COMMUNITIES COMMITTEE

Thursday 13 May 2004
(*Morning*)

Session 2

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COMMUNITIES COMMITTEE
19th Meeting 2004, Session 2

CONVENER

*Johann Lamont (Glasgow Pollok) (Lab)

DEPUTY CONVENER

*Donald Gorrie (Central Scotland) (LD)

COMMITTEE MEMBERS

*Scott Barrie (Dunfermline West) (Lab)
*Cathie Craigie (Cumbernauld and Kilsyth) (Lab)
*Patrick Harvie (Glasgow) (Green)
*Mary Scanlon (Highlands and Islands) (Con)
Elaine Smith (Coatbridge and Chryston) (Lab)
*Stewart Stevenson (Banff and Buchan) (SNP)
*Ms Sandra White (Glasgow) (SNP)

COMMITTEE SUBSTITUTES

Shiona Baird (North East Scotland) (Green)
*Christine May (Central Fife) (Lab)
Shona Robison (Dundee East) (SNP)
Mike Rumbles (West Aberdeenshire and Kincardine) (LD)
John Scott (Ayr) (Con)

*attended

THE FOLLOWING ALSO ATTENDED:

Bill Aitken (Glasgow) (Con)
Mrs Mary Mulligan (Deputy Minister for Communities)

CLERK TO THE COMMITTEE

Steve Farrell

SENIOR ASSISTANT CLERK

Gerry McInally

ASSISTANT CLERK

Jenny Goldsmith

LOCATION

Committee Room 2

Scottish Parliament

Communities Committee

Thursday 13 May 2004

(*Morning*)

[THE CONVENER *opened the meeting at 10:02*]

Antisocial Behaviour etc (Scotland) Bill: Stage 2

The Convener (Johann Lamont): I welcome everyone to the meeting, at which the entire business will be stage 2 of the Antisocial Behaviour etc (Scotland) Bill. This is day 5 of stage 2. Christine May is here as substitute for Elaine Smith, who is on constituency business. I welcome Christine to the meeting and hope that she finds it productive. Bill Aitken is also back with us today.

Members will be aware that arrangements have been made for a statement in Parliament at lunchtime on the tragedy in Glasgow. This meeting will be suspended at about 11.45 am. Lunch will be available from half past 12, and I hope to start again at 1 pm at the latest. However, if members are here and have finished eating, we can start back earlier than that—so much the better.

Christine May (Central Fife) (Lab): Would it be appropriate to deal with my declaration of interests? This is the first time that I have attended this committee.

The Convener: Belt and braces—we might as well.

Christine May: I am not aware that I have any interests that I should declare, other than those that are on my register of interests.

Schedule 2

PENALTIES FOR CERTAIN ENVIRONMENTAL OFFENCES

The Convener: Amendment 98, in the name of the minister, is grouped with amendments 100 and 111.

The Deputy Minister for Communities (Mrs Mary Mulligan): Amendments 98 and 100 will add three statutory provisions to the list of offences in schedule 2 for which a maximum penalty of £40,000 in summary proceedings is proposed. That penalty is proposed in respect of the offences in schedule 2 to mark our perception of their serious and antisocial character. Amendment 111 is consequential on the repeal by amendment 98 of section 75(4) of the Water (Scotland) Act 1980, and will repeal a provision of the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 that amended section 75(4) of the 1980 act.

The offences that we propose to add to the list deserve to be included in this category. On amendment 98, offences of polluting the water environment in general were included in the bill, but Scottish Water pointed out during consultation that the offence in section 75 of the Water (Scotland) Act 1980 is used specifically when polluting matter poisons water supplies. It will be readily appreciated that that is a particularly antisocial offence that brings with it, for sizeable communities, not merely health risks but the inevitable inconvenience that is associated with cessation of mains water and provision of emergency supplies. Insult is then added to injury because that same completely innocent community must pay for the necessary remedial work through water charges, the cost of which can quite easily run into millions of pounds.

As regards amendment 100, another offence whose antisocial character is obvious is illegal operation of a landfill or similar permitted installation. The list in schedule 2 includes the Pollution Prevention and Control Act 1999 so that any future regulations that are made under that act can attract the increased maximum summary penalty of £40,000. For consistency, amendment 100 will add to the schedule the offences under the Pollution Prevention and Control (Scotland) Regulations 2000 and the offence under the Landfill (Scotland) Regulations 2003 that relates to acceptance of illegal wastes at a landfill site. Both those regulations were made using powers under the 1999 act and the proposed amendments will, for the sake of consistency, ensure that breaches of those provisions attract similar penalties.

I suggest that the increased penalties that are proposed for those offences and for the other offences in schedule 2 are most likely to be imposed on corporate offenders. As I have said on numerous occasions, the bill is not just about targeting young people; it is about targeting antisocial behaviour of all kinds, whoever commits it. The offences in the amendments would have a thoroughly detrimental effect on our communities and I hope that committee members will feel able to support the amendments.

I move amendment 98.

Stewart Stevenson (Banff and Buchan) (SNP): I do not plan to oppose the amendments, which are consistent with other provisions in the bill. I wish merely to put on record the observation that I am very unclear as to whether we are dealing with antisocial behaviour or criminal behaviour. That has been a recurring theme throughout the passage of the bill, and it is one to

which we may return. We are talking about corporate responsibility and, although corporations of one sort and another must be held to account, it seems to be rather strange for that to be incorporated in a bill that is described as an antisocial behaviour bill. By all means, let us put those offences into legislation; however, I think that we are doing so in the wrong place.

Ms Sandra White (Glasgow) (SNP): I would like clarification. I note that amendment 98 will amend the Water (Scotland) Act 1980. Will the amendments have any effect in respect of pollution of rivers—the Clyde, in particular, which is constantly being polluted, although the Scottish Environment Protection Agency is supposed to check that it is not? If so, will SEPA be involved?

Mrs Mulligan: My understanding is that that is already included in the bill. This is the next stage to ensure that all-encompassing effect, which, as Stewart Stevenson has said—

The Convener: I should have checked whether other members wanted to comment. I was being far too lax first thing in the morning.

Mrs Mulligan: I am sorry, convener—I will not do that again.

The Convener: You may wind up, as you were doing without having been bidden.

Mrs Mulligan: The issue that Sandra White raises is already covered in the bill, especially in paragraph 2(1) of schedule 2. On Stewart Stevenson's point, I recognise that we could have an academic discussion about where antisocial behaviour stops and criminal behaviour starts, but our intention has always been to prevent or to stop certain behaviours. Amendment 98 may be a belt and braces provision, but it will ensure that such behaviours are dealt with effectively. I am pleased that Stewart Stevenson feels able to support that aim.

Amendment 98 agreed to.

Amendments 99 and 100 moved—[Mrs Mary Mulligan]—and agreed to.

Schedule 2, as amended, agreed to.

Section 53—Antisocial behaviour notices

The Convener: Amendment 343, in the name of the minister, is grouped with amendments 344, 392, 393, 347 and 348.

Mrs Mulligan: Amendment 343 clarifies that an antisocial behaviour notice should specify only action that is designed to deal with the antisocial behaviour identified in the notice. To leave that unsaid would provide scope for the local authority to specify any kind of action that it thought a landlord should take, which would go beyond our intention and might be unfair. Notices under part 7 of the bill are intended to be a specific targeted measure that will deal with particular problems of antisocial behaviour. More general failures by landlords are intended to be dealt with under part 8.

