COMMUNITIES COMMITTEE

Wednesday 28 September 2005

Session 2

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COMMUNITIES COMMITTEE
23rd Meeting 2005, Session 2

CONVENER

*Karen Whitefield (Airdrie and Shotts) (Lab)

DEPUTY CONVENER

*Euan Robson (Roxburgh and Berwickshire) (LD)

COMMITTEE MEMBERS

*Scott Barrie (Dunfermline West) (Lab)
*Cathie Craigie (Cumbernauld and Kilsyth) (Lab)
*Christine Grahame (South of Scotland) (SNP)
*Patrick Harvie (Glasgow) (Green)
*Mr John Home Robertson (East Lothian) (Lab)
*Tricia Marwick (Mid Scotland and Fife) (SNP)
*Mary Scanlon (Highlands and Islands) (Con)

COMMITTEE SUBSTITUTES

Shiona Baird (North East Scotland) (Green)
Alex Johnstone (North East Scotland) (Con)
Christine May (Central Fife) (Lab)
Mike Rumbles (West Aberdeenshire and Kincardine) (LD)
Ms Sandra White (Glasgow) (SNP)

*attended

THE FOLLOWING ALSO ATTENDED:

Johann Lamont (Deputy Minister for Communities)

CLERK TO THE COMMITTEE

Steve Farrell

SENIOR ASSISTANT CLERK

Katy Orr

ASSISTANT CLERK

Jenny Goldsmith

LOCATION

Committee Room 4

Scottish Parliament

Communities Committee

Wednesday 28 September 2005

[THE CONVENER *opened the meeting at 09:35*]

Item in Private

The Convener (Karen Whitefield): I open the 23rd meeting of the Communities Committee in 2005 and remind members to turn off their mobile phones.

Item 1 is to ask the committee whether it wishes to take in private item 5, which concerns the committee's approach to the 2006-07 budget process. Are members agreed?

Members *indicated agreement*.

The Convener: Agenda item 2 was to be a declaration of interests but, unfortunately, Euan Robson has not yet appeared. As a result, I suggest that we defer agenda items 2 and 3 to the end of today's public meeting. When Mr Robson appears, I will ask him immediately to declare any interests that relate to the Housing (Scotland) Bill.

Housing (Scotland) Bill: Stage 2

09:36

The Convener: The next item is day 2 of our stage 2 consideration of the Housing (Scotland) Bill. I welcome to the meeting Johann Lamont, the Deputy Minister for Communities, who is accompanied by Archie Stoddart from the bill team; Roger Harris and Jean Waddie from the private sector housing team; Edythe Murie from the office of the solicitor to the Scottish Executive; and Matthew Lynch from the office of the Scottish parliamentary counsel. They are all becoming regular visitors to the committee.

Section 51—Right to adapt rented houses to meet needs of disabled occupants

The Convener: Amendment 45, in the name of the minister, is grouped with amendments 49, 51, 53 and 60.

The Deputy Minister for Communities (Johann Lamont): These amendments seek to improve the package of measures in section 51 in relation to the right of a private sector tenant to carry out adaptations to suit the needs of a disabled occupant. In light of the committee's comments, we have considered carefully the rights that have been created for tenants in England and Wales in the Disability Discrimination Act 2005. Apart from amendment 45, which is simply a correction, the amendments in the group, along with amendments 59 and 61, seek to make changes that we believe to be appropriate.

Before I describe the amendments, it might be helpful to summarise our view of two other aspects of the Disability Discrimination Act 2005 that were mentioned by the Disability Rights Commission in its evidence to the committee.

The first aspect is the balance of rights between the landlord and the tenant. Established housing law for the social sector in England and Wales provides that a tenant can assume that a landlord has consented unless the landlord demonstrates through the court that refusal is reasonable. The Disability Discrimination Act 2005 makes the same provision for private sector tenants in relation to disability. By contrast, existing private sector housing law in Scotland and the provisions of the Housing (Scotland) Act 2001 require the tenant to demonstrate that a landlord has been unreasonable. As a result, the bill takes that approach.

Apart from precedent, there are practical reasons why taking the approach in the 2005 act would cause difficulties in Scotland. For example, there would be a different test for different categories of tenant in Scotland and a landlord

would have to deal with different tenants on a different legal basis. Moreover, in cases in which consent has been withheld or the landlord has not responded, the local authority would not be able to establish clearly that the tenant had consent for the works. As consent is required for a grant or loan to be made, such a situation would be likely to delay or to obstruct grant or loan approval and would disadvantage the disabled person. The bill's arrangements ensure that a clear decision is reached.

The second aspect that the Disability Rights Commission highlighted was the purpose of the adaptations. Although the bill provides that adaptations should make the house

"suitable for the accommodation, welfare or employment of any disabled person",

the Disability Discrimination Act 2005 provides that they should facilitate the person's "enjoyment of" the premises. The current provision in the bill is already wide because the term "welfare" is intended to be interpreted according to its dictionary definition and have a broad meaning that is synonymous with "well-being". The reference in the bill to the

"accommodation, welfare or employment of any disabled person"

will not only be consistent with other Scottish legislation but will cover as wide a range of circumstances as would a reference to facilitating the enjoyment of the premises.

Amendment 45 corrects an omission in the bill. Section 51 provides that the right to carry out adaptations should not apply to a Scottish secure tenancy. That is because the secure tenancy regime in the Housing (Scotland) Act 2001, which outlines the monitoring and regulation arrangements for local authorities and registered social landlords, provides equivalent rights and protections for the tenants concerned. Short Scottish secure tenancies are distinct in legal terms, but they are subject to the same provisions regarding repairs in schedule 5 to the 2001 act as are Scottish secure tenancies. Therefore, they should also be excluded from the operation of chapter 7 of part 1 of the bill.

Amendment 49 deals with the landlord's decision. In essence, section 51 constrains a landlord's normal property rights by saying that he or she must have good reasons for not allowing a tenant to alter a house, if those alterations would benefit a disabled occupant. Section 52(1) sets out an illustrative list of factors that will be relevant to a decision on what is reasonable. Amendment 49 will add "the disabled person's disability" to that list of factors. A person's disability is included as a factor in a similar way in the Disability Discrimination Act 2005. That makes it clear that, if a tenant wants to make alterations that would benefit a disabled occupant—whether the benefit is to their accommodation, welfare or employment—but the benefit is not connected with the person's disability, then, subject to any other factors, it might be reasonable to refuse the application on that ground. In such a situation, the landlord presumably would make a decision on the same basis as he or she would decide a similar application from the tenant of a house with no disabled occupant.

