COMMUNITIES COMMITTEE

Thursday 13 May 2004
(*Afternoon*)

Session 2

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CONTENTS

Thursday 13 May 2004

COMMUNITIES COMMITTEE
20th 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:

Paul Martin (Glasgow Springburn) (Lab)
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

(*Afternoon*)

[THE CONVENER *opened the meeting at 13:00*]

Antisocial Behaviour etc (Scotland) Bill: Stage 2

The Convener (Johann Lamont): At this afternoon's meeting, we will continue our stage 2 consideration of the Antisocial Behaviour (Scotland) Bill. I inform members that we are now making a call for amendments up to the end of the bill so that we can proceed with our consideration. An announcement recording that will be put in the *Business Bulletin*.

I draw members' attention to a printing error in today's marshalled list of amendments. The line numbering on amendment 357 is incorrect. To get the correct line number and to understand what effect Donald Gorrie's amendments to the amendment would have if they were agreed to, you should subtract 2 from the line numbers that are printed next to amendment 357. For example—if you do not know what subtracting is—if you count the line numbers, taking "Before section 65, insert" as line 1, you will find that the line currently numbered 5 is actually line 3 and so on. To ensure that no one is in any doubt about the effect of amendments 357A, 357B and 357C, a correctly numbered version of amendment 357 has been placed on everyone's desk.

Before section 65

The Convener: We are dealing with the amendments that are grouped together under the heading "Registration of private landlords". Cathie Craigie has moved amendment 351 and I now call Donald Gorrie to speak to amendment 357A and the other amendments in the group.

Donald Gorrie (Central Scotland) (LD): I think that you were quite right to allow Cathie Craigie adequate time to explain the amendments, convener, which she did creditably, because, although the concept of a national register was discussed in our consultation at stage 1, the mechanics of it have not been properly scrutinised. Therefore, the committee must pay extra attention to scrutinising the way in which Cathie Craigie's amendments attempt to deal with the issue.

As I have said before, I entirely support the concept of the registration of private landlords. However, as one of my amendments suggests, we must allow adequate time for consultation on what is a complex issue.

My first amendment, amendment 357A—I am taking them in the order in which they appear in the marshalled list, rather than in order of importance—relates to fees. There is an existing system of controlling houses in multiple occupation and it might be the case that landlords of HMOs will have to pay a second set of fees to register under the proposed system. That raises a wider issue, in that there is a degree of overlap between the proposals and existing HMO legislation. It is important that the Executive examine that carefully to ensure that the legislation coheres properly. The HMO legislation is about buildings and the bill is about people, so it is important that they cohere. However, if the minister can make the right assurances, I will not be too fussed about pressing amendment 357A.

I am much more interested in amendment 357B, as it concerns the difference of opinion as to whether landlords who rent out one or two rooms in their house, in which they continue to live, should be categorised along with landlords who rent out a property in which they do not live. Cathie Craigie indicated that that is a step too far. Registering all landlords will be a huge undertaking for local authorities and introducing the other category would be too much of a burden. I think that Cathie Craigie said that there is no indication at the moment of where rooms are being rented out in such a way. I suppose that people do not have to tell anyone other than Gordon Brown, the taxman, that they rent out rooms in their house.

As well as the fact that the matter is too complex to deal with at the moment, which is a procedural issue, there is a policy issue. I think that a person who rents out rooms in their own house, in which they are still living, is in a different category from a person who rents out a whole property. The issue is not that one person is good and the other person is bad, but that they are involved in different exercises. I am keen for the committee to support amendment 357B and for the minister to agree to consider the issue carefully, either accepting my argument or coming forward with proposals at stage 3 that would deal better with the matter.

Amendment 357C involves a rerun of the holiday houses issue. Obviously, there will be slight differences in the arguments relating to the proposed section on registration and section 64, in respect of which Stewart Stevenson's amendment 350A was agreed to. However, the principle is the same and the same arguments apply as to what

constitutes a holiday house and the need to give more thought to the issue. Therefore, if the committee accepts the amendment, I appeal to the minister to come back with a well-thought-out policy on holiday houses at stage 3. For consistency, I appeal to the committee to support the proposal on holiday houses.

Amendments 360A and 364A make the same point. Cathie Craigie expressed concern about the wording of those amendments and there might be some justice in what she said, but I was anxious that the tenant should be kept informed and given advice about what was going on, especially if the landlord is not put on the register or is taken off it. Perhaps I missed something; I am not sure. The bill provides for landlords not getting rent if things go against them, but there could still be a stand-off and the position of tenants could be in jeopardy in some way. Help, advice and especially information should be given to tenants. I hope that the minister or Cathie Craigie—I am not sure about the etiquette—will respond and assure us that the matter will be clarified at stage 3.

I am not clear about the interpretation of

"a fit and proper person".

Amendment 359 contains a list, but I would like the minister to give an assurance that there will be guidance to try to achieve consistency. At what stage will past offences be overlooked? I will give an example. A few years ago, the Church of Scotland ordained two ministers. One of them had been in jail for fraud and one had killed somebody under extreme provocation and had been in jail for violence. If the Church of Scotland thinks that those people are okay and puts their past offences in a cupboard somewhere, I presume that councils can do something similar. However, I think that councils need guidance on how to interpret the criteria that make someone not

"a fit and proper person".

Various bodies, including the Convention of Scottish Local Authorities and some of the housing organisations, have said that they support the principle of this part of the bill but would like to have much more discussion on the mechanics. My amendment 403 tries to meet that request by setting out that ministers must consult COSLA and other relevant people and lay before Parliament a report of that consultation. It also stipulates that this committee or another committee must consider that report and that Parliament must then endorse the report.

As I have said, registration of private sector landlords is an important issue and it is right that it has been raised in a set of amendments. However, the mechanics have not yet been properly scrutinised. We have to take people with us. People support the idea in principle, but their concerns about the mechanics and funding must be taken into account. I hope that the committee and the minister can accept my amendments or come forward with some sort of guarantee or with superior ideas to those in my amendments. I hope that the committee and the minister will respond to the points that I have made.

Mary Scanlon (Highlands and Islands) (Con): I commend Cathie Craigie for being consistent and passionate in raising issues from her constituency—the issues that are addressed in her 25 amendments. However, despite the merits or otherwise of those amendments, they present me with certain difficulties.

Cathie Craigie referred to the committee's stage 1 report, paragraph 183 of which states:

"The Chartered Institute of Housing in Scotland and the Scottish Association of Landlords both agreed that full registration of private landlords would be best left to a private sector housing bill, in order to avoid tarnishing what is seen as a very positive move with the negative connotations of antisocial behaviour."

Although paragraph 187 notes that the committee is "sympathetic" towards a national registration scheme, members will forgive me for quoting paragraph 188, which says:

"The Committee notes the Scottish Executive's commitment to introduce a private housing bill which will provide for the physical standard of a property and for all aspects of the landlord-tenant relationship and therefore accepts that it is inappropriate to include such provision in this particular Bill."

I appreciate that we did a "however" and a U-turn, and came up with paragraph 190, but I want to raise the concerns that I and other committee members had.

The Executive has been commended by all parties and all organisations for its wide-ranging consultation on the bill. I, too, commend the Executive in that respect. However, Cathie Craigie's amendments are substantial and complex. I will quote from a briefing from the Council of Mortgage Lenders, which has raised concerns, as have the Scottish Association of Landlords and others. The CML mentions

"the principle of a voluntary accreditation scheme which could make a useful contribution towards raising standards in the PRS".

That idea may not be appropriate, but the whole issue requires further debate and a more wide-ranging consultation with all the relevant people, to examine the wider impact on the private rented sector.

In the Executive's consultation paper, two options are given under the heading "Regulating the Activities of Private Sector Landlords". The first option is:

"Giving local authorities the power to require all privately let property in a defined area to be registered."

That is what is proposed. The second option is:

"Giving local authorities the power to take over the management of individual properties".

My concern is that the provisions in the amendments are substantial, wide-ranging and complex and the committee has not been able to gauge the response of all those who will suffer as a result of the impact of the amendments.

I fail to understand why the registration scheme is being introduced in a bill that relates to antisocial behaviour. We should wait for the Executive's proposed housing bill, which I understand will come before the Parliament early next year. The inclusion of registration for private sector landlords in that bill would allow for proper consultation and debate.

In addition to what the committee said in its stage 1 report, I remind the committee that the CML argues that

"registration is being introduced in association with the negative of anti social behaviour as opposed to perhaps more positives such as improving standards."

On the basis that the considerable amendments in this group were not included in the consultation process, I do not consider the bill to be the appropriate piece of legislation for the provisions. I agree with the CML's comments about the registration scheme being associated with the negative aspects of antisocial behaviour rather than with the positive aspects of good housing management. As I have said, although I have much sympathy for the scheme, I will oppose the amendments.

The fact that the provisions in these substantial and complex amendments have not been put out to full and wide-ranging consultation in order to measure their impact on the private rented sector also means that I cannot support them. Although I support a registration scheme for private landlords, I want such a scheme to be implemented properly, with the appropriate consultation and in the right bill. If we agree to the amendments in the group, I do not think that we will measure up to what is expected of us in the democratic process.

13:15

Christine May (Central Fife) (Lab): I share Mary Scanlon's wish that measures be taken to bring private landlords into the ambit of legislation, because it is in that sector that many of our difficulties with antisocial behaviour occur. That is why I will support the amendments in the group. The scheme should be included in the bill no matter what happens with the proposed housing bill, whose provisions could be complementary or additional.

I have a question of clarification on amendments 363 and 364, which concern removal from the register and notification of removal from the register. Is the terminology sufficient to cover instances in which, subsequent to the antisocial behaviour taking place, the landlord dies or instances in which the property is in the process of transfer between one owner and another and there is therefore no landlord? I recognise that it is the landlord himself who is the subject of the register. However, given that such businesses are often transferred between members of the same family, the general approach to the tenancies and obligations often remains the same. In other words, it is likely that the behaviour would be allowed to continue. Is anyone present today who is qualified to clarify that point?

The Convener: Cathie Craigie or the minister might want to address the point later in the meeting.

Stewart Stevenson (Banff and Buchan) (SNP): First, it is entirely appropriate to congratulate Cathie Craigie on developing and lodging her amendments, which represent a substantial change to the bill—indeed, the amendments constitute a more substantial piece of work than many a member's bill. However, I have concerns about the introduction of such substantial measures without detailed scrutiny at stage 1.

Of course, we discussed the need to be able to identify who landlords are—it would be difficult to take action under the bill unless we know who they are. We also discussed the need for a compulsory register of landlords. However, I had thought that, for the purposes of the bill, it would be sufficient to have brought forward proposals that required all landlords to be registered but that created no barriers to registration, because the register would simply be a book of the names and addresses of landlords. Indeed, such a simple form of registration would be in line with the policy objectives of the rest of the bill.

There would also have been a duty on criminally inept landlords to register, of course, and there would have been no barrier to their registering, which would have meant that they could be found in the same way as other landlords. Had such a system been proposed with provisions for penalties where people chose not to register, for example—and I am being slightly mischievous, but one could envisage this—the transfer of ownership to the tenant when the landlord did not make themselves known, we would have had a logically consistent and relatively straightforward set of proposals.

I am planning to abstain on the amendments. I cannot in all honesty say that I wish to vote against them, but equally I cannot say that, given the substantial nature of the proposals, I or colleagues have done justice to understanding all the implications. The minister may yet be able to persuade me to vote otherwise. I repeat that Cathie Craigie has done an excellent piece of work and I look forward to seeing her proposals return in the appropriate bill, probably in substantially the same form, if that is the way in which the committee and Parliament choose to go. For the moment, that is my strong preference.

The Convener: I will speak now, so that I am not accused of trying to have the last word, which is one of my many obsessions.

It has been suggested that the private rented sector will be tarnished by being associated with antisocial behaviour legislation, but the reality is that it is tarnished by its inability to deal with the significant problem that it creates in relation to antisocial behaviour in some communities. I am not talking about all communities—most landlords do a good job and provide an important housing service. However, in some places, there are problems because of the difficulties that arise when private landlords do not manage difficult tenants and because tenants are left in vulnerable properties. We are not talking about attaching to the sector something that it does not want to have attached to it. The reality is that, unless we deal with the issues, the private sector will be diminished by the current problems.

