COMMUNITIES COMMITTEE

Wednesday 2 November 2005

Session 2

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COMMUNITIES COMMITTEE
26th 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:

Helen Eadie (Dunfermline East) (Lab)
Johann Lamont (Deputy Minister for Communities)

CLERK TO THE COMMITTEE

Steve Farrell

SENIOR ASSISTANT CLERK

Katy Orr

ASSISTANT CLERK

Jenny Goldsmith

LOCATION

Committee Room 2

Scottish Parliament

Communities Committee

Wednesday 2 November 2005

[THE CONVENER *opened the meeting at 09:31*]

Housing (Scotland) Bill: Stage 2

The Convener (Karen Whitefield): I welcome everyone to the 26th meeting in 2005 of the Communities Committee and remind everyone that mobile phones should be turned off.

Item 1 is consideration of the Housing (Scotland) Bill at stage 2—this is our fourth day of deliberations. I welcome Johann Lamont, the Deputy Minister for Communities, who is accompanied by Archie Stoddart of the bill team, Roger Harris and Jean Waddie of the private sector housing team, Edythe Murie of the office of the solicitor to the Scottish Executive, and Matthew Lynch of the office of the Scottish parliamentary counsel. I am grateful to the minister and her officials for joining us today.

The first question is to ask the committee whether section 117 is agreed to.

Section 117 agreed to.

Section 118—Meaning of "house in multiple occupation"

The Convener: Amendment 197, in the name of Cathie Craigie, is in a group on its own.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): The purpose of amendment 197 is to assist local authorities in establishing that a property that is a house in multiple occupation is the main residence of its occupants. Currently, local authorities face significant enforcement difficulties in proving that a residence is someone's only or principal residence. As a consequence, some landlords use those difficulties as a mechanism to evade HMO licensing. In doing so, they put the health, safety and welfare of tenants at risk. In addition, compliant landlords perceive those individuals as being able to flout the law without prosecution.

Landlords attempt to evade licensing through regular rotation of occupants, to prevent their being in one place for any period of time, and through calling the properties short-term lets. They advise tenants not to open the door to the authorities, not to allow access without a warrant and not to provide any information to the authorities during visits. When detected, the landlords move the occupants, who are potential witnesses in any prosecution that may be brought. When they do so, it makes it difficult for local authorities to trace the occupants, which makes judicial proceedings extremely difficult.

Amendment 197 would give local authorities the scope to deal with such situations. I ask the minister carefully to consider the improvement to the bill if it were accepted.

With the convener's permission, I will pass to the minister a series of photographs that she might be interested in. They clearly show that, in this particular case, the houses are in multiple occupation. However, although neighbours reported the landlord in question to the local authority and, indeed, want to give evidence against him, they have not been able to get enough information from tenants to be able to track him down and take legal action.

I move amendment 197.

Patrick Harvie (Glasgow) (Green): I hope that, in closing, Cathie Craigie will explain in more detail why she thinks that amendment 197 is the right way to address this problem. She says that it is sometimes difficult to prove that a property is someone's sole or main residence and appears to suggest that the lease or occupancy arrangements should be taken as proof of that. However, that is clearly not the case. For example, although a couple might live together in a flat, one might keep his or her previous flat in case things go wrong. The lease for the flat—or, for that matter, the room in an HMO—might exist, but it is clearly not their main or only residence.

The Deputy Minister for Communities (Johann Lamont): I note Cathie Craigie's comments and photographs. I acknowledge the important concerns and issues that lie behind amendment 197 and I appreciate local authorities' problems in dealing with landlords who claim that their accommodation is not its occupiers' main residence. Although such properties offer some of the worst conditions and must be tackled, I am not convinced that the amendment would help local authorities in that respect.

The main residence is included as a criterion for HMO licensing to ensure that the bill does not catch tourist accommodation and other short-term arrangements. Without such a restriction, occupancy arrangements could cover a very wide range of situations—from a tied cottage that has been occupied for many years, to a holiday home or caravan that is rented for a year but is only occupied at weekends, to a room where someone on call sleeps over. To presume that all accommodation is its occupiers' main residence until it can be shown to be otherwise could divert local authorities' resources into investigating all sorts of accommodation that would prove not to be HMOs.

Amendment 197 would also not change situations in which, despite the owner's claims to the contrary, the accommodation is a main residence. It might cause the burden of proof to shift but, in the end, a local authority has to be confident that if such a matter comes to court it can prove that the accommodation is the occupier's main residence against all the owner's arguments that it is not.

Although there have been calls for the Scottish Executive to provide more guidance on how to determine a person's main residence, we have not yet found any practical ways of doing so. However, we are always happy to consider new possibilities; perhaps Cathie Craigie and I could discuss the matter further.

Legal interpretation is a matter for the courts, so any advice that we might give would necessarily be qualified. Because of the danger of creating further loopholes, I am particularly wary of including specific criteria in the bill; after all, we are talking about only a tiny minority of landlords, although that group will exploit any hole to escape their responsibilities. We should rely on the courts to judge each case on its own.

In most cases, local authorities and landlords know when accommodation really is a person's main residence, so I am not persuaded that treating all occupancy agreements as documents that establish main residence would help authorities to enforce licensing. Local authorities need to have confidence in their own judgment, and to report landlords who try to evade the system for prosecution.

I ask Cathie Craigie to seek to withdraw amendment 197.

The Convener: I invite Cathie Craigie to wind up and to say whether she wishes to press her amendment.

Cathie Craigie: I thank the minister for her response. I appreciate that she takes the situation seriously and I accept that we are probably talking about a minority of landlords who flout the law or use loopholes to evade registration. The pictures that I passed to the minister today show that rogue landlords—for want of a better phrase—are those who are likely to cause danger to their tenants. They could be the landlords of the types of premises where tragedies happen. I accept that the wording of amendment 197 is perhaps not exactly as the Executive would expect it to be, but I ask the minister to consider the matter again between now and stage 3. The Executive could perhaps find an appropriate form of words, or concede to firmer guidance so that local authorities can go to court and take proceedings against rogue landlords.

On what Patrick Harvie said, a couple who are renting a flat will probably not be covered by HMO licensing, so I do not understand his point.

In the light of the minister's indication that she would look at the matter again between stages 2 and 3, I would be happy not to move—

The Convener: You have moved your amendment, so you must seek to withdraw it.

Cathie Craigie: I would be happy to withdraw my amendment. One of those days I will get this right.

Amendment 197, by agreement, withdrawn.

Section 118 agreed to.

Sections 119 to 122 agreed to.

Schedule 4

APPLICATIONS FOR HMO LICENCES: PROCEDURE

The Convener: Amendment 136, in the name of the minister, is grouped with amendments 137 to 156.

Johann Lamont: This group of amendments deals with the treatment of a landlord's agent in HMO licensing. The status of agents is a key issue in improving standards in private rented housing. The bill as drafted treats an agent as subordinate to the owner of the property and makes the owner responsible for whatever is done on his or her behalf, but many landlords use agents to manage their properties and we rely on professional agents to ensure that legal requirements are met. It is also often the agent, rather than the owner, who has direct contact with tenants. The provisions of the Antisocial Behaviour etc (Scotland) Act 2004 on landlord registration require agents to be subject to the same process of approval as owners. The same issues apply in relation to HMO licensing. We also want to ensure that there can be effective co-ordination between registration and licensing. For those reasons the amendments require that the agent must be a fit and proper person and that he or she will be named on the HMO licence.

The amendments fall into four main themes. First, in the application for a licence the agent's details must be included in addition to the owner's details. The agent will also be named on the notice of application and in the register of licences that is held by the local authority.

Amendments 141 to 144 are the core of the issue. They provide that a local authority must refuse to grant an HMO licence if either the applicant or any agent who is specified in the application is disqualified or is not a fit and proper person to operate an HMO. We will provide for relevant offences if an agent is used who is not named in the licence. An agent will also be held responsible if he or she causes any condition of the licence to be breached. If convicted of any

offence, the agent can be disqualified from acting in relation to any HMO for up to five years.

Amendment 156 will ensure that the agent will be copied into all correspondence between a local authority and the owner. Such notification normally entitles the person notified to make representations about the subject of the notice or to appeal the decision. In the case of an agent, he or she will be able to make representations on behalf of the owner, but not separately.

I move amendment 136.

09:45

Tricia Marwick (Mid Scotland and Fife) (SNP): I welcome the minister's amendments. The position of agents in relation to private rented accommodation has always been difficult. That the Executive now wants to ensure that the same duties and obligations that are placed on the owner be placed on the agent, who will be held responsible for any breaches of the conditions, is extremely welcome. It is a step forward to ensure that the agent properly represents the landlord in engaging with tenants. There have been situations in the past in which agents have acted inappropriately, but because the owner of the property was either unaware or turned a blind eye, no action was taken.

Johann Lamont: I acknowledge the welcome that has been given to the amendments as well as the committee's concerns about the subject in the past.

Amendment 136 agreed to.

Amendments 137 to 140 moved—[Johann Lamont]—and agreed to.

The Convener: Amendment 97, in the name of the minister, is grouped with amendments 101 to 110 and amendments 114 and 115.

Johann Lamont: The amendments in the group all deal with who should be notified about various decisions about HMO licensing and what should be included in the notification.

Most of the amendments—97, 101, 102, 104, 105, 106, 108, 110, 114 and 115—add the chief officer of the fire and rescue authority to the list of people who must be notified. The Fire (Scotland) Act 2005, which we expect to be implemented before the HMO provisions come into force, will place all responsibility for enforcing fire safety in HMOs with the fire and rescue authority. The 2005 act also provides that any conditions of licence relating to fire safety will have no effect and cannot be enforced by the licensing authority.

However, we consider that the chief officer of the fire and rescue authority should be informed of activity in relation to HMO licences. That will help the fire and rescue authority to fulfil its duties by notifying the authority of HMOs in the area. It will also mean that the fire and rescue authority can make representations to the licensing authority, where necessary.

Amendment 103 relates to variation of an HMO licence, which might be proposed either by the licence holder or the local authority. The amendment requires that if the variation is proposed by the local authority, the authority must tell the licence holder and other parties its reasons for doing so. That might be a policy matter that applies to all HMOs, or all HMOs of a particular type, or it might be in response to specific circumstances or complaints. It seems only fair that the licence holder should know the authority's reasons for the variation.

Amendments 107 and 109 deal with revocation of a requirement under section 137 for a licence holder to take action to rectify or prevent a breach of licence conditions. When such a requirement is made, the authority must notify the occupiers of the property as well as the licence holder, police and fire services. The fact that those people will be notified also makes them eligible to appeal against a local authority's decision.

The bill as drafted provides that only the licence holder be notified when the requirement under section 137 is revoked. It seems more appropriate that all parties who are notified of the requirement should also be notified of its revocation. An occupier in particular might wish to appeal on the basis that the problem had not been fully remedied, and the notice should therefore remain in force. That is clearly an omission from the bill, and amendments 107 and 109 will correct it

I move amendment 97.

Mary Scanlon (Highlands and Islands) (Con): I would like to ask for clarification about the notification of HMOs. At Saturday's planning event, some people from St Andrews understandably talked about the number of student accommodation HMOs in the town. They asked whether planning authorities should have some say in the matter. I realise that that may come under different legislation, but I was considering it under the provisions for serving notice. The people from St Andrews were considering whether it would be possible for the fire authority to determine more viable and sustainable communities with a mix of housing rather than allowing almost whole streets to become houses in multiple occupation.

Could section 137 allow planning authorities or even local people, perhaps under a use classes order, to receive notification that houses were being changed to homes in multiple occupation?

Johann Lamont: There is, to address Mary Scanlon's point, a broader issue of planning and HMOs—we can discuss it broadly, although perhaps not in detail, in the amendment. The matter belongs more properly, however, in our discussions on planning and how we achieve a mix in communities. The Executive's view is that we will not be happy to mix licensing and planning regimes.

There would have to be a public notice of an HMO or an application for one, which would make local people aware of the issue.

Amendment 97 agreed to.

The Convener: Amendment 198, in the name of Cathie Craigie, is grouped with amendments 199 to 203.

Cathie Craigie: I will be happy to move amendment 198. This is a small but significant group of amendments. Section 122 and schedule 4 deal with applications for HMOs. Schedule 4, which I seek to amend, sets out areas in which there might be exemptions.

We should move the emphasis from the property, although that is important, to the person. The amendments would ensure that the concerns of individuals living in an area would be taken into account. The Scottish Council for Single Homeless, which drew my attention to the issue, has voiced particular concern.

I move amendment 198.

Johann Lamont: I am happy to support the amendments. The HMO sector often houses people who have support needs. The risks that such people might face by being identified in the community may not always threaten their safety but may have a serious effect on their welfare and on their opportunities to move towards more independent living.

The Executive has lodged an amendment to include the same wording in relation to landlord registration. I am grateful to Cathie Craigie for pointing out that that should also include HMOs.

The Convener: I invite Cathie Craigie to wind up. Please say whether you wish to press the amendments.

Mr John Home Robertson (East Lothian) (Lab): I think that she might seek to withdraw them.

Cathie Craigie: I am speechless—support from the Executive! I will press the amendments.

Amendment 198 agreed to.

Amendments 199 to 201 moved—[Cathie Craigie]—and agreed to.

Schedule 4, as amended, agreed to.

Section 123—Suitability of applicants

Amendments 141 to 144 moved—[Johann Lamont]—and agreed to.

Section 123, as amended, agreed to.

Section 124—Suitability of living accommodation

The Convener: Amendment 38, in the name of Scott Barrie, is in a group on its own.

Scott Barrie (Dunfermline West) (Lab): If members can cast their minds back—I know that it is a long time ago—to day 1 of our stage 2 consideration of the bill, they will see that amendment 38 is the final amendment in the group of amendments on a similar issue to which I spoke on that day.

Amendment 38 would require local authorities to consider a property's energy efficiency when they consider its suitability as living accommodation for an HMO licence. The amendment would complement the insertion into the tolerable standard of the requirement for "satisfactory thermal insulation". It would also complement the Scottish Executive's work on fuel poverty.

As members will probably have read, the 2002 Scottish house conditions survey reported that there were 34,000 privately rented households in fuel poverty, which accounts for one household in five in that sector. Following the recent large price increases in electricity and gas, the figures are now likely to be considerably higher.

To date, most of the work that has been done on fuel poverty has focused on the social rented sector. Amendment 38 would provide local authorities with more powers to improve the standard of energy efficiency within the private rented sector, which is one of the key aims of the bill.

I will be interested to hear the minister's response to those points.

I move amendment 38.

The Convener: As no other member wishes to comment, I invite the minister to respond.

Johann Lamont: I recognise that the desire to see measures to encourage improvements in the energy efficiency of housing has been a theme of the committee's discussion on the bill, but I do not think that amendment 38 would achieve that.

The existing criteria for determining whether a property is suitable for use as an HMO deal with issues such as the health and safety of the occupants and the property's location. With such issues, the risk that a problem will arise is clearly increased by the fact that a greater number of people will live in the property. The same cannot

be said of energy efficiency. It is difficult to see the relevance of such a criterion in deciding whether a property is suitable for being an HMO. No such consideration is required for other rented housing. The amendment might result in a local authority declaring that a property is suitable for renting by a family or an elderly couple but not sufficiently energy efficient to provide accommodation for a group of students or farm workers. As that would not be appropriate, I invite Scott Barrie to seek to withdraw amendment 38.

Scott Barrie: The minister is at least consistent, given that she advanced the same argument for rejecting previous amendments on day 1 of stage 2. I certainly take the minister's comments on board.

I think, however, that the matter is something that we need to return to because the energy efficiency of property is a key component that is missing from the bill. In seeking to withdraw amendment 38, I give notice—as I did with regard to my previous amendments—that I may wish to return to the matter. I therefore welcome the minister's commitment to address the issues and I hope that she will discuss the subject with me between now and stage 3.