Amendments 51, 53 and 60 deal with the code of guidance to be prepared by the Disability Rights Commission. The committee was keen to ensure that a disabled tenant who wished to exercise the right to carry out adaptations that section 51 provides should have support from the commission, and we agree with that view. The Disability Rights Commission was given functions in providing such support in England and Wales when a similar tenant's right was inserted into the Disability Discrimination Act 2005, but the act did not confer an equivalent function on the Disability Rights Commission in Scotland, because the right under section 51 of this bill was not a matter of law. We have been assured that a Government amendment to the Equality Bill will be tabled later in the year to give the commission equivalent functions in providing such support in Scotland. The Housing (Scotland) Bill cannot confer those functions because the commission is a reserved body, so only Westminster can give it functions.

One way in which the commission will provide support will be to produce a code of guidance that will give practical advice on the exercise of the right set out in section 51 and, in particular, on what should be considered reasonable. The guidance will also apply to tenants in the social rented sector who want to make adaptations under the rights in section 28 of the Housing (Scotland) Act 2001.

In England and Wales, the Disability Rights Commission's code of guidance is required to be taken into account in court proceedings that relate to the tenant's right, and we agree with the committee that that should be the case in Scotland too. Such proceedings are based on housing law, which is a devolved matter, and so it is for the Scottish Parliament rather than Westminster to require the sheriff court to take account of the commission's guidance. The bill did not make that provision, because the Disability Discrimination Bill, which gives the commission the power to make relevant codes, had not been passed, so amendment 60 makes suitable provision in connection with the tenant's right. Amendment 53 imposes a similar requirement in connection with the rights of local authority and RSL tenants under section 28 of the 2001 act.

Amendment 51 ensures that the code will be relevant to a private landlord's decision on whether it is reasonable to refuse or place conditions on consent.

I move amendment 45.

The Convener: Before I allow any member in to ask questions of the minister, I point out that we have now been joined by Mr Robson. I invite him to declare any interests that he might have in relation to the Housing (Scotland) Bill.

Euan Robson (Roxburgh and Berwickshire) (LD): I have no registrable interests. I apologise for being late; I mistook the time of the meeting.

The Convener: Thank you. I am sure that your timekeeping will be better in future.

There are no further comments from members on this group of amendments. Does the minister have anything to add?

Johann Lamont: I have nothing further to say.

Amendment 45 agreed to.

The Convener: Amendment 46, in the name of the minister, is grouped with amendments 47, 48, 50 and 52.

09:45

Johann Lamont: Chapter 7 of part 1 of the bill gives private sector tenants the right to carry out adaptations to a house, subject to the landlord being able to refuse on reasonable grounds. Amendments 46 to 48, 50 and 52 give a similar right to tenants who are entitled to the installation of central heating and other energy efficiency measures under the Executive's central heating programme. The same right will apply to any future programme under the same powers. The effect of the provision is that landlords will be unable to refuse consent to such installations without reasonable grounds or to apply unreasonable conditions to such consent. If a landlord refuses consent or applies unreasonable conditions, the tenant will be able to appeal to the sheriff court or, if amendment 61 is agreed to and we make regulations on the matter, to the private rented housing panel.

Under the central heating programme, installations are provided and organised by a managing agent. The agent will be able to inform tenants of their rights, ensure that landlords are aware of their obligations and, if necessary, put the tenant in contact with an appropriate support agency. Although only a few cases have been recorded in which installations have not gone ahead because of the landlord's refusal, we think that there are likely to have been other cases in which tenants have not applied because they knew that the landlord would be against the idea.

Such installations usually add value to the property at no cost to the owner. As well as making the house more fuel-efficient, they help many people to escape from fuel poverty. We think that the measure is important because it will ensure that there are no arbitrary obstructions to tenants obtaining the benefits of the central heating programme. It will also ensure that, in those few cases in which there is a sound reason for not having the installation, the landlord's interests are protected.

I move amendment 46.

Amendment 46 agreed to.

Amendment 47 moved—[Johann Lamont]—and agreed to.

Section 51, as amended, agreed to.

Section 52—Matters relevant to application to carry out work under section 51

Amendments 48 to 52 moved—[Johann Lamont]—and agreed to.

Section 52, as amended, agreed to.

After section 52

Amendment 53 moved—[Johann Lamont]—and agreed to.

Section 53 agreed to.

Section 54—Effect of tenant moving from house

The Convener: Amendment 54, in the name of the minister, is grouped with amendments 55 to 57.

Johann Lamont: Section 54 provides that, where tenants move from a house to enable works to be carried out, they can, if they wish, return on the same terms of tenancy as they had before. That applies to any works that are required or authorised under any of the provisions in part 1. Amendments 54 to 57 extend that protection to any person who occupies a house under an occupancy arrangement.

Of course, occupancy arrangements generally provide fewer rights than a tenancy and we do not propose to change the terms of agreements. For example, if the end date of an agreement falls while the person is out of the house, the amendment will not extend the date to allow the person to return. However, where someone has moved out—for example, to enable a work notice to be complied with—they should not be treated as if they have abandoned the agreement. That should apply as much to occupancy agreements as to tenancies; whatever rights the person has should be continued.

I move amendment 54.

Amendment 54 agreed to.

Amendments 55 to 57 moved—[Johann Lamont]—and agreed to.

Section 54, as amended, agreed to.

Section 55 agreed to.

Section 56—Listed buildings etc

The Convener: Amendment 58, in the name of John Home Robertson, is in a group on its own.

Mr John Home Robertson (East Lothian) (Lab): Amendment 58 is a probing amendment because I think that it would be useful to clarify the timescale that could be involved in this section of the bill. I am motivated by worrying experiences in my constituency relating to Historic Scotland taking a long time to deal with certain kinds of case work. For example, most people think of Dunbar as being that town on the seaside that has an ugly derelict building on the skyline. The building is a burned down hotel—a listed building that has been in that state for 16 years. I referred to the building during the debate in the chamber on the Executive's legislative programme and I am sure that it is a pure coincidence that, last week, consent was given for it to be demolished, which is a relief.

The situation is bad enough when you are talking about the appearance of a town, but it would be worse if the work that was being delayed because of protracted consideration by Historic Scotland or any other quango was urgent work on a dwelling-house.

Section 56(2) says:

"The local authority must, before it carries out any work in, or demolishes, any house which is, or which forms part of, a building to which this section applies in pursuance of section 35 or 36, consult … the Scottish Ministers".

That appears to be open ended; the situation could last for years. Amendment 58 would put a cap on that period of six weeks. We must not allow Historic Scotland or any other organisation to sit on that sort of case for months or years on end—we know from experience that Historic Scotland is capable of doing that. There is a case for setting a reasonable limit—although perhaps six weeks is too tight—and I would be grateful if the minister could address that point. There is a risk of unreasonable delay. It has happened before and it could happen again.

I move amendment 58.

