

# **SOCIAL INCLUSION, HOUSING AND VOLUNTARY SECTOR COMMITTEE**

Tuesday 4 July 2000  
*(Morning)*

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## SOCIAL INCLUSION, HOUSING AND VOLUNTARY SECTOR COMMITTEE

† 26<sup>th</sup> Meeting 2000, Session 1

### CONVENER

\*Ms Margaret Curran (Glasgow Baillieston) (Lab)

### DEPUTY CONVENER

\*Fiona Hyslop (Lothians) (SNP)

### COMMITTEE MEMBERS

\*Bill Aitken (Glasgow) (Con)

\*Robert Brown (Glasgow) (LD)

\*Cathie Craigie (Cumbernauld and Kilsyth) (Lab)

Mr John McAllion (Dundee East) (Lab)

\*Alex Neil (Central Scotland) (SNP)

\*Mr Lloyd Quinan (West of Scotland) (SNP)

\*Mr Keith Raffan (Mid Scotland and Fife) (LD)

\*Mike Watson (Glasgow Cathcart) (Lab)

\*Karen Whitefield (Airdrie and Shotts) (Lab)

\*attended

### CLERK TEAM LEADER

Lee Bridges

### SENIOR ASSISTANT CLERK

Mary Dinsdale

### ASSISTANT CLERK

Rodger Evans

### LOCATION

The Chamber

† 25<sup>th</sup> Meeting 2000, Session 1—held in private.



## Scottish Parliament

### Social Inclusion, Housing and Voluntary Sector Committee

*Tuesday 4 July 2000*

*(Morning)*

[THE CONVENER *opened the meeting at 09:37*]

**The Convener (Ms Margaret Curran):** My apologies. I am sorry to have kept the committee waiting. As some members will have heard, the Glasgow train stopped for 10 minutes outside Haymarket.

**Alex Neil (Central Scotland) (SNP):** I give my apologies, as I will have to leave for about 45 minutes to attend the Public Petitions Committee, to protect the direct labour organisation workers in North Lanarkshire.

**The Convener:** We will let you go, Alex.

**Mike Watson (Glasgow Cathcart) (Lab):** I move that agenda item 7 be moved up to agenda item 4. The Finance Committee starts at 12.45 and there is a fair chance that we will not be finished by then. That would make sure that I am here for the whole item.

**The Convener:** I think that you flagged that up to Lee Bridges earlier. He has recommended that we move to the housing stock transfer report now.

Sorry, the clerk has advised me that we will move it up to item 4. I move that item 4 be taken in private. That will accommodate those who have to go to the Finance Committee.

**Members indicated agreement.**

### Family Homes and Homelessness (Scotland) Bill

**The Convener:** We move to item 2, which is the Family Homes and Homelessness (Scotland) Bill. Before Robert Brown speaks on that, I should mention that Cathie Craigie has introduced her Mortgage Rights (Scotland) Bill. Congratulations, Cathie.

**Cathie Craigie (Cumbernauld and Kilsyth) (Lab):** Thank you.

**The Convener:** The clerks have recommended to the Parliamentary Bureau that Cathie's bill should come to the committee. The bureau will consider the referral today.

Robert Brown will now make an introductory statement.

**Robert Brown (Glasgow) (LD):** The clerks should have circulated a copy of both the Family Homes and Homelessness (Scotland) Bill and the financial memorandum yesterday. I have also prepared a briefing note, which I have circulated this morning, because this legislation has a complicated background. I will take members through the briefing, because it is important that they understand the legislative background to all of this. The procedure is for me to give an introduction and members can then ask me questions.

The background is the number of people who apply to councils because they are homeless, which has increased steadily, as members will be aware. That increase is not all owing to people being thrown out of their houses, but much of it has been. Many of those cases of homelessness are due to situations where people's tenancies have failed for one reason or another. By tenancy, in this context I mean when people are either tenants or mortgage holders who have failed to pay the mortgage.

I am trying to make improvements in the background law to help prevent homelessness. The general idea is that there should be a prejudice against throwing people out of their houses in those circumstances. Obviously there are circumstances when you cannot maintain the existing occupancy of the house, but there are other circumstances when something could and should have been done at an earlier stage to prevent it reaching that end result.

Eviction results in personal difficulties. Families, often with children, are thrown out of their houses. The state has to take on board the results of a matrimonial break-up or other social problems as well as rehousing problems. From everybody's point of view, it is a lose-lose situation, which does not necessarily result in the lender or the landlord getting their money back, at least not easily.

The bill is divided into two main sections, but there is also a background in relation to court procedures. Members would probably expect nothing less from a lawyer. We have to deal with four situations. One is mortgage repossession. At the moment, the court has no discretion; if a request for repossession comes before the court, it must grant the request. It is not entitled to examine the background, the financial situation or how it has come about. No doubt, in many cases, you will be dealing with a building society that has done its best to act reasonably, but not always. Often there are second loans—it is a more competitive environment, shall we say, in relation to second loans—and people are more anxious to call up the loan if things go wrong, not least because they are further down the line in terms of their security over the house than the building

society or first lender.