Amendment 344 is a minor drafting amendment.

I turn to amendments 392 and 393. I appreciate that Mr Gorrie lodged the amendments because he is concerned about the possibility of serious action being taken against a landlord without the reason for initiating that action being properly tested. The amendments would require a sheriff to be satisfied that the antisocial behaviour that was specified in the antisocial behaviour notice had actually happened, whenever the sheriff was considering an application for suspension of rent liability or for a management control order as a result of a landlord's failure to comply with a notice. There is already provision in the bill for an internal appeal of a notice. I suggest that that earlier opportunity would be the appropriate time to raise the question of whether antisocial behaviour has taken place. However, sheriffs will have discretion to consider such matters later when they decide whether an order in respect of rental income or a management control order should be granted. I do not think that it is necessary for a duty to be placed on sheriffs to investigate. I suggest that the amendments would not serve a useful purpose and I invite Donald Gorrie not to move them.

Amendments 347 and 348 deal with the need to inform a landlord that a management control order has been made or revoked. It is clearly important to notify landlords, because such orders will affect their rights in a property. However, the situations in which the extreme measure of a management control order would be used include those in which the landlord cannot be traced or contacted. I suggest that it would be particularly unfortunate if, in such cases, the local authority were to be in breach of the law because it had not informed the landlord, or if it were to avoid seeking a management control order because it feared that it would risk breaching the law in that way. The amendments will, if it is impracticable for it to do so, lift the requirement on the authority to inform the landlord.

I move amendment 343.

10:15

Donald Gorrie (Central Scotland) (LD): The minister set out some of the arguments but, with all due respect, I am not highly impressed by them. The idea that an internal review is a satisfactory way of doing anything at all is rebutted by the whole of recorded history. Internal reviews

may have their place, but they are not a foolproof part of a civilised system. It is essential that the whole background is looked into when such drastic action is taken as saying that a tenant need not pay rent to their landlord because of some alleged failures by the landlord.

Often, issues arise out of disputes between neighbours or between tenants and landlords. Council officials, being human, will tend to take sides in such disputes and may not come to a correct judgment. It should be incumbent on them to demonstrate to a sheriff that antisocial behaviour actually took place, because the provisions in section 53, unlike those on antisocial behaviour orders and dispersal, are entirely in the hands of local authority officials. It will be they who will make judgments as to what constitutes antisocial behaviour, which may vary enormously from official to official or from council area to council area. It should be demonstrated in court that antisocial behaviour has taken place and—according to the bill as it stands—it must be demonstrated that the landlord has not done his stuff, and that therefore action has to be taken.

Sometimes, there are bad tenants who have a feeble landlord who has no control over them, but who tries his or her best. Equally, there are bad landlords, whose tenants are more victims than offenders. A sheriff is needed to make a judgment on such matters. The issue is extremely important, so I will press amendments 392 and 393.

Mrs Mulligan: We have a slight difference in emphasis. It is absolutely the case that it should be demonstrated that the antisocial behaviour has taken place, and that when two parties are in dispute it is for them to show that there has been an act. That is different to what Donald Gorrie's amendments 392 and 393 say, which is that a sheriff needs to be the investigating party; a sheriff would have to look at all the evidence that was put before them to consider whether an act took place. I still feel that Donald Gorrie's amendments are unnecessary because there is within the available procedures an opportunity to demonstrate that the act has taken place, and there is an opportunity for those who contest that to appeal the process and have the issue further investigated.

Amendment 343 agreed to.

The Convener: Amendment 21 is grouped with amendments 22 to 33.

Bill Aitken (Glasgow) (Con): The purpose of amendments 21 to 33 is to remove part 7 of the bill. The provisions in part 7 will give local authorities the power to serve notice on a private landlord instructing them to take whatever action is specified to tackle antisocial behaviour in or around their property. The two primary sanctions that are available under the powers are cessation of the occupier's liability to pay rent and transfer of management control of the property to the local authority. Frankly, part 7 is another unfair and unworkable piece of the bill.

We all know that there are, from time to time, irresponsible landlords. We also all know that there are irresponsible tenants, otherwise the bill would not be being brought forward. The fact is that it is quite possible that a landlord operating with all due diligence could end up with a tenant who is antisocial and whose conduct they are unable to control significantly. To some extent, this goes back to what I said yesterday: individuals' behaviour should be dealt with by the police and other authorities using the common law of Scotland in respect of breach of the peace, or the terms of the Civic Government (Scotland) Act 1982—whichever is considered appropriate.

It would, to say the least, be hard lines to penalise a landlord who had acted in good faith and who had taken all reasonable precautions to ensure that the tenant to whom he was letting a property was a reasonable individual; indeed, I question whether it would be legally permissible to do so under article 6 of the European convention on human rights. There have been previous incidences in which legislation has failed because it was not appropriate to punish an individual for the misdeeds of another—which is, in effect, what we would be doing.

However, the bill goes beyond that; in so far as it relates to cessation of the occupier's liability to pay rent, it provides an incentive to tenants to misbehave. We all know that it takes time to process applications and orders. We could end up with cases that are not as extreme as one might think, but in which people could sus out the situation and take on tenancies and conduct themselves in such a manner that an order was made so that they could avoid paying rent. They could, in effect, move from one set of premises to another, if landlords were not diligent in obtaining references. Thus we could, in part 7 of the bill, provide an incentive for bad behaviour.

We must also consider the effect that such orders could have on an area. As we all know from other research, there is a shortage of private-sector accommodation in Scotland. Not only will the bill act as a positive disincentive to private landlords to let properties, it could affect significantly the availability of private rented houses in certain areas. That is yet another instance of something that has not been thought through properly.

I move amendment 21.

Stewart Stevenson: I wonder for whom Bill Aitken speaks. During consultation, we heard from landlords' representatives and, in some ways,

what Bill Aitken said goes against the grain of what was said then. The good landlords—the majority—appeared, on the face of it, to welcome measures that would redd from the rented sector landlords who do not provide appropriate accommodation or manage their tenants appropriately. It seems to me that the provisions in part 7 will, in general, give good landlords a much stronger lever for dealing with antisocial tenants and provide real encouragement to landlords who might otherwise shy away from doing so. I invite Bill Aitken to tell us in his summing up which landlords have made representations to him to have removed part 7 of the bill, because what he said seems—from my recollection—to be at odds with the evidence that we gathered at stage 1.

Patrick Harvie (Glasgow) (Green): Bill Aitken presented arguments that seem to have been based purely on situations in which a landlord is not at fault, but a tenant is. If that was his concern, I would prefer by far that he tried to address that concern by lodging amendments that would change part 7, rather than remove it entirely. I cannot support amendments that would remove part 7, given the number of situations in which the landlord is at fault.

As Stewart Stevenson said, we did not hear from landlords or their representatives strong arguments that shared Bill Aitken's concerns. I echo Stewart Stevenson's request that we be provided with some understanding of who Bill Aitken thinks has these concerns and why they did not speak to us.

Donald Gorrie: As has been pointed out, Bill Aitken has identified an issue, but there is still a general necessity for part 7, so I will support it. My amendments 392 and 393 endeavour to cover this area. It would be helpful if the minister would consider lodging at stage 3 an amendment that would deal with situations in which a landlord has done his or her best but has not, because of intimidation or whatever, been able to control a tenant. As they stand, the provisions could be extremely unfair, so an Executive amendment at stage 3 would help to make part 7 effective and fair. I will not support Bill Aitken's amendments, but I hope that the minister will ponder the issue and respond at stage 3.