It has also been suggested that the proposals have not been discussed. Some people have said—I am not suggesting that this has been suggested at this meeting—that the issues have been raised only from MSPs talking among themselves, but the proposals have not popped up from nowhere. A year and a half or two years ago, I secured a members' business debate at which many of the issues were raised; the issues were also raised by the housing improvement task force. It would have been prudent for people who were concerned about the proposals to have worked up a system for registering landlords. As we have been told, there is to be a bill on the private sector later this year. I would have thought that those who would be expected to concentrate their minds on that bill might have done so already. I am surprised that people feel that we should have to wait for a long time to talk to COSLA, because it must be aware of the problem already—I would have thought that it was engaging with the mechanics of such a scheme, rather than just with the aspirations to do something about the problem.

There is an urgency to the issue. We can all think of areas where the situation has reached a crisis point such that people think that the only way of dealing with the problem is to get out or, if they cannot get out, to be silent. Communities cannot be regenerated in that context. The nature of the private sector means that some landlords cannot be contacted, which prevents social landlords coming in and taking over properties to do them up as they have done elsewhere. We have to recognise that. Even if we could live with the misery faced by individuals within communities, the Communities Committee must recognise the community impact of such problems.

I understand Stewart Stevenson's line of argument on the test of who is to be considered

"a fit and proper person",

but somebody pointed out to me that, if someone had a chequered history and sought to obtain a licence to run a public house or a taxi within a local community, they would have to pass such a test. However, someone can buy property and receive rent—whether from the public purse or not—from putting vulnerable people into that property without having to pass such a test. Some of the people who live in those properties are extremely vulnerable and therefore deserve protection.

We do want to introduce a hugely cumbersome system that everybody resents and from which we get no public good. I have therefore thought of a simpler system under which, if a landlord were on the register, they would be contactable and, if they did not register, their income would be affected. Hiding would therefore have an economic cost that it currently does not have. I would like the minister and Cathie Craigie to respond to that suggestion.

I would also like some discussion, now or before stage 3, on where the register would sit. Would it be distributed to letting agents so that they could not advertise the properties of landlords who were not registered? It seems bizarre that it would be possible to encourage somebody to pay rent for an unregistered property, which would be an offence. That does not seem to be rational at all. I am talking not just about rental income from housing benefit, but about any other means by which rental income is paid. If it is to be an offence to ask for rent for an unregistered property, I cannot understand why we should allow people to do anything that would encourage others to seek to pay rent for such a property. I would have thought that, if a letting agency had a copy of the register, it would not be able to display the properties of unregistered landlords in its windows. I would also have thought that the housing benefit office, which deems whether a property can appropriately be rented and have the rent funded by housing benefit, should not be able to clear the

way for somebody to offend by handing rental income to the landlord of an unregistered property.

If those issues cannot be resolved now, they must be resolved at some stage, because the biggest strength of the proposals is that they would be an active inducement to landlords to come out of the woodwork and register and an active deterrent to those who are not in the business of delivering a service to anybody, but are simply manipulating a system that secures them financial gain with no accountability for the income that they receive. I hope that the minister and Cathie Craigie will address those points because, if the system is not made manageable in the ways that I have suggested, it will be severely damaged.

Ms Sandra White (Glasgow) (SNP): I congratulate Cathie Craigie on all the hard work that she has done. When I spoke to her earlier, I realised how much work and time have been put into her amendments. However, we should look at the matter in perspective. We are talking about the registration of landlords. When the Parliament was considering the Housing (Scotland) Bill, we had an opportunity to provide for the registration of HMOs, which should, in my opinion, have been mandatory. We missed that chance.

Although there may be some bad landlords on whose premises antisocial behaviour takes place, the provisions in Cathie Craigie's raft of amendments will encompass all private landlords. Like Mary Scanlon, I am concerned that the bill is not the proper place for such provisions, especially when a bill on private housing is to be introduced at the end of this year or the beginning of next year. We are talking about the registration of all private landlords. I agree with that and thought that we should have tackled it when we dealt with the regulation of HMOs—the two issues are much the same thing. Donald Gorrie mentioned the fact that the regulation of HMOs is to do with buildings and the registration of landlords is to do with people, but the HMO legislation applies only when three or more people are staying in the house, so those provisions also have something to do with people.

I do not know whether Cathie Craigie has lodged her amendments to this bill because she realises that we missed an opportunity—I am sure that she will answer that when she sums up—but the bill is not the proper place for such provisions. It would be far better to wait until we can scrutinise the proposals properly. We should not be saying that all private landlords are bad landlords, which is what we are suggesting if we insert the registration provisions into the Antisocial Behaviour etc (Scotland) Bill.

Amendment 351 is about registers and amendment 357 is on applications for registration. I have problems with regard to the fees situation. To go back to HMOs, registering houses in Glasgow is an awful lot dearer. In some cases, the cost can be about £1,500. In places such as Aberdeen, it is only something like £300. I have a real worry that there will be two separate sets of legislation pertaining to the same people.

13:30

Local authorities have to administer the system and I would like clarification on how that will work. Do private landlords with HMOs have to register under one aspect of the law in the first instance and then, if they let out one or two rooms in their own house, have to register that as well? Must they make a separate application? That seems cumbersome and bureaucratic and, I think, unworkable. I would like to know exactly what is being proposed with respect to fees. People are basically being penalised simply for being private landlords—not all private landlords are bad.

Donald Gorrie's amendments to amendment 357 are eminently sensible and I intend to support them. We have to consider the situation sensibly. I do not see why someone who owns a house and lets it out to a relative who might be working in the location for three or four months should have to declare themselves as a private landlord. That has not been clarified as far as I am concerned.

Donald Gorrie's point about holiday homes was quite right. We debated that matter earlier today, after Stewart Stevenson brought it up, and Donald Gorrie has raised it again now. The minister has told us that the problems addressed in Donald Gorrie's amendment 357C and Stewart Stevenson's amendment 350A can be solved through environmental orders, antisocial behaviour orders or noise abatement orders. What order will cover the holiday home situation, however? How can people work out exactly what defines a holiday home? I would be pleased to hear a fuller explanation of that.

Cathie Craigie's amendments 354 and 355 highlight the fact that the housing benefit system is, unfortunately, not a devolved matter; they show just how little power the Parliament has over that aspect of the law. We are discussing antisocial behaviour legislation that will impinge on the lives of tenants, landlords and other people, yet I have not yet heard an explanation from the minister of how we will tackle the situation if housing benefits are withheld or if some form of fund is required. I would need those issues to be clarified before I could support the proposals.

I am minded to support Donald Gorrie's amendment 403, which I think is sensible. We should speak to the people who are going to be affected by a proposal before we rush through with

it. Depending on whether another housing bill is to be introduced, and if I do not get proper answers to my questions, I might join Mary Scanlon in voting against the proposals.

Patrick Harvie (Glasgow) (Green): I am grateful for the opportunity to discuss the issues before us and for the work that Cathie Craigie has put into her amendments. I have made it clear in the past that I support in principle both registration and the sensible regulation of private landlords. I would be less than honest if I did not say that my ideal outcome from the discussion is a ministerial commitment to separate Executive legislation in this area, and for Cathie Craigie to be satisfied with that.

That might not be the outcome, so I will outline a couple of concerns and then ask some specific questions, which will help me to decide whether to vote in favour of the amendments. I will deal with the two concerns that members have already mentioned. First, Cathie Craigie's proposal on registration has not had the proper level of consultation and scrutiny. The set of amendments has been compared to a member's bill by a couple of members. If it had been such a bill, there would have been a full and separate consultation process on its provisions. That has not happened, which is a shortcoming.

Secondly, there is the question of the application of the proposals to an area wider than antisocial behaviour. If the proposals were not tied in with antisocial behaviour legislation, they might be better received by private landlords and tenants. Both those concerns are major issues, and I do not think that they can simply be dismissed. That does not mean that I will vote against the amendments. I still want to be able to vote in favour, but I think that we should acknowledge the fact that there are major shortcomings and that the issue is urgent enough for us to accept those major shortcomings.

If I am to be able to support the amendments, I will need answers to specific questions on a couple of Donald Gorrie's amendments. Amendment 357B, in particular, is very important. I do not believe that the provisions in amendment 357 should be extended to cover individuals who let out one or two rooms in their own house, and I urge Donald Gorrie to press amendment 357B and I urge Cathie Craigie to accept it. The issue was given virtually no consideration before the amendments were lodged, and it would be a major step that we have not properly contemplated if we were to introduce such a provision. I hope that Cathie Craigie will also accept that amendment 357B would not prevent her amendments from targeting those categories within the private rented sector in which there is a serious and urgent problem. There may well be a case for some degree of regulation of people who let out individual rooms, but I think that there should be a much lighter touch than what is being proposed.

Amendment 360A is another of Donald Gorrie's amendments. The argument was made earlier that tenants would have the opportunity to see out the existing lease, but we should remember that that could be an extremely short time. I think that Donald Gorrie's proposed requirement for tenants to be notified is only reasonable and the least that we should be considering.

Like other members, I am concerned that the list in paragraph (a) of subsection (2) in amendment 359 is a partial list. Donald Gorrie raised the question of how long offences should debar a person from registering, but that is not the only issue. We can all think of other offences that would have to be included and we would agree that people who are involved in organised prostitution or in trafficking for exploitation, or people who are involved in a wider range of offences than those listed, should also be covered.

In paragraph (b) of subsection (2) in amendment 359, the discrimination grounds that are listed are not consistent with those in the Scotland Act 1998. There may be a simple explanation for that, but the grounds listed in the Scotland Act 1998 have since been widely used elsewhere. I wonder whether there is a reason for the inconsistency.

My final point is about the housing bill that we anticipate. Perhaps aspects that are not satisfactory in the amendments in this group could be ironed out in a future housing bill, and details of the wider regulation of private landlords could also be included in that future bill, even if we set up the scheme through the Antisocial Behaviour etc (Scotland) Bill.

Scott Barrie (Dunfermline West) (Lab): Like other members, I want to start by congratulating Cathie Craigie on the hard work that she has obviously done. As an individual committee member, she has taken up an issue that was highlighted explicitly in our stage 1 report. That shows the importance of going through that process.

Given the way in which the Parliament was set up and the founding principles on which it is based, we must be careful that we do not introduce major new provisions without proper consultation and examination. However, we are having quite a detailed debate here just now and it is not the case that the amendments have come completely out of the blue or that there have been no discussions on the issue in the past. We must place the amendments in this group in that context.

Some members have expressed the view that the bill is perhaps not the place to legislate for or

to place controls on the private rented sector. They seem squeamish about setting up a register under the bill and think that we should wait for a better bill to come along. Sometimes, we must seize the initiative and take the opportunities that come our way. As someone who has dealt daily with legislation in my working life, I know that some of it is found in the most weird and wonderful places because past legislators took an available legislative opportunity to remedy obvious omissions or create new initiatives. We should bear that in mind.

One difficulty with waiting for an appropriate bill to come along at some point before we introduce such a scheme is that it would delay doing something that all of us acknowledge needs to be done with some urgency. We should keep that point at the forefront of our minds. How we deal with Cathie Craigie's amendments will depend largely on what the minister says, but we want legislation that is easy to understand and administer and that passes what is known as the Ronseal test in that it does what it says it will do. If we can satisfy ourselves that the amendments will work, we should take this legislative opportunity. Otherwise, we will end up returning to the issue in a year, 18 months or two years and wondering why we did not take action sooner. That is frustrating for legislators—we often ask ourselves why something was not done previously. We have an opportunity and we should consider it seriously.

