

SOCIAL JUSTICE COMMITTEE

Wednesday 17 January 2001
(Morning)

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SOCIAL JUSTICE COMMITTEE

2nd Meeting 2001, Session 1

CONVENER

*Johann Lamont (Glasgow Pollok) (Lab)

DEPUTY CONVENER

*Ms Sandra White (Glasgow) (SNP)

COMMITTEE MEMBERS

*Brian Adam (North-East Scotland) (SNP)

*Bill Aitken (Glasgow) (Con)

*Robert Brown (Glasgow) (LD)

*Cathie Craigie (Cumbernauld and Kilsyth) (Lab)

*Karen Whitefield (Airdrie and Shotts) (Lab)

*attended

THE FOLLOWING ALSO ATTENDED :

Mr Michael McMahon (Hamilton North and Bellshill) (Lab)

WITNESSES

Douglas Blair (Scottish Executive Development Department)

Gavin Corbett (Chartered Institute of Housing in Scotland)

Tim Ellis (Scottish Executive Development Department)

Alan Ferguson (Chartered Institute of Housing in Scotland)

Beverly Francis (Scottish Executive Development Department)

Richard Grant (Scottish Executive Development Department)

Geoff Huggins (Scottish Executive Development Department)

Murray Sinclair (Scottish Executive Development Department)

Michael Thain (Chartered Institute of Housing in Scotland)

CLERK TO THE COMMITTEE

Lee Bridges

SENIOR ASSISTANT CLERK

Mary Dinsdale

ASSISTANT CLERK

Rodger Evans

LOCATION

The Hub

Scottish Parliament

Social Justice Committee

Wednesday 17 January 2001

(Morning)

[THE CONVENER *opened the meeting at 10:01*]

Deputy Convener

The Convener (Johann Lamont): I welcome members to this meeting of the Social Justice Committee. The first item on the agenda is to choose the deputy convener of the committee, who must be drawn from the SNP. Is there a nomination for the post of deputy convener?

Brian Adam (North-East Scotland) (SNP): I nominate Sandra White.

The Convener: Sandra White has been nominated as deputy convener. Do we agree to that nomination?

Members indicated agreement.

Ms Sandra White was chosen as deputy convener.

The Convener: I welcome Sandra White to the post and look forward to working with her.

Ms Sandra White (Glasgow) (SNP): I am looking forward to the post of deputy convener. I am sure that we can all work together to push through the Housing (Scotland) Bill and the wider agenda of the committee. I thank committee members for supporting my nomination.

Items in Private

The Convener: We move to agenda item 2. Are we agreed that items 4, 6 and 7 should be taken in private?

Ms White: Why do we have to take item 7 in private?

The Convener: It is a draft report on a petition, so it is available only to committee members until we agree it, when it can go into the public domain. We must discuss the contents of the report in private.

Ms White: If a petition comes before the committee and we agree to discuss the issue in private until such time as we say that it is not to be kept private, that means that it will always be discussed in private.

The Convener: When we write a report, the discussion of its contents must be in private.

Ms White: When the petition came to the committee, if we had not agreed to hear it in private, it would have been dealt with in public.

The Convener: It is one thing to discuss in public how we want to deal with a petition or any other matter, but once we decide that we will produce a report, we must be able to deliberate on it in private. The draft paper remains private to the committee members who must sign up to the report. That discussion must be in private. The matter comes back into the public domain when the report is produced.

Ms White: I understand that. I just wonder why those discussions are always in private.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): For the record, when the petition came to the committee we took evidence on it in public. I say that in case anyone reading the *Official Report* thinks that we have always dealt with the petition behind closed doors.

The Convener: The issue is not the content of the report, but the mechanism by which the committee comes to conclusions on it. The practice is that when a committee is preparing a report in the name of the committee, the draft report is dealt with in private.

Item 3 also relates to items in private. I ask members to agree that consideration of questions for witnesses and of the conclusions following the taking of evidence at the sessions on 24 and 31 January and 7 and 14 February be taken in private. Is that agreed?

Members indicated agreement.

10:04

Meeting continued in private.

10:17

Meeting resumed in public.