The second situation is one where you are dealing with tenants. I am not sure how familiar members are with the background to this, but there are two sorts of tenants. One is the assured tenant: that kind of tenancy exists when housing associations or private landlords are the landlord. A formulation of rights and grounds for eviction exist in that situation. The other is the secure tenant: that broadly exists where people are council tenants, the council is the landlord and there is a higher element of security. There are many reasons why people can be thrown out of their houses. The vast bulk of evictions are related to financial issues. Some are on social grounds and a variety of other reasons, but rental evictions are by far the biggest proportion of the ones that we are dealing with in this bill.

Those are the major forms of occupancy of houses, but a number of people also have occupancy of a house from a primary title-holder who has moved out—the tenant of a mortgage of an owner-occupier who has perhaps gone to Australia for a year or whatever—and let out the house. Often parents move elsewhere—perhaps a new relationship has been formed—and adult children are left in the house. In instances of marital break-up a partner may be left in the house when the title-holder has moved out.

A lot of those matters are dealt with to some extent under the Matrimonial Homes (Family Protection) (Scotland) Act 1981. However, in terms of actions taken by the building society or the principal landlord, there can be problems in giving rights to people in this subsidiary position. Some of the provisions in the bill are intended to deal with that fairly technical, but nevertheless important, position. The bill intends to provide a new uniform scheme that would apply across all those situations to replace the varied and inadequate rights under the existing law.

I should have said that although assured and secure tenants have some rights for their situation to be taken into consideration by the court, the onus is not on the sheriff to be satisfied about the basis of the eviction. That should be made clear and the emphasis should be on maintaining people in their houses wherever possible. The court should be able to consider personal and financial circumstances—not just of the householder, but of other members of the household—and to take into account whether the granting of the order would result in people becoming homeless. That would be the onus of proof.

The court should also consider whether the debtor or tenant has had a reasonable opportunity to get money or housing advice. Nine times out of 10 that has not happened. People have got into a

mess for various reasons and have not known what to do or have buried their heads in the sand. That is a common situation in which people find themselves for various reasons: the loss of a job; a reduction in overtime; illness in the family; the family has split up; additional financial burdens, perhaps from a funeral or a wedding; alcohol and drug problems; catalogue debt that has got out of hand. As I have said before, it does no good to the family or to the public purse if people lose their homes in this way.

09:45

The primary purpose of the bill is to impose a new scheme in which the court has a statutory requirement to consider such matters before eviction can be granted. At the moment, the court does not have a proper range of procedural powers. There are question marks about the extent to which the courts can continue cases, recall orders or grant delayed orders. I have widened the scope for such procedural issues to allow time for consideration. I have modelled those powers on the provisions in section 20 of the Housing (Scotland) Act 1988, which apply to eviction of council tenants and which are reasonably satisfactory.

I am not trying to set up a charter for non-payment. In broad terms, the mortgage lenders, landlords and housing associations are clearly entitled to recover mortgage or rent payments. However, that is not the only consideration and I am trying to impose a balance. Under the bill, if the sheriff continues the case for further consideration or advice, he is required to impose payment conditions in the meantime. Those conditions might be fairly limited. However, it is not intended that people should continue to occupy a house without paying mortgage or rent. It is important to emphasise that in the bill. The importance of paying bills must be recognised.

The bill contains procedural provisions to enable people with subsidiary rights—those who may not have been served with the court order, because they are not named on the mortgage, for example—to enter the court action or to suspend any order if necessary. There are similar procedures in other legislation that I have tried to copy.

As members will be aware, in many cases court procedures can be quite lengthy. It can take quite a while for a case to get to court and there can be much dithering when it eventually gets there. In such cases there are rarely background disputes; it is usually accepted that mortgage or rent is in arrears. There may be some argument about the amount, but that does not really go to the heart of the matter. The main concern is how the situation has arisen and what can be done about it. In such

cases a proof and the whole panoply of civil court procedure is rarely an appropriate way in which to proceed. That does not help the creditor, the householder or, in the case of eviction, the public services.

The bill would include provisions under which the Sheriff Court Rules Council can establish a new framework with speedier provisions to deal with such matters. My general idea is that there would be an early court hearing where the sheriff asks the parties about the essence of the dispute, how the situation has arisen and what can be done about it. There are several legal parallels to that procedure, such as interdict procedure, child welfare hearings and the Matrimonial Homes (Family Protection) (Scotland) Act 1981. It is in everyone's interest to sort the matter out at that point, where possible, rather than for proceedings to drag on. That is the purpose of section 8 of the bill.

The bill also widens the situations in which homelessness decisions can be challenged under part II of the Housing (Scotland) Act 1987. Part II of the 1987 act deals with priority homeless situations and allows for people to take a judicial review application to the Court of Session, although only in certain limited circumstances. That is relatively expensive and is not particularly user-friendly. Furthermore, that applies to primarily procedural situations, rather than those that have a substantial issue at their core. I am trying to widen the circumstances in which people can go to the sheriff court for a relatively speedy decision.