Mary Scanlon (Highlands and Islands) (Con): I support the points that John Home Robertson has made. I have had a similar experience in relation to an old youth hostel in Inverness. However, I know how long Historic Scotland takes to do things and I think that it might be well beyond its capabilities to respond within six weeks.

Johann Lamont: Amendment 58 would require the persons consulted by a local authority that was seeking to carry out work in or demolish a listed or protected building under section 35 or 36 of the bill to make a response within six weeks. Under section 56(2), a local authority must consult the Scottish ministers, the planning authority, where that is not the local authority, and any other persons that the local authority thinks fit.

Although the bill does not set a time limit for responses to such a consultation process, it would clearly be practical for a local authority to set an indicative date for the receipt of responses and a respondent should try to meet that deadline. A local authority could not be expected to wait for ever for a response. Comments have been made about a particular agency, and there is no suggestion that a body should be able to fail to respond or to sit on a response for ever.

I sympathise with John Home Robertson's aim of ensuring that responses are not unreasonably delayed and that a reasonable time is provided for their return. However, the problem with setting a specific statutory limit for the return of responses is that it would remove all flexibility. I am also concerned that the amendment would catch a range of bodies and individuals who may simply be unable to respond within such a timeframe. Sometimes there may be reasons for setting a longer period than six weeks for the return of responses. Furthermore, if an important response were sent slightly late, the amendment could prevent a local authority from taking it into account. It is sensible for a local authority to have discretion to consider late responses and I am sure that John Home Robertson would not want to prevent that.

That is not to say that whether a body that is expected to respond does respond is not an issue. In planning, those involved cannot afford to ignore some statutory consultees, but they should not have to wait a ridiculous length of time for a response either. However, if a time limit is specified, that might mean that important information might not be able to be used.

I recognise the points that have been made about people responding timeously, but the time limit that has been identified is unsustainable. The Executive might be able to find other ways internally to reflect in practice the points about responses to consultations and to take the broader view that the amendment highlights. Therefore, I invite John Home Robertson to withdraw his amendment.

Mr Home Robertson: The minister said that a local authority could not be expected to wait for

ever. I was anxious that consultation could be open ended under the bill, but I will take what she has just said as being ministerial guidance that the time for making such responses should not be unreasonably long.

I hope that people in Historic Scotland and elsewhere will heed such guidance, because Historic Scotland—and probably other bodies—has sometimes taken a ridiculous time and delayed important work. What the minister said is helpful. I hope that the relevant public bodies will follow the spirit of that guidance. On that basis, I am content to withdraw amendment 58.

Amendment 58, by agreement, withdrawn.

Section 56 agreed to.

Section 57—Recovery of expenses etc

The Convener: Amendment 36, in Cathie Craigie's name, is in a group on its own.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): Section 57 gives local authorities powers to recover expenses in undertaking works under a work notice or a maintenance plan, when paying the share of an owner for common repairs or meeting the repairing standard for private landlords.

Unlike the Housing (Scotland) Act 1987, the bill does not give local authorities the power to make a charging order. The amendment would introduce that power. It would allow local authorities to recover the costs of work that they had undertaken by placing a charge against a property when an owner could not pay for whatever reason—whether they were unwilling or whether they had no financial means to repay but had equity in the property.

Such a provision would allow flexibility that local authorities could use as a tool in the box of powers that they will have to help to maintain and improve standards in the private rented sector. I hope that the minister will accept the amendment and will see it as an improvement to the bill.

I move amendment 36.

10:00

Johann Lamont: First, I make it clear that I am sympathetic to what Cathie Craigie seeks to achieve with amendment 36. However, I am less sure that the best way forward is simply to graft the charging order regime in the Housing (Scotland) Act 1987 on to the bill.

I fully agree that when local authorities carry out enforcement action they must have as much certainty as possible that they will get their money back. That is particularly important as the bill broadens the range of interventions that a local authority can make. It is because of that broader intervention that I am, as I have said, less sure that simply grafting on provisions from the 1987 act is the best way forward.

As the bill is very much tailored to reflect the current Scottish housing scene, provisions to secure debt should be tailored in the same way. I also think that it would be better to include such provisions in the bill.

In asking Cathie Craigie to withdraw amendment 36, I give her a commitment that the Executive will make proposals in this area at stage 3. We acknowledge that, as she has highlighted, local authorities must have certainty when it comes to recovering costs; however, we need to get this important matter right as it touches on a range of other issues.

The Convener: I ask Mrs Craigie to indicate whether she wishes to press or withdraw amendment 36.

Cathie Craigie: I agree with the minister that the issue is important, and I welcome her commitment to examine it between now and stage 3. I also want to get things right and, if we can find a better way of addressing the issue, I am happy to withdraw amendment 36.

Amendment 36, by agreement, withdrawn.

Section 57 agreed to.

Sections 58 to 61 agreed to.

Section 62—Part 1 appeals

The Convener: Amendment 59, in the name of the minister, is in a group on its own.

Johann Lamont: As I said in relation to the first group of amendments, amendment 59 forms part of a package of amendments that relate to the tenant's right to adapt.

The bill gives a tenant of a house in the private rented sector the right to make adaptations to meet the needs of a disabled occupant. That right is subject to the consent of the landlord, which must not be unreasonably withheld. Section 62(6) allows a tenant to appeal to the sheriff if a landlord has either refused consent or set conditions on consent. If amendment 61, which is also part of this package of new measures, is successful, ministers may change the route of appeal to the private rented housing panel.

As drafted, an appeal may be made within 21 days of notification of the landlord's decision. The case has been made to us that the appeal period should be extended. I consider that case to be justified. A disabled person is likely to have to call on the Disability Rights Commission for assistance in challenging—and, if necessary, appealing—the

landlord's decision and in practice that process can take time. The Executive does not wish to create obstructions to the exercise of the tenant's right. The situation is clearly different from, for example, the serving of a work notice by a local authority. As a result, we consider it appropriate that the appeal period in section 62(6) should be extended from 21 days to six months.

I move amendment 59.

Christine Grahame (South of Scotland) (SNP): I am obliged to the minister for her comments, because I was surprised that the length of time was being changed from 21 days to six months. Such a change seems substantial—indeed, extraordinary. Where did the figure come from? I appreciate what has been said about disability discrimination guidance, but the figure seems rather random. What factual analysis led to the decision? As the minister said, the amendment is linked to amendment 61, which I might want to comment on later.

The Convener: As no other member wishes to speak, I invite the minister to wind up.

Johann Lamont: We moved from 21 days to six months after discussing the matter with the Disability Rights Commission, which felt that such a timescale would be reasonable. We are not saying that the process must take six months.

Christine Grahame: Might I come back on a small point? Section 62(7) says:

"The sheriff may, on cause shown, hear an appeal after the deadline set by subsection (1) … or, as the case may be, (6)."