Ms White: I take issue with many things in the bill, but I support whole-heartedly part 7 and cannot support Bill Aitken's amendments. He will know about people who have lived as good tenants in a house for 50 years and whose lives have been made absolute hell when a private landlord has let the rest of the property. Anything that makes landlords comply with their duties under the law must be welcomed. I definitely welcome part 7, so I cannot support Bill Aitken.

Mary Scanlon (Highlands and Islands) (Con): Stewart Stevenson and Patrick Harvie both asked where Bill Aitken was coming from, but Bill Aitken has an ally in the Council of Mortgage Lenders. I presume that all members received this week a briefing paper from that organisation, which points out that

"While there is some protection in that the Sheriff before granting the Order has to consider it would have been reasonable to take the action highlighted in the Notice it appears that the Tenant is being rewarded for his bad behaviour, particularly as it may take some time for the landlord to be able to evict the tenant."

Will the minister respond to that point?

The briefing paper also states:

"the Bill contains no obligation when a Local Authority is applying for such an Order to advise the holder of a Standard Security over the property of the action which they are taking. In the majority of buy to let properties the rental payment will be used to fund the mortgage payment and it would seem contrary to natural justice that lenders who hold a Standard Security over the property will not be allowed to make representations."

I would welcome the minister's clarification on the issues that are highlighted in the CML's briefing paper, which also alleges that part 7 could, because of such orders' being made, lead to an increase in repossessions in Scotland.

Christine May: I approach the issue without the benefit of the committee's experience in hearing evidence. Nonetheless, I cannot—because of experience—support Bill Aitken's amendments. Sufficient protection for the circumstances that Bill Aitken mentioned is already provided by other legislation and, perhaps, even by other parts of the bill.

On Mary Scanlon's point, I recall that it is for the mortgage holder to inform his lender of any material changes in circumstances. That would probably cover the point that is raised in the CML's briefing paper. It would be welcome if, at stage 3, the minister could give the reassurances that have been asked for about other protection that is available and, if Bill Aitken is able to give specific cases, provide answers in those cases.

10:30

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): Like most members who have spoken, I cannot support Bill Aitken's amendments to delete part 7. Stewart Stevenson mentioned the evidence that we took at stage 1, during which there was unanimous agreement among committee members and those who gave evidence and who had experience of working in the private sector that part 7 would be a useful tool.

The policy objective of part 7 is to provide a means to ensure that landlords take responsible

steps to manage their property. If, after a local authority has served an antisocial behaviour notice on a property, the landlord works with the local authority to try to alleviate or solve the problems with antisocial behaviour, I am sure that the authority would not move for a cessation of rent. However, too often, landlords do not engage with the local authority or with the people from whom they take rent.

The measures in part 7, which many organisations support, are about landlords taking responsibility. The CML, which came late to the debate, complained in its briefing paper that it had not been consulted. However, the committee put out a call for evidence and the Scottish Executive undertook a huge consultation exercise. Everybody who gave evidence to the committee said that the consultation process was thorough and had allowed people to engage. If the CML did not pick up the issue until a late stage, that is not the committee's or the Executive's fault.

The CML briefing paper raised the issue of people buying to rent. In some communities, people are being priced out of the housing market because of people who buy to rent. While we need and want to keep the private sector alive and healthy, the situation is causing difficulties in communities. The CML and its members who hold standard securities over properties could certainly engage more and help communities to deal with the problems of antisocial behaviour. Often, the conditions of people's mortgages should prevent them from engaging in the behaviour in which they engage—such as having something like a scrapyard next to their property—but mortgage lenders do not advise borrowers when they are in breach of their mortgage conditions. If the CML engaged with such people, I would be happy to engage with it. However, it has come late to the issue and the committee and other organisations have considered the points that it has made. The CML has brought nothing new to the table.

I do not agree with Bill Aitken's amendments; I stand with the vast majority of people who are involved in the private rented sector and politicians in opposing the amendments.

The Convener: We want to protect and do what we can to sustain the bit of the private rented sector that provides important housing services in our communities, but we do not want to protect the bit that creates problems—I would be happy to see that bit go. In some cases, properties are not maintained and landlords do not visit or engage with tenants or they give them no rights. On occasion, when tenants get above themselves, landlords use inappropriate means to evict them. We do not want that bit of the sector to exist and nor do organisations such as the Scottish Association of Landlords, which feel that they are damaged by such practices.

Perhaps the minister will say something about how we can support private sector landlords who are trying to manage their properties. Landlords have told me about problems with references, which may not be real, perhaps because somebody is moving on a problem. They find it difficult to get information. If somebody is moving in and out of the public sector, leaving rent arrears behind, they cannot pursue that person when they leave the property. It is reasonable for a private sector landlord to ask for support on those issues.

Does Bill Aitken think that antisocial behaviour in a property is the sole responsibility of the police? We should consider the demands that we place on the social rented sector. Are we saying that it is inappropriate to expect a housing association to have housing officers who are geared up to go out visiting tenants? Would we condemn the Glasgow Housing Association for its neighbourhood relations team, which is aimed at addressing antisocial behaviour to protect a public asset? I do not think that we would. We would recognise that there is a role for such a team. I see no reason why there should not be a role like that in the private sector too.

When serious criminal behaviour is going on inside a property, we cannot expect a landlord to sort it out. However, if a landlord is visiting his property regularly and is engaging with the neighbours, or if he has a contact number for the neighbours, he might find out that his property has been damaged—that the doors have been damaged or the windows smashed—or that people who are involved in drugs have been gathering there. Then, he would get involved at an earlier stage, before the situation becomes so serious that the police are called.

In my constituency, people have come to me when they have been unable to find a landlord's phone number to tell him that there is a problem with his property that is having consequences for them. If they do have a contact number, they might get abuse on the end of the phone: "What's it got to do with me—just phone the police or environmental health." Early intervention by a landlord might solve the problem before the situation spirals down.

It is not asking anything unreasonable of people who make their income from renting properties to say that they should be accountable for what happens in their flats. That is not to say that we are delegating to private landlords all responsibility for managing some very difficult people. The aim is to ask landlords to work with the police and, when somebody phones them, not to have the attitude: "I don't know what you're phoning me for. Phone somebody else." In those circumstances, it

is entirely reasonable for organisations in the community to say, "Well, if you don't think you have a responsibility, we're going to find a way of forcing you to engage with the situation." Sometimes, sadly, the only way that that can happen is by concentrating the landlord's mind through their pocket.

Mrs Mulligan: Let me be clear—

The Convener: I feel better for that—not that I am obsessed about the issue.

Mrs Mulligan: Good. I am glad that you are feeling better.

Let me be clear. If a landlord uses appropriate management practices, he should not be subject to penalty, even if he is unable to change the behaviour of the people in his property. The targeted powers that are provided in part 7 will allow the local authority to act in a range of circumstances if the landlord is failing to manage antisocial behaviour and the whole community is suffering as a result. I have repeatedly heard examples of that happening and of instances—just as the convener outlined—in which the landlord's response is either that he or she does not care, or that he or she is unable to take action. That is unacceptable.