The Deputy Minister for Communities (Mrs Mary Mulligan): When the Executive framed part 8, we took account of the consultations that we had carried out and decided that the bill should focus closely on landlords' management of antisocial behaviour. We therefore limited part 8 to cover those areas of the private rented housing sector where antisocial behaviour is a significant problem. However, following that, the Communities Committee took further evidence and concluded, for the reasons that Cathie Craigie and others outlined, that it would be more helpful and would provide better protection for the interests of tenants in the community if a broader system of registration were introduced at this stage. Therefore, I am persuaded by the evidence and by members' arguments that the route that is proposed in Cathie Craigie's amendments is a sound and acceptable alternative to the published part 8.

Within the overall approach, members have raised a number of issues, which I will now seek to address. I will mention Donald Gorrie's amendments and some members' comments. Amendment 357A seeks to ensure that the cost of an existing HMO licence will be a factor in any method for arriving at registration fees that we may introduce through regulation. I assure him that if national registration is introduced, we will want to design the scheme to minimise bureaucracy. We will be keen to avoid landlords being asked to go through the same process twice—for an HMO licence and for registration—and being asked to pay two fees. We will consider how to resolve that issue.

Amendment 357B seeks to exempt resident landlords who let one or two bedrooms. I have great sympathy with the amendment, although I agree with Cathie Craigie's comments about seeking a balance. Further consultation and investigation on the point would help to clarify what the appropriate balance might be. I would be pleased to pursue the issue further and return at stage 3 with a further amendment on the issue that may be acceptable to all.

Amendment 357C strays too far into the realms of the tourism industry. It is different from amendment 350A, which was agreed to this morning, in that it would require registration of everyone who is involved in holiday letting. If we were to add that to the task of protecting people who rent their homes from private landlords, we would be mixing very different objectives and overburdening the local authorities that would be charged with the registration process.

13:45

In connection with amendment 364, I am happy to give an assurance that guidance to local authorities will include the need to ensure that a landlord is aware of the consequences of the removal of a person from the register. I recognise the arguments behind amendments 360A and 364A on the occupants of such a landlord's house. That is an issue that could also be dealt with satisfactorily through guidance, but I am happy to consult on the practicalities of what is proposed and, in the light of that consultation, to consider lodging an amendment at stage 3.

Amendment 403 proposes a specific set of conditions that must be met before the part 8 provisions can apply. The registration system has been proposed through non-Executive amendments, in pursuit of what was agreed in the committee's stage 1 report, so the Executive has not been in a position to carry out formal consultation on the proposal. I agree that there is a need for further discussion to explore all the details of implementing what is proposed in the amendments. In line with our usual practice, the Executive will consult on that detail to ensure that we design a system that is workable and achieves the policy purposes behind the amendments.

I want to deal with some of the specific points that have been raised. Donald Gorrie asked about the use of the term "fit and proper person". That phrase is not unknown to us; it is used. In fact, I

think that someone mentioned that it is used in the HMO registration scheme. Those of us who were councillors know well that it is used as part of the registration process for taxi drivers, for example. Therefore, the term has some meaning for us.

Amendment 359 would mean that local authorities would be expected to have regard to whether someone was a fit and proper person; indeed, it lists some of the factors that should be considered. That gives sufficient indication of what we would mean by "fit and proper person". I think that it is probably best to leave to the local authority interpretation of how long an outstanding offence would be held against someone before they could be considered to be a fit and proper person. It could do that when taking into account the other factors relevant to that category. We are talking about achieving a balance, which local authorities are not unused to doing when dealing with the other registrations for which they are responsible.

Mary Scanlon asked about the consultation and whether we should be proceeding with the proposal. Although she suggested that the committee report said that the bill was not the place to do that, she was magnanimous enough to acknowledge that paragraph 190 of the report said that a mandatory licensing scheme should be introduced. The committee thought through the process and arrived at the right decision.

I suggest to Mary Scanlon and to other members who have tried to argue that the bill is not the right place in which to introduce such a scheme that the bill is precisely the right place in which to do so. If we are seeking to protect people from antisocial behaviour, I do not need to tell members that our ability to do that is severely limited when people are in accommodation in which the landlord who is responsible for those tenants cannot be contacted. One of the reasons why we feel that a registration scheme is appropriate is that it will allow us to take the further step of making such contact. I am not saying that we will always be able to contact those landlords, but the proposal represents a significant move in that direction, which will assist us in tackling the antisocial behaviour issues that we want to tackle. If we do not do it at this stage, it will not just be a missed opportunity but will leave a hole in the provisions that we are trying to create to resolve issues around antisocial behaviour.

Members have referred to the proposed private housing bill. Although the Executive is committed to introducing that bill before the end of the session, in 2007, I am not aware of any other date that has been announced. It would not be the most effective use of our time to deny people the opportunity to get some of the problems that we identified during the consultation resolved at this stage. I therefore hope that members will feel able to support the measures that are in front of them.

Christine May asked what happens if somebody dies or transfers the property. The scheme is designed to register the person who is the landlord, and the duty in the bill will be to keep the list updated. Although I recognise the fact that there may be problems in maintaining the list, we would want to look at how it was operating to try to pick those points up. It is an interesting point that had not been considered previously and we will give much more thought to it.

Stewart Stevenson was uncharacteristically unconvincing in his argument for not supporting these measures. I suspect that he is not convinced that he should not support the measures. I am sure that, in her winding-up speech, Cathie Craigie will convince him that he should support them.

Convener, you suggested that you would want stronger sanctions that would inhibit people being able to gain income from properties where there were difficulties. I share that concern. Cathie Craigie has outlined some of the issues.

The Convener: It is not an issue of sanction for me; it is an issue of logic. If it is an offence to let a property that is not registered and if it is known that a property for which someone is seeking rent is not registered, I cannot understand why that would be allowed. If the housing benefit office or the letting agent has the information that a property is not registered, it does not seem logical or rational that public money or any other money should go to somebody who will have committed an offence by the time they receive it.

Mrs Mulligan: I have some sympathy with that view and agree that we need to consider the logical sequence of events. However, although it may not be the direct sequence of events that you would favour, we can, ultimately, arrive at the correct outcome of somebody not benefiting if they are not responding in an appropriate manner. I reassure you that we will consider your suggestion to make it an offence for an agent to promote an unregistered landlord and perhaps return at stage 3 with an amendment on that.

I am sure that Cathie Craigie will want to return to several points that members have made, so I will conclude by saying that I will look carefully at the point that she made on the issue of start-up funds for local authorities. I cannot give a commitment today, but once the registration scheme is established, we expect it to be self-funding through the fees. If there is a need for support through some kind of start-up funding, we should consider that.

I congratulate Cathie Craigie on the work that she has done on this. If we are to have the package of measures that we have said that we

want to have at our disposal to address antisocial behaviour, it is appropriate to put the measure in the bill.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): As members have said, the amendments are substantial, so I have quite a few responses to make.

The Convener: We want to make progress, but if the committee is anxious that it has not scrutinised the amendments sufficiently, I will not ask you to wind up before you are finished. I ask only for self-discipline.

Cathie Craigie: I thank the convener for that and I will try to discipline myself.

I thank everybody for their kind words. It was important to lodge the amendments not only because of the committee's experience of scrutinising the bill and of pre-legislative scrutiny exercises in which we visited communities, but because of experience that I have gained in representing the people of Cumbernauld and Kilsyth and our experience of the Housing (Scotland) Act 2001. That act focused on the social rented sector, but we also discussed private landlords when we dealt with it. We waited to deal with them because we were told that another opportunity would be presented for us to examine in more detail how we manage the private rented sector, how we regulate private landlords and how we monitor the physical standards of property that is available for rent, some of which leaves a lot to be desired.

We agreed at stage 1 that examining the physical standards of properties would be a step too far—it would require everybody to give a commitment to another bill—but we agreed that the bill had scope to include a simple registration scheme for landlords and the properties they let. The amendments that I have lodged would provide such a simple registration scheme and a mechanism by which local authorities, the police and people in our communities who must deal with problems regularly can find out where a landlord resides.

The convener talked about the test of whether a person is fit and proper. It is fit and proper for the committee to ensure that people who may have vulnerable people under their roof, or who may rent property to such people, pass the simple test of whether they are fit and proper to be landlords. The test would not be complicated. As the convener said, local authorities apply that test daily as they deal with taxi drivers, operators of licensed premises, people who sell burgers and people who wash windows, all of whom require to be licensed. Local authorities apply that test every day without impinging on individuals' rights.

Donald Gorrie talked about the test in relation to people who have convictions. Somewhere in Scotland now, a local authority committee is probably considering an application to be a licensed taxi driver from someone who may have had a conviction. A mechanism can operate for disregarding spent convictions or for not taking into account convictions that would not have a direct impact on the job for which a licence was sought. Donald Gorrie's concern can be dealt with.

I touched on the general issue of consultation. Regulation of the private sector has been on the agenda for at least the past four years, since we started discussing the Housing (Scotland) Act 2001.

14:00

I do not have in front of me the briefing paper from which Mary Scanlon quoted, but I am confident that she quoted it exactly. We did not hear, however, how people responded to that briefing paper. People in my constituency, who gave the matter very serious consideration, told me—as their elected representative—that the measures that were proposed in the briefing paper did not go far enough and they expressed their views on what they wanted to happen. When the bill was published, they told me that it did not go far enough. That is the opinion of people not only in my constituency, but in constituencies up and down the country—the people whom we met when we visited those constituencies. The matter goes further than that: organisations that represent the housing interest, student organisations, Shelter Scotland and the Chartered Institute of Housing in Scotland all felt that, on balance, we need a scheme that registers all landlords, rather than a scheme that registers landlords in a discretionary area.

I will now go through the points that members raised. Donald Gorrie asked about his amendments to my amendments. On amendment 357A, we received assurances from the minister that she will examine fees to ensure that there is no duplication. I hope that Donald Gorrie accepts those assurances.

On amendment 357B, I am not convinced that we are going a step too far by saying that landlords who are resident on premises should not be required to register. However, Donald Gorrie raised a valid point and it would be worth our while to give the matter further consideration. I hope that Donald Gorrie will not move the amendment in order to allow us to have that conversation and come back on the matter at stage 3.

On amendment 357C, the holiday homes issue has been taken much further than I intended. We discussed the matter when we considered part 7, but I ask Donald Gorrie not to move the amendment to allow more time to consider the

matter in its proper context as part of the tourism industry.

Amendments 360A and 364A concern notification of tenants. Again, I have sympathy with the amendments. I am sure that it would be a matter of good practice for local authorities to notify tenants but—again—I ask Donald Gorrie not to move the amendments and allow discussions on regulation to ensure that tenants are made aware of what is happening.

If amendment 351 is passed, we will have a registration scheme. Amendment 403 would require the Executive to discuss with local authorities such a scheme and the timing of when it would be put in place. There is no point in setting in legislation a timeframe that local authorities are unable to meet. We do not want to make the mistakes that we made in the HMO legislation; we want a scheme that works. I have waited five years for the bill and I want it to work.

The Convener: I will allow Stewart Stevenson to intervene on that area.

Stewart Stevenson: I just want to ask a straightforward question. Does Cathie Craigie feel that amendment 359 is necessary in view of some of the concerns that have been raised about its particulars? Does she agree with me that if amendment 359 was not agreed to, her other amendments could stand alone, which would leave local authorities entirely responsible for determining whether someone was a "fit and proper person"? Is amendment 359, which describes the reasons why a person would not be considered fit and proper, lifted from another source, and is it therefore similar to provisions elsewhere in legislation? I would be grateful to Cathie Craigie if she could help me to understand the status of amendment 359. I note that she has not directly addressed that issue in her remarks.

Cathie Craigie: I would be grateful if Stewart Stevenson could give me some time to think about those points. Perhaps the minister will help me if I need technical advice. Stewart's intervention has nicely made me lose my train of thought.

Mary Scanlon asked about consultation. I really think that the people who say that we have not consulted have not taken the opportunity to get fully involved. The proposals have been around for a long time but, as far as I am aware, the briefing paper on the bill that we received from the CML the other day was the first submission that we have received from that organisation. I would have expected organisations such as the CML, which I respect, to take a greater interest in the matter. We agreed, as did some housing professionals, that a voluntary scheme would be patchy across the country and would not work.