Under that provision, the sheriff could extend the period for an appeal beyond six months. This amendment and amendment 61 just seem a bit messy, as if they have not been properly thought through. I simply put that on the record, but I might return to the matter at stage 3.

Johann Lamont: It has been thought through, but we are quite happy to reflect on the points that you have made.

The Convener: The question is, that amendment 59 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)
Harvie, Patrick (Glasgow) (Green)
Home Robertson, Mr John (East Lothian) (Lab)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Whitefield, Karen (Airdrie and Shotts) (Lab)

ABSTENTIONS

Grahame, Christine (South of Scotland) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)

The Convener: The result of the division is: For 7, Against 0, Abstentions 2.

Amendment 59 agreed to.

Section 62, as amended, agreed to.

Section 63—Part 1 appeals: determination

Amendment 60 moved—[Johann Lamont]—and agreed to.

Section 63, as amended, agreed to.

Section 64 agreed to.

After section 64

The Convener: Amendment 61, in the name of the minister, is grouped with amendment 37.

Johann Lamont: The committee recommended at stage 1 that, should a tenant be aggrieved by a landlord's decision to refuse or apply conditions on consent to adaptations to suit a disabled occupant, the appeal should be to the private rented housing panel. The bill provides that appeals against such a decision should be to the sheriff court, which is the usual way in which reasonableness is tested if parties cannot resolve a dispute.

I appreciate the view that, in principle, a tribunal such as the panel might provide a more appropriate route for handling such appeals, but I believe that a range of factors should be assessed before we draw a conclusion on the most appropriate route for appeals. For example, we do not yet know what will be in the Disability Rights Commission's code of guidance. Neither do we know whether appeals are more likely to be over arbitrary unreasonableness or the technical issues of adaptations. Such factors could affect the relative merits of court and panel processes for handling the disputes. There is also a broader issue about the handling of housing disputes, which we are currently exploring. Moreover, we do not know the likely volume of such appeals, how it will compare with the volume of applications to the panel in connection with the repairing standard or the implications for the ability of the panel to handle that additional function.

Although I agree that the panel might well prove to be an appropriate route for appeals, I think that it would be sensible to finalise the route of appeal once those issues have been assessed. That is why amendment 61 allows ministers to change the route of appeal from the courts to the panel. We believe that it is permissible to give ministers such a power in this instance because the power is created as part of the same legislation that establishes the sheriff court route of appeal. In that sense, amendment 61 differs from the proposals in amendments 26 and 43, which were discussed by the committee at a previous meeting, as those

proposals would involve duplication of matters that are already covered by existing primary legislation.

The committee also recommended that ministers should take powers to extend the functions of the private rented housing panel. Amendment 37 would do that in a more general way than was proposed in amendments 26 and 43. I have sympathy with the purpose of amendment 37, but I am afraid that I can see little practical scope for the use of such a power.

Amendment 37 would allow tenants to apply to the panel for a determination on matters to be defined by ministers. Such a determination would, presumably, relate to the property or the management service provided by the landlord. The panel will already handle issues relating to the basic habitability of the property and the landlord's maintenance of the fabric, fixtures and fittings for which the tenant is paying.

Management issues, as we discussed in relation to amendments 26 and 43, are already substantially covered by existing legislation. For example, the list of management requirements that are specified in amendment 43 are all existing legal requirements with an established route of redress, except that the requirement to provide a weekly rent book is amplified.

Ministers could not use regulations to change other primary legislation that gives a route of redress for such legal obligations and it would not be appropriate for the panel to duplicate such redress by making determinations.

I feel that, although the general power that has been suggested has its attractions, it would, in practice, achieve only marginal benefits. However, I realise that there may be detailed matters that the proposal is intended to address, despite the constraints that I have outlined. Those details will be aired shortly. I also accept that, although such a power might be used only in limited ways, provided that its use does not undermine the success of the voluntary accreditation of landlords, it should not have disbenefits. The proposed power would need to be accompanied by processes that would allow appropriate action to be taken on a determination by the panel. I am therefore interested to hear what Cathie Craigie has to say on amendment 37 and I would be happy to discuss the matter further with her before stage 3 if she feels that that would be useful. However, I ask her not to move her amendment.

I move amendment 61.

Cathie Craigie: I very much welcome the introduction of the private rented housing panel. As the minister said, the only avenue that was previously open to people who were involved in a dispute was the sheriff court. The introduction of the panel is, therefore, welcome.

Amendment 37 would extend the remit of the private rented housing panel, but only when the minister felt that that was appropriate and only after consultation with those who had an interest. At stage 1, we heard from a number of organisations that made specific suggestions about how the remit should be extended and what areas the panel should look at. However, we need time to see how the panel operates and beds down. We need to carry out an evaluation of the work and the performance of the panel before we get specific about how the remit should be extended. I feel that amendment 37 would leave the matter sufficiently open to enable us to do that.

Nevertheless, I would rather talk than have amendment 37 disagreed to today. I would be pleased to speak with the minister over the next few months and I look forward to hearing in more detail how she feels the matter may already be covered.

Tricia Marwick (Mid Scotland and Fife) (SNP): I am confused about amendment 61 and I feel that the bill is in danger of becoming quite confused, too. On the one hand, the bill says that appeals are to be made to the sheriff; on the other hand, amendment 61 gives powers to ministers to change the method of appeal.

I have listened carefully to what the minister has said about the disability discrimination guidance that may be issued and the effect that it might have in the future and I accept that we do not know how many people are going to appeal. However, I do not think that we should make legislation that is based on whether or not we think that great numbers of people will appeal. The minister was saying that it might be decided in the light of that that the route of appeal would be better to the panel than to the sheriff court—I think that that is what she was saying, although I am prepared for her to come back on that. However, I believe that, if we are going to make legislation, we should make the best legislation that we can. It should not be determined at a later date that another route would be better simply because of the number of people who appeal.

Christine Grahame: I share that view, which is why I abstained in the vote on amendment 59. I just think that the system is becoming cluttered. An appeals procedure should be clear. When people appeal something, they should know their path through the process.

I do not know how the matter can be resolved. People will have to pick up the regulations and work out whether they are going to appeal to the private rented housing panel or to the sheriff directly. In any event, if they are not happy with what the panel says, regulations may

"provide that the determination of the panel or, as the case may be, the committee on such an appeal may be appealed to the sheriff".

What is the time limit for making an appeal, following the decision of the panel? Do the six months that the minister mentioned apply to the panel as well? There is no clarity. Perhaps a way round is for the first appeal to be made to the panel, which could then say, "This is beyond us; we refer it to the sheriff." We need something that is clearer than this branching-off process. There are still gaps in timescales. Perhaps the minister will tell us the timescale for appealing the panel's decision.