The powers in part 7 will make it clear to the landlord what action the landlord should be taking to deal with the antisocial behaviour, whether that is setting clear standards, warning the tenants, enforcing tenancy conditions, seeking possession or other measures. In response to the convener's point about support for private landlords, it is good practice in many local authorities to engage with private landlords. I know of private landlord forums in a number of authorities, where there are regular meetings and where support for landlords is in place. Such forums ensure that landlords operate a good service that is responsible and responsive to the community in which it is based. In fact, the Executive will go further, by issuing guidance under part 7, to ensure that landlords engage with the kind of issues that we are discussing. It is important that we recognise that landlords have a responsibility; however, there should be a support mechanism to ensure that they take on that responsibility.

I turn now to the points raised by the CML. As Christine May said, the onus is on the mortgage holder to inform the mortgage lender if there is a difficulty in paying the mortgage. However, when tenants are not paying the rent, we want the local authority to take a view on whether the rent penalty is the appropriate measure. We have put that into part 7 because we acknowledge that it is an issue.

I am a little concerned that the CML seems to have come to this issue late and is raising concerns that are not wholly in the province of the bill. That detracts from a part of the bill that is essential to our aim of tackling antisocial behaviour. I reiterate that we are not talking about the majority of landlords—who are good and responsible and who operate a valued service. Bill Aitken says that we have a shortage of private rented properties and so should not be putting private landlords under any pressure. That is not a good argument. If tenancies are not managed properly, nobody gains. Therefore, it is appropriate to insist that landlords take action where appropriate.

I have to say that I get a little tired of justifying our actions against those who are not responding—as if we particularly want to target innocent landlords who are behaving responsibly. That is not the case. We seek to deal with those landlords who do not act responsibly and therefore have an impact on our communities. If we are to achieve our aim, it is essential that we maintain the parts of the bill that Bill Aitken seeks to remove.

The Convener: I ask Bill Aitken to wind up and to indicate whether he wants to press or withdraw amendment 21.

Bill Aitken: A number of interesting points have arisen. There is a general consensus that we are not talking about every landlord. We are talking about irresponsible people and I would support any sanction against them. However, the bill as drafted unfortunately has the potential to put people in real difficulty through no fault of their own. Donald Gorrie has clearly acknowledged that in his amendments 392 and 393 and in what he said this morning.

As I have said, it is frequently possible for a landlord who acts in good faith and who takes all reasonable precautions as to the bona fides of his tenants to run into problems and seek to do something about them. The minister will confirm that the ultimate sanction open to a private landlord is to seek repossession of the property. Under the Housing (Scotland) Act 2001, that is a difficult and convoluted process. That is understandable, because we do not want people to be thrown out of their houses without due cause or sound reason. However, the process can be lengthy and expensive for landlords, because they have to apply to the courts to obtain repossession of the property. During that period, the person who is the prime motivator of the difficulty—the antisocial tenant—is living rent free. That is bizarre. The issue really has to be addressed.

Not for the first time in the years that I have known him, Stewart Stevenson has demonstrated a degree of inconsistency in his arguments. In this very committee room yesterday morning, he stated that no one should be penalised for the

faults and omissions of another. This morning he has reversed his position, which is just a little incongruous.

Stewart Stevenson: Will you take an intervention, Bill?

Bill Aitken: I will, if it is in order to do so.

The Convener: No.

Bill Aitken: No—it is not in order to do so. I have no doubt that Stewart will have an opportunity on another occasion.

Sandra White was right to cite cases of the particular difficulty that I have been talking about. She and I are familiar with instances of such problems in the west end of Glasgow and I have to come back to a basic fact: when misbehaviour causes concern to other tenants and co-proprietors of a property, it is a police matter. In her sensible and constructive comments, Mary Scanlon properly highlighted the concerns that the CML has made known. I accept the convener's point that the CML has become involved in the procedure late, but its comments are nonetheless well made and must be recognised.

The minister argued her case as I expected. However, she did not deal with the possible effect of article 6 of the ECHR.

10:45

Mrs Mulligan: I am happy to reassure Bill Aitken that we have examined ECHR compliance and that we have no concerns about whether the provisions would take us outside that.

Bill Aitken: I am certain that the minister has done that and I hope that the advice that she has been given turns out to be sound, because the ECHR is all embracing and, as we well know, has caused other problems.

The convener conceded that private landlords can do only so much. At the same time, she made her views about irresponsible landlords clear. I concur with those views. The point that landlords can do only so much and the fact that the bill provides an incentive to bad behaviour cause me the greatest concern, so I will press amendment 21.

The Convener: The question is, that amendment 21 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Scanlon, Mary (Highlands and Islands) (Con)

AGAINST

Barrie, Scott (Dunfermline West) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Harvie, Patrick (Glasgow) (Green)
Lamont, Johann (Glasgow Pollok) (Lab)
May, Christine (Central Fife) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)
White, Ms Sandra (Glasgow) (SNP)

The Convener: The result of the division is: For 1, Against 8, Abstentions 0.

Amendment 21 disagreed to.

Section 53, as amended, agreed to.

Section 54—Review of antisocial behaviour notices

The Convener: Does Bill Aitken wish to move amendment 22?

Bill Aitken: Given the Herculean task that is before the committee and the fact that the principle has been established, I will not move amendment 22 or my subsequent amendments that relate to part 7.

Amendment 22 not moved.

Section 54 agreed to.

Section 55—Internal procedure on review

Amendment 23 not moved.

Section 55 agreed to.

Section 56—Failure to comply with notice: order as to rental income

Amendment 344 moved—[Mrs Mary Mulligan]—and agreed to.

Amendment 392 moved—[Donald Gorrie].

The Convener: The question is, that amendment 392 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Gorrie, Donald (Central Scotland) (LD)
Harvie, Patrick (Glasgow) (Green)
Stevenson, Stewart (Banff and Buchan) (SNP)
White, Ms Sandra (Glasgow) (SNP)

AGAINST

Barrie, Scott (Dunfermline West) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
May, Christine (Central Fife) (Lab)

ABSTENTIONS

Scanlon, Mary (Highlands and Islands) (Con)

The Convener: The result of the division is: For 4, Against 4, Abstentions 1. The vote is tied. I use my casting vote to resist the amendment.

Amendment 392 disagreed to.

The Convener: Amendment 345, in the name of the minister, is grouped with amendment 346.

Mrs Mulligan: Amendment 345 will ensure that when a sheriff makes an order that ceases a tenant's or occupant's rent liability, the other terms of their lease or occupancy arrangement continue to be in force. The bill as published would have that effect, but we have lodged the amendment to put the point beyond challenge. The matter is important because we want to ensure that a landlord will continue to have the right to manage a tenancy to deal with antisocial behaviour, which he will need to be able to do to comply with an antisocial behaviour notice.

Section 56 provides for a sheriff, on application by a local authority, to make an order that suspends a tenant's or occupant's rent liability. As with any court decision, the landlord involved will be able to appeal. We have decided to make provision on appeals in two ways through amendment 346.

First, we have specified that the appeal should be made to the sheriff principal within 21 days. We think that that is a reasonable approach with a reasonable timescale. Secondly, we want to avoid a situation in which a landlord appeals without the tenant or occupier knowing. If the appeal is won and the tenant has—understandably—used the money for other purposes because rent was apparently not due, a demand for back-rent could put the tenant and his or her family in a difficult financial position. We have provided Scottish ministers with a regulation-making power in relation to notices to be given to tenants. We envisage that the regulations will require the landlord to give notification to the tenant that an appeal has been submitted. It will then be up to the tenant to be prudent and to set aside money until the appeal has been decided. If the landlord does not give such notice and the appeal is successful, the sheriff principal will not be able to require the tenant to pay back-rent for the period from the initial court decision to suspend rent liability to the appeal decision that restores it.