Housing (Scotland) Bill: Stage 1

The Convener: I welcome visitors and Michael McMahon who, I understand, is the reporter from the Local Government Committee, which is also taking important evidence on the Housing (Scotland) Bill.

I welcome the representatives from the Scottish Executive. I will introduce you and then hand over to you. We will have the opportunity to hear you give a brief overview and then we will ask questions. We have scheduled an hour for this session. I am anxious that the committee should have the opportunity to ask questions as well as to hear your presentation, so I hope that we can get the balance right.

I welcome Richard Grant, who is head of housing division 2, Tim Ellis, from the bill team, Geoff Huggins, who is head of housing division 3, Murray Sinclair from the solicitors division, Beverly Francis from housing division 2 and Douglas Blair from the homelessness team. The range of expertise gives a clear indication of the amount of work that must have gone into the bill. Dealing with it is a massive undertaking for the Executive and for this committee.

Richard Grant (Scottish Executive Development Department): We are happy to answer questions on the objectives of the bill and on how it will work.

If members have had a chance to read the bill, they will have seen that the long title says that it is

“An Act of the Scottish Parliament to make provision about housing, including provision about homelessness and the allocation of housing accommodation by social landlords, the tenants of social landlords, the regulation of social landlords, Scottish Homes, the strategic housing functions of local authorities and grants for improvement and repairs”.

The overall purpose of the bill is primarily to provide a better deal for tenants of social landlords and to provide a framework that allows, more generally, for the achievement of better housing. The bill will work primarily through amendments to the Housing (Scotland) Act 1987, which is the primary consolidated act relating to housing. There are also extensive changes to the Housing Associations Act 1985 and the Housing (Scotland) Act 1988.

Members may also have seen the documents that accompany the bill. There is a policy memorandum and an explanatory memorandum, which goes through each of the provisions of the

bill. We have also circulated to the clerk versions of the 1987 act, which have been amended to take account of the changes that the bill will introduce. Some of the sections of the bill are quite difficult to understand on their own, so I hope that that will be of use to the committee. There is also a summary of the consultation that was undertaken on the bill.

The bill has seven parts, nine schedules and 101 sections. I will go over the main points briefly, then hand over to members for questions.

Part 1 deals with homelessness and allocations and takes forward the recommendations of the homelessness task force. It places new duties on local authorities to produce homelessness strategies, to secure advice for homeless people and to provide permanent accommodation for unintentionally homeless persons in priority need. It also creates arrangements whereby local authorities can ask registered social landlords for assistance in providing accommodation for the homeless and provides for arbitration if there are disputes about that. It also includes provisions on waiting lists and allocations.

Part 2 is lengthy. It creates the new Scottish secure tenancy for tenants of local authorities and registered social landlords. It contains many provisions, some of which come from the existing provisions for secure tenancies. The basis of the new tenancy is the secure tenancy, which is currently available to public sector landlords, but there are changes and modifications to it. The new provisions give new rights, including rights of succession and to exchanges and information, which are set out in a fair number of sections and in three or four schedules. Linked to the tenancy is a short Scottish secure tenancy. That is a new arrangement, which is meant for specific circumstances set out in schedule 6.

The bill also makes provision for the right to buy, which has been widely discussed. It sets out the arrangements for the modernised right to buy—with new discounts and qualifying periods—which will apply to new tenants in the future. It also sets out arrangements for amending and introducing new exemptions and suspensions, including a suspension in designated pressured areas.

The final part of part 2 deals with tenant participation. It introduces provisions that require landlords to have strategies for tenant participation and to review funding arrangements for tenant participation. The provisions put duties on landlords to consult registered tenant groups and other tenants on a range of matters.

Part 3 deals with the regulation of social landlords and local authorities and provides for the single regulatory framework, which is one of the objectives of the bill. It creates for the first time the concept of registered social landlords in Scotland,

and has many detailed technical provisions, with slightly separate arrangements for regulating local authority housing management functions from those for regulating social landlords, housing associations and so on. It implements the decision to regulate the homelessness functions of local authorities and local authorities' and RSLs' factoring arrangements.