10:15

The Convener: As no other members wish to speak, I invite the minister to respond to the points that have been made.

Johann Lamont: Amendment 61 acknowledges that the committee recognised that people might be more comfortable appealing to the housing panel than to the sheriff, as is the case under current housing legislation. We have to be sure that, if we move from that clear position, we have an organisation that has the capacity to deal with appeals in a better and more useful way. We aim to take the power to do that, but obviously we would not do so and not tell anybody—the regulations will give the timescales in which people have to appeal and so on.

The purpose of amendment 61 is to be helpful with a difficult but important bit of the bill, which we must get right. It is clear where we are just now, but we recognise that it may be appropriate to move. However, we would not move work to a body until we knew the volume and nature of the work and the capacity of the organisation to deal with it. That is a reasonable approach. The committee will have the opportunity to examine and comment on the regulations.

We are on the same side. As I indicated to Cathie Craigie, I am happy to talk to her about some of the practicalities of the issue that she flagged up with amendment 37. The same applies to amendment 61. We are moving in the direction that I believe the committee wanted us to move in and it is important that we are clear about where people will go. That is the intention behind amendment 61.

Christine Grahame: The minister has not answered my point—

The Convener: Christine, it is not normal practice for us to engage in a debate when you do not get the answer that you are looking for, no matter how helpful that might be. However, on this occasion, I will allow you to make a brief point, to which I will ask the minister to respond.

Christine Grahame: What is the timescale for appealing to the sheriff following a determination by the housing panel, under subsection (2)(c) of the proposed section? That would normally be in primary legislation, not in regulations.

Johann Lamont: The regulations would address that.

The Convener: The question is, that amendment 61 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)
Harvie, Patrick (Glasgow) (Green)
Home Robertson, Mr John (East Lothian) (Lab)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Whitefield, Karen (Airdrie and Shotts) (Lab)

ABSTENTIONS

Grahame, Christine (South of Scotland) (SNP)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)

The Convener: The result of the division is: For 6, Against 0, Abstentions 3.

Amendment 61 agreed to.

Amendment 37 not moved.

Sections 65 to 67 agreed to.

Section 68—Assistance for housing purposes

The Convener: Amendment 62, in the name of the minister, is grouped with amendments 63, 64, 65, 127, 66, 131, 67, 132, 70, 134 and 73. I point out that if amendment 131 is agreed to, I cannot call amendment 67. Similarly, if amendment 134 is agreed to, I cannot call amendment 73.

Johann Lamont: This group combines a complex set of mainly technical amendments and includes three amendments in the name of Scott Barrie that I am happy to support. I hope that members will bear with me while I describe the impact that the amendments will have.

There are two main principles behind amendment 62. The first is that local authorities should be able to offer assistance with the costs of selling a house. I have taken account of the committee's concerns about the costs to sellers who are on low incomes or in a slow market of providing the purchasers information pack—such sellers may not be able to fund those costs until the house is sold. The provision that amendment 62 seeks to insert will ensure that they can receive assistance with those costs. Guidance on the scheme of assistance will set out when assistance with sale might be appropriate.

The second principle is to separate assistance with acquisition or sale of a house from other purposes. The bill refers to assistance

"in connection with work on any land or in any premises"

for various purposes and the other provisions in part 2 maintain that link to work that is carried out. As it is clear that buying or selling a house does not include such work, assistance will operate differently for those activities. Amendment 62 creates two separate categories of things that are eligible for assistance—purchase or sale and everything else. The effect of that separation is to renumber section 68. Amendments 63, 64 and 66 complete that process and fix subsequent references to the relevant sections. Amendment 70, too, is linked to the renumbering but, in addition, it suggests a change of wording to make it clear that, when a designated lender makes a loan, it is assisting the borrower, but is not exercising the local authority's power to provide assistance.

Amendment 65 will ensure that assistance for purchase or sale of a house will not be bound by the rules in the rest of part 2 that govern grants and loans, which refer to work that is carried out. Amendment 127 will provide that ministers have powers to make regulations about all types of assistance for all purposes. The provisions in those regulations will be additional to any applicable provisions in the bill.

To summarise, the amendments that I have covered will ensure that assistance can be given to sellers to help with the costs of the single survey and that appropriate rules and procedures can be developed for assistance with acquisition or sale of a house.

We think that Scott Barrie's amendments 131, 132 and 134, which deal with assistance for the reinstatement of adaptations that have been made to a house to suit the needs of a disabled occupant, would be useful additions to the bill and would reinforce the tenant's right to adapt that is contained in section 51. Therefore, I am happy to support those amendments. Amendments 131 and 134 supersede amendments 67 and 73.

I move amendment 62.

Scott Barrie (Dunfermline West) (Lab): As the minister has indicated, amendments 131, 132 and 134 are about reinstatement following adaptation of houses for disabled people. When we took evidence at stage 1, there was a concern that it would be difficult to ensure that houses were reinstated once adaptations had been undertaken. Amendment 134 is consequential to amendment 131 and amendment 132 just seeks to ensure that we get the process correct. I am glad that the minister is prepared to accept my amendments.

Mr Home Robertson: I understand that consideration of the present group of amendments is the only opportunity to discuss section 68. I support amendments 131, 132 and 134, but I want to raise a point of detail in relation to section 68, which covers the provision of assistance in connection with work such as adaptation for disabled people, repair, maintenance and the implementation of fire precautions. It would be helpful to me and more widely if the minister could indicate whether the scope of such assistance for housing purposes could cover security matters, such as the provision of controlled entry into flatted property. We all know from our constituency experience that that is a significant issue. It is important to people's quality of life that they should feel secure in their houses. I presume that there will be scope for assistance and advice to cover that issue and it would be helpful if the minister could take the opportunity afforded by today's debate to confirm that point.

Christine Grahame: I think that I am correct in saying that the regulations will deal with the issue of financial assistance, or a loan, to someone for their single seller survey. Obviously, the minister will have thought about what is going to go into the regulations. The assistance is supposed to be for the single seller survey. Will borrowing be required for any other requirements and outlays for the purchasers information pack or will assistance be limited to the survey? Will the amount be capped? How will the money be allocated? Will assistance be means tested or will there be another way of finding out who is entitled to it? Will the loan be interest free? Will it be secured in any way? What will be the timescale in which one will get the money? These things should all be known. I am very much in favour of assisting people, but I want the system to work.

When someone puts their house on the market, they will have to order a single seller survey and gather the other information that is required for the purchasers information pack. How long will it take before the seller knows whether they will get the loan? Can people apply more than once? For example, would someone be able to reapply for a loan if they had put their house on the market, their house had failed to sell, they had withdrawn the property from the market and then decided to try again in a year? Those are all practical questions about how the scheme of assistance will operate.