Amendment 38, by agreement, withdrawn.

Section 124 agreed to.

After section 124

10:00

The Convener: Members will note that the next amendment that we will consider is in the name of Pauline McNeill, who is the convener of the Justice 1 Committee. Because of her commitment to that committee, she is unable to join us today to speak to the amendments in her name. Members may want to consider whether they wish to move amendments on her behalf.

Amendment 183, in the name of Pauline McNeill, is grouped with amendment 184. Does any member wish to move amendment 183?

Mary Scanlon: I am interested to hear the ministerial response.

I move amendment 183.

The Convener: Minister, can you respond to the amendments?

Johann Lamont: I am unable to respond to any points that Pauline McNeill may have made on the amendments. It is interesting that Mary Scanlon has moved amendment 183, given her earlier comments on planning.

I understand the concern that underlies the amendments. The high concentration of HMOs in certain areas may change the character of the community and have an impact on the local environment and local services. Those issues have been raised by constituents in Pauline McNeill's constituency and elsewhere—indeed, they are issues that Pauline McNeill has consistently raised with me and other ministers in the past. I do not support the amendments because I believe that the planning system is the appropriate mechanism to address such problems where they arise.

The Executive is not in favour of a statutory link between licensing and planning. We must remember that the definition of an HMO covers a huge range of different types of property and different uses. HMOs are not only student flats, although that is the character of the sector in some areas; they also provide much-needed accommodation for people who are essential to the economy in many cases, and for people who need some support in their daily lives.

The purpose of the planning system is to manage development by taking into account, for example, all the factors that affect a community as a whole, and to determine whether a development should be permitted in a particular locality. In most areas, the development of a new HMO would not have any adverse impact. In some areas, HMOs are needed to house workers in seasonal occupations or on major infrastructure projects. However, I appreciate that in other areas there are large numbers of HMOs. In such places, the planning authority needs to consider whether planning policy should be put in place to address planning concerns about further HMO developments.

A planning authority needs to take a view in each case on whether a new HMO would require planning permission. Local planning policies can set out criteria against which applications for planning permission can be determined. It is also for the planning authority to decide where to focus enforcement action if planning permission is not obtained where it should be. The aim of HMO licensing is primarily to protect tenants by improving the quality and management of individual properties. Conditions can be attached to licences to address wider issues, such as antisocial behaviour or maintenance of common parts of the building. However, it should generally be within landlords' control to meet the requirements of HMO licensing. That would not be the case if the granting of a licence were dependent on planning considerations.

I believe that local planning authorities can, through their local planning policies and enforcement powers, address concerns about problems with local amenity, which might arise with large increases in the concentration of HMOs.

I am aware that Pauline McNeill spoke on those issues in the recent debate on planning reform; if she believes that there are deficiencies in the planning system in relation to HMOs, there are opportunities for her to raise those matters in the proposed planning bill or in other parts of the reform process. The functions of planning and licensing as they control HMOs are quite distinct. I do not believe that it would be appropriate to make a statutory link between them.

I therefore ask Mary Scanlon to seek to withdraw amendment 183, which she moved on Pauline McNeill's behalf, and not to move amendment 184.

Mary Scanlon: That has been helpful in clarifying the situation. Various people raised the issue at the planning event on Saturday, especially in relation to housing in St Andrews, and I will respond to them. I will raise the matter during consideration of the planning bill, should I continue to serve on the committee.

Amendment 183, by agreement, withdrawn.

Amendment 184 not moved.

Sections 125 and 126 agreed to.

Section 127—Duration of HMO licence

The Convener: Amendment 98, in the name of the minister, is in a group on its own.

Johann Lamont: Amendment 98 will allow a local authority to grant an HMO licence for a period shorter than three years. The minimum period will be six months. I still believe that the standard length of licence should be three years and that, in most cases, the additional cost and effort that would be involved in annual renewals would not be justified. However, I have listened to the concerns that were expressed that local authorities need flexibility to deal with exceptional circumstances by granting shorter licences in some cases. Amendment 98 responds to those concerns. [*Interruption.*]

The Convener: We have been advised of technical difficulties, so I suspend the meeting for a short comfort break.

10:08

Meeting suspended.

10:17

On resuming—

The Convener: I understand that our technical glitch has been rectified. Since the system has been down, I ask members to remove their cards and replace them into the consoles.

We return to amendment 98.

Johann Lamont: We have not specified any criteria for awarding a short licence, but local authorities will have to explain their reasons as part of the notification process. The guidance will stress that short licences should be given only in exceptional cases.

I move amendment 98.

Tricia Marwick: I am confused by amendment 98. I presume that there is no intention that the conditions for a short licence will be any less rigorous than those for a three-year licence. If the six-month licence is to be as rigorous as a three-year licence, I am confused by the idea of a probationary HMO licence. If someone is a fit person and they meet the criteria, and the local authority is satisfied, I cannot see the difference between three years and six months. What are the exceptional circumstances that local authorities have put forward? I cannot envisage the circumstances in which a licence would be required for six months, if the same criteria that applied to the longer period had to be met.

Johann Lamont: The licence is not intended to be a probationary licence, nor is it intended that it will become the norm. Amendment 98 is a recognition that local authorities asked for that flexibility. Local authorities would have to explain in their notification why they were granting a shorter licence than normal. The three-year licence was intended to reduce the costs to landlords and local authorities of renewing licences annually. However, amendment 98 was a response to local authorities' requests for a fallback position or safety net, whereby although they might feel that it is appropriate to give a licence, they would like to keep a closer eye on the situation.

As a caveat, I repeat that the short licence will not be the norm. Local authorities will have to explain the situation when they issue their notification.

Amendment 98 agreed to.

The Convener: Amendment 99 is grouped with amendments 100, 185, 186, 189 and 192.

Johann Lamont: I will speak to the amendments in Malcolm Chisholm's name—amendments 99 and 100. If it is acceptable, I will also address the issues that are highlighted by the other amendments in the group, which are in the name of Pauline McNeill; I do not yet know whether those amendments will be moved.

The Convener: That is acceptable.

Johann Lamont: Amendments 100 and 186 take different approaches to dealing with a change of ownership of a licensed HMO. Amendment 99 is consequential on amendment 100.

Under the current legislation, a licence expires when the licence holder no longer owns the property. The new owner must apply for a licence and, technically, commits an offence if they continue to operate before the application has been determined. We want a check to be done on any new landlord, but it should avoid causing any unnecessary disruption to tenants.

Subsection (3) of the new section that will be inserted by amendment 100 reinstates the basic position that a licence expires when ownership transfers. However, the amendment also allows the licence to transfer if the new owner is a registered landlord. To grant an HMO licence, the local authority has to be satisfied that the property is suitable and that the owner is a fit and proper person. In this situation, the property has been approved because an HMO licence is already in force and the owner has been approved because he or she is already registered under the Antisocial Behaviour etc (Scotland) Act 2004. It is not necessary to own any property to be registered, so registration can be carried out before the sale goes through. When those two requirements are satisfied, the existing licence will transfer to the new owner of the property for one month after the transfer of ownership. That gives the new owner time to submit an application in their name. As long as that is done before the month expires, the existing licence will continue in force until the new application is determined, as happens with all renewals.

Pauline McNeill's amendment 186 would allow the licence to transfer in all cases and would require the new landlord only to notify the local authority within 14 days. Presumably the authority would then have to consider whether the licence was still held by a fit and proper person and take steps to revoke the licence if that was deemed necessary. Our approach will provide more effective control.

Amendment 186 would require the local authority to be notified of changes to the physical state of the property or the number of occupiers. I realise that the existing legislation includes a provision that requires the licence holder to notify the licensing authority of any material change. That was considered and the deliberate decision was taken not to include an equivalent provision in the bill. Amendment 186 does not make it clear what should be considered to be a material change to the property, therefore licence holders would not be certain of when to notify their licensing authority and it would be difficult to take any action against them on that basis. Pauline McNeill's amendment 185 tries to cover that issue, but it shows how complicated it is.

The most appropriate way in which to deal with changes to licensed HMOs is through licence conditions. It is an offence to breach a condition of the licence. If the licence holder wants to make a change that would lead to a breach of the licence's conditions, he or she should apply for a variation before making the change. I am not in favour of notification after the fact. If the change makes the property unsuitable for the number of occupants, we would then have to ensure that whatever had been done was undone. It is generally easier to ensure that such a change is not made in the first place.

The bill gives ministers powers to specify mandatory conditions to be included in licences. A primary condition is the permitted number of occupiers, which must not be exceeded. It would be possible also to require a schedule of key physical features that were approved when the licence was granted. Any change to those features would require permission from the licensing authority. That approach would give the level of detail that is required and the schedule would be tailored to the individual property so that it is clear to the licence holder what changes need to be notified.

I agree that the licensing authority needs to know when changes are made, but I believe that that is best achieved through licence conditions, which can be tailored to individual circumstances, rather than in the bill. It is for members of the committee to decide whether to move amendments 185, 186, 189 and 192. If they are moved, I hope that members will agree with my position.

I move amendment 99.

The Convener: Ms McNeill is not here to speak to her amendments. Does any member of the committee wish to speak to them?

Members *indicated disagreement*.

Amendment 99 agreed to.

Section 127, as amended, agreed to.

Section 128 agreed to.

After section 128

Amendment 100 moved—[Johann Lamont]—and agreed to.

Amendments 185 and 186 not moved.

Section 129 agreed to.

Section 130—Variation of HMO licence

Amendments 101 to 105 moved—[Johann Lamont]—and agreed to.

Section 130, as amended, agreed to.

Section 131—Revocation of HMO licence

Amendment 106 moved—[Johann Lamont]—and agreed to.

Section 131, as amended, agreed to.

Sections 132 to 135 agreed to.

After section 135

10:30

The Convener: Amendment 159, in the name of John Home Robertson, is grouped with amendments 187 and 117.

Mr Home Robertson: Amendment 159 is on inquiries by local authorities into houses in multiple occupation. Section 117(1) states that HMOs "must be licensed". Most landlords are responsible and they ensure that their properties comply with the relevant safety regulations. However, not all landlords are responsible. My concern is that, as things stand, the onus is on the owner or the landlord to register a building in multiple occupation. The purpose of amendment 159 is to give local authorities the power to go looking for unlicensed HMOs or, at the very least, to act on information that is received concerning HMOs that may not be licensed.

The example that I have in mind is the situation of foreign workers who may be organised by gangmasters in various parts of Scotland. From time to time, there has been some publicity about people who work in fish-processing factories in the north-east of Scotland and about others who work in mainly food-related businesses around the country. I have specific concerns about a mushroom farm in my constituency. I do not know where the people who work there are living. There are reports that a significant number of people from eastern Europe—from Ukraine, Belarus, or wherever—are living in houses of multiple occupation in Edinburgh and elsewhere in Scotland, yet nobody knows whether those properties are properly regulated.

Cathie Craigie has referred to the state that some of the properties can be in and the conditions in which such people may be living. My concern is that the people may be frightened, vulnerable and even in danger. I therefore think that it is important that local authorities should try to deal with the situation and ensure that that kind of property is properly regulated. The purpose of amendment 159 is to empower local authorities to go looking for unregistered HMOs, or at least to act on information that is received from any quarter on such issues.

Amendment 187, in Pauline McNeill's name, approaches the same issue from a slightly different angle. It would be the height of impertinence for me to talk about Executive amendment 117. No doubt, the minister can address that one.

This is a serious issue and I hope that the Executive will be prepared to consider ways of enforcing the legislation more effectively in that sort of situation.

I move amendment 159.

The Convener: As Pauline McNeill is not here to speak to amendment 187, I ask the minister to speak to amendment 117 and to the other amendments in the group.

Johann Lamont: I appreciate the concerns that have been raised by the amendments in the names of John Home Robertson and Pauline McNeill. However, it is amendment 117 that provides what is necessary to allow local authorities to investigate unlicensed HMOs.

On the specific point with which John Home Robertson illustrated his concerns, we have made sure that the Gangmasters (Licensing) Act 2004 allows the Gangmasters Licensing Authority and local authorities to exchange information to help them to find the HMOs. That will be helpful in relation to the points that John Home Robertson has identified.

Local authorities investigate all sorts of suspected HMOs under the current legislation. Information may come from complaints or other external sources, or from active searching. That may mean licensing officers knocking on doors in the student area of a city or visiting farms and other rural businesses that are likely to employ seasonal workers. If they come across a property that appears to be an unlicensed HMO, they will check whether it meets the criteria for an HMO and whether it is exempt for any reason. If it should be licensed, licensing officers will then pursue the matter and, if necessary, submit a report to the procurator fiscal. All that is done under local authorities' general powers and a right of entry to any suspect premises.

Rights of entry in relation to all parts of the bill are provided in part 7. Amendment 117 will give local authority officers the right to enter any living accommodation to decide whether it is an HMO that requires to be licensed. No warrant is required for them to do so, but a warrant can be obtained to exercise that right in the face of refusal, and force may be used if necessary. Constables can enter any premises if they suspect that an offence is being committed such as the operation of an unlicensed HMO. That provision needs a small change, which I will come to later.

I hope that the committee—and John Home Robertson in particular—will be satisfied that amendment 117 achieves what is being sought

and will agree that it is better done within the existing provisions for rights of entry. I therefore ask John Home Robertson to seek leave to withdraw his amendment.

Christine Grahame (South of Scotland) (SNP): I am interested in what the minister says and I am very supportive of what John Home Robertson has said. There are instances of what he described in East Lothian that we know of, but there will be others that we do not know about, which have not been brought to the attention of MSPs or the authorities because people are too frightened to speak up.

I was interested in the minister's remarks about the Gangmasters (Licensing) Act 2004. I take it that that is UK legislation. If the provisions of that act are to be implemented, it would be useful if reference was made to it in the bill. There can be cross-references to powers in that act so that people will know whether remedies exist other than those that are apparent in independent Scottish legislation. I was unaware of the provisions and ask the minister whether there could be such cross-references.

The Convener: The minister does not need to speak again, but she may respond to that specific point if she wants to do so.

Johann Lamont: I am always happy to highlight where Westminster can support our policy drives and commitments, which it can do on a range of matters, and am certainly happy to take advice on technicalities. However, the point that I was making about the issue that John Home Robertson seeks to address through the bill is that we have been proactive in ensuring that the mechanism that I mentioned exists under the Westminster legislation.

Mr Home Robertson: On what Christine Grahame said, it is obviously important that legislation should be joined up. If different agencies are enforcing legislation in the same general area, it is important that everybody concerned is aware of their rights and obligations and that information that is gleaned by one enforcement authority is passed on to another enforcement authority where that is required. The minister has clearly said that that should happen under the Gangmasters (Licensing) Act 2004 and that information about HMOs that is obtained by officers who work for a United Kingdom Government agency should be passed on to and acted on by the relevant authorities. That may not need to be covered by the statute, but it certainly needs to be covered somewhere in the guidance. Perhaps returning to the matter would be useful.

I am grateful to the minister for her response, as I have made clear that the issue is serious. I am genuinely worried about what might be happening to people. There is a risk that serious abuses are taking place.

Amendment 117 will create new powers of entry, but a statement of intent to tackle such abuse proactively would be useful. There could be a case for returning at stage 3 to the general issue of the need for joined-up government and linking the Westminster act to what is being done in Scotland, but in view of what the minister has said about the Executive taking the issue seriously and wanting to tackle the problem, I am content to seek to withdraw amendment 159.

Amendment 159, by agreement, withdrawn.

Amendment 187 not moved.

Sections 136 and 137 agreed to.

After section 137

The Convener: Amendment 164, in the name of the minister, is grouped with amendments 165 to 172, 188, 190, 191, 173 to 175, 177 to 179, 205, 180 and 181.