The provisions are a fair and appropriate way of protecting the tenant in the circumstances that I have outlined. We realise that some tenants may not be prudent and may decide to spend the rent money, even though it may become due at a later date. There is probably a limit to how far we can go to protect people, but I expect local authorities to offer advice as a matter of good practice where they are aware that that danger might exist.

I move amendment 345.

Donald Gorrie: Will the minister confirm that, under amendment 346, the appeal must be against a decision made under section 56, which I tried to amend, and would relate merely to whether the landlord acted correctly? Will she confirm that the appeal would in no way cover the nature and reality of the alleged antisocial behaviour?

There is a widespread practice in housing associations and so on, when there is a dispute with a tenant, of establishing a separate account into which rent is paid but not handed over to the landlord. When the dispute is resolved, the money is available to be used if it is due. At the risk of teaching councils how to suck eggs, perhaps the guidance should specify that they may use a procedure of that sort. It is unreasonable that through some minor forgetfulness or bureaucratic error a large amount of rent should be paid when it should not have been paid or not paid when it should have been paid. The system that I have described would address the problem that the minister is trying to deal with.

Stewart Stevenson: When she sums up, will the minister advise us what discussions she has had about the interoperation of the amendments with the housing benefit system? How would the existence of an escrow account, as Donald Gorrie described, affect the payment of housing benefit in the range of circumstances that might be reasonable?

Mrs Mulligan: The simple answer to Donald Gorrie's first question is yes—the appeal would relate to the landlord's actions. However, we would expect the sheriff to take into account the whole picture.

Donald Gorrie's second point related to the establishment of a suspense account for the rent. As I said, there is a limit to how far we can go to protect people. However, Donald Gorrie's suggestion sounds reasonable and we will consider including it in guidance to assist further in trying to protect people from themselves. If a tenant or occupier does not know that a landlord has appealed, they will not be liable for any possible back-rent; but if they know about an appeal, a suspense account for the rent might be a way of protecting them.

On Stewart Stevenson's point about housing benefit, we would need to take further advice on whether it would be possible for housing benefit to be placed into a suspense account. There might be two options: the first would be to suspend the housing benefit, then back-date it if necessary; and the second would be to pay the housing benefit into the kind of fund that Donald Gorrie suggested. We will need to come back to the committee on exactly what the legal position is on that.

The Convener: The question is, that amendment 345 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Barrie, Scott (Dunfermline West) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Lamont, Johann (Glasgow Pollok) (Lab)
May, Christine (Central Fife) (Lab)

ABSTENTIONS

Harvie, Patrick (Glasgow) (Green)
Scanlon, Mary (Highlands and Islands) (Con)
Stevenson, Stewart (Banff and Buchan) (SNP)
White, Ms Sandra (Glasgow) (SNP)

The Convener: The result of the division is: For 5, Against 0, Abstentions 4.

Amendment 345 agreed to.

Amendment 24 not moved.

Section 56, as amended, agreed to.

After section 56

Amendment 346 moved—[Mrs Mary Mulligan]—and agreed to.

Section 57—Orders under section 56: revocation and suspension

Amendment 25 not moved.

Section 57 agreed to.

Section 58—Failure to comply with notice: management control order

Amendments 393 and 26 not moved.

Section 58 agreed to.

Schedule 3

MANAGEMENT CONTROL ORDERS

Amendment 27 not moved.

Schedule 3 agreed to.

Section 59—Management control order: notification

Amendment 347 moved—[Mrs Mary Mulligan]—and agreed to.

Amendment 28 not moved.

Section 59, as amended, agreed to.

Section 60—Management control order: revocation

Amendment 29 not moved.

Section 60 agreed to.

Section 61—Management control order: notification of revocation

Amendment 348 moved—[Mrs Mary Mulligan]—and agreed to.

Amendment 30 not moved.

Section 61, as amended, agreed to.

Section 62—Failure to comply with notice: action by authority at landlord's expense

Amendment 31 not moved.

Section 62 agreed to.

Section 63—Failure to comply with notice: offence

Amendment 32 not moved.

Section 63 agreed to.

Section 64—Interpretation of Part 7

11:00

The Convener: Amendment 349, in the name of the minister, is grouped with amendments 350 and 350A.

Mrs Mulligan: Amendment 349 will tighten the definition of a house to ensure that it refers to a house in which someone lives. The amended definition makes it clear that, for example, a building that has the design of a house but which is used in practice for some other purpose is not caught by the definition.

Amendment 350 will expand section 64(3)(b) to state directly the exempted types of houses that the paragraph encompasses. We felt that it was preferable to state those categories in the bill rather than do so by reference.

I should mention one slight difference. The existing exemption includes houses used by "a religious community" whereas the amendment talks about houses used by "a religious order". The latter term is more precise in its effect, as it focuses on those who have committed to a particular lifestyle, and is consistent with a term used in other legal contexts.

With respect to amendment 350A, in the name of Stewart Stevenson, I should make it clear that it was never our intention to use part 7 powers to deal with problems from holiday lets and it is not an issue that has arisen in any significant way during the consultation on the bill.

There are quite substantial powers to intervene in circumstances in which a landlord is failing to manage a let properly. As I made clear in connection with amendment 343, the powers are intended to require the landlord to deal with

specific and identified problems. I would not envisage those powers being used lightly and not until after the local authority had tried and failed to get a landlord to act through advice and assistance. They do not lend themselves to the short timescales involved in holiday lets. If the local authority felt that it had to use a notice, it would have to do so quickly for a particular let and there would be little prospect of making a real impact on the landlord's management of that let before it had ended.

I think that short-term problems arising from particular lets are best dealt with as disturbances under other powers and that, although there might be problems with the attitude of some owners of holiday lets, the bill is not the appropriate vehicle for dealing with them and in this respect is unlikely to be a useful tool for local authorities in dealing with antisocial behaviour. Although I recognise the problems that Stewart Stevenson is trying to highlight, I suggest that there are other ways of dealing with them than by amending this bill. For the reasons that I have outlined, I invite Stewart Stevenson not to move amendment 350A.

I move amendment 349.

Stewart Stevenson: I am perfectly happy to support the amendments that the minister has discussed. However, my amendment simply focuses on asking why houses that are used for holiday purposes are included in the exclusions.

I listened carefully to what the minister had to say. She made the argument that there are substantial powers to deal with property elsewhere. If that is indeed the case in relation to holiday homes, it is more generally the case as well, yet the minister is arguing—and I support the argument—that additional powers are required elsewhere. I am therefore unsure of the force of her argument about houses that are used for holiday purposes.

The point is also made that there are some practical difficulties relating to short-term lets. The difficulty that the minister has is that, in excluding houses that are used for holiday purposes without providing a definition of "holiday purposes", the bill is open to ambiguous interpretation at a later date. I know of holiday lets that go on for four or five months. Equally, I know of holiday lets that are for as little as a long weekend. It is certainly the case that there are extremely short lets.

Let me paint a scenario that I expect that the minister would like to fall within the scope of the bill but which would be outwith the scope of the bill if a house used for holiday purposes were included in the exclusions.

