pack, as could any outstanding costs for repairs.

Finance for low-income flat owners

9. The SCC has a specific remit to put forward the interest of people who experience disadvantage and therefore is concerned that at present the Bill includes no mechanisms to address the position of low income flat owners and the financing of repairs and maintenance.

10. The SCC was represented on the Housing Improvement Task Force and all three of the sub-groups, including the groups which considered improvement and maintenance of common repair. We are therefore disappointed that the recommendations in relation to the creation of a scheme of assistance have not been adopted, in particular recommendation 85 which stated:

   The Scottish Executive should establish, through legislation if necessary, a national framework of criteria proposed in paragraphs 366 to 370 of this report, and require local authorities to decide their policies and priorities on assistance in the light of those criteria and on the basis that they should use the most cost-effective combination of assistance to achieve their objectives.

The SCC has previously argued that local authorities should be encouraged to provide types of support, other than direct grants, such as loan and equity release support, provision of advice and information, DIY classes, home surveys, tool loan schemes and approved builder lists.

11. In our response to the consultation on the Tenements (Scotland) Bill we argued that the Scottish Executive must dovetail financial resources with legislative change for the Bill’s provisions to be effective. Given that these issues are currently not raised in the Bill, the SCC

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reiterates its recommendation that there be further examination of such issues during the development of the legislative proposals.

**Owners Associations**

12. In the original consultation, the Scottish Executive had asked for views on the requirement for the establishment of an owners’ association in all future developments where there are eight or more units in the development. The SCC had supported the inclusion of this requirement and is therefore disappointed to see that it has been removed from the Bill as introduced to the Scottish Parliament.

13. The SCC accepts that this may be a reserved matter under the definition of ‘business associations’ in the Scotland Act 1998 but would reiterate that without a mechanism for communication between owners within a tenement, many of the proposed changes may be difficult to implement.

14. We also recommended that the Executive should fund local authorities to undertake development work to encourage and support owners who, on a voluntary basis, want to establish an association and the development of a code of guidance for owners seeking to establish associations. In light of the fact that legislating on statutory owner’s associations may not be possible, support for voluntary associations becomes increasingly important to ensure that the principles of the Bill are effectively implemented.

**Issues relating to specific sections of the Bill**

15. The SCC would like to make a number of specific points in relation to sections of the Bill. Where no comment is made on a section, the SCC broadly agrees with the proposals contained within the Bill and has no further comment to make.

**Section 4: Tenement Management Scheme**

16. The SCC welcomes the introduction of Tenement Management Schemes (TMS) in the Tenements (Scotland) Bill. In relation to apportionment of costs the SCC agrees that it would be unfair to consumers to alter the title deeds in favour of the TMS system of apportioning costs and that therefore the title deeds should prevail in this case.

17. However, the SCC adopts a different approach in relation to decision making structures. Given that the rules of unanimity contained within many title deeds are known to lead to delays and disputes between owners, the SCC feels that there would be great merit in extending the majority decision making system to all tenements in Scotland. This would create one simple system for decision making across Scotland.

18. There is currently a lack of clarity over how the Tenement Management Schemes will be enforced. For example, what sanctions will be imposed if individual owners refuse to accept the majority decision or cannot agree on apportionment of costs. The Scottish Executive should consider in more detail how the mechanisms will be enforced.

19. In relation to Scheme Property, the SCC would recommend that the Scottish Ministers should use their order making power to ensure that legislation is still relevant if and when developments in buildings construction affect what may or may not be considered scheme property.

20. The SCC would also welcome guidance on what could be considered to be ‘incidental improvements’ as at present this may be open to abuse.
Sections 5 and 6: Applications to the Sheriff Court

21. The SCC has a number of points to make in relation to dispute resolution, appeals and complaints systems are a key area of our work across many different fields. While the SCC welcome the possibility of an owner appealing a decision to the Sheriff Court, we feel that this should be the final stage of a longer dispute resolution process.

22. In our initial response to the consultation on the Tenements (Scotland) Bill, the SCC argued that this area would benefit from a specialist tribunals system which would operate in a more accessible and informal manner than the courts system. In particular, we felt that the Lands Tribunal offered opportunities for creating such a body, albeit with increased funding to allow for offices in local areas.