Very few people are legally represented in court procedures relating to mortgage repossession or eviction cases. In Edinburgh and Glasgow sheriff courts, advice from non-professional legal sources is available through arrangements with the citizens advice bureaux and others. That provides a useful channel, which has been favourably reported on by both the courts and the people who appear before them. If a court procedure is under way, it is extremely important that people recognise that they need advice in order to sort things out.

The second part of the bill deals with homelessness duties. Miscellaneous provisions deal with administrative and legal matters that have arisen in relation to homelessness decisions. The first provision reverses the effect of a House of Lords judgment that was made a while back and requires councils to provide permanent and suitable accommodation, rather than temporary accommodation, to homeless families. The best councils do that already. However, some councils, because of housing stock difficulties or their general approach, use the legislation to treat people less than favourably.

In my discussions with housing bodies, it became clear that a permanent tenancy is not

necessarily the only way forward. There are situations where people such as young people with drug problems are not really capable of holding down a permanent tenancy. I am trying to make that the objective, but to recognise that if an alternative in terms of provision or support that would move matters on is available, that option is open to councils. That echoes many of the findings of the drugs inquiry about the difficulties faced by people in that position.

The bill also provides for a right of appeal to the sheriff, which I touched on in a slightly different context. In relation to the housing stock transfer, we heard evidence on the need for co-operation between councils and housing associations or other registered social landlords. We understand that the detail of that will be spelled out in the Scottish Executive's housing bill, which may include some sort of arbitration arrangement. However, it is important that there should be a general statement of duty on people dealing with such matters to co-operate with councils in preventing homelessness. That would set up a legal right and, in extreme circumstances, would allow people to pursue court actions.

I do not want to overstate the intentions of the bill. The bill will not resolve homelessness, but I hope that it will make a reasonably significant addition to the panoply of arrangements that are designed to prevent homelessness arising in the first place. It is extremely important that we try to stop people becoming homeless or having additional pressures put on them which in due course lead to homelessness.

I should say a word about the background to the bill. I drafted it myself, after a considerable amount of consultation with a number of the housing bodies and with other individuals in both councils and legal circles. I received a significant amount of assistance from Mike Dailly—formerly of the Legal Services Agency and now of the Govan law centre—and I must put on record my appreciation of his professional assistance. The decisions, however, were mine. I have also received considerable assistance from Andrew Mylne of the committee office in dealing with the technical aspects of the presentation of the bill. The bill would not have appeared in its present form without that technical assistance, and I am very grateful to Andrew for his help.

This member's bill was offered Executive support in its early stages, but only on the condition that it restricted itself to the mortgage repossession situation. I was not prepared to take up that offer, as I did not think that it was appropriate. I felt that, if the Executive wanted to legislate on such matters, it should do so itself rather than use the vehicle of a member's bill. As I have tried to explain, I also wanted to achieve

broadier aims than merely putting right a deficiency that was causing embarrassment to the minister at that time.

The bill has a relatively technical background. When I was a solicitor, I was not involved much in the area of the law that it deals with. I have come to it relatively recently. I hope that I have dealt with the technical issues correctly, and I have received background briefings to enable me to do that. I hope that the committee will be prepared to give the bill a fair wind and, after investigation and discussion with any appropriate bodies, allow it to proceed to the Parliament with its support.

I thank you, convener, and the members of the committee, for your time on this matter.

**The Convener:** That was very comprehensive. We have until about 10:30 to discuss this bill. I would like to have some general discussion on the content of the bill, but we must keep a wee bit of time free for procedures, as we have deadlines and suchlike. Whatever our views on the bill, most of us want to give it proper consideration, and we must ensure that we have enough time for that.

Does anyone want to question Robert Brown on the content of the bill?

**Bill Aitken (Glasgow) (Con):** You say that more than 18,000 orders were granted, and that, until recently, no one knew their outcomes. Are you now in a position to enlighten us?

**Robert Brown:** I do not think so. I lodged a question to the minister six months ago concerning this matter, which revealed the fact that no statistics were kept on people who were evicted. The minister proposed to consider the keeping of those statistics, and to discuss the matter with councils, but I do not know whether that has happened. Other members may know more about that. However, detailed figures would not yet be available, as it will take time for them to work their way through the system.

**Bill Aitken:** As you will know, in many cases debt is pursued and orders are obtained, but those orders are not executed. Could it be that comparatively few of the 18,000 orders resulted in people being evicted or leaving voluntarily?

**Robert Brown:** It is probably true that relatively few orders lead to evictions. I have picked that up from conversations, legal and otherwise, that I have had. However, the issue is not just about evictions and sheriff officers throwing people out on the streets, but about the people who are not prepared to go through that humiliation, who move out at an earlier stage. Many of those people have not had appropriate advice on their financial and personal situation, a fact that is borne out by the information that can be obtained from Shelter and other bodies. We must consider the broad

position, as the end result is the same: people are out of the house, in less advantageous housing circumstances at best, and having to deal with the family pressures which result from that.