Cathie Craigie: I am using this group of amendments in the same way as John Home Robertson did to raise a point with the minister. I believe that, whether they involve grants or loans, schemes of assistance will be important in helping all those in the private housing sector who have particular needs.

I hear from disabled people that they face particular difficulties in remaining comfortable in their home because adaptations have not been made and proper facilities have not been provided. Currently, everyone who is applying for a grant goes on the same waiting list—they are waiting in line with everyone else for a share of the pot of money. We all accept that we do not have a bottomless purse and that the available money has to be fairly distributed, but does the minister have any intention of ring fencing the budget for assistance for disabled people?

Johann Lamont: On John Home Robertson's point, a security door would be defined as an improvement, so it would be covered by the provisions in the bill on improvements. It is self-evident that a controlled-entry door would improve the property, particularly if someone felt that they were vulnerable or if an elderly person felt at risk.

The answer to Christine Grahame's first question is yes, although she will have to remind me of her exact point—I wrote down the answer, so she can match that up later with the *Official Report*. I do not deny that the other points that she made were important. We are clear that the issues are wide ranging and challenging. We have said that it is important to examine the safety net of the scheme of assistance where necessary, but we do not want to prevent possible private sector solutions in the short term. We do not want to say that because there is a scheme of assistance, no one needs to look for imaginative solutions. The stakeholder group indicated that, too. We want to work with the professions to design the scheme in a way that will allow the market to deliver affordable packages. However, we recognise the clear point that the committee has made about the market being difficult for some people in certain circumstances.

Assistance is connected with the sale as opposed to the seller survey and so the issue would arise where houses were difficult to sell or if someone was in difficult circumstances. I assure Christine Grahame that, as we develop the regulations, there will be lots of opportunities to explore and deal with the questions that she and others have posed on the matter.

As Malcolm Chisholm has indicated to the committee, we are inclined to do what Cathie Craigie suggests—ring fencing is an option that we will consider further. I will come back to that and explain it further in the context of amendment 128, but, again, I stress that our thinking on the matter is with the grain of the committee's thinking.

10:30

The Convener: The question is, that amendment 62 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)
Harvie, Patrick (Glasgow) (Green)
Home Robertson, Mr John (East Lothian) (Lab)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Whitefield, Karen (Airdrie and Shotts) (Lab)

ABSTENTIONS

Grahame, Christine (South of Scotland) (SNP)

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

Amendment 62 agreed to.

Amendments 63 to 65 and 127 moved—[Johann Lamont]—and agreed to.

Section 68, as amended, agreed to.

Section 69—Guidance about availability and amount of assistance

The Convener: Amendment 130, in the name of Scott Barrie, is grouped with amendment 133.

Scott Barrie: Amendment 130 is a technical amendment to allow for the substantive amendment 133, which seeks to amend section 73. At the moment, there does not seem to be a level playing field between local authorities in their policies on adaptations. The bill gives Scottish ministers powers to assist in the process, but my amendment 133 would give them additional powers to ensure that local authorities do not limit awards unduly. If the amendment is agreed to, we will have much more open, transparent and accessible rules to govern grants by our various local authorities, which will mean a more even playing field throughout Scotland. The type of grant or loan that someone gets would not depend on which local authority area they happened to reside in and Scottish ministers would be able to ascertain that the system was operating in a fairer and more equitable way. That is the purpose of amendment 133.

I move amendment 130.

Johann Lamont: The provisions in section 73 recognise that some local authorities limit the amount of approved expense. The flexibility to be able to do that allows them to apply priorities in their local area, but section 69 ensures that, in future, local authorities' decisions to use their flexibility in that way will be made clearly and publicly and their criteria will be published.

A person who requires to adapt a house to meet the needs of a disabled occupant is in a different position from an owner who wishes to improve the

house that they have bought and, perhaps, failed to maintain. That is why we have declared adaptations to be a national priority for grants along with the worst houses that fail to meet the tolerable standard. I expect local authorities to recognise that distinction in deciding their criteria and in making their statements under section 69, but I agree that it would be helpful to establish our view in the legislation.

The amendments would ensure that any grant for adaptations was based on the reasonable cost of the works, subject to any consent that may be required under section 73(4), rather than on some smaller proportion of the cost decided locally. I am happy to support amendments 130 and 133.

The Convener: I invite Scott Barrie to wind up and to indicate whether he wishes to press amendment 130.

Scott Barrie: I think that I might press it, as the minister is prepared to agree to it, for which I thank her.

Amendment 130 agreed to.

Section 69, as amended, agreed to.

Section 70—When assistance must be provided

Amendment 66 moved—[Johann Lamont]—and agreed to.

The Convener: I remind members that, if amendment 131 is agreed to, I cannot call amendment 67.

Amendments 131 and 132 moved—[Scott Barrie]—and agreed to.

The Convener: Amendment 128, in the name of the minister, is in a group on its own.

Johann Lamont: Amendment 128 is about grant for the adaptation of a house to make it suitable for a disabled occupant. It is a brief amendment but there is a substantial amount behind it, and it is also fair to say that it seeks to respond to the committee's concerns.

The present situation is that assistance for adaptations is at the local authority's discretion, but if it is given it is in the form of grant, so a disabled person does not have a right to a grant for adaptations. The only exception is that a grant is mandatory when work provides access to the standard amenities of washing and sanitary facilities, and the bill retains that.

For the first time, the bill creates a right to assistance from the housing authority for any person wanting to carry out adaptations. The assistance can be in the form of grant—again, with mandatory grant for standard amenities. However, the committee felt strongly that that was not a sufficient guarantee of suitable help for disabled people. We have taken serious note of the committee's views on the subject. We recognise your concerns and we wish to respond to them. The committee asked at stage 1 for a further explanation of the package that we have in mind. It also asked that the rights given to disabled people in Scotland in connection with adaptations be as good as those in England and Wales. I shall start by outlining the package.

What we are trying to achieve is legislation that will deliver assistance more effectively to that group of people in society who have difficulty using their homes because of disability, so that we give help that is necessary and appropriate to as many as possible. We have to do that in a way that is workable legally and financially. At the core of the issue is the extent to which we give local authorities a duty to provide grant. If the legislation establishes a duty, the local authority must carry it out whatever the cost, so we have to be clear that the resources are available for any duty that we create.

If we create a duty the financial consequences of which are either unknown, unmanageable or greater than the resources available, we will invite a situation in which either the local authority fails in its duty, and so acts illegally, or is obliged to cut back on other priorities that have already been established through the local democratic process, or in which the Executive is forced to alter its own established priorities in order to fund local authorities. That is not to say that priorities and the availability of resources cannot be changed. The point is that that should be done thoroughly and through the established processes. Neither local authorities nor the Executive should be put in the position of being unable to manage their priorities and resources properly because a local authority duty with unmanageable financial consequences has been created.