Christine May asked whether a property would be removed from the register if a landlord died. If the scheme goes ahead, it will be the person who is registered, so if a registered landlord dies and the person who inherits the property wants to carry on renting it out, they will have to register unless they are already a registered landlord. Similarly, if a person sells a property or transfers it to a family member, the new owner can rent out the property only if they become a registered landlord.

I knew that there would be a "but" from Stewart Stevenson—I should have made sure that he was sitting next to me this afternoon so that I could sweet-talk him into supporting my amendments. I hope that he will support them. Over the past five years, I have learned—as I am sure Stewart is learning—that it is very difficult to pass legislation that is simple. When draftspeople are let loose on a proposal, simple schemes often become technical and legalistic documents. I propose a simple registration scheme, whereby a person who wants to be a landlord will have to undergo the "fit and proper person" test. Such registration schemes are operated every day by local authorities; taxi drivers or burger van owners do not come to us in droves to complain about the complications of passing the hurdle of registration. The scheme would involve a simple address book in which registered landlords would register the property that they want to let. There would be a penalty for landlords who do not register; there would be no point in having the scheme if there was no such penalty.

The scheme would be just a start. It would be just a step along the way. We must go further and consider the issues that Johann Lamont raised and that I have been raising for a long time. It seems simple to me that someone should not be awarded housing benefit unless the local authority can check that both the property and the landlord are registered. However, life is not always simple and we must try to meet in the middle and develop a mechanism that protects the tenant, the community and the public purse.

I am confident that the minister will work towards that. We cannot wait for the housing bill to come along—the minister has said that she does not know when that will be. We in the committee are anoraks; we look forward to that bill's being published but, given that we do not know when that will be, it is best that we deal with the matter now. If we could deal with the housing benefit issue, that would be a major step forward.

On HMOs, Sandra White said that she would have preferred it if the scheme had been mandatory rather than voluntary. Some members of the committee believe that we should have a voluntary scheme. However, that would not work because, as with HMOs, all that would happen is that good landlords will get in touch with the local authority but the rogue landlords—those who

exploit people—will not do so. We need a mandatory scheme.

Ms White: I said that it should be mandatory. I did not say that it should be voluntary. I was not disagreeing with you.

Cathie Craigie: At the beginning, the HMO scheme was not mandatory—it used a progressive scale. I hope that we have learned from that. Sandra White and others who have spoken today have said that they support the concept that we are discussing. We should not miss the opportunity to take a step that will protect people from the few bad landlords that exist. I have made it clear that the majority of landlords are responsible and care about their properties and the people who live in them.

On fees, the minister will have the power to intervene by regulation. In her summing up, the minister said that she would be prepared to consider providing financial support for local authorities to set up the scheme. I am pleased about that. If members want to check how much it costs to process an application for a taxi licence or a street-trading licence, they will see that the scheme will not break the bank. Private landlords who rent out property for anything from £300 a month to £800 a month should be able to afford one payment every three years to register.

I have dealt with the points that Patrick Harvie raised about consultation. I hope that he will be convinced that we have consulted, that support has been expressed for the proposals and that he will support the amendments. I have already responded to Donald Gorrie about his amendments. I have said that we will speak about amendment 357B and return to the matter at stage 3.

Another issue that was raised related to notification to tenants. I have sympathy with that issue and we will return to it at stage 3.

I encourage members to support the amendments in my name.

Patrick Harvie: Will you respond to the concerns that were expressed about amendment 359?

Cathie Craigie: Could you repeat the concerns?

Patrick Harvie: Amendment 359 would insert before section 65 new subsections 2(a), which relates to other offences, and 2(b), which relates to grounds on which people might be discriminated against.

14:15

Cathie Craigie: On other offences, local authorities will have to take account of information that is before them when they decide whether a person is fit and proper. I do not want to belittle any offence, but if someone had a conviction for speeding, for example—doing 40mph in a 30mph zone—that would not really be relevant to whether they were fit and proper to let a property. However, if someone had a conviction for a sexual offence, a local authority might want to take that into consideration when making a decision on that person's application. If a window cleaner had a conviction for a driving offence, it would be disregarded, but if they had a conviction for assault or burglary, the local authority would take it seriously.

I trust the democratic process and the local government decision-making process. I am sure that Patrick Harvie's fears would not be realised and that local authorities would not consider spent offences. I have addressed most of the points that have been raised in the debate. I hope that I have convinced members that we have taken on board many different views and that what I propose will be a useful tool in taking the first steps towards better management and support of the private sector.

The Convener: The question is, that amendment 351 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)
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)

AGAINST

Scanlon, Mary (Highlands and Islands) (Con)

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

Amendment 351 agreed to.

Amendment 357 moved—[Cathie Craigie].

The Convener: Is Donald Gorrie moving amendment 357A?

Donald Gorrie: I hope that the minister will consider the various points in amendments 357A, 357B and 357C. Given what the minister and Cathie Craigie have said, I will not move amendment 357A.

Ms White: I will move amendment 357A.

Amendment 357A moved—[Ms Sandra White].

The Convener: The question is, that amendment 357A be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

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

Gorrie, Donald (Central Scotland) (LD)
Scanlon, Mary (Highlands and Islands) (Con)

The Convener: The result of the division is: For 3, Against 4, Abstentions 2.

Amendment 357A disagreed to.

Amendment 357B moved—[Donald Gorrie].

The Convener: The question is, that amendment 357B 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. As the vote is tied, I use my casting vote to resist the amendment.

Amendment 357B disagreed to.

The Convener: Is Donald Gorrie moving amendment 357C?

Donald Gorrie: For the sake of consistency, I will move amendment 357C.

Amendment 357C moved—[Donald Gorrie].

The Convener: The question is, that amendment 357C 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. As the vote is tied, I use my casting vote to resist amendment 357C.

Amendment 357C disagreed to.

The Convener: The question is, that amendment 357 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)
Harvie, Patrick (Glasgow) (Green)
Lamont, Johann (Glasgow Pollok) (Lab)
May, Christine (Central Fife) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

Scanlon, Mary (Highlands and Islands) (Con)

ABSTENTIONS

White, Ms Sandra (Glasgow) (SNP)

The Convener: The result of the division is: For 7, Against 1, Abstentions 1.

Amendment 357 agreed to.

Amendment 358 moved—[Cathie Craigie].

The Convener: The question is, that amendment 358 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)
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)

AGAINST

Scanlon, Mary (Highlands and Islands) (Con)

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

Amendment 358 agreed to.

Amendment 359 moved—[Cathie Craigie].

The Convener: The question is, that amendment 359 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)
Harvie, Patrick (Glasgow) (Green)
Lamont, Johann (Glasgow Pollok) (Lab)
May, Christine (Central Fife) (Lab)

AGAINST

Scanlon, Mary (Highlands and Islands) (Con)
Stevenson, Stewart (Banff and Buchan) (SNP)

ABSTENTIONS

White, Ms Sandra (Glasgow) (SNP)

The Convener: The result of the division is: For 6, Against 2, Abstentions 1.

Amendment 359 agreed to.

Amendment 360 moved—[Cathie Craigie].

The Convener: Does Donald Gorrie wish to move amendment 360A?

Donald Gorrie: In the light of the minister's assurances, I will not move amendment 360A.

Amendment 360A not moved.

The Convener: The question is, that amendment 360 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)
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)

AGAINST

Scanlon, Mary (Highlands and Islands) (Con)

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

Amendment 360 agreed to.

Amendment 361 moved—[Cathie Craigie].

The Convener: The question is, that amendment 361 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)
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)

AGAINST

Scanlon, Mary (Highlands and Islands) (Con)

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

Amendment 361 agreed to.

Amendment 362 moved—[Cathie Craigie].

The Convener: The question is, that amendment 362 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)
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)

AGAINST

Scanlon, Mary (Highlands and Islands) (Con)

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

Amendment 362 agreed to.

Amendment 363 moved—[Cathie Craigie].

The Convener: The question is, that amendment 363 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)
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)

AGAINST

Scanlon, Mary (Highlands and Islands) (Con)

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

Amendment 363 agreed to.

Amendment 364 moved—[Cathie Craigie].

Amendment 364A not moved.

The Convener: The question is, that amendment 364 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)
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)

AGAINST

Scanlon, Mary (Highlands and Islands) (Con)

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

Amendment 364 agreed to.

Amendments 352 to 356 moved—[Cathie Craigie].

The Convener: Does any member object to a single question being put on amendments 352 to 356?

Stewart Stevenson: Yes.

The Convener: In that case, I will take each amendment individually.

The question is, that amendment 352 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)
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)

AGAINST

Scanlon, Mary (Highlands and Islands) (Con)

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

Amendment 352 agreed to.

The Convener: The question is, that amendment 353 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)
Harvie, Patrick (Glasgow) (Green)
Lamont, Johann (Glasgow Pollok) (Lab)
May, Christine (Central Fife) (Lab)
White, Ms Sandra (Glasgow) (SNP)

AGAINST

Scanlon, Mary (Highlands and Islands) (Con)

ABSTENTIONS

Stevenson, Stewart (Banff and Buchan) (SNP)

The Convener: The result of the division is: For 7, Against 1, Abstentions 1.

Amendment 353 agreed to.

The Convener: The question is, that amendment 354 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)
Harvie, Patrick (Glasgow) (Green)
Lamont, Johann (Glasgow Pollok) (Lab)
May, Christine (Central Fife) (Lab)
White, Ms Sandra (Glasgow) (SNP)

AGAINST

Scanlon, Mary (Highlands and Islands) (Con)

ABSTENTIONS

Stevenson, Stewart (Banff and Buchan) (SNP)

The Convener: The result of the division is: For 7, Against 1, Abstentions 1.

Amendment 354 agreed to.

The Convener: The question is, that amendment 355 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)
Harvie, Patrick (Glasgow) (Green)
Lamont, Johann (Glasgow Pollok) (Lab)
May, Christine (Central Fife) (Lab)
White, Ms Sandra (Glasgow) (SNP)

AGAINST

Scanlon, Mary (Highlands and Islands) (Con)

ABSTENTIONS

Stevenson, Stewart (Banff and Buchan) (SNP)

The Convener: The result of the division is: For 7, Against 1, Abstentions 1.

Amendment 355 agreed to.

The Convener: The question is, that amendment 356 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)
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)

AGAINST

Scanlon, Mary (Highlands and Islands) (Con)

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

Amendment 356 agreed to.

Section 65—Designation of registration areas

Amendment 365 moved—[Cathie Craigie].

The Convener: The question is, that amendment 365 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)
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)

AGAINST

Scanlon, Mary (Highlands and Islands) (Con)

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

Amendment 365 agreed to.

Section 66—Notice of designation

Amendment 366 moved—[Cathie Craigie].

The Convener: The question is, that amendment 366 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)
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)

AGAINST

Scanlon, Mary (Highlands and Islands) (Con)

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

Amendment 366 agreed to.

Section 67—Duration, review and revocation of designation

Amendment 367 moved—[Cathie Craigie].

The Convener: The question is, that amendment 367 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)
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)

AGAINST

Scanlon, Mary (Highlands and Islands) (Con)

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

Amendment 367 agreed to.

Section 68—Notice of revocation of designation

Amendment 368 moved—[Cathie Craigie].

The Convener: The question is, that amendment 368 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)
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)

AGAINST

Scanlon, Mary (Highlands and Islands) (Con)

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

Amendment 368 agreed to.

Section 69—Registration of relevant houses within designated area

Amendment 369 moved—[Cathie Craigie].

The Convener: The question is, that amendment 369 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)
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)

AGAINST

Scanlon, Mary (Highlands and Islands) (Con)

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

Amendment 369 agreed to.

Section 70—Registration and its consequences

Amendment 370 moved—[Cathie Craigie].

The Convener: The question is, that amendment 370 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)
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)

AGAINST

Scanlon, Mary (Highlands and Islands) (Con)

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

Amendment 370 agreed to.

Section 71—Offences

Amendment 371 moved—[Cathie Craigie].