Johann Lamont: I will not press the convener's tolerance too much, but members will accept that there is a substantial amount to say about this group of amendments.

I will start with amendment 205, in the name of Cathie Craigie, which would retain certain provisions of the Housing (Scotland) Act 1987. Part 8 of the 1987 act gives local authorities various powers in relation to HMOs, which are defined as

"houses let in lodgings or occupied by more than one family".

Those powers have been largely obsolete since the introduction of mandatory HMO licensing, but the sections that would be retained under the amendment are still used. They allow a local authority to serve a notice requiring the owner of a HMO to carry out works to make the home suitable for the number of people living in it, including proper provision for escape in case of fire. If the notice is not complied with, the local authority can do the work and recover its costs.

As drafted, the bill would repeal those powers without replacing them. The principal way of improving the physical and management standards in HMOs is through licensing. In order to obtain and keep an HMO licence, landlords must meet the standards that are set by the local authority for space, physical safety, and facilities. A small number of landlords still flout the law and refuse to comply with the requirements. They will be prosecuted but, in the meantime, their tenants may still be living in appalling conditions. Therefore, I have been persuaded that powers should be available to improve those properties,

and the amendments in this group establish such powers in the form of an HMO amenity notice. Rather than retain powers from a separate regime, we will establish HMO amenity notices that will be part of a coherent system that uses a single definition of an HMO and procedures that are consistent with other interventions under the bill.

A local authority will be able to serve an HMO amenity notice on any living accommodation that should be licensed, whether it is or not. The trigger will be that the accommodation is not reasonably fit for occupation by the number of people occupying it. The authority will take into account ventilation, lighting and heating, water, gas and electrical supply, and facilities for sanitation, washing and cooking. The notice will require works to be carried out to remedy whatever defects are found in order to make the accommodation fit for occupation.

An HMO amenity notice may not require the owner to take any fire safety measures within the meaning of the Fire (Scotland) Act 2005. That act transfers responsibility for enforcing fire safety measures in all licensable premises, including HMOs, to fire and rescue authorities and joint fire and rescue boards. We do not want to dilute that responsibility by giving local authorities separate powers to require fire safety measures in HMOs. We have provided that the fire and rescue service will be copied into all correspondence on HMO licensing, and I am sure that close joint working between local authorities and fire and rescue services will continue.

The procedures for serving and enforcing HMO amenity notices are modelled on those that are used in part 1 of the bill for work notices and repairing standard enforcement notices. There is provision for notification, appeals, rights of entry, evacuation of occupiers and so on. The important point is that local authorities will be able to carry out the work and to recover their expenses from the owner if the notice is not complied with. HMO amenity notices can be used when landlords refuse to meet their obligations under the licensing system. They will also give local authorities a means of improving conditions for tenants in addition to taking action against the landlord.

I would like to speak about amendment 188, in the name of Pauline McNeill, which would introduce a power of closure. I understand the wish to have a direct way of stopping unlicensed HMOs. However, it is never that simple when dealing with people's homes. Tenants may have moved into a property quite innocently, and there may not be any obvious alternative accommodation for them. The issue has been considered at length, but I am not persuaded that a power of closure would be an effective addition to the range of powers and sanctions that have been put in place to tackle unlicensed and poorly managed HMOs.

It is important to keep in mind that the new HMO regime will form a package along with landlord registration under the Antisocial Behaviour etc (Scotland) Act 2004. If a landlord contravenes housing law by letting an HMO without a licence, their registration will almost certainly be revoked. If he or she continues to let property after that, a notice may be served so that no rent is payable. No part of that process requires court action, although there is, of course, provision for appeal. If no rent is coming in, a landlord will have very little incentive to continue operating.

The rent penalty notice is a powerful tool against a landlord who refuses to get a licence. There are specific powers to tackle problems with the property. If the property poses a danger to occupiers, neighbours or passers-by, an HMO amenity notice may be served. If necessary, the property may be closed under fire and building legislation. Action may be taken directly against occupiers who engage in antisocial behaviour; they may be banned from the area and the house may be closed. Those are appropriate powers to deal directly with problems that are not confined to houses in multiple occupation or to rented housing.

Additional sanctions against landlords, such as closing a property or having the local authority take over its management, have been considered. Both options would require significant safeguards to ensure that no one was wrongly deprived of the right to use their property as they wish. I note that amendment 188 does not provide for appeals, which would be essential, or for other proper procedures. The options would also create extra responsibilities for the authority in finding alternative accommodation for the tenants and in taking on the long-term management of the property.

10:45

The most effective sanction is to hit unlicensed landlords in the pocket. I am confident, therefore, that the rent penalty notice will provide an effective deterrent. A further financial deterrent is the penalty imposed on conviction for an offence. I know that concerns have been raised about the level of fines that have been imposed on landlords who have been convicted of letting unlicensed HMOs. The level of fine that is imposed is a matter for the sheriff to decide, but the maximum fine that is available is also an issue. I do not think that it is acceptable to have different levels of fine depending on where the offence is committed, as would be the case if amendment 190 were agreed to. I appreciate that the bill gives ministers powers to set fees, but there is no requirement for a single

fee across Scotland, and the amendment clearly envisages that fee levels would vary geographically.

Many local authorities also use a sliding scale of fees, depending on the number of occupiers. Let me give you some figures. At current rates, the amendment would give maximum fines ranging from £200 to £3,400 for operating a four-person HMO without a licence, and from £200 to £13,000 for operating a large hostel without a licence. Just by moving across a council boundary, a criminal landlord could significantly reduce the financial risk of operating illegally, and that cannot be right. I do not feel able to support amendment 190, but I recognise the concerns about the level of fines relating to HMO licensing and would be interested in discussing the issue further with Pauline McNeill or other members of the committee, if they are interested, before stage 3.

In relation to amendment 191, the arguments for raising the principal fine also apply to some of the other offences, such as breaching the conditions of a licence, where tenants may be equally at risk. I am not convinced that it is necessary to raise the fine for representing an expired licence as valid. Using an expired licence is a relatively minor offence in itself. If the offender is also operating an HMO at that time, the higher fine will come into play. Obstructing someone from carrying out their duties is an offence in many pieces of legislation and carries a standard fine, but I am happy to include those details in discussions on the complete package to cover all offences and penalties, so I ask Cathie Craigie not to move amendment 205.

I move amendment 164.

Cathie Craigie: I thank the minister for highlighting my reasons for lodging amendment 205 and for outlining the amendment's purpose and effect. As she pointed out, sections of the Housing (Scotland) Act 1987 have been used by local authorities in the past. For example, in the year to 2005, the City of Edinburgh Council served five notices under sections 161 to 165 of the 1987 act on landlords about whom they were concerned. I wanted to hear that there was an alternative and that somebody somewhere would have a power under the new legislation to ensure that action was taken against unlicensed landlords who did not provide a proper means of escape from fire. Having heard what the minister said, I am confident that that is covered.

I want to say a wee bit about amendments 190 and 191. There is merit in the intent of the amendments, but I accept the difficulty that the minister raises about having different levels of fines in different local authority areas. We have to send a clear message out in the legislation and must give local authorities clear powers to punish landlords who evade licensing and who are seen to be flouting the law. In my opinion, the fines are not high enough at present. I appreciate that the minister is willing to discuss that with Pauline McNeill and other members of the committee between now and stage 3 to see whether we can find a solution to the problem. We all recognise that it is a problem and that just asking somebody to apply for a licence and pay a fine of a few hundred pounds is not enough of a deterrent to stop people taking a chance and remaining unlicensed, so I welcome the opportunity to discuss that.

Patrick Harvie: The HMO amenity notices that are set out in these pretty substantial amendments are certainly strong, although "draconian" might be too strong a word to describe them. I suppose that ministers would be more comfortable with calling the measure "tough". If you ask me, "tough" and "draconian" are simply two sides of the same coin.

First, has the Executive consulted any organisations that might have a position on this fairly substantial addition to the bill? If so, I would like to know their views and, indeed, how the Executive has consulted them.

Secondly, amendment 166 says:

"The local authority may revoke an HMO amenity notice".

Will the minister tell me in everyday language whether that means that notices are expected to be revoked or will not be enforced if conditions change or if the information on which assumptions such as the number of people in a particular property were based and which led to the amenity notice proves to be incorrect?

Tricia Marwick: As Patrick Harvie pointed out, we are dealing with several substantial amendments at stage 2. In the interests of making good legislation, we should have had the opportunity to take evidence on them. That is not to say that I disagree with these amendments. On the surface, they seem entirely sensible. Patrick Harvie might not like the idea of draconian measures, but I have no problem with taking draconian steps against landlords who put at risk the people who live in their accommodation. I am not criticising the minister, but I simply wish to raise a general point about legislation. When huge amendments are lodged at stage 2 that insert large sections into the bill and give bodies incredible operational powers, we should consider taking evidence on them.

Johann Lamont: In making legislation, you are damned if you do and damned if you don't. It is a matter of judgment whether an amendment that we introduce is a positive response to arguments that have been made by the committee or by people with serious concerns that the bill contains weaknesses that must be addressed, or whether it

is a step too far and we should have ensured that everyone is on board. We have to deal with such matters almost on a case-by-case basis.

Moreover, size is not necessarily what it appears to be. For example, much of amendment 164 is about procedure and process. A very small amendment might, in policy terms, take a much greater leap into the unknown. Again, the size of an amendment is a matter of judgment. It is not for me to tell the committee what its response to any amendment should be or what action it should take.

I should point out that amendment 164 reinstates something that the bill originally removed and that, as Cathie Craigie pointed out, was seen as necessary. On Patrick Harvie's point, as the powers will be given to local authorities, it will be up to them to decide how they are exercised.

I ask members to support amendment 164 because we feel that this provision must be reinstated and believe that we must address certain concerns around the issue. Amendments can always be scrutinised further at stage 3 and I am, as ever, more than happy to discuss with individual committee members the implications or consequences of amendments that they did not envisage.

The Convener: The question is, that amendment 164 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)
Grahame, Christine (South of Scotland) (SNP)
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

Harvie, Patrick (Glasgow) (Green)

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

Amendment 164 agreed to.

Amendments 165 to 168 moved—[Johann Lamont]—and agreed to.

After schedule 4

Amendment 169 agreed to.

After section 137

Amendments 170 to 172 moved—[Johann Lamont]—and agreed to.

Amendment 188 not moved.

Section 138—Offences relating to HMOs

Amendment 145 moved—[Johann Lamont] and agreed to.

Amendment 189 not moved.

Amendments 146 to 148 moved—[Johann Lamont]—and agreed to.

Section 138, as amended, agreed to.

Section 139 agreed to.

Section 140—Penalties etc

Amendment 149 moved—[Johann Lamont]—and agreed to.

Amendment 190 not moved.

Amendments 150 and 151 moved—[Johann Lamont]—and agreed to.

Amendments 191 and 192 not moved.

Section 140, as amended, agreed to.

Section 141—Disqualification orders etc

Amendments 152 to 154 moved—[Johann Lamont]—and agreed to.

Section 141, as amended, agreed to.

Section 142—Notice of decisions

Amendments 107, 173, 108 to 110 and 174 moved—[Johann Lamont]—and agreed to.

Section 142, as amended, agreed to.

Section 143—Part 4 appeals

11:00

The Convener: Amendment 111, in the name of the minister, is grouped with amendment 112.

Johann Lamont: Amendments 111 and 112 are technical amendments, which correct an omission in relation to appeals. When a sheriff confirms or quashes a decision of the local authority, that results in a confirmation or quashing of whatever the decision created. For example, if the local authority has decided to grant a licence and the sheriff overturns the decision the licence is also quashed. The bill as drafted makes that provision in relation to licences and orders but does not cover requirements that may be made under section 137. Amendments 111 and 112 add requirements to the relevant sections.

I move amendment 111.

Amendment 111 agreed to.

Amendments 112 and 175 moved—[Johann Lamont]—and agreed to.

Section 143, as amended, agreed to.

Section144—HMO register

Amendment 155 moved—[Johann Lamont]—and agreed to.

Amendments 202 and 203 moved—[Cathie Craigie]—and agreed to.

Section 144, as amended, agreed to.

Section 145—Fees

The Convener: Amendment 113, in the name of the minister, is in a group on its own.

Johann Lamont: Section 145 gives ministers powers to make provision, by order, for the charging of fees for HMO licences. The section states that ministers may, for example, set the amount of the fees, set out how fees are to be arrived at and specify circumstances in which no fee is payable. Amendment 113 would add to that list of examples

"circumstances in which fees are to be refunded."

As members will know, we do not intend to commence the bill's provisions on HMOs for some years, until other legislation on private landlords is fully implemented. Therefore, we have no specific proposals at the moment for how those powers will be used, but there may be a case for refunds if, for example, an exemption order means that a licence is no longer required for a particular property.

Although the list in section 145(3) is illustrative rather than exclusive, I believe that it would be helpful to add refunds to it.

I move amendment 113.

Amendment 113 agreed to.

Section 145, as amended, agreed to.

Sections 146 and 147 agreed to.

Section 148—Joint licence holders

Amendment 114 moved—[Johann Lamont]—and agreed to.

Section 148, as amended, agreed to.

After section 148

Amendment 156 moved—[Johann Lamont]—and agreed to.

Section 149—Interpretation of Part 4

Amendment 115 moved—[Johann Lamont]—and agreed to.

Section 149, as amended, agreed to.

Sections 150 to 154 agreed to.

Section 155—Matters relevant to deciding whether person is fit and proper to act as a landlord

The Convener: Amendment 163, in the name of Patrick Harvie, is grouped with amendment 195.

Patrick Harvie: Amendment 163 would amend section 155 of the bill, which amends section 85 of the Antisocial Behaviour etc (Scotland) Act 2004 in relation to the criteria for the fit-and-proper-person test. As members will recall, I was happy to support those criteria at the time.

In deciding whether an applicant is a fit and proper person, local authorities are currently required to consider a number of issues, including whether the individual has

"practised unlawful discrimination on grounds of sex, colour, race, ethnic or national origins or disability in, or in connection with, the carrying on of any business".

That was entirely proper at the time, because those were the only unlawful forms of discrimination when the Antisocial Behaviour etc (Scotland) Act 2004 was passed. Since then, the additional grounds of religion or belief and sexual orientation have been added to protect people against discrimination on those grounds in employment and vocational training. Westminster is expected to introduce a single equalities bill at some point and I expect that discrimination on those grounds in the provision of goods and services will be made unlawful. However, discrimination

"in, or in connection with, the carrying on of any business"

could include discrimination in employment, so it seems reasonable for all forms of discrimination to be included rather than only those that were unlawful when the Antisocial Behaviour etc (Scotland) Act 2004 was passed.

People will be protected from discrimination on the ground of age by early December 2006 at the latest. The inclusion of age in my amendment might seem superfluous, but it will not affect the operation of the fit-and-proper-person test in a negative way and it will kick in when protection from age discrimination comes into law. I hope that members agree that my amendment simply updates the fit-and-proper-person test to take account of the legislation that has been passed since 2004.

I move amendment 163.

Johann Lamont: I am sympathetic to Patrick Harvie's amendment 163. It is right that, in carrying out the fit-and-proper-person test, the local authority should consider material that shows that a landlord or agent has been discriminating unlawfully and I agree that we should ensure that the legislation keeps pace with discrimination law.

However, there is a technical difficulty with the amendment in that, as Patrick Harvie indicated, age discrimination is not yet unlawful so the reference to age in the amendment would have no effect. We could live with that, but it would be helpful if the bill included a broader provision that avoided that difficulty and ensured that any future changes in discrimination law were covered. I am happy to make a commitment to lodge an amendment to that effect at stage 3.

Of course, whatever material relating to discrimination the local authority takes into account, its decision will ultimately be based on what information it considers to be relevant to the letting of houses.