Amendment 128 is designed to allow ministers to decide whether and how far to go beyond the existing mandatory grant arrangements for adaptations for standard amenities, by adding further controls over the type of assistance that must be provided for adaptations and, in particular, specifying circumstances in which the mandatory assistance for adaptations should be in the form of grant. The use of regulatory powers to do that will allow proper consultation and proper assessment of the potential financial effects to ensure that extending mandatory grant does not create unmanageable demands.

A later amendment provides for those regulations to be subject to the affirmative procedure, to ensure full parliamentary scrutiny. We could use the powers to prescribe that works of a specified type should be assisted with grant,

in addition to those for standard amenities. That point was perhaps highlighted earlier. We would do that only after consultation and after obtaining better information than we have at present on the scale of need for that type of work; on whether local authorities could realistically comply with the duty; and on the impact on disabled people.

We would want to qualify any such requirement to make grant by criteria that ensured that grant was the most appropriate form of assistance in individual cases, for works other than standard amenities. What sort of criteria would those be? The works would have to be necessary and appropriate. There should not be another suitable means of meeting the person's needs available through housing, social work, health or other sources because, in that case, the local authority ought to be able to make a choice. For example, the provision of a specialist wheelchair might be as effective as the adaptation of a kitchen, and it might bring wider benefits. Similarly, a kerb-climber wheelchair might be preferable to a ramp at the front door, also because of the wider benefits. Additionally, the local authority should not have to give grant if, without it, the applicant could carry out the works without falling into financial hardship or coming under threat of financial hardship. If a person needs to carry out £5,000 of works but their house is worth £100,000 more than any borrowing on it, helping that person to obtain an equity loan may avoid depriving someone else of a possible grant of £5,000.

Those criteria would help to ensure that resources were targeted at those who are most in need of them. That would be consistent with, for example, community care policy. Again, we would consult on the most appropriate criteria and their details before making regulations. We would also want to ensure a consistent approach to assessing needs. If necessary, we would use powers to specify the processes that local authorities should use. In that connection, we would want to tie into and reinforce the current exercise to review and co-ordinate the guidance that is issued to housing, social work and health agencies on the provision of equipment and adaptations for disabled people. People who are seeking housing adaptations should have their needs considered in the round, as happens under the joint future approach for community care, which provides an effective and co-ordinated response.

So, by a combination of regulations and guidance, backed up if necessary by direction in particular instances, we intend to develop suitable arrangements with stakeholders to ensure that local authorities assess disabled people's needs and establish when grant-funded adaptation is the most appropriate assistance. Except in cases of works that attract grant whatever the circumstances, local authorities would retain the power to decide whether to provide grant, as they must be allowed to balance the services that they provide against their capacity to fund them.

Fears were raised at stage 1 that some local authorities might choose not to give sufficient priority to adaptations, even though they are a stated national priority. Those fears are unfounded, but I appreciate the fact that the committee might want more concrete assurance. I reiterate what was said earlier. Malcolm Chisholm indicated in the stage 1 debate that he was inclined towards ring fencing. The Executive provides local authorities with private sector housing grant, which is the bulk of the funding that they use in connection with the private sector. That includes funding for adaptations to houses for disabled people who are living in the private sector. That central grant is monitored and managed through Communities Scotland, and local authorities overall are spending a substantial proportion of that grant on adaptations at a level that is comparable with or better than the equivalent level in England. However, there is scope to define how much of each local authority's grant should be spent on adaptations, on the basis that the money cannot be used for other purposes if it is not spent. The arrangement would be administrative and will need further discussion with the Convention of Scottish Local Authorities, particularly on how the needs in each area can be estimated and reflected. However, we are keen on the approach and are inclined to use it to support the priority that we want to give to assistance for adaptations.

I turn to the position in England and Wales. We have looked carefully at the disabled facilities grant that operates there. The Office of the Deputy Prime Minister is currently reviewing the DFG, but as we do not know the outcome of that review, the DFG is a moving target for comparison. The DFG provides mandatory grant for most adaptations but limits it to £25,000 in England. In Scotland, there is currently a level at which further approval is required. That is not a limit but a filter, and if the local authority makes a sound case for higher expenditure it is approved. The DFG is subject to a means test that has no minimum level of grant, but if a grant for adaptations is made in Scotland it is currently for a minimum of 50 per cent. So, again, direct comparison is difficult.

The main concern that we have in applying the DFG model as it stands is the tension between mandatory grant and finite resources. The Prime Minister's strategy unit has recognised that in a published report called "Improving the life chances of disabled people". The report states:

"While the DFG is mandatory, the resources available are cash-limited. Waiting lists and lengthy administration procedures are used to allocate scarce resources."

Whatever the outcome of the DFG review, it reinforces our view that it is important to address the tension between mandatory grant and finite resources in how we legislate for Scotland. That is why we believe that the effect of defining further circumstances in which grants shall be made should be assessed properly before legislating.

Should we put the detail of our proposals in the bill? We have certain information about the scale of potential need for adaptations, but that is not a sufficiently reliable guide. It is based on self-reporting and suggests that, after allowing for the means test, demand for adaptations as it stood in 2001 could be of the order of £275 million. That would not be manageable if a duty were created to meet all such demand and further demand that has arisen since. Those problems with the available information also mean that restricting the extent of mandatory grant in the bill would be done without a proper understanding of the financial effects or the impact on individuals' relative needs. We must consult on those issues and investigate them in detail with stakeholders, including disability organisations and local authorities. That is why we propose regulatory powers.

I thank the committee for allowing me an extended comment on those issues. I believe that they are important to everyone here.

I move amendment 128.

10:45

The Convener: Thank you, minister. You spoke on amendment 128 for some time, but I am sure that committee members welcome your comments. The issue with which amendment 128 deals greatly exercised the committee during our stage 1 deliberations.

Scott Barrie: As you said, convener, the issue concerned the committee greatly and we took a variety of extensive evidence on it. The minister has highlighted that the issue is not about right or wrong, left or right; it is a difficult one in the context of finite resources. The Minister for Communities was clear when he gave evidence to the committee about the different situation in Scotland and about the fact that not everything works perfectly south of the border either. Having a mandatory grant system but finite resources does not resolve the problem for people who want assistance at a particular time. The minister made that point well and it is good that she acknowledged the difficulties.

The Convener: No other members wish to speak. Do you have any closing comments, minister?

Johann Lamont: I think that we all recognise where the tensions lie in this area. I do not think that the committee and the Executive are divided on the issue. We remain open about how matters can be resolved. We believe that the bill will meet the needs of disabled people in a different but comparable way to how they are met in England and Wales.

Amendment 128 agreed to.

Section 70, as amended, agreed to.

Sections 71 and 72 agreed to.