The Convener: The question is, that amendment 371 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)
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)

AGAINST

Scanlon, Mary (Highlands and Islands) (Con)

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

Amendment 371 agreed to.

Section 72—Order that no rent payable

Amendment 372 moved—[Cathie Craigie].

The Convener: The question is, that amendment 372 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)
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)

AGAINST

Scanlon, Mary (Highlands and Islands) (Con)

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

Amendment 372 agreed to.

Section 73—Appeals

Amendment 373 moved—[Cathie Craigie].

The Convener: The question is, that amendment 373 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)
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)

AGAINST

Scanlon, Mary (Highlands and Islands) (Con)

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

Amendment 373 agreed to.

Section 74 agreed to.

After section 74

Amendment 374 moved—[Cathie Craigie].

The Convener: The question is, that amendment 374 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)
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)

AGAINST

Scanlon, Mary (Highlands and Islands) (Con)

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

Amendment 374 agreed to.

Section 75—Interpretation of Part 8

Amendment 375 moved—[Cathie Craigie].

The Convener: The question is, that amendment 375 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)
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)

AGAINST

Scanlon, Mary (Highlands and Islands) (Con)

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

Amendment 375 agreed to.

14:28

Meeting suspended.

14:43

On resuming—

Section 76—Parenting orders

The Convener: Amendment 290, in the name of the minister, is in a group on its own.

Mrs Mulligan: The committee will be aware—mainly because we keep saying it—that parenting orders are designed to deal with the small number of parents whose behaviour lets their children down and who refuse to engage with voluntary support to improve their parenting. In order to improve their parenting, we have provided that counselling or guidance on parenting should be a compulsory part of a parenting order. The requirement to attend counselling or guidance will sit alongside other requirements of the order that will relate to the parent's behaviour in respect of their child.

The bill as it stands contains one dispensation in respect of compulsory guidance or counselling. Where a parenting order has been made previously in respect of the same parent, counselling or guidance need not be a requirement of a further parenting order. The Executive provided that dispensation to ensure that parents need not go through counselling or guidance again, just for the sake of it. In many cases, further counselling may be appropriate, but there will be circumstances in which the benefits of guidance have already been taken on board, and the restrictions on the behaviour of the parents will be the effective part of the order.

Amendment 290, therefore, provides that the dispensation applies only where the second or further order is in relation to the same child as the first or previous orders. We have suggested that limitation because we think that the circumstances of each child are different, and that guidance focusing on the parents' relationship with one child should not be a substitute for guidance focusing on their relationship with another child. I hope, therefore, that members feel able to support amendment 290.

I move amendment 290.

Amendment 290 agreed to.

14:45

The Convener: Amendment 291, in the name of the minister, is grouped with amendments 292 and 324.

Mrs Mulligan: Amendments 291, 292 and 324 are technical amendments that do not represent a change in policy. They delete the existing provisions in subsections (4) and (6) of section 76 that require a court and a supervising officer, in imposing or supervising a parenting order, to take account of the religious beliefs and education or work commitments of a parent, and repeat them in a new stand-alone section in part 9. That makes it clearer that those requirements apply across the board to all parenting orders, whether made following application by the local authority or the principal reporter under section 76, or by the court when it has also made an ASBO in respect of a child under section 12.

I move amendment 291.

Stewart Stevenson: I have a brief point of clarification on amendment 324. I take it that new paragraph (1)(a), which seeks to avoid conflict with religious beliefs, mirrors the provision in

paragraphs (b)(i) and (b)(ii), in that a parenting order would be in conflict with a person's religious beliefs if it interfered with their ability to attend a religious service that occurs at a specific and mandated time.

Mrs Mulligan: Yes.

Amendment 291 agreed to.

Amendment 292 moved—[Mrs Mary Mulligan]—and agreed to.

Section 76, as amended, agreed to.

The Convener: Amendment 293, in the name of the minister, is grouped with amendments 294 to 303, 305 to 311, 313, 317, 318 to 322, 331 and 332. Amendment 303 is pre-empted by amendment 177 in the next group.

Mrs Mulligan: The vast majority of the 27 amendments in the group are designed to improve the drafting and accessibility of part 9. They do not involve significant policy changes. The exception is amendment 331, which changes the definition of "parent" in section 87 that applies to the whole of part 9. As drafted, section 87 defines a parent—and therefore people who may be subject to a parenting order—as

"a natural person who has parental responsibilities"

in respect of the child concerned.

Parental responsibilities are defined in section 1(3) of the Children (Scotland) Act 1995 and, as I am sure members are aware, such responsibilities are possessed by the natural mother of a child, the father of the child if he is married to the mother, and any other person who has obtained such responsibilities under the 1995 act.

I hope that members agree that everyone who has parental responsibilities should and could potentially be made subject to a parenting order. The problem is that there are other people who we believe should be made subject to such orders but who are excluded by the current definition. Most important, unmarried fathers who live with the mother or who otherwise have day-to-day care of the child are not subject to parenting orders unless they have gone through the rather cumbersome process of applying for parental responsibilities. We know that very few unmarried fathers have done so.

Amendment 331 seeks to substitute "relevant person" for "parental responsibilities" as the determinant of whether someone would be potentially subject to a parenting order. As a result, its effect would be that those with parental responsibilities and those who ordinarily have charge of or control over a child could be subject to a parenting order in relation to that child. I believe that that is the right course, as it would ensure that unmarried fathers or step-parents who have day-to-day care of a child could be held to account for deficient parenting in the same way as those with formal parental responsibilities.

Seventeen of the amendments in the group seek to delete erroneous references to "relevant parent" or "relevant child" in sections 77 and 78. Such labels are erroneous, because they suggest that the provisions in section 78 on procedural requirements on making an order apply only to applications made under section 77. That is not the case, and the amendments in question ensure that the procedural requirements should apply no matter whether a parenting order is made under section 77 or under section 12. Amendments 317, 318, 320 and 321 are consequential amendments to section 81. Amendment 332 is a consequential amendment to section 87.

Amendment 293 seeks to move section 76 to after section 77 in order to make part 9 flow more effectively. As section 77 sets out the people who may apply for parenting orders and the grounds on which they may do so, it is sensible that it should come before section 76, which defines a parenting order. Moreover, section 76 applies to all parenting orders no matter whether they are made under section 77 or section 12. Putting it beside the other general provisions makes that clearer.

Amendment 296 is a technical amendment that seeks to move the definition of "relevant local authority" from section 87, on the interpretation of part 9, to section 77 and to amend it to reflect the fact that the person subject to the application is not specified in the order as the order has not yet been made. The effect of section 77(1)(b) would be that a parenting order may be made only where Scottish ministers have notified the court that the local authority in which the parent lives has arrangements in place to support the order. We will use that provision to provide for pilots of parenting orders.

Amendment 319 is a consequential amendment to section 81. Amendment 322 is a technical amendment that improves the drafting of subsection 83(1) and makes it consistent with other provisions.

I move amendment 293.

Patrick Harvie: When describing the effect of amendment 331, the minister mentioned that the rights and responsibilities of a married partner would automatically apply. I have no intention of opposing the amendment; however, has she communicated on this matter with colleagues at Westminster who are legislating for us on civil partnerships? Moreover, would a civil partner acquire the same potential as a married partner to be subject to a parenting order?

Stewart Stevenson: My point is rather technical. I notice that amendments 296 and 319

lift phrases out of section 87. I wonder whether specifying the

"local authority for the area in which the parent ordinarily resides"

in this respect implies that if two parents involved in a child's care who lived in two different local authorities were subject to such orders, two parenting orders would be needed.

Scott Barrie: I welcome amendment 331, in the minister's name, given the difficulties that have arisen from the missed opportunity to resolve the issue once and for all in the Children (Scotland) Act 1995. If we had resolved the issue then, we would have had an act that was in line with practice in 1995, never mind practice in 2004. The proposal is a welcome addition, because many wrong assumptions are made about who has full parental responsibilities and rights.

Mrs Mulligan: On Patrick Harvie's point, a civil partner would be a relevant person and therefore would have the same responsibilities. On Stewart Stevenson's point, if parents lived in different local authority areas, two orders would be needed. However, even if they were living together, as individuals they would be entitled to two orders, so there should not be a problem.

Amendment 293 agreed to.

Section 77—Applications

Amendments 294 and 295 moved—[Mrs Mary Mulligan]—and agreed to.

The Convener: Amendment 174 is grouped with amendments 175 and 177. If agreed to, amendment 177 will pre-empt amendment 303 in the previous group.

Scott Barrie: As members will be aware, I am and always have been supportive of parenting orders. They can be used as an added sanction when it can be demonstrated that the root cause of a young person's unacceptable behaviour is the action or, more likely, the inaction of the parent.

As the minister indicated in her introduction to the previous group of amendments, orders cannot be used solely to hold a parent responsible for their child's behaviour. Rather, it has to be clearly established that the quality of parenting has caused the difficulty. It is significant that, before a sheriff can grant a parenting order, it must be established that the parent has failed to engage on a voluntary basis with appropriate help and support to address parenting capacity.

Section 77 deals with applications for parenting orders. Orders should come through the children's hearings system. If panel members feel that grounds exist for granting an order, the principal reporter should be directed to apply for a parenting order to the sheriff court. Of course, such a recommendation could have been made by the local authority in the social background report to the hearing, or it could have been made to the reporter in an initial investigation report that in other respects did not recommend compulsory supervision measures.

As section 77 stands, a local authority could apply directly to a sheriff for a parenting order. My amendments 174, 175 and 177 would remove that automatic right. It is important that we do not end up with parallel systems in respect of parenting orders. The amendments would also ensure that the children's hearings system—whether or not a hearing actually takes place—remains involved in what is, at the end of the day, a crucial issue in child welfare: an adult's ability or inability to parent adequately. I lodged the amendments for that reason.

I move amendment 174.

15:00

Mrs Mulligan: Unfortunately, I am unable to support Scott Barrie's amendments 174, 175 and 177. The effectiveness of parenting orders would be artificially restricted if local authorities were not allowed to apply for them. We should always bear in mind the fact that our aim in introducing parenting orders is to improve the situation of the child who suffers from deficient parenting. I agree with Scott Barrie that in many situations in which the quality of parenting that the child receives is at issue, that will be highlighted through the hearings process. The reporter will be well placed to decide whether an application for a parenting order is appropriate.

We cannot discount the possibility that there may be circumstances in which a child who is not being dealt with through the children's hearings system could benefit from a parenting order. As the committee will know, local authorities have a general duty under part II of the Children (Scotland) Act 1995 to promote the interests of children in their area, and particularly those of children in need. Local authorities educate most of Scotland's children. They hold responsibility for children and families social work and are also responsible for looked-after children. For those reasons, I am convinced that it would be appropriate for local authorities to be able to apply for parenting orders.

To give Scott Barrie some reassurance, we must remember that such an application will not be made in a vacuum. As it stands, section 77 requires the local authority to consult the principal reporter before making an application for a parenting order. That will ensure that the two organisations consider collectively what is in the

best interests of the child concerned. Section 77 also requires the principal reporter to consult the local authority before he or she makes an application for a parenting order. Deleting that requirement would be a particularly difficult effect of Scott Barrie's amendments.

Given those reassurances about the involvement of the children's reporter in safeguarding the position of the hearings system, I hope that Scott Barrie will feel able to withdraw 174 and not to move amendments 175 and 177.

Scott Barrie: I have listened carefully to the minister. My primary concern is that we do not end up with two systems. The principal reporter will have to have discussions with the local authority and vice versa: if the local authority was applying for an order, it would have to discuss it with the reporter. That is exactly as it should be.

I would have a difficulty, however, if we conferred a blanket power to the local authority under which it could apply for parenting orders, and if there was a misapplication of that power. In some parts of the local authority, there might be a belief that the behaviour of the child in question must be the result of the parents' inability, although that might not in fact be the case. The order would not be granted under those circumstances. It was in order to avoid getting into such an unfortunate circle that I lodged my amendments.