**Bill Aitken:** As I recall, the law in England would allow a county court judge to do what a sheriff in Scotland cannot do, that is, carry out an inquiry into why the debt has been accrued, whether or not there is any prospect of that debt being repaid in the short term.

**Robert Brown:** That is correct.

**Bill Aitken:** Therefore, you are simply seeking to apply the English system in Scotland.

10:00

**Robert Brown:** It is not quite as simple as that. I am trying to go a bit further than that. I do not want to make any adverse comments on professional colleagues, but sheriffs have variable knowledge and interest in housing law. The system is not organised throughout Scotland in such a way that expertise is necessarily brought to bear in that area of law.

As well as allowing the sheriff the power of discretion, I want to spell out the detail of situations in which that discretion is to be exercised and the burden of proof with which the sheriff must be satisfied. It is important that we consider the procedures, the training of sheriffs and other lawyers in this context and the ability of the sheriff court rules to facilitate a proper investigation that is designed, if at all possible, to prevent people being evicted.

**Bill Aitken:** I am not unsympathetic towards your aims; I am just a little concerned that we should identify the extent of the difficulty. We may be using a sledgehammer to crack a nut, although the jury is out on that specific issue.

I also have concerns over some of the other aspects, such as the fact that the bill will make eviction more difficult. There are certain circumstances in which eviction is not desirable. However, when the eviction is on the basis of anti-social behaviour, we would not want to inhibit housing associations or local authorities, bearing in mind the problems that the neighbours of the anti-social tenants have to live with.

**Robert Brown:** That is an important issue, and I would like to say three things about it. First, anti-social tenancy is not a major ground for eviction in Scotland. Quite often, anti-social tenancy evictions masquerade as rental evictions. Secondly, anti-social behaviour situations are varied and complex, and evicting someone from their house does not solve the problem; it simply moves it somewhere else.



Thirdly, we must have regard to the interests of people who live nearby, who are affected by the anti-social behaviour; therefore, the intention would be to make a speedy decision in such cases. At present, if people are sufficiently determined, an anti-social eviction case can be spun out for a considerable time, while they wait for legal aid and a hearing. The intention is to re-examine the sheriff court rules, to enable sheriffs to identify the substance of such issues early on, so that a decision can be made quickly. Evictions would not always be slower if the bill were passed. Some would be slower and some would not take place at all, but some would be quicker.

**Bill Aitken:** I am not suggesting that eviction should be considered lightly—far from it. However, the emphasis should be on the interests of the people whose lives are being made unpleasant by the conduct of a minority of their neighbours. In the past, local authorities have been understandably loth to carry out evictions. Nevertheless, that is a failure on their part. We have a duty as a Parliament, and they have a duty as landlords, to look after the interests of the well-behaved tenants.

**Robert Brown:** It must be remembered that we are dealing with alleged anti-social behaviour that must be established before the court. I am trying to make that process a bit speedier. Quite often, the original issue can be lost sight of in the morass of complicated social disputes between neighbours, and sometimes the wrong neighbour is accused. It is important that the right tenant is identified.

Once anti-social behaviour has been established and everyone knows where they stand on the matter, action should be taken immediately. This bill does not say that people should not be evicted; it says that the sheriff must consider certain things before that decision is made. Anti-social behaviour would be one of the situations in which there would not be a huge amount of sympathy for the continuation of the tenancy.

**The Convener:** People should flag up issues on which we can take evidence at stage 1. I asked the clerk whether we had received any representations on the bill. I presume that this will be like the Abolition of Poindings and Warrant Sales Bill, on which outside organisations said what we had got right and wrong and tried to bring matters to our attention. We will have the opportunity to look through those representations.

**Mr Keith Raffan (Mid Scotland and Fife) (LD):** I have a couple of points about section 5 onwards. There is a provision to require councils to provide permanent and suitable accommodation, rather than temporary accommodation, within three months. How practical is that? What would be the nature of that accommodation? Does it simply

mean putting people into council accommodation? Will there be a tendency for councils to try to ship people out?

Secondly, there is a duty on registered landlords to co-operate with councils in preventing homelessness. I do not know what proportion of the total rental market the private market represents, but I think that it is probably pretty small. The trouble with that provision is that it could lead to the private rental market shrinking still further. If registered landlords feel that they cannot get somebody out and more duties are imposed on them, they are less likely to go into the rental market.

**Robert Brown:** Registered landlords are essentially housing association-type bodies. They are social landlords, so in this context we are not talking about the private rented market. We are talking about what the stock transfer bodies and the housing associations have to do to assist councils in their duties. That is a straightforward issue that does not affect the balance between private and social landlords.

On permanent and suitable accommodation, the bill restores or—because it includes “suitable”—slightly improves the law as people thought it existed before the *Awua* case in the House of Lords. In that case, the House of Lords decided that responsibilities under homeless persons legislation were limited to temporary accommodation. What lies behind this provision is a recognition of the desirability of shifting people into permanent accommodation.

Most of the people who come under this heading do so as a result of marital break-up and, usually, children are involved. It is a question of trying to rehouse them permanently rather than providing bed-and-breakfast accommodation or temporary housing hither and thither. The sooner that is done, the better; if it can be done without the interim stage, that is even better.