Amendment 195 seeks to make three further changes to the Antisocial Behaviour etc (Scotland) Act 2004—certain changes are already included in section 155 of the bill. All the changes will improve the operation of the registration scheme in part 8 of the 2004 act in the light of consultation on the detailed implementation of the scheme and the development work on the electronic and other systems that will be used to bring registration into force next year.

The main effect of amendment 195 is to manage the way in which information in the register is made available to the public. Currently, the act provides for uncontrolled access to the name and address of the landlord and agent and to a list of all the properties that the landlord owns. The system makes information available for legitimate purposes to tenants, prospective tenants and neighbours. The use of an internet-based registration system brings economies and other advantages, but it also means that information could be trawled easily for malicious or intrusive purposes.

The amendment seeks to limit the ways in which information is made available and to allow local authorities, on application, to provide the information that is defined in the act as public information if they are satisfied that it is appropriate to do so. The amendment therefore links access with the purpose of access. That is already done in connection with, for example, the electoral register. The amendment is a response to the serious concerns that were voiced across the board during the recent consultation on the detailed implementation of registration.

The amendment will allow local authorities to withhold details from the public register if they might jeopardise security, safety or welfare—for example, in the case of women's refuges. The amendment will also close a loophole that would have allowed a person who had been refused registration to reapply immediately and be protected from prosecution while the new application was being processed.

I invite Patrick Harvie to withdraw amendment 163 on the basis of my commitment to lodge an amendment on discrimination at stage 3.

Scott Barrie: I was tempted to support amendment 163, but I note what the minister said. Given that she has made a genuine and explicit agreement to lodge an amendment that will encompass other anti-discriminatory legislation, we should wait until stage 3 for that.

11:15

Patrick Harvie: I am grateful to the minister for her assurance about lodging an amendment at stage 3 to take account of the points that I raised and I look forward to seeing the amendment. I would expect nothing less from a minister who made such a robust defence of equality legislation last week in the chamber. I seek to withdraw amendment 163.

Amendment 163, by agreement, withdrawn.

Christine Grahame: On a point of order, convener. I wonder whether anyone finds this room very cold. I do not know whether it is just me, but I find it cold at this end.

The Convener: It is generally cold. I asked the clerks to make inquiries about it some time ago.

Christine Grahame: Thank you. Some of the Executive officials are sitting here with blankets round their knees.

The Convener: I hope that the situation will soon be rectified.

Section 155 agreed to.

After section 155

The Convener: Amendment 194, in the name of the minister, is in a group on its own.

Johann Lamont: Amendment 194 alters the Housing (Scotland) Act 1988 so that a landlord can seek possession from the court under a contractual assured tenancy and evict the tenant on the ground of antisocial behaviour, even though the terms of the tenancy agreement do not say that that can be done.

It allows a private sector landlord to take action against antisocial behaviour more quickly and effectively than at present. As things stand, the landlord has to serve a notice to quit and after that has taken effect and the tenancy is converted from a contractual to a statutory assured tenancy, the landlord can then seek possession on the ground of antisocial behaviour. That process stands in the way of effective action on antisocial behaviour and, in the current social environment, any tenant would be aware that antisocial behaviour in and around the house was unacceptable and could

threaten the tenancy without needing to have that written down as a term of tenancy.

I move amendment 194.

Christine Grahame: I am pleased with amendment 194. Most of us have cases that fall through holes in the law when we are unable to resolve matters for constituents who have antisocial neighbours. I am delighted that the amendment will accelerate resolution in circumstances where there might be a gap in the law.

Johann Lamont: I welcome Christine Grahame's support and urge others to support the amendment.

Amendment 194 agreed to.

Amendment 195 moved—[Johann Lamont]—and agreed to.

The Convener: Amendment 176, in the name of Mary Scanlon, is grouped with amendments 182, 13 and 14. I point out that if amendment 182 is agreed to, amendment 13 will be pre-empted.

Mary Scanlon: As the bill is being used to amend parts of the Antisocial Behaviour etc (Scotland) Act 2004, I take this opportunity to address related issues.

Amendment 176 is a probing amendment to look for a commitment from ministers that exemptions will be included in the regulations that will be before the committee in the next two weeks.

The purpose of amendment 176 is to remove tied housing and agricultural tenancies from the requirement for regulation of private landlords under parts 7 and 8 of the Antisocial Behaviour etc (Scotland) Act 2004. If a farmer or other landlord lets houses to third parties, he will be registered anyway under a legal tenancy agreement.

However, if it is necessary for an employee to be located on a farm to operate the business, that is part of the employment contract. The sanction of a rent penalty notice would be inoperable for tied properties because rent is prohibited by the agricultural wages order. I understand that Scottish ministers have expressed a commitment to exclude owners of houses that are subject to agricultural and crofting tenancies from the requirement for registration under part 8 of the 2004 act.

Under such arrangements, the house is a secondary consideration and the responsibilities of landlords and tenants are very different to those for a residential letting. For consistency, therefore, I ask that that exclusion should also apply to the requirements set out in part 7 of the 2004 act, which deals with local authority powers to serve antisocial behaviour notices on landlords as a mechanism to ensure that they control the behaviour of antisocial tenants.

Amendment 182, which is also in my name, seeks to leave out definition (b) of "tenancy" in section 168(1):

"any occupation of living accommodation by a worker employed in agriculture under that person's terms of employment".

The point is that the living accommodation is one of the terms of employment and not subject to a legal tenancy agreement between a landlord and a tenant. I understand that, legally, a tenancy agreement would have a lease, terms of rent and a time period. Security of tenure does not apply to tied housing; if a person leaves the job, they leave the house. A tied house is part of a contract of employment and, as such, should be dealt with under employment legislation, which is currently reserved to Westminster, I understand.

I ask the minister whether it is valid to deal with employment contract matters under housing legislation. A worker in a tied house will have the repairing standard outlined in his employment contract in greater or lesser detail. There is no legal landlord-tenant relationship; there is only a legal employment contract. If a tied house was not habitable, the employer would be in breach of contract. If an employee had to leave the house, and consequently his job, that could be a case of constructive dismissal to be dealt with by an industrial tribunal. Tied housing is an entirely separate issue from agricultural holdings that are leases of farms. A farmer may provide tied houses, whether he owns or rents a farm.

There are many examples of employees in tied houses, of which agricultural workers are one. Other examples are gardeners, gamekeepers ghillies, stalkers, ministers of religion, wardens in sheltered accommodation, public house and hotel staff and, of course, First Ministers. Tied houses for those occupations are part of an employment contract and do not seem to be included in the bill. Why should tied housing for agricultural workers be treated differently to other tied houses?

There are also implementation problems. As I said earlier, under the agricultural wages order employers cannot charge rent for tied houses, so the ultimate sanction of the private rented housing panel of withholding rent is not operable. The role of the private rented housing panel as an arbiter in an employment contract dispute would also be inoperable, because the employee is not a legal tenant.

Tied houses for agricultural workers and other types of employee should be provided and kept in a satisfactory state of repair, but the correct path for ensuring that is employment legislation, where that is deemed necessary. However, to ensure good standards in tied housing, good practice in contracts of employment needs to be encouraged in relation to the repairing standard. I fully support

having something equivalent to the repairing standard for tied housing, but it should be done through contracts of employment rather than through housing legislation.

I move amendment 176.

Johann Lamont: Mary Scanlon's amendments 176 and 182 are, in the main, intended to separate tied tenancies from other types of tenancy, so that the owners of houses that are subject to tied tenancies are not treated as landlords for some legislative purposes. I do not think that that is acceptable in principle. In response to the question that was asked, I make it clear that the regulations will not exclude tied housing. We intend to treat all tied houses in the same way.

From the point of view of the occupier, the house is that person's home. It should therefore meet the repairing standard and, by the same token, the letting of the house, whether under a lease or employment contract, should be managed in a fit and proper way. If an employer provides a house, he or she should have a responsibility to the occupant, as does a landlord under a lease. The owner also has a responsibility to the community: if the provision of a house creates a problem of antisocial behaviour in the neighbourhood, the owner should take reasonable management steps to address the occupant's behaviour, whether the owner is the employer or the landlord under a lease.

I appreciate that tied housing plays a particular role in business arrangements, particularly in the farming community. I do not accept that the registration and antisocial behaviour notice provisions in the Antisocial Behaviour etc (Scotland) Act 2004 will create serious problems for those businesses that outweigh the protections that people in tied housing should enjoy.

We will expect local authorities to give advice on how to correct an unsatisfactory situation. If an employer is not willing or able to act as an acceptable landlord, the local authority will take into account the use of an agent under section 155 of the bill.

The 2004 act allows ministers to exclude categories of house from the registration requirement by an order under the affirmative procedure and we have been consulting on that. The committee will have an opportunity to consider the issue when it deals with the order in five weeks' time.

It seems to me that the 2004 act provided a perfectly sound mechanism for considering the exclusion of houses subject to tied tenancies. I do not accept that there is a case for removing tied tenancies from the scope of the private landlord provisions in the 2004 act.

Amendment 176 would exclude agricultural holdings, smallholdings and crofts from registration. Again, that was covered in the recent consultation. The consultation paper suggested that ministers should use their order-making power to exclude houses subject to agricultural and crofting tenancies. The process of making the order should be allowed to take its course without substituting a new exclusion in the 2004 act.

The effect of amendment 182 is that the occupant of a tied house would no longer have the protection of the repairing standard and would not have a right to carry out adaptations to suit the needs of a disabled occupant. I do not think that that is right. Such protections should be available to any tied tenant. That is why we lodged amendment 13, which has the effect of extending the rights from agricultural tied tenants to all tied tenants. It also means that they will be eligible for grants or loans if they meet the criteria in section 89 of the bill.

Amendment 14 simply removes the definition of a worker employed in agriculture, as amendment 13 removes the only occurrence of that term.

I do not think that a reasonable employer concerned to provide suitable housing for an employee needs to be worried, but the registration of tied houses will help deal with employers who are not well motivated. Employment law governs the employment relationship and is not the appropriate vehicle for detailed management of the occupancy arrangement. I invite Mary Scanlon to withdraw amendment 176.

Euan Robson (Roxburgh and Berwickshire) (LD): I cannot support amendments 176 and 182, because I think they are defective in a couple of areas. Amendment 176 does not address the issue of the definitions of "landlord" and "tenancy" in part 8. Therefore, there would be a contradiction in the bill if we agreed to amendment 176.

I am not clear about the effect of amendment 182. I think it was meant to remove an extra line in addition, because I cannot make any sense of line 17 on page 91.

I listened carefully to what the minister said about employment legislation. Although I heard what she said, I think we need to consider the matter further. There are circumstances where we could be said to be intruding on employment law. For example, the consequence of someone being declared an unfit person to be a landlord would be that they would no longer be able to offer the tied house or cottage for occupancy. They would therefore not be able to continue to offer employment. It appears to me that that consequence impacts on employment law to an extent. We need to give further serious consideration to that because it would be

unfortunate if it were later shown that the Parliament had intruded into a reserved area.

11:30

I am surprised about the way in which the definitions are set out on pages 90 and 91 of the bill. If those definitions change what might be described as the current statutory provision for or definition of tenant and landlord, it would be unusual to have that definition altered at the back end of a statute on housing. I am not clear that that would set a particularly good precedent. That is also an area that we need to consider in relation to this and other legislation. For example, ought we to amend other definitions in statute? I do not know the answer to that question, but we ought to be careful about it.

I cannot support the amendments, but they raise some serious issues and I hope that the minister will consider them in detail before stage 3. Clearly, it is important that occupants of tied premises should not be second-class citizens in terms of how their accommodation is maintained. That is something that I am sure that we would not want. On the other hand, we have to balance that against whether we are entitled to legislate in that area and whether we are doing other things unintentionally that might alter relationships in the way that I have suggested.

Issues have been raised that need to be considered further and it would be helpful if the minister would indicate whether she is willing to have further discussions.

Mr Home Robertson: I support the minister's position. It is important to confirm the status of an employee in a tied house as a tenant for the purposes of the bill. There is a perception that people in tied houses get free accommodation, but that is not the case; they are paying rent in the form of labour. Someone who is paying rent in any form should be recognised as a tenant and should have rights as a tenant, including the right not to be expected to remain in sub-standard accommodation. It is important that people in such circumstances have legislation that protects them.

Obviously, it would be helpful to get further clarification of the points that Mary Scanlon has raised but—to be flippant for a second—if it were discovered that Bute House were in some way defective and was not a fit place to live in, Jack McConnell should have the right to request protection under this legislation. That is a silly example, but there are real examples as well. Some of us know of examples of low-quality tied housing in our constituencies about which action should be taken to ensure that employees who live in tied housing get accommodation that is of a satisfactory quality.

Christine Grahame: I support what John Home Robertson has said. People in the situation that we are discussing have a contract of employment, but they are also in the position of being landlord and tenant. I welcome what the minister said. It is true that good employers have no reason to feel threatened, but there are employers who have people in tied accommodation who are vulnerable. I think that those people should have the full support of the law in order to ensure that they get appropriate accommodation, which, often, they do not have.

I understand the technicalities that Euan Robson raises. However, we are dealing with tenants across Scotland. No group should be disadvantaged simply because there is another contract in operation. I fully support the minister's position.

Mary Scanlon: For the sake of clarity, I would like members to know that as my father was a farm worker I lived in a tied house for the first 20 years of my life. I therefore want, probably as much if not more than anyone round the table, the repairing standard for tied housing to be as good as that elsewhere.

I do not know whether it is permissible, but given the good points that Euan Robson and other members have made I wonder whether it is possible to ask the minister a question. I am not a lawyer, but I understand that a tied house is not a legal tenancy. A person in a tied house does not pay rent and there is not a lease; the time period is set as part of the employment contract. If the person is no longer employed, they are no longer entitled to the tied house. My understanding is that there is no such thing as a tied tenancy; there is a tied house that is tied to the person's contract of employment, but for the reasons that I have outlined it is not a tenancy in terms of the legal definition. I would like to ask the minister to clarify the matter. Euan Robson made some good points and greater clarity is required.

The second question that I would like to ask the minister is whether it is competent for us to change the legislation and whether the housing legislation will affect Westminster employment legislation in respect of tied housing and employment contracts. I would like that to be clarified. I appreciate that the order will come to the committee in five weeks' time. I do not know whether today is the day for it, but we need more clarity.

Euan Robson made the point that if a tied house is a tenancy in whatever shape or form—which I do not think it is—and the employer is not a fit and proper landlord, that might mean that they are not a fit and proper employer. The questions that have been raised today are much more complex than some of the answers that we have received. If it

was decided that an employer who provides a tied cottage under a contract of employment was not a fit and proper person to be a landlord and that they were therefore not, according to what has been said today, a fit and proper person to run a business, we could bar people from owning and running farms, pubs, hotels and so on.

I will press the amendment in my name. If it is possible, convener, I would like to ask the minister to clarify some of the points that have been raised.

The Convener: Mrs Scanlon, when I asked you to speak to your amendment and any others in the group, that is the point at which you should have asked questions; you knew that the minister would respond at that point. I will not use my discretion to allow the minister to come in again.

I need to know whether you wish to press or withdraw amendment 176.

Mary Scanlon: I wish to press the amendment.

The Convener: The question is, that amendment 176 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Scanlon, Mary (Highlands and Islands) (Con)

AGAINST

Barrie, Scott (Dunfermline West) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Grahame, Christine (South of Scotland) (SNP)
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)

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

Amendment 176 disagreed to.

The Convener: Amendment 160, in the name of Patrick Harvie, is in a group on its own.

Patrick Harvie: Amendment 160 is fairly similar to an amendment to which I spoke, in a group that was lodged by Donald Gorrie, during our first stage 2 meeting on the bill. Amendment 160's purpose is to introduce a management standard and to broaden the scope of the bill from physical standards to management standards.