Section 73—The approved expense

Amendment 133 moved—[Scott Barrie]—and agreed to.

Section 73, as amended, agreed to.

Sections 74 to 79 agreed to.

The Convener: The next section is section 80, but we will take a short comfort break before we move on. I suggest that members be back in their seats for 11 o'clock.

10:49

Meeting suspended.

11:01

On resuming—

Section 80—Conditions applicable on completion of work

The Convener: Amendment 68, in the name of the minister, is in a group on its own.

Johann Lamont: Amendment 68 seeks to clarify the wording of the conditions that will apply to a house where a grant or a loan has been paid. The house must continue to be used as a private dwelling. Therefore, amendment 68 will remove the double negative,

"must not be used other than",

from section 80(4). I am sure that, if nothing else, we can unify around the proposal to remove a double negative.

I move amendment 68.

The Convener: Mr Gorrie, who used to point out such grammatical matters, is no longer a committee member, but I am sure that he would be pleased by amendment 68.

Amendment 68 agreed to.

The Convener: The double negative has been banished.

Section 80, as amended, agreed to.

Sections 81 to 87 agreed to.

Section 88—Local authority payments to not for profit lenders

Amendment 70 moved—[Johann Lamont]—and agreed to.

The Convener: Amendment 71, in the name of the minister, is grouped with amendment 72.

Johann Lamont: Under the scheme of assistance, a local authority can make loans itself or it can make payments to a non-profit lender, which will make loans to appropriate individuals. The local authority might contribute to the loan fund, or it might cover additional administrative costs or risks to make the loans accessible to people who could not get a commercial loan. The payments to the lender may be subject to such terms as the local authority thinks fit. The bill explicitly mentions terms with regard to repayment by the lender to the local authority. Amendment 72 seeks to clarify that the terms of the payment from the local authority to the lender can also restrict the terms on which the lender makes loans to individuals.

The bill incorporates a set of rules and procedures that local authorities will have to follow when making grants or loans. Those include the test of resources and ensuring that the work is necessary, the costs are reasonable and the expenditure produces an improvement that is maintained into the future. Those are important requirements to safeguard the contribution made by the state to private housing.

We do not want a situation in which loans supported by public funds are entirely free of such conditions just because they are made through a third-party lender. On the other hand, there may well be loan arrangements for which these particular rules are not appropriate. We want local authorities to explore innovative loan arrangements. That is why amendment 71 does not require that all the rules on grants and loans are applied to third-party loans, but makes it clear that they could be. It also makes it clear that ministers can, if necessary, make regulations to ensure proper safeguards for any subsidy to borrowers made through non-profit lenders.

I do not have a firm view at present on whether such regulations are required. We will consult on what terms would be appropriate in different circumstances. It may be that in the first instance guidance will be sufficient to point local authorities in the right direction. Whether the terms are decided by local authorities or by ministers, the amendment will ensure that there is appropriate control over public subsidy, even when it is paid out through a third party.

I move amendment 71.

Mary Scanlon: Will the minister give me an example of some not-for-profit lenders?

Johann Lamont: The Co-op.

Mary Scanlon: The Co-operative Bank?

Johann Lamont: Credit unions are the obvious ones.

Tricia Marwick: In what circumstances do ministers envisage that loan repayments would not be made?

Johann Lamont: What we are trying to do here is take a belt-and-braces approach to something that might happen. However, it would be about a lender, as opposed to the borrower, making repayment to a local authority.

Amendment 71 agreed to.

Amendment 72 moved—[Johann Lamont]—and agreed to.

Section 88, as amended, agreed to.

Section 89—Tenants

The Convener: Amendment 134, in the name of Scott Barrie, has already been debated with amendment 62. I remind members that if amendment 134 is agreed to I cannot call amendment 73.

Amendment 134 moved—[Scott Barrie]—and agreed to.

Section 89, as amended, agreed to.

Section 90—Application to agricultural tenants etc

The Convener: Amendment 9, in the name of the minister, is in a group on its own.

Johann Lamont: Agricultural and crofting tenants are treated as owners in relation to grants, because they normally have full responsibility for any improvements or repairs to the house. The bill defines such tenants by referring to a list of statutory provisions. The Agricultural Holdings (Scotland) Act 2003 introduced new types of agricultural tenancy, but was omitted from the bill as introduced. That was simply an error, which amendment 9 corrects, and I would ask the committee to accept the amendment.

I move amendment 9.

Amendment 9 agreed to.

Section 90, as amended, agreed to.

Section 91—Directions and guidance

The Convener: Amendment 74, in the name of the minister, is in a group on its own.

Johann Lamont: The bill gives ministers powers to influence how local authorities operate the scheme of assistance through regulations,

directions and guidance. Regulations and guidance are necessarily general. They also take time for consultation and to go through the parliamentary process. The power of direction is provided to enable ministers to respond quickly to specific problems, such as flooding or subsidence, and to enable a focused response to a problem in a particular area. That could be to do with the condition of the houses in the area, or the way the local authority is exercising its powers. However, ministers are often asked to intervene by individuals who have been refused a grant by the local authority. The amendment makes it clear that the power of direction cannot be used to require a local authority to act in a certain way in relation to a particular individual or house.

I move amendment 74

Amendment 74 agreed to.

Section 91, as amended, agreed to.

Section 92—Local authority powers for improvement of amenity of an area

Amendment 10 moved—[Johann Lamont]—and agreed to.

Section 92, as amended, agreed to.

Sections 93 and 94 agreed to.

The Convener: Members will be pleased to know that that ends our consideration of amendments on day 2. I thank the minister and her officials for attending the committee today. The next meeting will consider amendments up to the end of section 116 of the bill, and will include amendments proposing to introduce tenancy deposit schemes. Members will note from the marshalled list that those amendments will now be taken after section 116. All amendments should be lodged with the clerks by 12 noon on Friday 30 September.

Interests

11:11

The Convener: I invite Euan Robson to make a declaration of interests.

Euan Robson: I have no registrable interests to declare.

Deputy Convener

11:11

The Convener: On 4 June 2003, the Parliament agreed motion S2M-107, making members of the Scottish Liberal Democrats eligible for nomination as deputy convener of the committee. I therefore seek nominations of members of that party for the position of deputy convener.

Cathie Craigie: I would be delighted to nominate Euan Robson.

The Convener: As only one nomination has been received, I ask the committee to agree that Euan Robson be chosen as deputy convener of the Communities Committee.

Euan Robson was chosen as deputy convener.

The Convener: I am delighted to welcome Euan Robson to the committee and congratulate him on his appointment as deputy convener. I am sure that he will find working on the committee as enjoyable and interesting a task as do the other committee members.

11:13

Meeting suspended until 11:14 and thereafter continued in private until 11:19.

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