I do not think that there will be problems in most areas, although in one or two areas there is a shortage of social rented housing. In those areas it is difficult to carry out the current duties satisfactorily. The words

“as soon as reasonably practicable thereafter”

provide a get-out to some extent if the council has major problems carrying out its duties. It is a directional measure as much as anything else.

**Mr Raffan:** So it does not deal with the private rental market at all?

**Robert Brown:** No.

**Mr Raffan:** Why not?

**Robert Brown:** Primarily because arrangements would operate differently for the private rented sector. If the local authority wants to house people in the private sector, which it will no doubt do in certain circumstances, that is a matter of contractual arrangements with private landlords. A whole new can of worms would be opened up if private landlords were compelled to receive people in those circumstances. There may be a case for that, but I am not trying to do it in this bill.

**Fiona Hyslop (Lothians) (SNP):** Thank you for your presentation. As you are aware, I was keen to pursue the mortgage repossession angle by changing the Conveyancing and Feudal Reform (Scotland) Act 1970 when the Abolition of Feudal Tenure etc (Scotland) Bill was before us. That was a lost opportunity, but I am pleased that we are again discussing proposals on the matter.

It is clear that we must consider how this bill fits into the context of the housing bill, Cathie Craigie's Mortgage Rights (Scotland) Bill and how we take evidence. That is a procedural matter that we will have to address. We have some sympathy with the intention behind section 1, which deals with mortgage repossession. We have to explore some of the points in the bill and make it robust. On the sections that relate to council tenants, we will have an opportunity in advance of the housing bill to examine the operation of anti-social behaviour orders, which are encouraging evictions, and the homelessness task force report.

Robert Brown is talking about making councils responsible for providing permanent accommodation. The question is where the Family Homes and Homelessness (Scotland) Bill fits in with other things that are happening. It will be an interesting exploration which we would have had to do anyway for the housing bill. I need procedural clarification on how much work we do on a bill that may be superseded by the housing bill and by Cathie Craigie's bill.

I have a few specific questions. I may be wrong, but I thought that housing courts were a Lib Dem policy. If they are proposed in the housing bill, how would the Family Homes and Homelessness (Scotland) Bill operate in that context?

In the evidence that we took on the Abolition of Poindings and Warrant Sales Bill, the idea of making debt and financial advice part and parcel of any operation of debt recovery or repossession was raised. This would be a great opportunity to examine an important feature of what is required, not just for housing and homelessness, but for other areas that we have investigated.

**Robert Brown:** I share the view that the matter might have been dealt with under the Abolition of Feudal Tenure etc (Scotland) Bill because it was concerned with the same act but, as you say, it

was not dealt with in that bill, so we have to move on.

My bill has had a fairly lengthy gestation. It was redrafted several times at different levels after the first draft was produced in the early autumn last year and then it was stuck with the clerks for a while. In that time, some aspects of what will be included in the housing bill have become clearer. Apart from the provisions relating to eviction, the bill was originally drafted to complement what I thought would be in the housing bill and to deal more quickly than the housing bill would with several bits and pieces of reform that were long outstanding. An example of that is the section on permanent and suitable accommodation, as the Government—rather than the Scottish Executive—promised legislation at an early stage to reverse the decision on that, but that has not yet happened. This is a legislative opportunity to do that.

Section 5 and the section on co-operation between councils and social landlords are the areas of overlap with the housing bill. The trouble is that we do not know what will be in the housing bill. This bill sets out a broad duty. Depending on how the housing bill is phrased, it may be possible for those sections of this bill to proceed, although it is clear that a review of those sections may be needed once the housing bill is available.

To an extent, there is overlap in the eviction provisions as the Executive will introduce the single social tenancy. From what I can deduce so far, it is not likely that the housing bill will take the same approach as I am taking. This is intended to be a thematic approach, looking at the policy issue and how we remedy what I think are the problems with the current legislation. That is readily compatible with whatever is in the bill, on tenancies and so on.

The Liberal Democrat manifesto at recent elections has gone variously for housing courts or housing tribunals. You will probably be aware that the anti-social behaviour consultation paper recommends that rather than opting for housing tribunals we should consider improvements in court arrangements to allow housing issues to be dealt with more satisfactorily. What I am trying to do echoes that, in the sense that I am giving powers to the Sheriff Court Rules Council to revise the rules in this sphere.

I should explain that there are bodies of rules for ordinary actions, summary cause actions and matrimonial actions. I envisage a separate body of rules for housing cases—not least eviction cases but perhaps others as well. That would be the subject of consultation by the Sheriff Court Rules Council and the Lord President of the Court of Session, who has responsibility for this. I am not setting that down in tablets of stone, but I am

indicating the direction in which I want to go, which is to introduce a speedier court procedure.

**The Convener:** I will hold the procedural points until we have had more discussion on content.

**Cathie Craigie:** I introduced my bill yesterday. I do not want to question Robert Brown in detail. I agree with the principles that underlie his bill. My bill is different. It aims to ensure that the courts take account of all the circumstances of mortgage holders in default and aims to give rights to tenants of mortgage holders in default. Robert Brown's aim is wider and deals with evictions by councils and other social landlords.