In our discussions in that first meeting it was clear that it is not proposed that we place additional requirements or burdens on landlords; rather, Donald Gorrie's amendment sought to give an additional route for tenants to seek redress, in this case through the private rented housing panel. The main argument of the Deputy Minister for Communities against the amendment was that it did not contain any sanctions. However, amendment 160 does. It would give local authorities the power to consider a landlord's failure to rectify a breach of management standards under section 82 of the Antisocial Behaviour etc (Scotland) Act 2004, which is on the fit and proper person test. The amendment would also allow for an order that would have the same effect as a rent relief order. Those sanctions would give additional teeth to management standards. We have an important opportunity not only to reinforce existing requirements on landlords to protect tenants' rights, but to give tenants an additional route to seek redress when things go wrong. I hope that members will consider the amendment.

I move amendment 160.

Cathie Craigie: I would like to ask Patrick Harvie about his interesting amendment 160. Proposed new subsection (1) states that a landlord would

"meet the management standard if—

(a) a rent record is provided, and receipted, in all circumstances where rent is paid".

How long would a landlord be required to keep such receipts in order to track payments that may be relevant not only to rent but also to council tax and state benefits?

I am not an expert in tenancy law, but is not proposed new paragraph (c)—which says that the landlord would meet the standard if

"where the tenancy is an assured or short assured tenancy, a written tenancy agreement setting out the terms of the lease is provided to the tenant"—

already the law?

Proposed new paragraph (i) states that a landlord would meet the standard if

"the deposit for the property is less than two months rent."

I am very sympathetic to that. I cannot speak for the committee, but there are circumstances in which one knows tenants to be vulnerable when such deposits are retained. I know that we are redressing that with the rent deposit scheme. I am interested in that. Has Patrick Harvie a figure in mind other than

"less than two months rent"?

I would like clarification on some of the technicalities of the amendment, particularly on retaining receipts.

Johann Lamont: Like Patrick Harvie's amendment 43, which the committee considered at its first stage 2 discussions on the bill, amendment 160 aims to involve the private rented housing panel in dealing with specific management issues on behalf of tenants. I appreciate the intention behind the amendment,

but it does not provide an appropriate or effective solution for two reasons.

First, a route of redress through the courts is already open to tenants for most of the issues that are raised in the amendment. It would be wrong to assume that an alternative is needed or that the best alternative is the private rented housing panel. Secondly, the mechanism that is proposed in amendment 160 would create a more complex and confusing situation with little extra benefit for tenants.

I would like to develop the first of my reasons. The matters in the proposed management standard are almost entirely clearly defined factual matters and are not, in the main, questions of degree; neither are they comparable to the type of balance and judgment that a private rented housing panel of three people will make to decide whether a house is in a good state of repair. Some people might argue that a full formal court hearing is not an appropriate route, but it does not follow that the panel is the best route. Other options for dispute resolution may be more suitable. We are reviewing the evidence on the issue in the housing context, and we will want to consider it in detail.

11:45

I turn to the second reason. A tenant who used the mechanism that amendment 160 seeks to provide would, in the first place, have to make a particular type of application to the panel, which would be dealt with in a particular way. The tenant would not be able simply to raise a management issue as an incidental matter during processing of a case that related to the repairing standard. That would mean that the benefit of extending the panel's remit into management issues—which Shelter, for example, identified—would not be realised.

If a tenant made an application in the way that is set out in amendment 160 and the proposed standard was found to have been breached, the main consequences would be that an instruction would be issued to the landlord to comply with what, in most cases, is existing law and a reference would be made to the local authority as registration authority, after the various steps of the panel process had been completed. The local authority would then consider the reference and decide whether the landlord's registration should be removed, given all the circumstances.

The same end could be achieved more quickly and simply if the tenant contacted the local authority directly with evidence that a legal requirement in the proposed standard had been breached. If evidence suggested that management behaviour that was not currently a legal requirement should formally be given force, the letting code provisions in section 155 would allow that to be done. However, we do not have such evidence at present.

Amendment 160 proposes that if the landlord was prosecuted the equivalent of a rent relief order could be made in addition to levying of fines, and that there could application of a rent penalty by the local authority if registration was removed and the landlord continued letting. When a house breaches the repairing standard, it is in a poorer condition than it should be for the agreed rent. That is not the situation that applies in the context of the proposed management standard. Although I recognise the attraction of a rent relief order in such circumstances, it is not as easy to justify.

If those arguments—especially the one on the introduction of registration—are considered together, we realise that amendment 160 would add complexity but provide little real benefit. Although the mechanism that it seeks to use is convenient, it is not necessarily the most appropriate. I ask Patrick Harvie to seek to withdraw amendment 160.

The Convener: I invite Patrick Harvie to wind up and to indicate whether he wishes to press amendment 160.

Patrick Harvie: I am not convinced that agreeing to amendment 160 would detract from the existing mechanisms or add intolerable complexity.

There are a few points that I want to address. On rent records, my understanding is that amendment 160 would require a rent record to be provided to the tenant and that it would be entirely up to the tenant how long they kept it. A rent record would simply be a receipt for rent that had been paid.

The minister said that tenants can already obtain redress through the courts. Most members would acknowledge that that is a difficult route for many tenants to access, which is one of the reasons why amendment 160 is worth considering. However, I will think about what the minister has said and might return with an amendment at stage 3. I would like to withdraw amendment 160, if that is agreeable to the committee.

Amendment 160, by agreement, withdrawn.

The Convener: To give members of the committee a short comfort break, I will suspend the meeting for a strict five minutes. The meeting will reconvene at 11:54 exactly.

11:48

Meeting suspended.

11:54

On resuming—

The Convener: Amendment 196, in the name of Tricia Marwick, is in a group on its own.

Tricia Marwick: Amendment 196 would require the Scottish ministers to make a statement that set out measures that they and local authorities were taking, or intended to take, to reduce the number of long-term empty residential properties in private ownership throughout Scotland. The statement should specify the measures that have been taken to assess the number of residential properties that have been empty for more than six months, the reasons why they have fallen into disuse and the range of measures that are available to local authorities to encourage owners to return their properties to use. The statement should also identify any further measures or powers that should be made available.

Many private sector homes have been empty for more than six months. Given the shortage of affordable housing, it is counterproductive for potential homes to lie empty. Campaigners who oppose housing developments often use the persistence of empty property as an argument against new homes, so action on empty homes could assist in securing new homes. The bill provides an opportunity to address the issue and to encourage, through local authority action, owners of residential properties that have been empty for longer than six months to bring them back into use.

Efforts to reduce the number of empty private sector properties should focus on bringing those houses back into use to meet local need. That principle was behind the empty homes initiative that the Scottish Executive launched, which ran from 1999 to 2003. It encouraged owners of empty property voluntarily to lease property to local authorities or registered social landlords to supplement the social housing stock.

Evaluation of the empty homes strategy showed that about one quarter of empty properties that claimed council tax discount might be regenerated to provide affordable rented accommodation. The EHI evaluation report concluded that, on a national scale, that would represent a significant number of properties that could be brought back into use, which would be more cost effective than building more affordable rented stock. Many local authorities supported the empty homes initiative in taking action to assess the number of empty properties in their areas and to promote ways of bringing them back into use.

Approximately 48,000 houses in the private sector are empty. They account for 59 per cent of all vacant residential properties. A large number of them are transitionally empty as owners move between houses or while repair work is undertaken. However, almost 47 per cent of vacant properties in the private sector—about 22,500 homes—have been empty for more than six months. Addressing the problem of empty homes would benefit communities, add to the supply of houses for local authorities to meet their housing duties and generate revenue for property owners.

In the private sector, houses may lie empty because of low demand, but properties are also empty in areas that have high market demand and which have an acute shortage of affordable housing. By local authority area, the highest number of empty private sector homes is in Edinburgh, which has 4,900, after which come Aberdeen city, Fife and Glasgow. The authorities with the highest number of empty homes as a proportion of the local dwelling stock are the Western Isles Council, Orkney Islands Council, Aberdeen City Council and Moray Council. Areas that have a large number of empty private sector properties also have a shortage of local affordable houses for people to rent.

That is why amendment 196 is needed. I ask ministers to make a statement by 31 December about the measures that they and local authorities intend to take. Within four years of that, and within each subsequent four years, I ask ministers to publish a report that says what progress has been made to reduce the amount of empty living accommodation.

I would welcome the minister's comments and I ask for support from the committee.

I move amendment 196.

Cathie Craigie: I am not minded to support the amendment. Tricia Marwick was right to refer to the empty homes initiative, which encouraged local authorities to examine the stock of homes that lay empty in their areas. Responsibility should lie with them. In the Housing (Scotland) Act 2001, we introduced a requirement for local authorities to prepare housing strategies; in preparing those, local authorities must identify empty homes within their boundaries. I presume that means that local authorities are required to supply information both to local residents and to ministers on their proposals for dealing with the issue.

As the provisions on local housing strategies kick in, we will see improved approaches to housing within and across local authority boundaries. Nothing would be achieved simply by requiring ministers to make further statements to Parliament on the matter. When ministers receive local housing strategies from local authorities, I hope that they would already be taking decisions on whether the strategies meet the aims of the 2001 act and the housing needs within local areas.

12:00

Patrick Harvie: I am happy to speak in favour of amendment 196, especially as today's debate on the amendment comes just days after our debate in the chamber on homelessness. Different members will have different positions on issues, but the debate in the chamber overwhelmingly acknowledged that there is a problem in respect of the supply of affordable rented housing and of affordable housing more generally. If supply is such a problem and if we are fully committed to abolishing homelessness, we need to make the best possible use of the available resources, including the significant numbers of empty homes that are not being properly used.

I accept Cathie Craigie's point that existing measures, as they continue to kick in, may bring down the total number of empty homes. However, amendment 196 would add to those measures by giving Scottish ministers the responsibility—thereby giving the Parliament the opportunity—to consider additional measures if significant stocks of empty homes persist.

I believe that the committee should look favourably on amendment 196.

Mary Scanlon: I doubt that any member around the table—or, indeed, any of the 129 MSPs—is unconcerned about the shortage of affordable housing. In fact, the debate on affordable housing and last week's debate on homelessness were perhaps two of the best debates that we have had recently. I want to introduce a touch of reality to today's debate, although I would support Tricia Marwick's amendment if I thought that it would address the affordable housing problems that people face.

Quite often, people come to my surgery to ask whether I can do something about a house that is in an awful mess with its garden overgrown. However, further inquiries reveal that the house belongs to an elderly person who has been taken into a care home and whose dearest wish is that they will get back home one day. Such people do not want to give up their homes; they want that bit of independence and hope. I am trying to say that houses often lie empty for good reasons. That is not always the case, but the sweeping change that amendment 196 calls for would not take account of some of the sensitivities that exist.

Another issue is that many people, particularly in the Highlands, want to keep their original homes. At the end of their working lives, they want to return to the Highlands and Islands rather than continue to live abroad or in London or wherever they worked. They do not want to be cut off from their roots and background. Whatever people might think about second homes, some people have a second home because they care about where they lived and were brought up and because they have an affinity with that area.

I would mention the empty homes initiative, but I am glad that Cathie Craigie already mentioned it.

In a democracy, a basic freedom is that people are allowed to spend their money as they wish, including on their own property. Amendment 196 would go a step too far in taking away that basic freedom, which should exist without interference from the state.

Finally, I believe that much more should be done with the local housing strategies, as Cathie Craigie mentioned. In particular, such strategies should take account of the enormous increase in housing for single men, but that is an issue for another day. Amendment 196 is not the answer to the housing problems that we are facing in Scotland today.

Christine Grahame: I will obviously support my colleague. We are simply calling for a statement and for accountability from whichever Government is in power—not just the current Government but any lot of Scottish ministers. Tricia Marwick has given statistics on empty homes in Scotland, some of which we realise are empty for good reason. However, we also recognise that homelessness is on the increase. We all want to support the Executive's current target of housing all homeless people by 2012, but things do not seem to be going in that direction. The target is a push to ensure that there is accountability and reporting, and it is extremely important that the minister sincerely wishes to do that. It will also put pressure on those who have houses, whether they are local authorities, social landlords or other private individuals.

We are clearly aware of the impact of homelessness on health, employment and social cohesion. I do not know where Mary Scanlon's comments about making people give up their Highland homes came from; the whole point is to let people stay where they are. I support other members who want housing to be a much higher priority for Parliament, and I think that we would drive that message home by highlighting the number of empty homes.

Johann Lamont: I do not know where Christine Grahame has been for the past six years. I defy anybody to say that housing and issues related to homelessness have not played a central part both in the work of the committee—before I convened it, when I convened it and now, when I attend it as a deputy minister—and in the significant investment by the Executive to match that work. The test is how effective we are in relation to that, and we all have a role to play.

Amendment 196 sets out the principle that, if there are houses lying empty for no good reason when people need affordable houses, that

represents misuse of the nation's resources and such houses should be brought into use. I can see the logic of that position. The amendment rightly focuses on the private sector because we already expect social landlords to minimise empty housing where there is need; we measure that in judging their performance. However, anyone who talks to people who operate in the social rented sector will know that houses lie empty for all sorts of reasons, including their being termed hard to let. Broader social policies have to be brought to bear to address those questions.

We can and do encourage private owners to make use of their houses. The empty homes initiative explored ways in which local authorities could do that and encouraged all local authorities to consider the scope for meeting unmet housing need from empty homes and, where there was such scope, to establish a strategy for realising that potential. A number of local authorities now include their approach to empty homes in their local housing strategies, and we expect that local authorities will continue to identify projects that will help to return empty homes to use through such strategies.

If we were to consider going further than encouragement—to compel owners to bring their houses into use, as has been suggested—we would need a clear view about when an owner's decision to leave a house empty is so unacceptable that the Government should override that person's property rights. The amendment makes no suggestions on that score and, if passed, would give no steer to the Executive about Parliament's will in that connection.

Any action to secure the use of an empty property must be directly linked to the existence of housing need in the area. If there is not a need for that type of house in that area, neither the use of public money to encourage its return to active use nor the use of compulsion would be justified. We have seen from substantial research that has been conducted in connection with our affordable housing programme that the balance of need varies substantially across Scotland, and that there are many areas where there is a surplus of housing. The need for action and the action itself must have a very local dimension. It should remain, as it is at present, driven by local authorities. I note and agree with what Cathie Craigie said about the central role of local authorities and their housing strategies.

I appreciate that amendment 196 may reflect a view that local authorities are not giving the issue enough recognition in their local housing strategies or in the action that they are taking, but I do not necessarily accept that view. Some local authorities have clear strategies, and others may well have found that only a small number of houses are empty without good reason. To be useful, empty houses have to be of a suitable type and in locations that would be acceptable to tenants. However, because of the underlying principle of the amendment, I am happy to undertake to review the position to ensure that, five years on from the empty homes initiative, local authorities continue to consider the scope for bringing empty property into use and to take active steps to encourage that where it will make a positive contribution to meeting the need for affordable housing. I see that being done through the local housing strategies, which are key to that commitment.

Like homelessness, the broader issue of housing supply expresses itself differently in different places. It expresses itself differently within and among urban areas and rural communities. I want to make a personal point on which the Executive will not necessarily have a view. I know of somebody whose family lived in the inner Hebrides. The family home there became important, even when the relatives were no longer there. It was the place to which people returned, as they could not work and stay in homes on the island. The family home therefore took on significance and is still significant in a way that is perhaps not easily encapsulated at national level in an empty homes initiative. We must be sensitive in dealing with such issues.

There must be practical delivery of what seems to be a logical position. Empty houses that could be released for use should be used. To make a statement for Parliament on that matter would be to express an aspiration, but drilling down to local authorities and asking them to address the matter through local housing strategies will be more effective in dealing with the disparities throughout the country.