Given what the minister has said, I might not press my amendments today, although I might wish to speak to her about the matter in further detail. There is an issue here, and we must ensure that we get it right. We must not set up a system that does not work and which is worse than what we have at the moment.

Mrs Mulligan: I wish to ensure that members are aware that the particular problems that Scott Barrie has highlighted could be resolved through guidance, which would need to address the points that he has made. I think that the guidance that would be on offer provides a double protection.

Scott Barrie: On that basis, I seek leave to withdraw amendment 174.

Amendment 174, by agreement, withdrawn.

Amendment 296 moved—[Mrs Mary Mulligan]—and agreed to.

Amendment 175 not moved.

Amendment 297 moved—[Mrs Mary Mulligan]—and agreed to.

The Convener: Amendment 394, in the name of Donald Gorrie, is grouped with amendments 395 and 396.

Donald Gorrie: Amendments 394 to 396 would all replace the word "desirable", where it is used in section 77, with the word "necessary". Various youth work organisations made the point to me that they wanted the rules about the procedure that must be followed before a parenting order comes into effect to be as tight as possible, and they felt that the word "desirable" is somewhat weaker than the word "necessary".

The minister has taken action on the matter through amendment 323, which is in the next group of amendments. That amendment is constructive and helpful; it relates to the conditions that will apply and will ensure that the young person's interests are taken into account. Amendment 323 will also mean that if a parent is trying to do his or her best and has taken steps to seek voluntary support, that will be taken into account when a parenting order is considered. That amendment is helpful, but I want to make the system as tight as possible. If the sheriff had to feel that the order was necessary rather than just desirable, that would ensure that marginal decisions did not slip through the system. I await the minister's response with interest.

I move amendment 394.

The Convener: The consequence of somebody slipping through would be that they would have a parenting order, which will be a positive measure, not a punitive one. I am keen that the system should not be seen as threatening, but as bringing people to the table. We work with the assumption that the worst consequence will be beneficial because it will allow dialogue with parents.

Mrs Mulligan: The three grounds on which a parenting order may be made are those of preventing antisocial behaviour, preventing criminal conduct and improving the welfare of the child. As the bill stands, the court will have to be satisfied that a parenting order is desirable in the interests of preventing further such behaviour or improving welfare. Donald Gorrie's amendments would raise the bar with the effect that the court would have to be satisfied that the order was necessary to prevent further antisocial or criminal behaviour or to improve the welfare of the child. That test is much stiffer than the desirable test and I feel that it is not right to impose a stiffer test. Requiring the local authority or principal reporter to prove to the court that the order is necessary or definitely required would be going too far. In effect, the use of the term "desirable" means that the court will grant the order when it believes that doing so will be useful in preventing that child from engaging in further antisocial behaviour or criminal conduct, or in improving the child's welfare. As the convener suggested, that wording is more appropriate.

As Donald Gorrie pointed out, we should also bear it in mind that under Executive amendment

323—which is in the next group of amendments—the

"paramount consideration shall be the welfare of the child"

in the determination of whether a parenting order should be made. Given that, and given the much clearer provision in amendment 323 that engagement of the parent with voluntary support must be considered—if a parent is engaged in voluntary support, a parenting order would not be necessary—I am convinced that the desirable test is the appropriate one. I hope that Donald Gorrie is reassured and that he will withdraw amendment 394 and not move amendments 395 and 396.

Donald Gorrie: In the light of Executive amendment 323 having come on the scene, and of the minister's explanation, I am happy to seek leave to withdraw amendment 394.

Amendment 394, by agreement, withdrawn.

Amendments 298 and 299 moved—[Mrs Mary Mulligan]—and agreed to.

Amendment 395 not moved.

Amendment 300 moved—[Mrs Mary Mulligan]—and agreed to.

Amendment 396 not moved.

Amendment 301 moved—[Mrs Mary Mulligan]—and agreed to.

Amendment 176 not moved.

Amendment 302 moved—[Mrs Mary Mulligan]—and agreed to.

Amendment 177 not moved.

Amendment 303 moved—[Mrs Mary Mulligan]—and agreed to.

Section 77, as amended, agreed to.

Section 78—Procedural requirements

The Convener: Amendment 304, in the name of the minister, is grouped with amendments 312, 314, 315, 178, 316 and 323.

Mrs Mulligan: Taken together, the amendments in my name in this group seek to improve the drafting and accessibility of part 9. They also seek to make more explicit in the bill our policy that parenting orders should be used only for the small number of parents who have refused to engage with voluntary supports to address the problems with their parenting.

As discussed, amendment 323 is the most important amendment in the group. It replaces and expands on section 79. I suggest that the new section is better; it requires a court that is considering whether to make a parenting order to have regard to whether the parent has engaged with voluntary measures to address their parenting problems. We have always said that parenting orders would be targeted at that small group. Amendment 323 delivers that policy more clearly and I hope that that will be welcomed by members. Amendment 316 is a consequential amendment to amendment 323 in that it deletes section 79.

Amendment 178, in the name of Scott Barrie, seeks to amend section 79(2). It would require a court to have particular regard to the welfare of any child of the parent other than the child to whom the order relates. I have considerable sympathy for the amendment. We need to ensure that when a court is deciding whether to make a parenting order, it takes into account the wider circumstances of the family concerned including, of course, the welfare of other children in the family. However, we have already provided for that: paragraph (b) of subsection (2) of the new section that amendment 323 seeks to introduce requires a court to have regard to the information that it receives by virtue of section 78(1)(c), which is the information about the family circumstances of the parent and the likely effect of the parenting order on those circumstances. I hope that, on that basis, Scott Barrie will not move amendment 178.

Amendments 312 and 314 seek to amend section 78 to ensure that a court explains in ordinary language the effect of making, varying or revoking a parenting order. As the bill is drafted, the obligation to explain applies only when a court is making an order.

Amendment 304 is in a similar vein. It seeks to ensure that a court must comply with the procedural requirements that are set out in section 78—that is, it must give the child a chance to express his or her views when the court is considering varying or revoking the order as well as when it is making the order in the first place.

Amendment 315 moves section 78 to after section 83. It does so to brigade together all the provisions in part 9 that have general application to all parenting orders.

I move amendment 304.

15:15

Scott Barrie: I feel that I have been pre-empted slightly by the minister's amendments. She is correct to say that amendment 323 offers a much expanded version of section 79, and I concur with what she said about it doing what my amendment 178 seeks to do. Given the fact that amendment 316 proposes to delete section 79, there would be no point in my proposing to amend it, so I will not move amendment 178.

Donald Gorrie: I ask that the minister and her colleagues take into account the excellent wording

of amendment 314, which provides that

"the court shall explain in ordinary language the effect of the variation".

Could there be a section in every bill to ensure that matters would be explained in ordinary language for the benefit of MSPs? The language of the people who write bills is a foreign language to most citizens.

The Convener: The real challenge to the courts is for them to explain some of their decisions in ordinary language. If they had to explain them to people, they might be a bit more careful about the decisions that they make.

Mrs Mulligan: I acknowledge the point that Donald Gorrie is making. Legislation is not always the easiest thing to understand. Nevertheless, I challenge him to identify which part of my language he has not been able to understand today. I hope that his understanding will allow him to support the Executive's amendments.

Amendment 304 agreed to.

Amendments 305 to 314 moved—[Mrs Mary Mulligan]—and agreed to.

Section 78, as amended, agreed to.

Amendment 315 moved—[Mrs Mary Mulligan]—and agreed to.

Section 79—Considerations relating to making of order

Amendment 178 not moved.

Amendment 316 moved—[Mrs Mary Mulligan]—and agreed to.

Section 80 agreed to.

Section 81—Review of order

Amendments 317 to 321 moved—[Mrs Mary Mulligan]—and agreed to.

Section 81, as amended, agreed to.

Section 82 agreed to.

Section 83—Failure to comply with order

Amendment 322 moved—[Mrs Mary Mulligan]—and agreed to.

Section 83, as amended, agreed to.

After section 83

Amendments 323 and 324 moved—[Mrs Mary Mulligan]—and agreed to.

Before section 84

The Convener: Amendment 325, in the name of the minister, is in a group on its own.

Mrs Mulligan: We have spoken already today about areas that the Executive has identified to improve the way in which parenting orders will work in practice. Amendment 325 does just that. It will protect parents involved in parenting order proceedings, and their children, from publicity. It will prevent any person from publishing, in a range of formats, information that would identify a parent or any of their children, the address of the parent or children, or the children's school. A court can waive that restriction if it believes that doing so is in the interests of justice.

We are proposing those protections to allow parents to receive the help and support that they need to address antisocial behaviour without being burdened by any unnecessary labels. It is also of paramount importance to ensure that their children have anonymity. I hope that members will feel able to support the amendment.

I move amendment 325.

Stewart Stevenson: I have a few technical points. For clarity, could you confirm that subsection (7)—"causing to be published"—would cover a reporter in attendance at proceedings who is acting for a publishing medium controlled outwith Scotland?

I note that the definition of "programme service" is that used in the Broadcasting Act 1990. What part of amendment 325 relates to publication on the internet and/or web? What part of the amendment provides for restrictions on using technologies such as mobile phones to transmit the information to a group of people and to publish it by that mechanism, or by any other mechanisms of which I have not thought?

The Convener: I do not imagine that there can be many that you have not thought of, Stewart.

Patrick Harvie: I wonder whether the minister could also flesh out a little more detail about the circumstances in which it may be necessary, in the interests of justice, for subsection (1) not to apply.

Mrs Mulligan: I am sorry, but I did not hear the end of that sentence.

Patrick Harvie: Subsection (2) of the proposed new section says:

"the court may, in the interests of justice, order that subsection (1) shall not apply".

I was hoping that you could explain in a little more detail the circumstances in which that would happen.

Mrs Mulligan: I shall answer members' questions in reverse order.

On Patrick Harvie's question, we accept that subsection (1) may be fairly unusual, but it would be for the courts to interpret the circumstances

under which they would see it not applying. I suppose that subsection (2) just allows for circumstances that are not defined in the bill.

In relation to Stewart Stevenson's points, we are allowing for all mediums of publication—even those that he has not thought of—to be encompassed by subsection (7), because the ultimate aim is to prevent the publication of names, addresses and other information that would identify the parent or the child. However, we need to take further advice on the point about media controlled outside Scotland. Obviously, our intention is to ensure that they are also covered, but I would not want to mislead members by saying that we are absolutely certain that that is the case at this stage.

Stewart Stevenson: Can I intervene? Obviously, my intention—I am sure that it coincides with your policy intention—is to ensure that someone who is acting within Scotland can be pursued if he enables the action of someone outside Scotland. I hope that you will address that issue in due course.

Mrs Mulligan: That is a well-made point and we will pursue it.

Amendment 325 agreed to.

The Convener: Amendment 391, in the name of the minister, is in a group on its own.

Mrs Mulligan: Amendment 391 is another of what I would call improving amendments, which was identified in consultation with the principal reporter. The amendment will give ministers a power to lay regulations empowering reporters to appear before a sheriff to conduct parenting order proceedings, including appearing before a sheriff principal for appeal proceedings. The regulations may prescribe the qualifications, training and experience that a reporter must have to be so empowered.

Currently, a reporter's right of audience before a sheriff is derived from the Reporters (Conduct of Proceedings before the Sheriff) (Scotland) Regulations 1997—I am sure that members all knew that already. Those regulations provide that a reporter can appear before a sheriff for proceedings under chapters 2 or 3 of part II of the Children (Scotland) Act 1995. Many reporters have extensive experience of addressing complex factual and legal issues in proof hearings before a sheriff as part of those proceedings. However, it appears that reporters do not have the right to appear before a sheriff on any other summary applications, including for parenting orders. To deal with those would necessitate the Scottish Children's Reporter Administration buying in legal representation. I am sure that members will agree that that would be a time-consuming and expensive process.

Giving reporters the right to appear before a sheriff, as amendment 391 will provide, offers a sensible and practical way forward and I hope that the amendment will receive the committee's support.

I move amendment 391.

Amendment 391 agreed to.

The Convener: Amendment 326, in the name of the minister, is grouped with amendments 328 to 330.