I would be interested to find out how we will deal with the three bills that we will have before us. I had hoped that my bill would progress more quickly than it has. As slow as the wheels of justice turn, the wheels of Parliament turn slower still and it takes a while to get legislation through. The bills deal with similar areas and it would be sensible to arrange our work programme so that we address that and avoid overlap. My bill will be on the web today, so people will be able to compare Robert Brown's bill and mine and see that they are quite different.

10:15

**Mr Lloyd Quinan (West of Scotland) (SNP):** With regard to the Housing (Homeless Persons) Act 1977, which was introduced in Westminster by Stephen Ross, Robert Brown's briefing note says that his bill aims to reverse the effect of the *Awua* judgment. It goes on to say:

"The Bill recognises that some people (eg some teenagers with drugs problems) may not be capable or suitable for a permanent let and should have some form of supervised or supported accommodation."

Robert, what would be the financial implications of that? When deciding whether someone was suitable for a permanent let, where would the burden of proof lie—the council, the court or someone else? Would the bill have an effect on other legislation, such as the Social Work (Scotland) Act 1968? Would local government legislation need to be amended to ensure that supervised accommodation could be provided? In the current climate of restricted local authority budgets, the bill might add an additional burden. It would certainly do so in terms of capital, but the running costs would be substantial as the proposal would require a great deal of staff.

**Robert Brown:** One of the themes of the bill is the relation between the legislative framework and what councils do practically. As Lloyd Quinan says, it is important to bear that in mind. I hope that my bill acts as a prompt to councils to improve their procedures in certain respects. The bill does not impose a duty on councils to do something

about supported accommodation. There is an increasing recognition that, given the scale of the problems, the facilities that are available for supporting teenagers with drug problems, for example, are inadequate. That will have to be tackled on a broader front, as many people have said, including the Executive.

The bill says that when deciding whether to give someone a permanent let, local authorities can take account of whether there is a facility for someone to have support in the community and whether that will advance them towards independent living. If support is not available, the situation would continue to be as it is at present, which is that such people have to be housed somewhere and should receive as much support as is possible.

Mr Quinan asked who would decide whether someone was eligible for a permanent let. The initial decision would be made by the council. Whether the person accepted such an offer would be up to the person, but most would. If the person who is offered the let is not satisfied with the position, the second part of the bill ensures a right of application to the sheriff court. That would not happen in most cases, but it is important that a legal remedy should be open to people who feel aggrieved by a local authority's decision. To some extent, that already exists in the form of the judicial review mechanism in the Court of Session.

**Mr Quinan:** That throws up more questions than it answers.

**Alex Neil:** The thrust of the bill is to attempt to have matters dealt with once they get to court, which would make the process easier, fairer and more balanced—most sensible people would welcome that principle—but by the time such issues get to court a lot of water has flowed under the bridge. It might be sensible to consider for inclusion in the bill an obligation on the authorities to refer for mediation matters relating to things such as anti-social behaviour or disputes over rent arrears. That would prevent the matter getting to the point at which lawyers and courts have to become involved. I know that that makes good business for lawyers, but it would make sense to consider the idea.

When we get the reports from the debt recovery working parties—the official one, which Tommy Sheridan and I are on, and the unofficial one that Jim Wallace has set up—I expect that there will be a heavy emphasis on dealing with problems that arise from things such as rent arrears at source, rather than waiting until the situation becomes a crisis. As we heard when we took evidence during the pre-legislative scrutiny stage of the Abolition of Poidings and Warrant Sales Bill, a lot of the time, debt is allowed to build up before the situation is tackled. There should be a statutory requirement

for mediation at least to be attempted.

**Robert Brown:** I forgot to touch on a valuable point that Fiona Hyslop made about citizens advice bureaux and advice throughout the country. It is obvious that I cannot solve all the problems in the world with a member's bill. The intention is that the legislative framework should provide a spur to councils that are falling short of best practice to revise their procedures. The Executive has powers under homelessness legislation to give guidance to local authorities, as it has done. In 1977, I was on the working party that produced Glasgow District Council's code of guidance. It led to major changes in Glasgow's approach to homelessness allocations. There is great scope for that kind of thing.

I do not know whether it would be appropriate to deal with the points that Alex Neil raises through the bill or by other mechanisms. Before I accepted an amendment to the bill along those general lines, I would like to be satisfied that adequate mediation arrangements are available. The science is relatively new and a number of people are getting into the field. I understand that the quality of the service can vary and it probably is not available nationwide. Only a limited number of organisations are able to provide an adequate service.

**The Convener:** We will deal with the points Alex Neil raised when we examine the broader issue of debt.

We have a number of other things to deal with, so we cannot spend more time on this matter. We have not been able to pursue many issues, but we will be able to clarify certain things with Robert Brown later.