I hope that what I am saying will give Tricia Marwick sufficient assurance on the issue that amendment 196 raises. I cannot support the amendment, partly because there are technical difficulties—I refer to the use of the term "living accommodation", for example—but my main concern is that it would initiate a substantial and costly centralised administrative and bureaucratic process that would probably entail fresh primary research beyond what is required to address the target problem. Such a process is not justified by the apparent scale of the problem. In any case, I repeat that the most effective approach will be to ensure that local authorities give the issue appropriate priority in the context of their responsibility to establish strategies and their responsibilities for meeting housing need in their areas.

In the light of what I have said and my undertaking to review the position, I invite Tricia Marwick to seek to withdraw amendment 196.

Tricia Marwick: Amendment 196 proposes that a statement should be made. There is no compulsion to take away some old body's house or family home—any such provision is simply absent. Like everybody else, I would be concerned about there being such a compulsion.

It is important to focus on what is before us. Amendment 196 simply proposes that ministers should make a statement on empty housing. I lodged the amendment because I am not convinced that local housing strategies, without direction and a bit more happening than is currently happening, will be enough to address the problem.

We all acknowledge that the empty homes initiative that ran from 1999 to 2003, and which managed to focus on the problem of empty homes in the private sector, was successful. Amendment 196 proposes that ministers should publish a statement by the end of 2007 and attempts to focus attention on empty houses and on ways in which those houses can be brought back into use. I cannot understand why there is such resistance to a statement on the subject. There was a statement on homelessness and we expect a statement on fuel poverty by the end of this year. Asking in legislation for ministers to make statements to Parliament is reasonable.

However, I have listened to what the minister said and will not press the amendment to a vote today, although I hope that she will be in touch with the committee or with me on the matter before stage 3. If I am satisfied by stage 3 that sufficient efforts are being made to address the problem of empty homes, I will leave things at that. If not, I reserve the right to lodge a similar amendment at stage 3.

Amendment 196, by agreement, withdrawn.

12:15

The Convener: Amendment 204, in the name of Patrick Harvie, is in a group on its own.

Patrick Harvie: In a sense, amendment 204 anticipates the introduction of the fit and proper person test. There is a concern that although the test might be effective once it has been operational for a while, a significant number of poor landlords might seek, in the transition period, to evict tenants illegally if they anticipate failing the test. Harassment could therefore be used as a method of evicting tenants.

Amendment 204 is intended to provide a set of additional protections, which might be needed not in the long run but in the short term. Its principal effect would be to involve the local authority in cases where there is harassment or where illegal evictions are being pursued.

Many people would accept that the present laws that protect tenants from unlawful eviction are difficult to enforce. When an allegation is made, the police cannot be compelled to investigate and an individual is often left with no practical alternative but to let the issue drop. As someone who experienced harassment from a landlord, I can attest that that was the only thing I could do. Many people are still in such situations.

The situation is different south of the border, where local authorities have the power to investigate allegations of harassment. There is no equivalent role in Scotland. I seek not to place heavy burdens on local authorities, but to involve them and, through that involvement, to make a more compelling case for the police to pursue an investigation.

Those are the main points. The issue was brought to my attention by Shelter Scotland and amendment 204 has its support. I hope that it will have the support of the committee.

I move amendment 204.

Euan Robson: I have three objections to amendment 204, the first of which is that it seems to substitute the judgment of the court with the judgment of a local authority officer—and not a particularly senior one at that. Secondly, there seems to be no appeal mechanism against the serving of the notices that are incorporated in the amendment. My third objection is substantial: in subsection (6) of proposed new section 22A of the Rent (Scotland) Act 1984, someone is not allowed to plead that they had

"reasonable grounds for engaging in that conduct."

It seems wholly illiberal to remove that right in either civil or criminal proceedings.

The serious defects in amendment 204 should lead to its rejection. There might be other grounds for objection, but those are the three principal ones that lead me to conclude that the amendment is not appropriate.

Tricia Marwick: I have certain sympathy with Patrick Harvie's amendment 204. On paper, the legal protection for private sector tenants looks strong, but the reality is that most people are unable to exercise their rights. The homelessness task force recognised that in its 2002 report, which stated:

"We are … concerned to ensure that private tenants are given maximum protection from illegal eviction and harassment. While criminal liability … and civil penalties … attach to such actions, legal action rarely results".

Patrick Harvie lodged amendment 204 against that background.

Local authorities need to have a stronger role in the investigation of illegal evictions. I do not think

that it is a question of local authorities seeking to do the job of the court, as Euan Robson suggested. We need to get the evidence and local authorities gather evidence on a multitude of things, such as antisocial behaviour orders. I do not think that it is unreasonable to expect that a local authority would help to collect evidence in cases of unlawful evictions.

I recognise that there might be difficulties with amendment 204, so I would like to hear what the minister says before I decide whether to support it.

Cathie Craigie: I do not support amendment 204. I think that it is unnecessary at the moment and will be made even more so in a few months' time, when the Antisocial Behaviour etc (Scotland) Act 2004 comes fully into effect and the Executive's proposals to ensure that every private landlord is required to register come into force. After that point, if a private landlord were to harass or victimise tenants, he or she would not be considered to be a fit and proper person to hold a licence, which would mean that they would commit a criminal offence if they let property.

Johann Lamont: On a practical note, the wording of the amendment—it talks about "unlawful harassment"—begs the question whether there is something that we would call "lawful harassment". Perhaps we could reflect on that.

Amendment 204 would give local authorities a duty to investigate cases of unlawful eviction and harassment. While I fully agree that unlawful eviction and harassment to get tenants to leave is unacceptable behaviour, I am not aware of evidence that shows that such cases would be pursued more effectively if local authorities were given that duty. The police are keen to investigate alleged breaches of the law thoroughly.

Patrick Harvie made the point that the amendment would deal with the situation in the short term, before the introduction of the registration of private landlords. However, the registration of private landlords will start before the legislation that we are discussing today comes into effect.

The registration of private landlords will give local authorities an effective tool for dealing with landlords who use unlawful eviction and harassment as methods of dealing with tenants and will avoid some of the difficulties that are involved in pursuing a prosecution under the present arrangements. A different level of proof is required to deregister a landlord and a registration decision can also take account of other problems with the way in which the landlord is managing the property.

The registration route provides not only an effective penalty for such landlords, but a stronger incentive to stay within the law than the notice procedures that are proposed in amendment 204. The proposed notices would not resolve the difficulties of obtaining corroborated evidence about the landlord's conduct for the purposes of a prosecution and so would not be an effective deterrent if the landlord felt that he or she could avoid prosecution. Where there are prosecutions, the notice system unfairly substitutes an officer's unchallengeable opinion on what is reasonable conduct for the judgment that the court would otherwise have exercised.

I do not think that the proposed duty is either effective or necessary, given in particular the fact that, in Scotland, as Cathie Craigie indicated, landlord registration will give local authorities an effective tool to use against unlawful eviction and harassment.

I invite Patrick Harvie to withdraw amendment 204.

The Convener: I invite Patrick Harvie to wind up and to indicate whether he wishes to press or withdraw his amendment.

Patrick Harvie: The hair stands up on the back of my neck whenever I am accused of being illiberal. That is a worry to me.

Tricia Marwick: What hair?

Patrick Harvie: I do not have much, that is true.

I accept that the issue of reasonable grounds should have been considered in the drafting of the amendment. However, I take issue with the idea that the amendment involves the substitution of the judgment of a local authority officer for the judgment of the court. The point of the amendment is that the situation should never get to court, or should do so only rarely. Opportunities to take the matter to court would be limited and, in most circumstances, it would not get that far. As Tricia Marwick said, it is legitimate for us to seek ways in which the local authority can become involved in the investigation.

I accept that there might be issues with the drafting of amendment 204 and, therefore, I seek leave to withdraw it. However, in the coming weeks, I will try to persuade members that the issue of local authority involvement in the investigation is worth pursuing and I might lodge another amendment at stage 3, in the hope that we can debate the issue further.

Amendment 204, by agreement, withdrawn.

Section 156—Rights of entry: general

Amendment 117 moved—[Johann Lamont]—and agreed to.

The Convener: Amendment 177 was debated with amendment 164. I understand that the

minister has something to say before she moves amendment 177.

Johann Lamont: I clarify to the convener and the committee that amendment 177 seeks to insert three subparagraphs rather than three paragraphs, as suggested by the marshalled list.

Amendments 177 and 178 moved—[Johann Lamont]—and agreed to.

Section 156, as amended, agreed to.

Section 157 agreed to.

Section 158—Rights of entry: constables

The Convener: Amendment 161, in the name of the minister, is grouped with amendment 162.

Johann Lamont: Amendments 161 and 162 are technical—my favourite kind of amendment. I clarify that amendment 161 should read "after second <any> insert <land or>". The word "second" is missing from the amendment as lodged. I hope that that is clear.

The amendments address rights of entry to HMOs. Although the word "premises" covers any building, the term "living accommodation" when used in relation to HMOs includes places that are not buildings, such as caravans. The addition of "land" to section 158 means that constables will have rights of entry to every category.

I move amendment 161.

Euan Robson: I seek clarification of what the minister said about the missing word in amendment 161. She implied that she would have to insert that word at stage 3. I understood that if an amendment appeared on the marshalled list in a particular form, it had to stay in that form.

Johann Lamont: I will check that. However, amendment 161 should read "In section 158, page 84, line 9, after second <any> insert <land or>".

The Convener: I understand from the clerks that I have discretion to accept the amended wording in the same way that I could accept a manuscript amendment. That is why the amendment was included in the marshalled list. Does the minister have anything further to add?

Johann Lamont: No, apart from saying that I appreciate your willingness to accept my clarification. I do not wish to be rebutted over a "second <any>".

12:30

Mr Home Robertson: On a point of order, convener. I realise that we are debating technicalities and I do not wish to appear pernickety. However, we need to make a distinction between the various forms of amendment, because the situation could create difficulties for people who are trying to follow our proceedings. At the moment, there are amendments that are lodged, manuscript amendments that come along later and the kind of amendment that is now before us, which might be called an oral amendment. I am sure that this is a technical matter and that it will not cause any problems, but I am worried about the precedent that we might be setting. Is there such a thing as an oral amendment?

The Convener: It is not my intention to set any precedent. I always prefer members to be as accurate as possible in the content of their amendments. However, certain situations can arise in which it is appropriate for me to exercise my discretion. Each amendment is judged on its merits and, on this occasion, I felt that it was right to accept the amendment.

Amendment 161 agreed to.

Amendment 162 moved—[Johann Lamont]—and agreed to.

Section 158, as amended, agreed to.

Section 159 agreed to.

After section 159

The Convener: Amendment 1, in the name of Patrick Harvie, is in a group on its own.

Patrick Harvie: Amendment 1 seeks to address an issue that we discussed at stage 1. Our stage 1 report noted that we recognised

"the strength of the arguments presented in evidence to promote energy efficiency by including a target on the face of the Bill to improve energy efficiency by a specified date."

Amendment 1 seeks to stipulate a 20 per cent improvement in energy efficiency by 2010, with a further 20 per cent improvement by 2020, and to ask the Executive to provide a strategy for achieving those targets and to report back to Parliament on its progress.

The amendment is supported by Friends of the Earth Scotland, the Association for the Conservation of Energy, Energy Action Scotland, Help the Aged and Age Concern Scotland, some of which gave evidence at stage 1. That support reflects the dual nature of the argument, which centres on climate change and fuel poverty. By making a concerted effort to improve the energy efficiency of private housing stock, we can tackle both issues.

Anyone who takes climate change seriously knows that energy efficiency is one of the most important measures that we can take. After all, we will not be able to meet ever-increasing energy demands in a sustainable way. I realise that it is quite exciting to talk about new energy

infrastructure—I know that committee members hold a range of views on nuclear power, wind farms and so on—and that energy efficiency is probably a less enticing and more boring subject for discussion. However, we need to get the matter right if we are to take our global climate change responsibilities seriously.

A dramatic move on energy efficiency is justified. Of course, the targets that are set out in amendment 1 are only as substantial as targets that have been set elsewhere. I am asking not for anything unachievable or outlandish, but for targets similar to those that are being worked on in other parts of the UK.

About 70 per cent of people who live in fuel poverty in Scotland are in the private sector, so it is appropriate to take the opportunity to address the matter in a bill on private sector housing. It is argued that Scotland's housing stock is inherently different and that we are therefore unable to achieve targets, but I reject that view. Similar arguments could be made about housing stock elsewhere in the UK, but the UK Government has chosen not to make those arguments. Instead, it has set itself the difficult but necessary task of increasing energy efficiency with targets to be achieved by set dates. That is the approach that we should take in Scotland. I hope that members will remember the strength of the arguments in our stage 1 report—on which we all agreed—and that the committee will agree that targets should be included in the bill.

I move amendment 1.

Christine Grahame: I support Patrick Harvie's amendment. In Scotland, we have more excess winter deaths than our Scandic neighbours even though their weather is more severe. That is directly connected with the quality of our housing stock. It is not the minister's fault. It is just a fact of life. Given that one death in 20 is due simply to the fact that we have cold homes, the energy efficiency of homes should be a high priority along with the health of our citizens and their quality of life. The committee and the minister can make a huge difference in improving the quality of homes, the tolerable standard in heating in them and their energy efficiency, including insulation.

Johann Lamont: Energy efficiency and the related issue of fuel poverty are important to every member of the committee, to me and to the Executive. That is why we have invested heavily in the central heating programme and the warm deal insulation scheme. Some 56,000 houses that did not have central heating now have it and more than 218,000 houses have been insulated under the warm deal scheme—that is nearly 10 per cent of Scotland's houses. The result has been dramatic. In 2003-04, the warm deal scheme led to an average reduction of £99 in the annual fuel bills of private tenants and the central heating programme led to the average bill for the over-60s being cut by £376. We have amended the bill so that private sector tenants have the right to have central heating installed and landlords cannot reasonably refuse permission.

I am sympathetic to the promotion of improvements in energy efficiency, but I am not convinced that amendment 1 is the right way forward. Agreeing to the amendment and including targets in the bill would be premature because the Executive will shortly publish its draft energy efficiency strategy, which will cover all sectors and propose a range of activities to address energy efficiency. Patrick Harvie mentioned the approaches that are being taken elsewhere in the UK, but members should note that the target in England and Wales is for a 20 per cent saving by 2010 compared with 2000. The second target in Patrick Harvie's amendment does not apply in England and Wales.

It does not make sense to introduce an ad hoc target ahead of the comprehensive strategy that we are developing. We want to ensure that the strategy does what it says on the tin. At best, targets could turn out to be meaningless; at worst, they could skew activity away from the areas in which it would have the most impact. I therefore ask Patrick Harvie to withdraw his amendment.

Patrick Harvie: I have congratulated the Executive on its work on fuel poverty and I am happy to do so again. I accept that its efforts are significant and substantial and they are to be welcomed. However, I am disappointed that the Executive is unable to support my amendment 1.

We have heard in our considerations substantial arguments in favour of including a clear target in the bill. Fuel poverty and climate change will affect the poor and the socially excluded hardest. We cannot dismiss an attempt to tackle those issues as ad hoc.

No matter how much good comes out of the Executive's planned work, exactly the wrong signal would be sent out if the committee refused to make it clear that it expects not only equivalent targets for the Scottish Executive to do as much as the UK Government is doing south of the border but for the Scottish Executive to go further and set a good example on important issues of fuel poverty and climate change.

One of the reasons why I got into politics was that I was sick of hearing people say, "If we don't do this now, future generations will look badly on us." Future generations are alive, here and now, and it is we who should be ashamed if we do not act now. I argue strongly that we should add these achievable targets to the bill. I press amendment 1.

The Convener: The question is, that amendment 1 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Grahame, Christine (South of Scotland) (SNP)
Harvie, Patrick (Glasgow) (Green)
Marwick, Tricia (Mid Scotland and Fife) (SNP)

AGAINST

Barrie, Scott (Dunfermline West) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Whitefield, Karen (Airdrie and Shotts) (Lab)

ABSTENTIONS

Scanlon, Mary (Highlands and Islands) (Con)

The Convener: The result of the division is: For 3, Against 5, Abstentions 1.