Mrs Mulligan: This group of amendments also emerged from discussions with the principal reporter. They are designed to ensure that arrangements for parenting orders operate effectively. We need to ensure that reporters have the necessary statutory power to investigate whether a parenting order might be appropriate. Amendment 326 will grant that power. It will allow the principal reporter to investigate the circumstances of a parent and their child when considering whether to apply for a parenting order and it will require a local authority to assist with that process by providing any relevant information that the reporter might seek. That will allow reporters to make well-informed and considered decisions about whether to apply for a parenting order. It will enable them to take all relevant factors into account, look in detail at the behaviour of the parent and the circumstances of their child or children, and consider what efforts have been made to provide support for the parent on a voluntary basis.

Amendments 328 to 330 will alter the link that we originally proposed between hearings and the reporter over parenting orders. Our original intention in section 86 had been to ensure strong links between the hearings and parenting orders by giving hearings the power to require a reporter to apply for a parenting order when a hearing believed that that was the appropriate way forward. However, allowing a hearing to decide whether an application is made in that way would not give a reporter the opportunity to exercise their professional judgment over whether to apply for an order. It would also rule out any response to a change in the parent's or child's circumstances that might occur subsequent to a hearing but before the application is made. Requiring the reporter to apply would also prejudge the outcome of consultation with the local authority.

Amendment 328 therefore proposes that the reporter should be required to consider whether to apply for an order, rather than simply to apply for one. That will ensure that the hearing retains a central role and is able to recommend an application for a parenting order while allowing the reporter discretion to look at the evidence and consult the local authority before deciding whether to apply.

Amendments 329 and 330 are consequential to amendment 328 and will amend the wording of section 86 to reflect the change to the role of the reporter that I have just outlined.

The amendments are important and I am confident that they will strengthen and improve the way in which parenting orders will work in practice.

I move amendment 326.

15:30

Scott Barrie: I want to voice my support for the amendments. The minister is absolutely right that having an automatic right of referral would make the children's hearings system far more adversarial than it should be. Given that a children's hearing is essentially a hearing for the child, it is right that it should be separate from any consideration of a parenting order relating to the inaction or action of parents. The amendments take a step back from that position and allow consideration of parenting orders to take place in another forum and those matters to be pursued through the courts. The minister is right to preserve the sanctity of children's hearings being for the sole purpose of considering the best interests of the child. If we had retained the original suggestion, there would have been a danger that discussions on whether to apply for a parenting order would have become the focus of the hearing, given that parents and adults often take over hearings anyway in practice and children are somehow left to the side. The focus on the child at the hearing will be retained, so I support the amendments.

Mrs Mulligan: I appreciate Scott Barrie's experience of the hearings system and therefore value his support and what he has said.

Amendment 326 agreed to.

Section 84 agreed to.

Section 85—Guidance

The Convener: Amendment 327, in the name of the minister, is in a group on its own.

Mrs Mulligan: Amendment 327 is a technical amendment that will replace section 85, on guidance by Scottish ministers about parenting orders, with a new section. The new section will ensure that the obligation to have regard to guidance applies to parenting orders that are made under section 12 in conjunction with an antisocial behaviour order on a young person, as well as those made under section 77—that is, by direct application by the local authority or principal reporter. The effect of the amendment will be that every body or individual, apart from a court discharging functions under the bill in relation to parenting orders, will be obliged to have regard to guidance that is issued by Scottish ministers about the exercise of those functions.

I move amendment 327.

Amendment 327 agreed to.

Section 85, as amended, agreed to.

Section 86—Amendment of Children (Scotland) Act 1995

Amendments 328 to 330 moved—[Mrs Mary Mulligan]—and agreed to.

Section 86, as amended, agreed to.

Section 87—Interpretation of Part 9

Amendments 331 and 332 moved—[Mrs Mary Mulligan]—and agreed to.

Section 87, as amended, agreed to.

After section 87

The Convener: Amendment 379, in the name of Paul Martin, is in a group on its own.

Paul Martin (Glasgow Springburn) (Lab): The subject of amendment 379 was brought to my attention by Glasgow City Council in response to the serious issue of the cost of vandalism. The purpose of the amendment is to continue with the Executive's theme of parental responsibility.

My amendment covers 12 to 15-year-olds and says that parents should pay financial compensation for damage caused by their children. It is important to ensure that we take the opportunity to probe this serious issue, which faces many of our constituencies.

Several points have been made about the issue. It is said that the cause of vandalism is connected in some way to deprivation and that vandalism occurs particularly in communities that suffer social exclusion. That is a slur on socially excluded communities, because it is not always such communities that suffer from vandalism. On many occasions, economically active people have children who carry out vandalism and cause damage to public property. That is an important point. Deprivation is not an excuse for vandalism and I have made that point on several occasions.

The amendment seeks to ensure that we have the opportunity to get compensation. Members will note that the amendment makes it clear that consideration would be given to the ability to pay and the circumstances of those involved, and there would also be a requirement for a local authority or registered landlord to make an application to the sheriff.

I understand that local authorities throughout Scotland support this idea, especially those that

suffer from vandalism. In Glasgow alone, dealing with vandalism cost an estimated £10 million in one financial year. Vandalism to public buildings in Glasgow cost the local authority £2.8 million.

I appreciate that it would be difficult to seek financial compensation from a parent whose child burned down a school—an example that has been given on several occasions—because the cost of that could be £1 million plus. However, it is a point of principle that when public property is damaged, local authorities should be given the opportunity to seek financial compensation. The amendment also raises the principle of deterrence. I believe that the amendment fits in well with the parental responsibility issues that the Executive has included in the bill.

I move amendment 379.

Stewart Stevenson: I have some sympathy with Paul Martin and I know where he is coming from, but I have some concerns about the substance of the amendment. He referred to the burning down of a school, and I experienced that in my constituency when we lost an entire school as a result of vandalism. I would be concerned if the penalty that bore upon the parents of someone who was guilty of that criminal act was disproportionate to the act itself.

The definition in subsection 2(a)(ii) of the proposed new section says that the child can be held accountable only for damage to a household other than the one in which they reside. I am not clear whether that would cover damage to the property of a parent with whom the child does not reside but who has visiting or parental rights that are exercisable during the day, from time to time, and whether the father—typically it is the father—would be able to sue the mother if the child was to damage his house while the child was not a member of the father's household. If that were the case, I could see it being a recipe for some rather awkward confrontations in the courts and elsewhere.

Proposed subsections 2(c)(i) and 2(c)(ii) require that the particular instance has

"been considered in other court proceedings or by a children's hearing; and … been held to be antisocial behaviour."

I am not entirely clear what definition of antisocial behaviour would require to be met in the circumstances described. The bill has three definitions, although two of them are the same and the third is only slightly different. I am not clear whether the drafting of Paul Martin's amendment is sufficiently specific. If it is simply a drafting error, I suspect that it could be remedied at stage 3 if required.

Although I sympathise with Paul Martin's thinking—and it is not only in Glasgow that the application of the provision in his amendment might be of benefit, but in my constituency as well—I feel that the amendment runs incredible risks of penalising people who are not the guilty ones.

I presume that, through the amendment, we would be attacking the parents' parenting skills—or the lack of them—in failing to prevent their child from behaving as they behaved. If so, are such issues not adequately covered by the provisions on parenting orders in the bill? Would such orders not be preferable to financial penalties, which would not necessarily change parents' parenting and might result in the alienation of one family member from another?

I have a series of issues with the amendment and I will be interested to hear what others have to say.

Mary Scanlon: I fully understand Paul Martin's rationale and the reasons that underpin amendment 379, and I probably have some sympathy for it, but I have concerns as well. I would hope that Glasgow City Council and other councils in Scotland would consider the amendment in the context of all the measures in the Antisocial Behaviour etc (Scotland) Bill. They should ask whether, if the bill were to go through as it is, the measures in amendment 379 would still be necessary.

I think that it is too early to consider parental compensation orders. I would prefer the bill to be given time to bed down and to start to work in practice. I would prefer to hear the experiences of Glasgow City Council and other councils at a later date, once the bill has been enacted and its measures are being implemented, when we will be able to ask whether the amendment is necessary.

I am sure that Paul Martin has checked this, but I wonder whether it is competent under the European convention on human rights to ask a parent to pay for the crimes of the child.

I have other serious concerns on enforcement that I think Paul has raised himself. In fact, his amendment almost admits that concerns exist and tries to address them. The factors to be considered under proposed new subsection 3 include

"the likely effect of the making of the order on other members of the parent's family".

It would contradict what Paul is trying to achieve if other members of the family—or, in fact, the parent—had to pay compensation and that affected the well-behaved members of the family.

When we consider such issues and the other complications that would arise from implementing amendment 379, we can see that we should perhaps revisit the issue later. Paul Martin's ideas

are good, but I am not sure that this is the right time for them. I hope that we will come back to the issue in future.

15:45

Patrick Harvie: I have several concerns about amendment 379. Paul Martin said that parental compensation orders could serve as a deterrent, but I worry that they will be precisely the opposite in households in which there are poor relationships among the family members.

I agree that the theme of parental responsibility is already quite well served in the bill. For example, the breach of a parenting order will be an offence that could result in a fine, so I think that the issue of financial penalties is already dealt with. On the other hand, Paul Martin seemed to imply that it is a question of recovering costs, because he cited the costs to local authorities of vandalism and damage. That is a dangerous principle. If we accept that, the logical extension is to start thinking about recovering the costs incurred by the police, the courts and the children's hearings system. There are some really ghastly extensions to that, so I prefer to reject the principle of recovering costs.

Amendment 379 would be a fairly heavy-handed measure that would not be in keeping with the aspects of the bill that I can support, which are about reinforcing positive behaviour and supporting behaviour change. I hope that the amendment is not agreed to.

Another aspect is that amendment 379 would reinforce the perception that the bill is purely about children and young people, who are perceived as being antisocial in and of themselves. The fact that the amendment would apply only to 12 to 16-year-olds would reinforce that perception, which I would be uncomfortable with.

Scott Barrie: I fully understand where Paul Martin is coming from on amendment 379. We all know that there are quite high degrees of vandalism in our communities, which is a scourge that costs a heck of a lot of money and blights many people's lives.

My difficulty with the amendment is twofold. First, the use in our courts of compensation orders for over-16s is patchy. Some sheriffs regularly try to make the perpetrator of an offence make financial recompense to the victim for their actions, but other sheriffs hardly ever do so. One difficulty with the amendment is that it would provide a completely different system for under-16s from the one that we have in our adult courts.

Secondly, subsection (3)(a) of the new section that amendment 379 would insert would open up a can of worms. As Paul Martin mentioned, that provision would rightly require the sheriff to take into account

"the ability of the parent to pay financial compensation".

However, that would mean that certain youngsters would be able to cause damage almost with impunity, because their parents' financial state was such that they would never have to pay compensation. Other parents who might not be wealthy but who might have some income could be attacked quite punitively. That would give out a mixed message about what is acceptable or unacceptable behaviour.

We perhaps need to consider the difficulties surrounding the application of disposals by the children's hearings system—that might be where Paul Martin is coming from in his desire to see something done. Restorative justice seldom seems to figure in the disposals, which often appear to have no connection with the offence in which the youngster was engaged. Therefore, the community at large sees no restorative element in the compulsory supervision order or other sanction that is imposed on the young person. If panels could demonstrate more effectively that there is a restorative element to their disposals, the proposed compensation orders would not be required.

Restorative justice need not involve direct financial recompense for the damage that the young person has caused, because it can impose on the young person other ways of making amends for the behaviour in which they have been involved. If disposals encompassed an element of restorative justice, that would go some way towards meeting the issues that Paul Martin has justifiably raised.

Ms White: I understand exactly what Paul Martin says. Everyone in Glasgow and throughout the country encounters such wanton vandalism every other day or week and councillors and individuals complain about it. However, the amendment would deal with the matter in the wrong way. The measure is punitive. When a school, house or shop has been vandalised, the measure might satisfy people's initial concern, but it would not prevent more vandalism two or three weeks later by other kids.