I want to spend five minutes getting the procedures right. It is important that we do, given that we have the housing bill and Cathie Craigie's Mortgage Rights (Scotland) Bill as well. I will hand over to Lee Bridges to help us through this.

**Lee Bridges (Clerk Team Leader):** One bill has been referred to us and that is Robert Brown's bill, which is at stage 1. The Parliamentary Bureau has said that we must produce a stage 1 report by 7 October. Cathie Craigie's bill is going to the bureau today. I assume that it will come to us, so that will be another bill that we will need to report on at stage 1, probably a short time after 7 October. To all intents and purposes, the housing bill does not exist; it has not been introduced. We know that a bill is coming—I understand that it will be introduced sometime in the autumn—but we cannot say that we will hold off on Robert Brown's bill until we see the housing bill because we have to take his bill through stage 1.

We were going to talk about this matter later, when we discuss the proposed work programme,

but it makes sense in terms of the committee's time and that of witnesses to have an integrated approach in taking evidence on all three bills. We should know what is in the housing bill from the consultation document, which will be out soon.

**Bill Aitken:** It is out tomorrow.

**The Convener:** How do you know that?

**Fiona Hyslop:** The Tories and new Labour are close.

**Bill Aitken:** I have links with the Executive.

**The Convener:** Some of us are out of that loop.

**Cathie Craigie:** You cannot be new Labour.

**The Convener:** Always. I decided that a long time ago. This is not on the record, is it?

**Lee Bridges:** Yes.

**The Convener:** I take it all back.

**Lee Bridges:** There will be issues that will be relevant to all three bills. To make best use of our time and that of witnesses, it makes sense to have a strategic approach to evidence taking. We will be working with Stephen Curtis from the Scottish Parliament information centre to provide briefings for the committee after the recess. You can then choose the people you want to see. I hope that we will build up enough background knowledge to have a good go at each stage 1 report and then take specific bits of evidence as required.

**Alex Neil:** Who set the date of 7 October? Was it the bureau?

**The Convener:** Yes.

**Alex Neil:** We should go back to the bureau and ask it to be more sensible. We do not come back until 4 September. We have some outstanding work to do. If we keep to our schedule, we will have one meeting a week and therefore four meetings between coming back and 7 October. We could devote all that time to taking evidence on Robert Brown's bill, because while it is a member's bill it is clear from this morning's conversation that it has many ramifications for different aspects of housing policy. Frankly, it is nonsensical that we have to report by 7 October.

This is part of the pattern that is forming in this Parliament—rushing through legislation just for the sake of it. The whole point of setting up the Parliament was to get good quality legislation. I suggest that 4 or 7 November would be more realistic than 7 October. It is a nonsense.

**The Convener:** I am not unsympathetic to that point, but I am thinking through the implications for the rest of the legislative programme, such as the housing bill.

**Mr Raffan:** I do not want to repeat what Lloyd

Quinan said, but I agree with him. We have the draft drugs report, which I presume we will look at when we come back. That may well take a number of meetings. The point was that we would decrease our work load after the recess. We have been proceeding at a ridiculous pace. We have got into the habit of having two meetings a week, which is absurd. We are rushing through work in a non-methodical fashion. I agree with Alex Neil: we should go back to the bureau. I do not know whether I understood Lee Bridges correctly. Did you say that Cathie Craigie's bill is coming forward one week after Robert Brown's bill?

**Lee Bridges:** No. The bureau has not discussed the timetable yet, but I imagine that Cathie Craigie's bill will come forward soon after Robert Brown's.

**Mr Raffan:** The whole thing is absurd.

**The Convener:** I may have been told to go to the bureau. If Cathie Craigie's bill is coming up, I should have been told. I will check that out as soon as this meeting is over. If I go to the bureau this afternoon—you only ever go for five or 10 minutes anyway—I will make a plea to have the date on which we have to report on Robert Brown's bill extended, given that we have Cathie's bill also. I will go for the maximum amount of time. I take the point that we should not rush these matters. Given that we have the housing bill I can make a case for a much more integrated approach. Robert, there is no intention to delay your bill in any way. I reassure you that that will not happen. Perhaps you would like to come to the bureau to make the point as well. Cathie, have you been invited?

**Cathie Craigie:** No.

10:30

**Alex Neil:** Convener, as well as the specific issue relating to 7 October, the general point must be made to the bureau that while we in no way want to slow down the legislative process, we want to have the time to ensure that we get it right. Frankly, I do not know how the bureau picks these dates out of the air; it is ludicrous.

**The Convener:** We can make a case, given that we will also have the housing bill.

**Robert Brown:** In fairness, convener, you and I agreed the date of 7 October with the bureau when the bill came forward.

**The Convener:** Yes.

**Robert Brown:** The bureau wanted to deal with the bill quicker than that, which is astonishing. The bill sat with the bureau for a long time after it received its certificate of legislative competence. I am astonished to learn that Cathie Craigie's bill,

which was launched yesterday, is going to the bureau today. There are issues about whether that is just a speeding up of the process or whether there is more to it.