Someone with a particular political philosophy that is abhorrent to all of us in this room and who owns premises that are used for short term lets in an area in which members of a particular ethnic group are preponderant might choose to advertise his holiday let only in a fascist magazine, with the clear intent of introducing into the area people who would create problems for ethnic minority residents in that area under the guise of letting a house for holiday purposes. Indeed, he could advertise it as being for holiday purposes: "Go and create havoc in area X." I choose that as an extreme and relatively unlikely example, but it illustrates the coach-and-horses nature of including houses that are used for holiday purposes in the exclusions. The minister's statement that disturbances can be dealt with under other powers does not carry weight, given that we feel the need to legislate for disturbances in other tenancy situations. I am deeply uncomfortable about the exclusion, particularly as the bill does not appear—I might not have spotted it—to have defined what "holiday purposes" means in legal terms.

Donald Gorrie: I was going to make the point that Stewart Stevenson made. I have an amendment in another section that puts forward the same argument. We must have a definition of "holiday purposes". With the more varied lifestyles that people have nowadays, there can be long lets. Some people work hard abroad for some months and then have long holidays back in Scotland with plenty of time for them to cause all sorts of havoc. The landlord might be the association of drug dealers, which seriatim lets the house to various drug promoters who spend their holidays promoting drugs. I cannot see the argument for excluding holiday houses. The minister said that there are all sorts of good powers that can sort out the problem but, as Stewart Stevenson said, if that is the case, why are those powers not used in other respects? To include holiday houses alongside monasteries and so on is an extraordinary proposition that I cannot support.

Patrick Harvie: I have a fairly simple query, which I hope that Stewart Stevenson or the minister will be able to clarify. Everyone talks about holiday lets, but does a house that is "used for holiday purposes" include a second home that is owned by a person who uses it for their holidays? In other words, does the minister's amendment exclude second homes from the provision?

The Convener: I hope that the minister will at least assure us that the Executive will think about the matter again before stage 3. There are issues about simply removing the provision. One of the difficulties in dealing with difficult tenants is that they have security of tenure, but that does not necessarily apply in a holiday let. It is an inappropriate diminution of tenants' rights for

people to dress up as a holiday let what should be a proper lease with substantial rights attached.

What happens in communities where homes that are available for rent in the winter become holiday lets in the summer? In such cases, there can be a diminution of rights for people who would like to rent properties for the whole year. There is another issue that faces people who live in areas that become different during the summer because they are holiday places. If people are inciting folk to come along and be ghastly in their community, we must examine that, but I am not sure whether we should do so through the question of tenure in holiday lets.

I am not inclined to support amendment 350A at this stage. I look for some reassurance from the minister, and for some indication of what she is doing about bogus holiday lets, which are not holiday lets at all but simply a landlord avoiding their responsibilities to tenants who should have more security than they do.

Mrs Mulligan: In my initial comments, I tried to recognise that there may be concerns, particularly in areas where there is a substantial number of holiday lets. The issue needs to be addressed.

At the moment, we do not have a definition for holiday lets. That is partly because, as members have said, so many different kinds of holiday lets are available, but I give the committee a commitment that we will try to produce a definition, because that might be helpful for the committee to understand what is meant by a holiday let. However, on Patrick Harvie's point about second homes, if a second home is not being rented out, it is not a holiday let and would therefore not be included in the definition.

Donald Gorrie: What if it is "used for holiday purposes"?

Stewart Stevenson: Yes, that is the term used in amendment 350. Perhaps the minister would care to comment on that.

Mrs Mulligan: Again, we will need to consider that when we draw up a definition, but there is an issue to do with whether rent is being provided for the accommodation. We will need to consider the general definition.

I said that other provisions could be used, and I heard the extreme example that Stewart Stevenson gave. I would obviously have some concern about such a situation, and would not want to be unable to do anything about it. We can use other measures, such as statutory nuisance provisions under the Environmental Protection Act 1990, which would deal with noise, for example, but we could also perhaps use closure orders in such an extreme instance. Part 4 of the bill, which provides for closure orders, says that they can be used if we have reasonable grounds to believe that

"at any time during the immediately preceding 3 months a person has engaged in antisocial behaviour on the premises"

and that

"the use of the premises is associated with the occurrence of relevant harm".

It has already been stated that holiday lets can be for significant periods of time. Therefore, there are other ways of dealing with the problem.

I realise that amendment 350 needs to be tightened to make it clear that if there is a problem associated with holiday lets, it needs to be addressed, as would a problem associated with any other area within our communities. We are keen to come back at stage 3 with some further wording on that.

Amendment 349 agreed to.

Amendment 350 moved—[Mrs Mary Mulligan].

The Convener: In clarifying whether he wishes to move amendment 350A, Stewart Stevenson may wish to respond briefly to some of the points that have been made.

Stewart Stevenson: I will move amendment 350A, on the basis that the minister has accepted the need for further work on amendment 350 and I wish to give her the maximum encouragement to produce appropriate wording at stage 3, when she has every chance of receiving my support.

Amendment 350A moved—[Stewart Stevenson].

The Convener: The question is, that amendment 350A be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Gorrie, Donald (Central Scotland) (LD)
Harvie, Patrick (Glasgow) (Green)
Scanlon, Mary (Highlands and Islands) (Con)
Stevenson, Stewart (Banff and Buchan) (SNP)
White, Ms Sandra (Glasgow) (SNP)

AGAINST

Barrie, Scott (Dunfermline West) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
May, Christine (Central Fife) (Lab)

The Convener: The result of the division is: For 5, Against 4, Abstentions 0.

Amendment 350A agreed to.

Amendment 350, as amended, agreed to.

Amendments 132 to 134 and 33 not moved.

Section 64, as amended, agreed to.

Before section 65

The Convener: Amendment 351, in the name of Cathie Craigie, is grouped with amendments 357, 357A, 357B, 357C, 358, 359, 360, 360A, 361, 362, 363, 364, 364A, 352, 353, 354, 355, 356, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375 and 403.

We will not deal with this group of amendments before quarter to 12. It is my intention to allow the debate to run over into the afternoon session. I recognise the substance of the debate on the amendments and I will be generous with the amount of time that I allow people to move and to speak to amendments.

11:15

Cathie Craigie: My colleague to my right has just said that it sounded as though you were reading out a bunch of bus routes instead of amendments.

The Convener: There are not as many bus routes as that in Pollok.

Cathie Craigie: I hope that the amendments would provide a route to ensure that private landlords are fit and proper and take responsibility for the important role that they play.

I am sure that the committee will forgive me for lodging such a large group of amendments, which are intended to give effect to one of the recommendations in the committee's stage 1 report. I remind members that the recommendation was that

"a mandatory licensing scheme should be introduced for all private landlords and that each property which a landlord holds for rent should be registered."

Rather than lodge amendments that concerned only the detail of part 8 of the bill, I felt that it would be more helpful to propose a complete package to replace the existing part 8, with the exception of existing section 74, which makes a stand-alone provision. First, I will explain the overall effect of the amendments and then I will explain the purpose of each of the amendments in turn.

Part 8 of the bill as published allows local authorities to designate areas in which private landlords should be obliged to register. During its stage 1 evidence sessions, the committee heard from the minister that she wanted to act urgently to deal with those few landlords whose failures encouraged or exacerbated antisocial behaviour. She recognised that there would be an opportunity to strengthen regulation when the housing bill, which we hope to see in this session of Parliament, is enacted. However, she felt that there was an urgent need to act on the landlord's role in antisocial behaviour. Therefore, she wanted to limit registration to areas in which there is persistent antisocial behaviour in private rented housing.