23. The SCC strongly supports the Executive’s interest in developing mediation services and their commitment to developing a more cross-sectoral approach, discussed in the policy memorandum accompanying the Bill. While we appreciate that the Executive is awaiting the Sheriff Court Rules Council report before making any specific provision, we would argue that the Justice 2 Committee could take an approach similar to that of the Additional Support for Learning Bill which is currently going through Parliament. The ASL Bill states that the local authorities will have a duty to provide mediation services, though the voluntary nature of participation remains. This would not pre-empt the Sheriff Court’s deliberations, which are likely to focus on situations when the Court can encourage mediation rather than the provision of mediation services themselves. Furthermore, by following the route of the ASL Bill, the Executive could encourage Local Authorities to develop cross-sectoral mediation services rather than a stand-alone ASL mediation service, followed at a later date by a tenements mediation service.

Sections 11 – 14: Repairs: Costs and Access

24. The SCC appreciates that the issues surrounding contacting absent owners are complex and accepts that data protection issues impact on any legislation requiring individuals to provide personal information. We welcome the Executives statement that it continues to look into how the proposal of the Housing Improvement Task Force to place a duty on a non-resident owner who shares common repair and maintenance burdens to provide a contact address. The SCC would like to take this opportunity to reiterate its view that the Tenement Management System should require all owners to provide contact details to either a property manager (where one exists) or a nominated person, to be kept in accordance with data protection legislation. We believe that this is in the best interests of absent owners as well as those present as it is possible for their property to be entered for repair and maintenance purposes if they fail to refuse within a reasonable period of time. A contact address would ensure that they could be contacted quickly in such an event.

Section 15: Insurance

25. The SCC supports the Executive approach of compulsory insurance for tenement properties. At present the only stipulation is that this insurance is for the reinstatement value of the property rather than its market price. The SCC would like to see further guidance on what the minimum standards of insurance should be and would argue that there must be consumer involvement in the development of the list of risks to be included in any such standards.
JUSTICE 2 COMMITTEE

13th Meeting 2004 (Session 2)

Tuesday 20 April 2004

Tenements (Scotland) Bill
Written submission from COSLA
Response to Tenements (Scotland) Bill

COSLA warmly welcomes the introduction of a Tenements Bill and is broadly supportive of the provisions it contains. We support the establishment of a legal framework for the management of tenements. This is essential if owners are to be able to have an effective role in property maintenance. COSLA’s response does not go into the detail of the Bill as this is an issue on which individual Councils are better placed to comment but rather focuses on the key principles and provisions.

Our over-riding comment is that the basis for the provisions in the Bill must be that it introduces a system which is easy to understand, simple, effective and makes it easier for all owners in a tenement to reach agreement and ensure that their homes are well maintained. Our comments have been selected on that basis and we would also urge the Committee to consider carefully the comments they have received from our member Councils which will be based on their considerable experience in housing management and setting a clear policy agenda locally.

On the principle of the TMS as a set of default rules, it is simpler for the same rules to apply to all tenements. We are aware, however, that there are a range of views from Councils on this. Some Councils, whilst flagging up the difficulties of retrospective legislation impacting on existing titles, do believe that it is disappointing that new titles and titles of properties not even built can over-ride statute. The view here is that the TMS should be enforced as mandatory for future title deeds. Others pointing out the difficulties of a one size fits all approach indicate that the TMS should not supersede the title deeds on all matters. The view here is that the title deeds should prevail if they make specific provision for specific matters and they should prevail on decision making and apportionment of costs. A further strongly held view is that the majority decision making rules on maintenance and appointing property managers contained in the TMS should take precedence over existing title deeds and that costs for common maintenance should be apportioned equally. Under this scenario, owners could, if they chose to, revert to the deed conditions by applying to the Lands Tribunal.

On the detail of the TMS itself, except where there are large disparities in the size of flats, we agree that the most straightforward approach is for each flat to have equal shares in all parts of the common property and for maintenance costs to be distributed equally.

The Management Scheme includes maintenance but no provision for improvement. The Committee may wish to give consideration to extending the scheme to include necessary improvement works which would lead to the long-term sustainability of the building. The Bill says that all owners have a duty to maintain their property where it provides “support or shelter” to another part of the tenement. It indicates that the statute should reaffirm and restate the doctrine of common interest and includes a test of reasonableness based on the age of the building, its condition and the likely cost of any future maintenance. This principle could be incorporated into the management of improvement schemes.
The Bill should empower responsible owners and ensure that they have effective powers to take action against other owners who do not sign up to or contribute to decisions reached under the scheme. Consideration should also be given to the best means of providing information and advice to responsible owners and how best they can be assisted in using enforcement powers. Moreover, the provisions do not cover mediation. We have presumed that this is not because it is not felt to be appropriate but rather that it would be regarded as a voluntary option. However, the Committee may wish to clarify this during its consideration of the Bill.

The proposals for insurance are welcomed but it would be useful also if there were powers included in the management scheme for owners to have to exhibit valid insurance documents to ensure that the building is adequately covered.