Amendment 1 disagreed to.

The Convener: Amendment 193, in the name of Helen Eadie, in a group on its own. I welcome Mrs Eadie to the committee.

Helen Eadie (Dunfermline East) (Lab): Thank you, convener. In moving amendment 193, I wish to highlight the dramatic increase in Scotland in the number of new homes being built—some 250,000 in the past 10 years. The amendment, should it be agreed to by the committee, would give the buyers of new-build housing protection on the date of entry agreed between them and their builders.

The date of entry is definitive in that it is the moment that keys are handed over and the buyer takes possession of his or her home. At present, one has more protection in buying a DVD than in buying a new house. The law does not require a housebuilder to insert a clear date of entry into the missives for new-build homes. No matter how strenuously the legal profession has pursued the possibility of having a date of entry inserted into missives during negotiations, that has been energetically refused by most housebuilders throughout Scotland. In contrast, when people buy a used home, the entry date is agreed when missives are exchanged. Developers will agree only to a non-binding approximation of a date of entry. The missives imposed on home purchasers are described by lawyers in Dunfermline as shotgun missives: one buys a property on such-and-such a condition or not at all. The gun is at one's head.

Despite what the Scottish Rural Property and Business Association said last night in its e-mail to committee members, it is simply not the case that the issue can be resolved by contract law. I hope to evidence that assertion shortly. If it were that simple, the housing improvement task force would not have pursued the matter so vigorously over the past few years. Under the auspices of the housing improvement task force, the Law Society of Scotland established a working group that has been exercised over the issue of entry dates. I have been diligently engaged with the Law Society on the matter for some time. A letter from Janette Wilson, convener of the Law Society conveyancing committee, states:

"the Society has found it hard to get HFS to engage in meaningful dialogue about its draft missive and little progress has been made with the proposed piloting of a standard builders' missive."

12:45

I have also been engaged with a variety of other stakeholders on the issue, including the Office of Fair Trading, representatives of the Scottish construction forum, Fife Council and the Scottish Consumer Council. The June 2005 issue of the Scottish Consumer Council's "Inform" newsletter is devoted to a number of new-build housing issues, but it homes in on the point in which I am interested. An article in *The Sunday Times* on January 18 2004 provides further evidence that the problem arises throughout Scotland. I think that the minister has Pollokshields in her constituency; I see that she is shaking her head so perhaps it is not, but I will still say what I was going to say anyway. The article provides evidence that, in that one area alone, 35 owners moved into their homes 14 months after the original completion date. That is typical of what happens throughout Scotland; it is not the only example.

A case has been brought to the Public Petitions Committee. Cases have also been pursued by Ann McKechin MP, in her time as a solicitor prior to being elected to Westminster, and Sandra Osborne MP was kind enough to present me with details of a case. Many cases have been brought to me, too; the first one came to me shortly after I was elected. My friend had the worst experience of all when she was kept waiting for 18 months by her developer for her eventual date of entry. In common with everyone in Scotland who has such an experience, she suffered losses. Those losses can range from a small amount such as £1,000 or £2,000 to as much as, in her case, in excess of £25,000. Professor Ross Harper represented her. Her case has strengthened my belief that the issue is a genuine one and that legislation is required to balance the scales between the purchasers and the sellers of homes.

As I said, I have had a number of constituency cases. All those people have had to face exceptional costs. The issues that are raised include people having to take hotel

accommodation in the period between selling their house and moving into their new home, having to buy meals out and having to store furniture and clothing. Many such issues arise. I can see other members nodding, as they recognise those problems.

There is a massive housebuilding boom in Edinburgh, where in excess of 10,000 new homes are being built on the waterfront. Only last week, I learned of a case in which a developer in Edinburgh is requiring his own missives to be used. He was represented by one of the largest legal firms—Maclay Murray & Spens—which declined on his behalf to use the standard missive that the building industry and the Law Society are attempting to negotiate. As I said earlier, Janette Wilson said to me in her note of 21 July that the negotiations have not been able to make progress.

There is currently an unbalanced and unfair situation in the missives, as the builder can claim compensation and therefore interest from the purchaser—a payment of 4 per cent above the Bank of England base rate as well as an additional £50 per day—if there is a delay in settlement. That is in stark contrast to the fact that the purchaser might—and has in all the cases that I have cited—experience delays but is not able to claim compensation, should they wish to rescind the contract, for the delays that they suffer when the date of entry is well beyond that claimed in the initial receipts.

I move amendment 193.

Christine Grahame: I am extremely sympathetic to amendment 193. Everything that Helen Eadie has outlined is fair and I am interested in what the minister will have to say. However, I do not know whether amendment 193 would work or whether it would—I may be completely misguided—make the situation even messier. The proposed subsection (1)(b) that would be introduced by amendment 193 states:

"where the purchaser is unable to take possession of the property within 30 days of that date owing to the property not being in a fit state, the purchaser may give the seller notice in writing of the purchaser's intention to rescind the contract".

That is fine, but the seller may not be the developer; the developer may have a subcontractor who is doing the work. There is a chain of responsibility. Helen Eadie may say to me, "So be it—it makes the seller liable." However, I can see messy litigation following from such a provision. That is perhaps not a substantive defence, but it makes the situation much more complex. The delays may be out of the control of the developer. Acts of God such as flood, fire and what not might happen and mean that a person was unable to take possession.

Amendment 193 also includes remedies. Proposed subsection (1)(e) states:

"all expenditure necessarily incurred by the purchaser … as a result of the property not being in a fit state shall be reimbursed by the seller."

I can see the words "necessarily incurred" leading to more litigation. What if the seller is a little building firm that has gone into liquidation? I know that in such cases the purchaser would claim in insolvency proceedings, but that is not as neat a package—I wish it were.

Perhaps Helen Eadie could explain in more detail the difficulties that legal firms have had. Unless they are acting for the developers, in the main they act on behalf of their clients to try to remedy matters. Why have they not come up with something to resolve the issue, which we all want to be resolved? I am sympathetic to amendment 193, but I just do not know whether it would work.

Cathie Craigie: Like Christine Grahame, I have great sympathy with Helen Eadie's amendment and I understand exactly where she is coming from. We had some discussion about the issue when we took evidence; I remember asking someone from the Scottish Consumer Council about it. The comparison was made between the rights that someone has in buying a tin of beans and the rights that they have in buying a house—people have more rights in buying a tin of beans. The witness provided information on that, but the advice given at the time was that some of the issues involved were reserved because they were consumer issues, so we did not run with the idea.

The issue goes an awful lot deeper. Although I would love to support amendment 193, I do not think that I will be able to. The Scottish Executive should be asking organisations such as the Law Society to get their heads around the issue, because it is a minefield. I have constituents who bought off plan; five years later, the houses were not built but they could not get back their deposits. Sometimes people pay money and get the keys to the house, but they cannot get snagging work carried out—they have paid hundreds of thousands of pounds for a house that is not fit and proper. If they bought second hand, aspects of conveyancing law would give them protection. Developers often just want to get properties off their hands and people do not always know that they will be responsible for paying an extra £100 a year just to have the open spaces in a development maintained and the grass cut.

We need to consider a range of issues in relation to the purchase of new properties from developers, either large or small scale. I hope that the fact that Helen Eadie has lodged amendment 193 will give the Executive an opportunity to have dialogue on the issue, which I have raised with Homes for Scotland. Developers and Homes for

Scotland could do a lot on the basis of good practice, without legislative change. Nevertheless, we should let developers know that we will change legislation if they do not get their act together.

Mary Scanlon: I thank Helen Eadie for raising the issue, which undoubtedly applies in the Highlands as well as in the rest of Scotland. I would like her to address a couple of points in her summing up. I put on record the fact that sometimes there are delays for good reasons, such as the shortage of tradesmen, which I know Marilyn Livingstone has discussed at the cross-party group on construction.

Helen Eadie mentioned the Law Society and Homes for Scotland. Have the developers considered having some sort of insurance policy that would cover delays, given that, if someone's home is flooded, the insurance companies tend to pay out for accommodation and meals while the home owner is out of their house? I am also sympathetic to the points that Cathie Craigie made about snagging and open-space maintenance.

Scott Barrie: I will be brief, because most points have been made. I know that Helen Eadie has been interested in the subject for a long time. I remember that, a long time ago, we both attended a meeting in Dunfermline city chambers between developers and councillors about the issue.

Christine Grahame raises the important question whether agreeing to the amendment would have unforeseen consequences. The issue that is raised is real and needs resolution, but I am not convinced that Helen Eadie's amendment provides the solution. We must be careful when we pass legislation not to think that we are solving one problem while in fact we are creating another problem.

A big issue for me is whether, if we agreed to the amendment without being careful, we could distort the housing market. I am concerned about that. If, in an attempt to right an obvious wrong, we make the system far more complicated and expensive for those who try to buy new property, we will return to the debate about affordable housing that we have had for several weeks and months in the committee. We must be careful that we do not end up making worse a situation that we have all identified is a major problem.

Tricia Marwick: Like other committee members, I thank Helen Eadie for lodging the amendment, which concerns a huge problem in Dunfermline and other areas that are experiencing rapid housebuilding, whether they be Dalgety Bay, the M90 corridor or further afield. Unless action is taken, I suspect that the situation will not improve but worsen.

I share the concerns of other members that agreeing to the amendment might not be the best way to proceed and that the amendment might have unintended consequences. I said that some amendments that the minister lodged were fairly substantial and not enough time to consult or hear alternative views on them had been given, which does not make for good legislation. That applies equally to a member's amendment, no matter how worthy it is. The committee has had no opportunity to consult, so we are unsure about the amendment. We recognise the problem, but we do not think that the amendment is the way to resolve it.

The issue needs to be tackled. As others have said, that could be done without legislation. I would like to hear from the minister that she will work with Homes for Scotland and other stakeholders in the building industry to try to produce a code of practice in the first instance, which would give consumers greater protection. After such a consultation, we should make it clear—as we did with the single seller survey—that, if we need to legislate, we will. That stage must take place before the amendment can be made to the bill.

Johann Lamont: I recognise that difficulties with new-build properties can arise and cause purchasers much unexpected expense and anguish. The amendment is clearly intended to help purchasers who face such problems but, as members have suggested, trying to create a solution through primary legislation may cause as many difficulties as we seek to solve. I do not know whether anything new has been said. The committee's response suggests that people are aware of the issues, although identifying the problem is the easy bit.

It could be said that we are dealing with an amendment that makes sense but should be resisted because it needs further consideration. However, as far as I can see, not much pressure has come from the organisations that might be expected to act and to come up with solutions, although perhaps the issue has been flagged up. That suggests that identifying the problem is relatively straightforward, but the solutions are not evident, even to organisations such as the Law Society, which is wrestling with them.

Like other members, I urge caution about considering the amendment to be the way forward. For example, the amendment might have the effect that builders would cover the potential costs of compensation simply by raising prices, which would not be in the interests of purchasers. Having to have a fixed date would make it impossible to agree more flexible arrangements, even if that would be in the interests of both the builder and the purchaser.

13:00

As has been acknowledged, not all delays in construction are due to builders' bad faith. Predicting when new houses will be completed can be incredibly difficult, because of factors that are beyond a builder's control, such as bad weather and unexpected ground conditions. Generally, it is in builders' interests to complete houses quickly and to let purchasers move in as soon as possible, as any delay can cause developers problems with their cash flow. In effect, amendment 193 would punish builders for situations that might be beyond their control, which they already seek to avoid.

Cathie Craige asked about the discussion that took place with the Scottish Consumer Council. My impression was that, at stage 1, much of that discussion was about the quality of the finished product and about what rights people had in relation to snagging. I would be concerned if we ended up in a position in which, by driving builders to meet a completion date, we generated arguments about the quality of the finished product because builders had been more intent on completion than on completion to a standard.

In response to Tricia Marwick's point, I have said that whether we respond to a particular issue at stage 2 is a matter of judgment. In this case, we must accept that the issue has been raised at a late stage in the passage of the bill and that the solution is not obvious. I would be happy to discuss the matter further with Helen Eadie with a view to determining whether further measures could be taken and I therefore ask her to withdraw amendment 193.

Bodies such as the Law Society have been involved in discussions and they acknowledge that there is a difficulty. The challenge will be to find a solution that people recognise works and does not have unintended consequences. Given that there is not an obvious solution to a problem that has arisen at a late stage, it is important that we consult properly with all the stakeholders before taking a view. At this stage, I do not see how that could be done within the timetable for the bill. I emphasise to Helen Eadie and others that I would be more than happy to respond to suggestions about how the matter—on which the committee did not express a considered view in its stage 1 report or in the stage 1 debate—can be progressed.

The Convener: I invite Helen Eadie to wind up and to indicate whether she wishes to press or withdraw amendment 193.

Helen Eadie: Members will recognise that amendment 193 is a probing amendment for gauging their views. I spoke to Malcolm Chisholm about the issue not long after he became Minister for Communities and have discussed it with some of his ministerial colleagues over a period of time.

We should bear in mind the fact that, when the housing improvement task force was set up, sub-groups were established, which consulted widely on all the issues that were being raised. The Law Society built on the work that was done in its sub-group by establishing a separate conveyancing committee. As any conveyancing solicitor in Scotland will confirm, we are talking about a big issue that has not simply come out of the blue.

For that reason, I am pleased by the nature of members' responses in the sense that they acknowledge that there is a problem. The road to finding a solution begins with acknowledgement that there is a problem. I emphasise that, although the conveyancing committee produced a draft missive that was ready for circulation to every solicitor in Scotland, Homes for Scotland simply would not agree to it. That is what has given all of us a problem.

I accept the point that members make about the difficulties that exist with the various public utilities, which we must recognise. We must remember, too, that in spite of the route that we as a Parliament chose to go down to get our building built, we could have gone down a different route and specified a fixed date for its completion. That would have been possible because many construction companies in Scotland finish ahead of schedule when they are engaged to construct major works. Indeed, when I have met industry representatives at meetings of the cross-party group on construction, I have been told that builders and developers who engage in good practice would welcome such an initiative, as it would separate the cowboys from the good builders. That is one issue that we need to keep in mind.

I will not take up more of the committee's time, but I will just respond to the point about whether the amendment would raise prices. In considering whether the victims in such matters should be subject to penalties or to compensation, we need to take into account the need for an equitable approach across Scotland. A bit like provisions on equal opportunities, requiring fair treatment and equity in house buying throughout Scotland would come with a price tag. However, people should not be penalised by having to pay thousands of pounds more or even, as in the worst instance that I mentioned, in excess of £25,000 more. That should not happen in today's Scotland. We need to find a solution to the issue. However, I will seek to withdraw amendment 193.

Amendment 193, by agreement, withdrawn.

Before section 160

The Convener: Amendment 118, in the name of the minister, is in a group on its own.

Johann Lamont: When Malcolm Chisholm gave evidence to the committee at stage 1, the convener pointed out that the bill did not contain a provision such as the one in the Housing (Scotland) Act 2001 that requires ministers and local authorities to have regard to equal opportunities when exercising their functions. As Malcolm Chisholm confirmed in his reply, that was an omission. We are grateful to the convener for drawing it to our attention.

Amendment 118 will impose a duty on ministers and local authorities to carry out any action that they are required or empowered to take under the bill in such a way as to promote equal opportunities and to comply with the equal opportunity requirements. The wording of amendment 118 is similar to the provision in the 2001 act.

The terms "equal opportunities" and "equal opportunity requirements" are widely defined:

"'Equal opportunities' means the prevention, elimination or regulation of discrimination between persons on grounds of sex or marital status, on racial grounds, or on grounds of disability, age, sexual orientation, language or social origin, or of other personal attributes, including beliefs or opinions, such as religious beliefs or political opinions.