All members of the committee were happy with the principle that stronger regulation of private landlords would bring benefits to tenants, the community and many landlords by driving out the poor landlord and by improving the quality and image of the sector. The evidence that we received from many quarters, including from representatives of landlord and tenant interests, confirmed that. However, the committee was in no way convinced that the discretionary arrangements in the bill were the best way of proceeding. We felt that the discretionary approach would leave too much to chance if we wanted to get a firm hold on problems in the private rented sector. The Local Government and Transport Committee also commented that there might be merit in replacing that discretion with a requirement.

I am sure that councils would take a variety of views on how the discretion should be used, which would lead to a patchy situation that could be exploited by landlords who were determined to get round the controls. We must make no mistake: there are landlords who make it their business to exploit their tenants and the misfortunes of home owners in low-demand areas who have to sell up for a pittance. In fact, they exploit any loophole that they can.

Those landlords might be few in number in Scotland, and I in no way want to stigmatise the many good landlords who provide an essential part of the housing market. However, we urgently need to confront the exploitative landlords, so that their corrosive effect on some of our most fragile communities is halted. Members have given examples of how communities are affected by the actions of irresponsible landlords, so that is already on record.

We were not happy with the idea of discretionary regulation. We felt that there should be some form of national regulation in the bill, but we heard from a number of organisations that it would be wrong to rush through a full-blown scheme that covered everything to do with property conditions and tenancy management, and we agreed that to do so at this stage would be wrong. I support that view, as I do not think that such a move would allow for the level of consultation and consideration that we would want to engage in when talking about housing conditions and the many other issues that will arise in the bill on private housing. However, we felt that leaving out a provision to deal with private landlords would mean that there were areas in which the Antisocial Behaviour etc (Scotland) Bill would not be so effective.

I have tried to balance the issues and to prepare an alternative part 8 that would achieve two key objectives: assurance for the public, tenants and communities that private landlords are fit and proper persons; and a list or register of all properties in the private rented sector, provided so that people who need access to that list are able to gain it. My amendments aim to use a light touch to achieve those objectives and I have tried, with experience from other legislation, to ensure that there is minimum bureaucracy in the system.

If we achieve the objectives, we will give local authorities the means to act against exploitative landlords and the information that will help them to use the targeted powers available under part 7. Local authorities will also have the information that is an essential foundation on which to build the good working relationships that they should have with the private rented sector.

I will not go through every detail of all the amendments, but I would like to highlight the aspects that differ from the provisions in part 8 of the bill as published and that are significant for the operation of the registration scheme.

Amendment 351 sets out the scheme by making it clear that local authorities would carry out the registration function and that there would be a separate register for each local authority. Amendment 357, which is next in the marshalled list of amendments and next in the logical sequence of the package that I propose, deals with how a person would apply to be registered. As members will see, amendment 357 refers to a "relevant person" as defined in subsection (7). The intention is to require existing landlords to register, and to allow a person who intends to buy and let a property to obtain his registration before he goes to the extent of making a substantial capital investment. I think that that is a proper way to proceed. Any prudent person would want to ensure that he was registered before investing in property.

Amendment 357 would also allow for an agent to apply to be registered, even though he might not own any property for letting. A registered agent would be able to assure clients that he is registered as acceptable by the local authority and the authority would not need to re-examine the agent's suitability each time he acts for a new client.

Amendment 357 also provides for fees to be chargeable. The processing that would be required for the arrangements that I shall describe would be limited compared with the regime of detailed property inspection and other considerations that are part of the licensing scheme for houses in multiple occupation, from which we have all learned a lot. To avoid inconsistency and unfairness, I propose that, although fees should be set by the local authority, ministers should have powers to intervene by regulation. What I have in mind is that ministers may set upper limits for fees or may identify costs that can be taken into account in calculating those fees. I would also encourage ministers to use those powers to take account of the fees that HMO licence holders have already paid and to consider how to avoid duplication if a landlord is already accredited under a robust accreditation scheme.

I draw members' attention to the fact that amendment 357 would make it an offence knowingly to provide false or incomplete information. The benefits of registration would otherwise be undermined.

I turn to Donald Gorrie's amendment 357A, which seeks to amend my amendment 357. I encourage ministers to take account of the fees that HMO licence holders have already paid and to consider how to avoid duplication. I ask the minister to reassure us on that point so that Donald Gorrie can see that it is not intended that there will be any duplication. I hope that Donald Gorrie will consider the points that I am making and the minister's response.

I turn to Donald Gorrie's amendment 357B. Amendment 357 would cast the net widely to give all tenants of private landlords the assurance and protection that the landlord is a fit and proper person. It is difficult to know exactly the number of different types of landlords and tenants. As far as I can establish, there are no data that identify resident landlords in the census, the Scottish household survey or the Scottish house condition survey, so it is difficult to say how many people are in that category.

I appreciate Donald Gorrie's point and acknowledge that the very fact of registration, however light the touch, could have implications for the supply of accommodation with resident landlords. The task of administering registration in that more informal part of the market could be difficult for local authorities and we must strike a balance. I suggest to the minister that it would be helpful if we could have further discussions and if more work could be done on the issue. The Executive could take time to speak to the Convention of Scottish Local Authorities and private landlords and could come back at stage 3 to see whether we could take on board Donald Gorrie's suggestions.

We have just discussed Stewart Stevenson's amendment 350A to part 7, which is similar to amendment 357C. Although the committee agreed to amendment 350A, what amendment 357C proposes would be difficult to implement. It would require all landlords letting holiday accommodation to register. Previously, we discussed what would

happen with long lets. If a property were let over four, five or six months, the tenant would have some entitlement to a secure lease. We have to consider such issues. Holiday accommodation would be better dealt with by the tourism industry in some way. There should be some sort of quality assurance for people who are renting flats and holiday accommodation. We would be casting the net too widely if we included such accommodation in the bill. It is for the committee to decide, but I think that we are encroaching on an area that would be better handled by the tourism industry and the relevant Government departments.

Amendment 358 would require the local authority to consider whether the applicant—and, if there is one, the applicant's agent—is a fit and proper person. If the answer is yes, the local authority would have to register the applicant for three years. The fit-and-proper-person test, which is outlined in amendment 359, is at the heart of the scheme. The decision would have to be a matter of judgment for the local authority, but amendment 359 would help it by setting out the main types of information that it should take into account. Subsection 3(b) of the proposed new section states that that would include information about the way in which the applicant has managed or failed to manage antisocial behaviour in the past. The judgment would rest with the authority. It might take other types of information into account and it might reach the decision that although it has some information of the types listed, that is no longer relevant to the landlord's current and future behaviour and so the landlord should be registered.

The decision might be difficult as it would involve balancing different types of information and drawing conclusions about behaviour. However, as local authorities frequently have to make such judgments, they are best placed to do so in this respect. After all, their judgments would be backed up by democratic accountability and the support of professional officers in the field.