The principles in respect of demolition and abandonment are accepted. However, our view is that here again there should be a test of long term viability to ensure that an individual owner cannot enforce the demolition of an otherwise viable building against the wishes of the majority.

Effective maintenance could also be improved by requiring owners to have their buildings professionally surveyed on a regular basis.
Justice 2 Committee
Annual Report 2003 to 2004

Remit
To consider and report on matters relating to the administration of civil and criminal justice, the reform of the civil and criminal law and such other matters as fall within the responsibility of the Minister for Justice, and the functions of the Lord Advocate other than as head of the systems of criminal prosecution and investigations of deaths in Scotland.

The remit of the Committee includes:
- criminal justice
- youth justice
- victims support
- criminal justice social work
- police
- prisons and sentencing policy
- courts
- law reform including civil law; and
- fire services.

Membership
Miss Annabel Goldie (Convener)
Jackie Baillie
Scott Barrie (until xxx)
Colin Fox
Maureen MacMillan (from xxx)
Mike Pringle
Ms Nicola Sturgeon
Karen Whitefield (Deputy Convener)

Committee Clerking Team:
Clerk to the Committee
Gillian Baxendine / Lynn Tullis

Senior Assistant Clerk
Anne Peat

Assistant Clerk
Richard Hough
Introduction

1. The Justice 2 Committee, with the Justice 1 Committee, plays a principal role in scrutinising the justice system.

2. This year the Committee has spent most of its time on the scrutiny of legislation. The Committee has completed all stages of the Vulnerable Witnesses (Scotland) Bill and contributed substantially to the scrutiny of the Antisocial Behaviour etc. (Scotland) Bill.

Inquiries and Reports

3. The Committee has agreed that its first inquiry will be in the field of youth justice. To develop the inquiry remit, the Committee held a scoping seminar in March with practitioners including police, social work, voluntary sector and children’s panels. The main inquiry will begin in the summer.

Bills

4. The Committee has completed detailed scrutiny of the Vulnerable Witnesses (Scotland) Bill. This Bill widens the categories of witnesses who may be considered ‘vulnerable’, seeks to improve the quality of evidence given by vulnerable witnesses and provides better protection to vulnerable witnesses giving evidence in Court through increased rights to use special measures such as evidence by video link. The Committee heard the views of many organisations and individuals including people with recent experience of giving evidence in Court.

5. As a secondary committee the Committee also took extensive evidence on the justice elements of the Antisocial Behaviour etc. (Scotland) Bill, particularly on the effectiveness of the new powers and their interaction with the existing justice system. The findings of the Justice 2 Committee were reported to the Communities Committee which adopted a number of the Justice recommendations in its own Stage 1 report.

6. The Tenements (Scotland) Bill forms the final part of the Executive’s package of legislation reforming the system of land ownership in Scotland. The Bill clarifies and restates the common law rules which demarcate ownership of the various parts of the tenement and provides a default statutory management system for tenements. The Committee took written and oral evidence on the Bill in March and April and will publish a Stage 1 report at the end of May.

7. The Committee took evidence on the proposals for a United Kingdom Supreme Court contained in the Constitutional Reform Bill currently before the United Kingdom Parliament. Parliamentary history was made when the Lord President, Lord Cullen, gave evidence for the first time to a Scottish Parliamentary Committee. The Committee also began a review of legislation passed in the first Parliament, the Adults with Incapacity (Scotland) Act. The
Committee will return to this subject in the autumn when the Executive’s research into the Act is complete.

Subordinate Legislation

8. The Committee has reported on 3 affirmative statutory instruments and 15 negative statutory instruments.

Petitions

9. The Committee has considered a number of petitions this year on such wide ranging topics as the coupling of horses, the workings of the Scottish Legal Aid Board, the welfare of minors and complainers’ rights.

Other work

10. The Committee undertook visits to HMP Shotts, HMP Greenock, HMP Kilmarnock, HMP Cornton Vale, HMP & YOI Polmont Young Offenders Institution, the Crown Office and a number of the courts including Glasgow Sheriff Court and Glasgow High Court.

Meetings

11. The Committee met 32 times from 7 May 2003 to 6 May 2004. Of these meetings, 3 were held entirely in private to consider draft reports. Of the 10 meetings held partly in private, the majority of the meeting time was in public session. Of the items taken in private, 3 were to discuss lines of questioning; others were to consider the appointment of an adviser, approaches to bills and inquiries, witness expenses and draft papers. The outcomes of these private considerations were made public.

[Note: these figures will be updated before publication]

12. All formal Committee meetings were held in Edinburgh. The youth justice seminar was held in Glasgow.

Committee Office
May 2004