Members have raised a number of points that we will want to follow through, not least the business about advice agencies. It will take a little longer to do that than we originally expected, so I am not against the bill taking longer to go through stage 1.

**The Convener:** Lee Bridges has a point of information.

**Lee Bridges:** It is my fault that the bureau is seeing Cathie Craigie's bill today. It is doing so just for the referral, not the timetabling. In terms of planning the work, it would be useful to know for definite that the bill is coming to us, although I do not think that there is any doubt about that. It was a matter of getting the bill in today because the bureau will not meet during the recess. The timetable for the bill will be agreed with Cathie Craigie after the recess.

**The Convener:** If I am not called to the bureau I will write to it and make the points that we have discussed.

**Cathie Craigie:** I am thankful to Lee Bridges for clarifying that point. I am happy to take on board any points about speeding up the process. I share the view that we should not rush. I hope that we will be able to examine the issues in detail. In particular, I hope that people will be able to support my bill.

The Family Homes and Homelessness (Scotland) Bill and the Mortgage Rights (Scotland) Bill would make excellent reading over the summer. If members go away with the bills and the notes we could come back and be experts in the field. Given that the stage 1 report on the Family Homes and Homelessness (Scotland) Bill has to be ready by 7 October, having gathered the knowledge over the recess we would be raring to go.

**The Convener:** We can set homework for the summer recess and do it on a beach. If I do not get to the bureau I will write to it asking to delay our timetable so that we can take a more integrated approach. I will negotiate with Robert Brown and Cathie Craigie, who are the key interests. Thank you, Robert. That was extremely useful. It is handy having you as a member of the committee.

## Petition

**The Convener:** Item 3 is the petition. We will further consider petition PE38 by Glen Oaks Tenant and Resident Association, which members will recall we looked at before. It calls on the Scottish Parliament to request that Scottish Homes take a number of steps in relation to the organisation and improvement of tenant and resident organisations. Members have had the paper on this petition for some time, so I will continue. We have done some work on this already. The recommendation is:

"The committee is invited to note the comments made by Scottish Homes and to consider the general issues raised by the petition (as opposed to the specific circumstances highlighted by the petitioners) in the autumn in the context of the proposed housing bill."

We will look at the generalities of the petition, which is accepted practice.

**Fiona Hyslop:** I have a couple of points. The first is procedural. Scottish Homes said that it had not seen the petition that it was asked to comment on. In future, we should send a copy of the petition when we write to people.

I agree with the general points. Margaret Curran and I addressed the tenants information service conference. The general issue about who are recognised as tenants' representatives in consultation and participation is a huge area that we will have to address as part of our consideration of the housing bill.

We have a responsibility to the petitioners. One of the key points to emerge from Scottish Homes is that there would be an audit on performance standards, which would address whether the association is meeting its duty on tenant participation. We should ask Scottish Homes whether it is satisfied that the association met the performance standards that were being investigated in February.

To sum up, the first point is that we should check that the association has performed to the satisfaction of Scottish Homes; the second is that we should take on board the representations on the right of tenants to organise as they want to organise, as opposed to doing so prescriptively. That is a huge area that we can address as part of our consideration of the housing bill.

**The Convener:** Tenant participation is bound to be flagged up, whether we like it or not. I am sure that there will be a drive in the committee to flag it up—Fiona Hyslop and I gave a personal commitment to do that. I hope that there is no disagreement on that.

The point about sending copies of the petition is

important. I take it that that can be dealt with. Can we agree the recommendation?

**Members indicated agreement.**

**The Convener:** We agree the recommendation with the proviso—

**Mike Watson:** I am not against agreeing the recommendation, but the Glen Oaks Tenant and Resident Association does not believe that there is proper representation of tenants' views in the housing association. It is not for the Parliament to address an issue as specific as that, but I am not entirely happy with the response from Scottish Homes, which seems to have sided with the housing association.

Tenants must have what they regard as fair and proper representation. That is clearly not the case in this instance. While I agree that we note the recommendation, we should write to Glen Oaks Tenant and Resident Association making it clear that the problems it raises will be part of our consideration later in the year and that we are not just kicking the matter into the long grass.

**The Convener:** We recognise the seriousness of what it is flagging up, but we are considering the matter at a more general level.

**Alex Neil:** I support what Mike Watson says. I know other cases, in Lanarkshire and elsewhere, where Scottish Homes has not treated tenants organisations respectfully. When we write to Glen Oaks, we should offer it the opportunity to give evidence when we discuss the general principles of the bill.

**The Convener:** I do not want to be unhelpful to any tenants associations, but can we hold on that one—we have to consider a wide range of evidence relating to the housing bill. We shall put that on the agenda but make no specific commitments. It would be unfair if something went wrong

**Alex Neil:** Point out to it that it is entitled to request to give evidence.

**The Convener:** It can certainly submit evidence to us. Whether we hear it give evidence is another matter. I would not want to give anybody a definite indication that we will hear them. We will write to Glen Oaks and to Scottish Homes. Is there anything else on that? If members do not disagree, I assume general agreement.

**Members indicated agreement.**

10:38

*Meeting continued in private until 12:17.*

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