Scott Barrie's point was right. The amendment mentions parents' ability to pay, but that works two ways. Some people have much money, but others do not. Some may see an order as an easy way of getting away with a crime, whereas the measure might be very punitive for others.

I am concerned about the inconsistencies of sheriffs in deciding

"the amount of financial compensation which the parent is required to pay".

Obviously, sheriffs would take into account a parent's finances. However, inconsistency might arise if some sheriffs said that parents should pay and others imposed another form of justice. It is not that I do not trust the courts. "Dodgy" might be the wrong description, but sometimes the courts make decisions that we in the public do not understand.

The measure would be punitive and restorative justice would be a better way to tackle the problem. It might not be as popular among the public, but it has been proven to work. Everyone has seen areas where vandalism has taken place. In one case, young kids vandalised a nursery school. When they were taken back to the nursery to see the look on the younger kids' faces, they were horrified—they had not realised what they had done—and they set about rectifying the damage. I prefer such restorative justice to punitive measures such as fining parents. The amendment does not say how parents would be fined. Would a family allowance be removed, as happens in France?

I know where Paul Martin is coming from, but the amendment would deal with the issue in the wrong way. I would much rather have restorative justice schemes put in place, under which kids make good the damage that they have caused, although I do not suggest that a new school could be built. Cathie Craigie has mentioned bricklayers, who could perhaps build another school. Other forms of justice are available. The punitive approach of fining parents is not the right way to deal with the problem.

Donald Gorrie: Everyone recognises Paul Martin's point of view and has some sympathy with it. Some good speeches have been made—in particular that by Scott Barrie, if I may say that without ruining his career. He made a thoughtful and civilised speech that pointed out some problems with the proposition in the amendment. The issue is worth pursuing, but that could be done through restorative justice.

Restorative justice could be extended. A financial element could be added to the involvement of people who are at fault in repairing a garden that they have wrecked or removing graffiti from walls. Some continental countries operate a system whereby fines relate to income. I do not know whether such a system applies in Britain. In those countries, the fine or penalty might be one day's or one week's income, for example. As well as the young person who made trouble, a parent could contribute to the restorative justice, even if that was with a relatively token sum. That is worth exploring.

In the light of what members have said, it would be best if Paul Martin asked to withdraw his amendment and talked seriously to ministers about whether progress could be made along the lines that some members have suggested.

Christine May: I will not repeat what everybody else has said. Just over 12 months ago, I was probably one of those local authority leaders who were asking for the sort of measure that the amendment proposes. I now find that I must judge whether such a measure would be workable. I regret to say that I think that it would not be. It would satisfy the immediate need to meet the cost of vandalism and of restoration after vandalism, but it might prevent work to prove who had undertaken such activities.

Parental co-operation is often necessary to agree whose kid was responsible. The proposal would probably reduce the number of cases in which it was possible to work with parents and families. However, I hear what others have said about Paul Martin having a discussion with the minister on how elements of what he is trying to do through amendment 379 could be incorporated, and I think that that would be valuable.

The Convener: I certainly think that the issue is serious. To decide not to support amendment 379 on the ground that we are doing good things is not consequence free, because the scale of the problem is significant. The impact of not dealing with vandalism is significant. Money is being diverted out of the education system into fixing windows. Vandalism is diverting money out of the transport system, too—I understand that it costs First buses in Glasgow about £1 million a year. We are not just talking about smashed windows; we are also talking about the ability of buses to go on certain routes, which has an impact on the community. We must be clear about the effect that the spiral of vandalism has on the community—on how it feels about itself and on how people perceive the area.

Tackling vandalism is not simply a case of saying, "You have done a bad thing by breaking that window. We want you to confront that." We also have to deal with the trend in the way in which people behave. On group dispersal, we discussed how important it is for people to have facilities to go to so that they do not gather and cause problems, but such facilities often become the first target of vandalism. The degree of vandalism that exists is often the reason why people pull out of areas and a community centre, for example, cannot be sustained.

If we do not adopt parental compensation orders, we will need another measure. The minister must be charged with the responsibility of considering that. Sandra White said that the proposal would be too punitive, but I wonder how punitive we would need to be to address the scale of the problem. I will give an example of the normal way of looking at things. The young kids in

one of the local primary schools were looking forward to celebrating the school's 40th anniversary, but the school hall got burned down and they were not able to hold the event for which they had been practising for months. The impact of that was significant. How punitive would we need to be to match how those people felt about what had happened? Some things deserve punishment. We say that in other parts of our lives. We must think through that proposition—not necessarily in relation to amendment 379 in particular—and realise that it is reasonable.

As regards deterrence, Patrick Harvie said that parental compensation orders could cause a reaction that was contrary to what was intended, because a contrary youngster might decide to do the very thing that someone did not want them to do. On that basis, we would not make laws about anything, because there would always be people who were perverse enough to say, "If everyone wants me not to do that, I will go and do it just to noise them up." The argument that parental compensation orders would encourage some young people who were in fractured relationships with their parents to continue with their bad behaviour can be sustained in relation to other measures as well.

I do not want to damn Donald Gorrie by agreeing with something that he said, but it is notable that the targets of vandalism are often community assets and the things that people really need. Scott Barrie mentioned that compensation orders are not used in the adult courts, but perhaps they should be, because much of the vandalism will be committed by over-16s. We might need to press that proposal. I would like any money that was raised from compensation orders to be ring fenced, as that would enable a local school that was in a vulnerable place to get a closed-circuit television camera, for example. We could also fund measures to make it more difficult for people to be vandals and we could run anti-vandalism projects in schools. It would be interesting to examine further the connection between community reparation and obtaining a bit of money from the parent.

A number of issues have been flagged up on the practicality of amendment 379, not the least of which relates to families that are in financial difficulty and in which relationships are already poor. The consequences of the proposal for working with such a family would have to be borne in mind. On that basis, I hope that Paul Martin will not press amendment 379 at this stage. However, I seek reassurance from the minister that some of the ideas on compensation that have emerged will be explored further, because people in our communities seem to think that there is a rational connection between vandalism and the payment of reparation.

16:00

Mrs Mulligan: Like most members, I am sympathetic to the proposals, which are designed to ensure that parents address the behaviour of their children. I clearly understand the frustration of those who have to deal with the effects of vandalism, both financial and social.

However, I do not think that parental compensation orders are the way forward—at least, not in the context of the bill. Our policy of increasing parental responsibility is met through the bill by the parenting orders, which we have been discussing this afternoon. They focus on providing support to improve parenting skills and on ensuring that parents meet their responsibilities. Imposing a parental compensation order would directly impact on the parent, not the child, and might do little to change behaviour.

The introduction of parental compensation orders could undermine our approach in relation to parenting orders, which focus on increasing parental skills and responsibility to prevent antisocial behaviour by young people. Parenting orders are not linked to an individual act and are about the behaviour of the parent, not the child, but a parental compensation order would make a parent directly responsible for the actions of their child. That is difficult to justify when the specific act causing the damage was not the responsibility of the parent and it raises concerns that we would be extending the concept of vicarious liability.

In addition, there are serious doubts about how the process might operate in practice. The availability of the order would raise unrealistic expectations that the local authority or the registered social landlord would apply for compensation on behalf of any individual whose property was damaged as the result of the actions of 12 to 15-year-olds. The need for the local authority or the registered social landlord to make all applications might also place a significant burden on their resources. We know from informal consultation with COSLA that it is opposed to the amendment.

Furthermore, we do not think that the test of antisocial behaviour, which is based on grounds for referral to the children's hearings system being accepted or on a decision of the court, is sound. It would not be in the best interests of the child for us to introduce a system whereby their parents are punished financially because they have accepted grounds for referral to the hearings system linked to causing material damage to property. Referrals would be much more likely to be challenged in court, which would place a further burden on the court system and the hearings.

While we are on the subject of the hearings system, I note that Scott Barrie and others have

referred to issues relating to restorative justice. That has been an important part of the developing role of the hearings system. The Executive has been investing additional resources into the system to promote the use of that type of compensation. However, again without wanting to embarrass Mr Gorrie, I would be interested to hear more about the cases that he mentioned when he was talking about how the hearings system could be involved in relation to some kind of financial contribution. We can pursue that issue further.

I am also not convinced that parental compensation orders would impact fairly either on the parents of children responsible for causing material damage to property or on the owners of the property. Such an order would make sense only if the parents had the financial means to meet the terms of the order. The victims of the damage caused would not receive compensation if the parents did not have the means to make payments. In addition, under the amendment, compensation would be available only if the child was between 12 and 15. If the young person was 16 or over, the victim would have to take a civil action, which can be an awkward and time-consuming process. If we accepted the amendment, those who have criticised the bill for being anti-young people would have an opportunity to say that we are making provisions that would particularly stigmatise those younger people who might be involved in antisocial behaviour.

Although I have sympathy with the points that Paul Martin has raised and I agree that there is an argument for ensuring that parents take responsibility for the actions of their children and young people, we are not at the stage where the parental compensation order is the way in which we should proceed. Given that he has aired his views on the matter and heard the views of the committee, I hope that he will feel able to withdraw amendment 379.

Paul Martin: I welcome the fact that we have had a good discussion. I will respond quickly to a number of points, because I know that members have been here for some time.

First, Stewart Stevenson has got me beat on parental issues. In his absence, I say well done to him on that—I was not entirely sure how that part of the proposed new section would work.

On the point about how we define antisocial behaviour, I suggest that Stewart Stevenson should live in Sighthill, the Red Road flats or many other parts of Scotland where people experience antisocial behaviour. If he did, he would find himself in a position to define it. People who live in such places experience antisocial behaviour daily.

Mary Scanlon said that we should revisit the matter of parental compensation orders at a future point. However, I lodged a similar amendment to the Criminal Justice (Scotland) Bill and I was advised then that we should look at the matter in the context of future legislation. I welcome some of the positive statements that the minister has made about children's hearings, but we have to reach a position one way or another—

Mary Scanlon: What I meant was that I wanted the bill to be enacted and its provisions implemented and that, once that had been done, if all the measures in the bill did not address the problem, we should revisit the matter. I did not mean to kick the matter into the long grass; I wanted to look at it in the context of the implementation of the bill.

Paul Martin: With respect, those are the same points that were made about the Criminal Justice (Scotland) Bill—people said, "Let's see how the bill plays out and then people can reconsider the matter." Sooner or later, we will have to face up to the matter of parental compensation.

Donald Gorrie made a positive contribution to the debate when he spoke about finding a way of acknowledging the importance of the principle of financial compensation. I am not caught up with what the amount of money should be and the councils to which I speak are not seeking massive sums of money from individuals. However, the principle is about deterrence.

I offer examples of other deterrents. Some time ago, people did not consider using a seat belt. Now we find that, as a result of road traffic legislation, people wear seat belts. People gave no consideration to speeding fines previously but, when we provided for road traffic offences to carry penalty points, people took the matter much more seriously. The principle that I am concerned with is that using a financial contribution from parents as a deterrent will change people's attitudes in the way that the convener set out in her concluding remarks when she said that we must take the matter seriously.

I accept some of the points that Patrick Harvie and others made about how the orders would affect children from deprived backgrounds who might think that, because their parents will not be fined, they will have no difficulties. However, I do not think that the situation would work out in that way. People are charged for parking tickets and a breach of the peace regardless of their income. The point is how we approach the issue. We must send a clear message through the Antisocial Behaviour etc (Scotland) Bill, which I believe will be effective legislation.

At this point, I seek agreement to withdraw amendment 379. However, given some of the remarks that have been made, I ask that we consider which measures we can include at stage 3.

Amendment 379, by agreement, withdrawn.

The Convener: With that, we end the fifth day of our stage 2 consideration of the Antisocial Behaviour etc (Scotland) Bill. I record my thanks and the thanks of members to the ministerial team and to the clerks. The burden of managing the procedure of two long days is pretty heavy. However, we have reached the point that we were supposed to reach today, which is the first time that we have managed to do so since we started our stage 2 consideration.

Meeting closed at 16:10.

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