11:30

Amendment 360 seeks to ensure that an applicant is informed of the decision. Although I have some sympathy with amendment 360A, in the name of Donald Gorrie, its wording gives the impression that local authorities would have to write to all their tenants and give appropriate advice and assistance. Although it would be very serious if someone's application for registration were refused, it would not initially affect the contractual relationship between the landlord and the tenant and the tenant would have the right to see out the remainder of their lease. It is important to advise tenants about what has happened and I again ask the minister to consider whether the issue could be addressed through guidance or regulations. I do not think that the provision needs to be made explicit in the bill itself, but in any case local authorities should regard it as good practice to notify tenants that the landlord's application for registration has been refused. I hope that the minister will agree to discuss the matter further at stage 3.

I am aware of the time, but these amendments form a major piece of work. I will try to be as quick as I can.

Amendment 361 seeks to require that the registered person notifies any changes. That is particularly important, given that property holdings and agency arrangements can change frequently. In fact, a person could register before he has bought any property. As failure to notify changes could rapidly undermine the register and would be an obvious way for unscrupulous landlords to avoid controls, I feel that it should be made a criminal offence. I have no doubt that local authorities would place an emphasis on ensuring that errors are corrected and would not seek to report cases to the procurator fiscal in which failures were inadvertent.

Amendment 362 is necessary as it seeks to ensure that a landlord can appoint or change an agent while the period of registration is running and that, when that happens, the local authority will satisfy itself that the new agent is a "fit and proper person".

The amendments so far have centred on setting up the register of "fit and proper" people and their properties. We must also allow for the possibility that a registered landlord or agent will do something that means that he is not longer a "fit and proper person". Amendment 363 seeks to require the local authority to remove a person from the register if it becomes clear that the person is no longer "fit and proper" under the test that I have described. That would apply to a registered person no matter whether he is a landlord, a prospective landlord or an agent.

Amendment 363 also states that where a landlord uses an agent and the agent is no longer a "fit and proper person"—no matter whether the agent is registered in his own right—the landlord will be removed from the register unless he stops using that agent. Amendment 364 seeks to ensure that anyone removed from the register is told about it. I have no doubt that the local authority would also advise the person of the consequences should they continue to let property but I would be glad if the minister agreed that the point should be made in guidance to local authorities.

In cases in which a person's application for registration is refused or in which a local authority decides that the person is no longer "fit and

proper" and removes them from the register, there could be important consequences for the individual. As a result, amendment 352 seeks to make provision for appeal to the sheriff. I have also allowed for the sheriff's decision to be appealed to the sheriff principal within 21 days. If a person is not registered, there will be further consequences only if he then decides to let or to continue letting a property. Amendment 353 seeks to make that a criminal offence with a potential level 5 fine, which currently stands at a maximum of £5,000.

That is in line with the level of fine in the bill as introduced, and with the maximum fine for letting an HMO without a licence. In individual cases, the amount of the fine would be entirely up to the sheriff—up to the maximum. I hope that, through guidance and the training that would be provided to them, we can let sheriffs know just how important an issue we feel this to be. It is vital to have the penalty specified in legislation, both as a deterrent and as a strong signal that letting by a person who is not fit and proper is unacceptable.

The prime objective of the local authority should be to ensure that landlords register. If they fail to do so, either in ignorance or simply because of inertia, they should be encouraged to register. If such efforts are unsuccessful, the local authority should carefully consider whether reporting a case for prosecution is the best route, or whether the civil sanction, which I shall describe shortly, is more acceptable. I encourage local authorities and COSLA to agree suitable working arrangements with the Crown Office and Procurator Fiscal Service.

While the criminal sanctions send important signals—

The Convener: Cathie—

Cathie Craigie: Could I finish?

The Convener: I was just going to say that I suspect that we will be closing the meeting at a quarter to 12. It would be reasonable for you to use the remainder of the time, rather than feeling that you have to rush. We will hear from Donald Gorrie in the afternoon meeting. We will have to stop at about a quarter to 12, but do not rush through what you have to say. I will not be calling other members anyway.

Cathie Craigie: I can slow down, and I will take a drink of water. I do not know whether I have been more scared of the clock or of the convener.

The Convener: You would know if there was a problem. Just relax—you have about 10 minutes.

Cathie Craigie: The criminal sanction would send important signals and have a salutary and deterrent effect, but a sanction that strikes directly at the landlord's income from rents is likely to be particularly effective. In some cases, that might be a greater deterrent than the possibility of prosecution. Stopping a landlord's income from rents also has the attraction that, to the extent that rents are supported by housing benefit, the landlord would be prevented from profiting from state subsidy.

Amendment 354 would provide such a deterrent in the form of a civil penalty, in addition to the criminal offence, by allowing the local authority to apply to the sheriff for an order whereby no rent is payable. The local authority would consider all the circumstances before deciding whether or not to make such an application, and I would expect it to seek such a sanction only when it felt it to be really necessary. In particular, the authority would want to consider whether wrong signals would be sent out if the case revolved around antisocial behaviour. The minister has already assured the committee about guidance being given out on that and about how such cases would be dealt with, but the sheriff should and would consider all the circumstances before deciding whether or not it was appropriate to make such an order.

Amendment 355 provides for the landlord to appeal against an order stopping the rent. If such an appeal were successful, the tenant would then be obliged to pay the rent that had not been paid since the court's initial decision. Similarly to what we were saying in relation to part 7, that could create problems for the tenant who had used the money for other purposes. Amendment 355 would require the landlord to notify the tenant that he was appealing. It would also provide that any back-rent that was due because of a successful appeal would not be payable, should the tenant not be notified by the landlord. It would be up to a tenant who had been notified of an appeal to be prudent—as the minister said earlier—and to put money aside. The committee has discussed situations in which people are not always sensible with regard to rent. The minister was speaking about using some sort of suspense or holding account, which I would welcome. I hope that we can come back to that part of the bill at stage 3.

Amendment 356 would give ministers the power to fund local authorities in connection with registration, although I strongly believe that the running costs should be met from fees. When we consider what people pay for privately rented accommodation, it seems reasonable to expect an applicant for registration to pay a fee. Setting up the scheme would involve costs for local authorities. I have mentioned that to the minister and I welcome her comment that local authorities have been provided with additional support to allow them to start up the process.

Amendment 374 would provide a new interpretation section for part 8 that ties up with the

proposals that are contained in this group of amendments. Amendments 365 to 373 and 375 would remove the sections from the bill that would be superseded by my amendments.

I thank the convener for bearing with me while I have explained the overall approach and the detailed effects of the amendments. I hope that the committee will agree that the amendments would provide an important and effective tool for local authorities to engage with, encourage and promote the private rented sector in their areas. Local authorities would be given effective control over unacceptable management where that occurs. Combined with the more immediate powers that the bill provides in part 7, the amendments would give local authorities a tool with which they could challenge landlords who ignore or exploit antisocial behaviour. That is a step in the right direction.

I know that many committee members would have liked us to be able to refuse payment of housing benefit for tenants whose landlord is not registered. However, discussions on that would need to be entered into between the Scottish Executive and the Department for Work and Pensions. I hope that the issue can be considered between stages 2 and 3. If it is not possible to lodge the necessary amendments at stage 3, the issue will need to be addressed either in the upcoming housing bill or by putting pressure on our Westminster colleagues, who would need to address it through the rules for the payment of housing benefit that are laid by the Department for Work and Pensions.

With that, I thank the convener for the time that I have been given to speak to my amendments. I look forward to engaging in the debate when we return this afternoon.

I move amendment 351.

Meeting closed at 11:42.

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