'Equal opportunity requirements' means the requirements of the law for the time being relating to equal opportunities."

I move amendment 118.

The Convener: As the minister knows, I like nothing better than holding the Executive to account, so I am glad that my suggestion has, on this occasion, been taken on board.

Johann Lamont: We aim to please.

The Convener: There is a first time for everything.

Amendment 118 agreed to.

Section 160—Power to obtain information etc

The Convener: Amendment 119, in the name of the minister, is in a group on its own.

Johann Lamont: Section 160 gives local authorities powers to require information about any land or premises that helps them to exercise their functions under the bill. Amendment 119 will provide local authorities with the additional power of being able to require information from any occupier about his or her relationship with any other occupiers.

Such a provision should help in identifying unlicensed HMOs. An HMO licence is required for a property if it is occupied by three or more people from three or more families. Given the many stories that we hear about tenants being instructed to say that two of them are living together as a couple so that the landlord can evade licensing, we suggest that amendment 119 will help to enforce the licensing system. Under the amendment, local authorities will be able to require such information in writing from occupiers and it will be a criminal offence to give false information. I believe that tenants will be less willing to go along with their landlord's deceit if the local authority's inquiries are backed up with legal force.

I move amendment 119.

Euan Robson: Will the minister clarify that nothing in amendment 119 will compel someone to breach the Data Protection Act 1998?

Patrick Harvie: My question is along comparable lines. I am aware that the Executive scrutinises its proposals to ensure that their compliance with human rights legislation is such that the Presiding Officer can give the nod to the bill being introduced. Given that the amendment would create a criminal offence for refusing to give information about personal relationships, what issues have been discussed in relation to the right of privacy and how have they been resolved?

Johann Lamont: The first thing to say is that we cannot compel people to break the law, so everything must be compliant with other obligations under the law. The provision would require people to give information only about themselves, so there would not be a breach of the Data Protection Act 1998.

I acknowledge the points that members have made, but I think that this is a difficult area. We must recognise that people's capacity to try to circumvent and subvert the law is substantial. Perhaps the provision exposes something about the broader culture of landlord-tenant relationships that it will not fully address. However, we feel that it will provide the opportunity to discourage people from trying to subvert the law and to do things that are not in the interests of the tenants.

If members feel that particular issues need to be revisited, I am more than happy to do that. I recognise the delicacy about the motivation behind the proposal, but amendment 119 is about trying to resist people's desire to subvert law that is in the interests of good landlords and of tenants who wish to have safe and warm accommodation.

The Convener: The question is, that amendment 119 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)
Home Robertson, Mr John (East Lothian) (Lab)
Scanlon, Mary (Highlands and Islands) (Con)
Whitefield, Karen (Airdrie and Shotts) (Lab)

AGAINST

Harvie, Patrick (Glasgow) (Green)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Robson, Euan (Roxburgh and Berwickshire) (LD)

The Convener: The result of the division is: For 5, Against 3, Abstentions 0.

Amendment 119 agreed to.

Section 160, as amended, agreed to.

Section 161—Formal communications

The Convener: Amendment 120, in the name of the minister, is grouped with amendments 121 and 122.

Johann Lamont: These amendments seek to make technical changes to ensure that the bill's general provisions cover all types of HMOs. Section 161 deals with the delivery of formal communications, including how to deliver something to the owner or occupier of a house or other premises when the owner or occupier's name and address are unknown. The description "house or other premises" covers only buildings; the addition of the words "or other living accommodation" will ensure that HMOs that are not buildings are also covered.

I move amendment 120.

Amendment 120 agreed to.

Amendment 121 and 122 moved—[Johann Lamont]—and agreed to.

Section 161, as amended, agreed to.

Sections 162 to 164 agreed to.

Section 165—Orders and regulations

Amendments 123 and 129 moved—[Johann Lamont]—and agreed to.

Section 165, as amended, agreed to.

Section 166 agreed to.

Schedule 5

CONSEQUENTIAL CHANGES

13:15

The Convener: Amendment 124, in the name of the minister, is grouped with amendments 157, 125, 126 and 158.

Johann Lamont: The five technical amendments in the group will add to the consequential changes and repeals that arise from the bill.

Amendment 124 seeks to make a consequential change that was originally omitted from the bill. Section 308 of the Housing (Scotland) Act 1987 deals with payments for houses that do not meet the tolerable standard. It refers to houses that are compulsorily purchased under various provisions, including paragraph 5 of schedule 8 to the act, which concerns purchases of houses and land in housing action areas. Although the bill repeals schedule 8, it omits the consequential change that is necessary to remove the reference to the schedule in section 308. Amendment 124 seeks to remove that reference.

The three repeals in amendments 125 and 126 are required because of the repeal of schedule 8, which contains provisions for housing action areas, which will no longer exist. Amendment 125 seeks to repeal sections 120(6) and 124(4) of the 1987 act. Section 120(6) provides that when a local authority acquires land under section 120, the provisions of subparagraph 8(b) of schedule 8 apply to what it can do with the land. Section 124(4) provides that when a local authority purchases land under section 124, it must sell, let or appropriate the land in accordance with paragraph 8 of schedule 8. Those subsections will no longer have any effect and should be repealed. They do not need to be replaced because sections 73 and 74 of the Local Government (Scotland) Act 1973 provide broad powers for local authorities to appropriate and dispose of land and will apply without requiring specific mention in the bill.

Paragraph 18 of schedule 5 to the Agricultural Holdings (Scotland) Act 1991 lists works for which a tenant is entitled to compensation. Amendment 126 seeks to repeal a reference in that paragraph to works of a kind referred to in subparagraph 13(2) of schedule 8 to the 1987 act—in other words, it seeks to repeal the reference to works that are carried out in compliance with a housing action area final resolution, as such resolutions will no longer exist.

Amendments 157 and 158 seek to modify the Fire (Scotland) Act 2005. The fire safety regime that is introduced by that act applies to HMOs that require to be licensed under the Civic Government (Scotland) Act 1982. Amendment 157 seeks to change the 2005 act so that it refers to the new licensing provisions in the bill. The fire safety regime also covers houses that are subject to a control order under section 178 of the 1987 act. As the bill repeals that section, amendment 158 seeks to repeal the reference to it. Those modifications were omitted from the bill as drafted but are needed to ensure that fire safety will be properly enforced in HMOs in future.

I move amendment 124.

Amendment 124 agreed to.

Amendments 179 and 157 moved—[Johann Lamont]—and agreed to.

Schedule 5, as amended, agreed to.

Schedule 6

REPEALS

Amendment 125 moved—[Johann Lamont]—and agreed to.

Amendment 205 not moved.

Amendments 126 and 158 moved—[Johann Lamont]—and agreed to.

Schedule 6, as amended, agreed to.

Section 167 agreed to.

Section 168—Interpretation

Amendments 180 and 181 moved—[Johann Lamont]—and agreed to.

The Convener: If amendment 182 is agreed to, I cannot call amendment 13.

Amendment 182 moved—[Mary Scanlon].

The Convener: The question is, that amendment 182 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Scanlon, Mary (Highlands and Islands) (Con)

AGAINST

Barrie, Scott (Dunfermline West) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
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)

The Convener: The result of the division is: For 1, Against 7, Abstentions 0.

Amendment 182 disagreed to.

Amendments 13 and 14 moved—[Johann Lamont]—and agreed to.

Section 168, as amended, agreed to.

Section 169 agreed to.

Long title agreed to.

The Convener: That ends our stage 2 consideration of the Housing (Scotland) Bill. I thank the minister for her attendance this morning. I also wish Archie Stoddart well, as he will soon be departing from the Executive, although I am sure that the committee will see him return in a completely different capacity.

Patrick Harvie: I have no wish to delay the committee any longer than is necessary, because I am as hungry as the rest of you. However, I want to raise an issue that I feel is important enough to put on the record of our first committee meeting since Saturday's planning event.

Members will recollect that, during his presentation on the Executive's proposals, the chief planner, Jim Mackinnon, referred directly to a position that Friends of the Earth Scotland and Scottish Environment LINK took on the procedures for improving the national planning framework. Mr Mackinnon began by telling the audience that there had been some mischief making around the Executive's proposals. As he described the proposals, the only criticism to which he referred was the assertion that there had been a power grab by Scottish ministers. I argue that that reference was unambiguous. The same wording is used by Friends of the Earth Scotland and the same argument is supported by Scottish Environment LINK. It seems clear to me those organisations were the subject of the accusation of mischief making.

Jim Mackinnon said that Malcolm Chisholm described those organisations' position as a travesty of the truth. It is all very well for the Minister for Communities to say that to another politician—as he did to me during a parliamentary debate—but on Saturday Mr Mackinnon, as a civil servant, described as mischief making the sincerely held views of two Scottish non-governmental organisations while representatives of those organisations were sitting just yards away.

It is one thing for a minister to make a political attack, but it is another matter for a civil servant to do it. If it had happened at a meeting that was hosted by the Scottish Executive, it would be a matter between Mr Mackinnon and the minister, but it happened at a meeting that was hosted by a parliamentary committee and held in the chamber. To put it simply, it was our party and I feel that Mr Mackinnon took the trouble to insult our guests to their faces while we had little option but to sit back and watch. It is done now, but I ask the committee to object to the action and to let the Minister for Communities and Mr Mackinnon know by letter that we regard the comment as inappropriate. I ask the committee to agree either that we should take that action now or that the convener should schedule time for further discussion on the matter.

The Convener: I will let other members in, but I have to say that I am disappointed that you have chosen to take this course of action. I do not agree with you and my recollection of the events is not the same as yours. The clerks have an extract transcribed from the recording of the meeting, which members might find useful, as it will remind

them exactly what was said. I feel that a bit of political posturing is going on and I am somewhat surprised that you are pursuing your line of argument, given that Scottish Environment LINK and Friends of the Earth Scotland e-mailed me and the clerks to the committee on Monday to congratulate the committee on a successful event. If they had concerns, they would have raised them at that point, but they chose not to do so.

It is for the members of the committee who were at the event on Saturday to decide how we should proceed in relation to the course of action that you request.

Mary Scanlon: I am somewhat taken aback and shocked at Patrick Harvie's comments. I object to his comments about Jim Mackinnon, who is undoubtedly one of the most professional people I have met at Communities Committee away days and briefings. I have tremendous respect for his good judgment, his ability to respond to the committee, his undoubted professionalism and his sheer knowledge of his subject.

As the only other Opposition MSP who was there on the day, I say that I would have noticed if any insensitivity had been shown towards political parties, ministers or groups such as Friends of the Earth Scotland or Scottish Environment LINK. I assure you that, after six and a half years in opposition in the Parliament, I am extremely sensitive to such things. It is insulting to put on record the idea that someone of Jim Mackinnon's calibre insulted the guests. I would say that it was the opposite. I have just been given a copy of what he said, which is:

"There has been some mischief-making around"

the Executive's proposals,

"so hopefully what I can provide is a clear context".

I commend Jim Mackinnon for always providing a clear context for the complex planning bill that will come before us.

I do not support Patrick Harvie's comments because I do not think that they are true. I also want to put on record my opinion that Jim Mackinnon is one of the best professionals we have seen in the committee.

13:30

Mr Home Robertson: Patrick Harvie is a good colleague in the committee, but I think that he has lost the plot on this issue. From my recollection of what was said and done at that session on Saturday, I think that Mr Mackinnon said nothing inappropriate. I am indebted to the clerks for letting us have a transcript. Jim Mackinnon said:

"I am very grateful for the opportunity to explain the Executive's proposals. There has been some mischief-making around them, so hopefully what I can provide is a clear context for what is an important discussion and debate as we enter the legislative process on planning reform."

I do not think that that contains anything that could be interpreted as being pejorative. On the contrary, I think that the comments were entirely fair. In passing, I note that other people said things on Saturday that I felt were inappropriate and aggressive. However, we have to accept that that will happen in a discussion. I do not think that Jim Mackinnon said anything that could be seen to be out of order, so I reject the suggestion that Patrick Harvie has made.

Scott Barrie: I do not want to take up people's time unduly, but I must say that I would not support a decision to take the action that Patrick Harvie has asked us to take. I was not aware that this matter was going to be raised and it is difficult to cast my mind back to remember exactly what was or was not said.

From talking to people informally over coffee and at lunch and formally during the workshops in the afternoon, I did not get the impression on the day that anyone had taken umbrage at anything that had been said or that any of our guests felt that they had been insulted. If that were the case, I would have thought that they might have contacted us since Saturday, but I have had no such contact. I would have hoped that, before the matter was aired in public at today's meeting, Patrick Harvie might have thought to ask our views and give us a chance to reflect on our recollection of the remarks that Mr Mackinnon is reputed to have made.

We have to be careful about using language such as "insult our guests" because that certainly was not the tone of Jim Mackinnon's introductory remarks, which put the event into context and without which our discussion would have been particularly unstructured. Furthermore, as John Home Robertson said, Patrick Harvie is displaying political opportunism at its very worst. I feel extremely angry that the matter has been raised at the committee.

Patrick Harvie: I appreciate other members' feelings about the matter and take seriously the accusation that I am indulging in posturing or whatever. I raise the issue because I genuinely felt uncomfortable with the way in which the accusation of mischief making was made. I felt that the accusation was directed at the organisations that I mentioned and that the issue was worth raising.

I have watched the video recording of what was said on Saturday—both in the instance that we have been discussing and later in the session—a number of times and am clear about what was said. I have made my feelings clear and have put

them on the record. I accept that the committee does not feel willing—

The Convener: You have put your feelings on the record, but now the committee has to respond. A number of members of the committee who participated on Saturday do not agree with your assertion and your belief. You are entitled to hold that belief, but the majority of the members who were present on Saturday do not agree with you.

The fundamental point is that Scottish Environment LINK and the other organisations that were represented on Saturday do not appear to agree with you either, as none of them has contacted any member of the committee. On the contrary, representatives of Friends of the Earth and Scottish Environment LINK have told me personally that they enjoyed the conference. They highlighted several aspects that they thought to be of great merit. If they had had concerns, they would have taken the opportunity to raise them then. We need to have that on record as well.

Scott Barrie: Can I ask Patrick Harvie why, if the issue is so important and he feels so aggrieved on behalf of those organisations, he did not raise it as soon as the comments were made first thing on Saturday morning? Why was the issue not raised informally over lunch with any of us? Even if his concern arose only on later reflection, why did he not mention it to Karen Whitefield, John Home Robertson, Cathie Craigie or me when we were sitting in the pub later that evening? Patrick Harvie cheerioed as he left, and I left Edinburgh thinking that it had been a very good event from which we had all learned something.

The Convener: I should point out to Mr Barrie that Mr Harvie raised the issue with me at the end of the evening. I suggested that he might want to reflect on his concerns. He has done so, and that is why we are here today.

Patrick Harvie: I mentioned my concerns to the convener at the end of the day. I also spoke to participants in the event to find out whether my perception of what was said was shared. I spoke to the convener again this week about an appropriate time to raise the matter at committee and we agreed on the end of today's agenda.

I did not want to start phoning members to discuss the matter in detail until I had seen precisely what was said and whether my recollection was accurate. I obtained the video only yesterday.

Cathie Craigie: I share members' concerns about this issue being discussed at the meeting. We have been provided with a record of the event, as has Patrick Harvie. Why then is it necessary to raise this issue? There is nothing offensive in the record.

Patrick Harvie: In that one paragraph, no.

The Convener: It is clear to me from listening to everything that has been said that there is no consensus and that the committee does not agree with Mr Harvie. He has been allowed to put his concerns on record. However, most of the committee and, most important, the members who were present at Saturday's event with Mr Harvie do not share his concerns. We have also been able to put that on record and I should like to think that the matter is now closed.

Meeting closed at 13:38.

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