Part 4, which is relatively short, provides for the dissolution of Scottish Homes. Part 5 deals with the strategic role of local authorities and puts duties on local authorities to produce local housing strategies. It also deals with a range of funding provisions relating to the payment of grants by Scottish ministers for housing purposes and housing support services, and with powers for local authorities to make payments to third parties. It provides the legislative framework for a greater emphasis on the strategic role.

Part 6 deals mainly with improvement and repair grants and extends the range of work that can be funded through grants. It allows for the concept of a minimum grant and introduces a test of resources for grant applications.

Those are the main provisions of the bill.

The Convener: Do any of your colleagues want to add anything?

Richard Grant: No. They will come in when we are asked questions.

The Convener: Thank you. We move to questions. I will start the ball rolling.

The policy memorandum states:

"The core objective of the Bill is to secure a better deal for tenants in the socially rented sector."

Does the Executive intend to secure such improvements for tenants in the private rented sector? Is there a time scale for improving private tenants' rights?

Richard Grant: There are no provisions in the bill relating to tenants in the private rented sector. Ministers have announced the establishment of a housing improvement task force to consider quality issues in the private sector. It may want to consider certain tenancy matters that relate to quality issues. However, as the task force has not yet been established, the precise details of its remit have not been decided.

The Convener: So it does not have a time scale.

Geoff Huggins (Scottish Executive Development Department): We are doing further scoping work on the overall remit, based on what we know about housing quality. We hope to make an announcement by the end of February, setting out the membership and details of how the task

force will operate. However, we did not want to rush in without further thought.

The Convener: Will you be able to announce when the end stage will be?

Geoff Huggins: Yes. We intend to indicate how the task force will work, when it should report and what outcomes we expect from it.

The Convener: Thank you.

The policy memorandum states that the bill will

"ensure that a range of decent housing options is available to all, regardless of social, cultural or ethnic background."

How will the bill achieve improvements in housing for all sections of society? How was the bill equality-proofed to ensure that it reflects the needs of the disparate groups in society?

Richard Grant: I will make a couple of quick comments on that before Tim Ellis expands on it.

Essentially, we see the bill as providing a framework within which we can better secure equality of opportunity. The main parts of that framework are the provisions relating to the Scottish secure tenancy, those relating to regulation—which are closely related to the quality of service provided—and those relating to local housing strategies and the role that local authorities will undertake.

Tim Ellis (Scottish Executive Development Department): There is a summary of the effects on equal opportunities at the back of the policy memorandum. Once we had received all the responses to the consultation document, we reviewed them specifically from an equal opportunities angle. We also had the responses audited externally to try to take on board as many of them as we could. We went through various processes during the consultation to consult bodies with particular interests in equality issues, so I hope that we have taken on board those views wherever possible.

In some cases the issues are not straightforward. In such cases, we have had to try to strike a balance between the needs of different groups; for example, in relation to special needs accommodation and to the right to buy, where there are arguments from different perspectives.

10:30

Geoff Huggins: It is important to say that we continue to work with equality groups on how the bill will be implemented and on the guidance that will be offered. With a framework such as this, what is important is how it is used to promote equality and housing solutions for a diverse group of people in Scotland. This afternoon, we are meeting the three principal statutory groups to discuss those issues further and to discuss further

how, in their view, the bill is progressing.

Brian Adam: What improvements does the bill provide for tenants whose local authority does not pursue housing stock transfer?

Richard Grant: The bill complements the Executive's policy on community ownership, but many—if not most—of the changes in the bill would have benefits irrespective of whether a particular local authority proceeded with community ownership. The provisions in relation to the Scottish secure tenancy, for instance, will create a consistent set of rights for all tenants of local authorities and registered social landlords. There have been strong arguments for some time that that has value in its own right.

Similarly, we hope that, over time, the provisions relating to the regulation of local authorities and registered social landlords will be of substantial benefit to tenants. More generally, the provisions on homelessness will be of wide-ranging benefit. As I said, some bits of the bill are complementary to the Executive's community ownership initiative, but almost all the provisions would stand in their own right. Only one or two of them are closely tied to the community ownership initiative.

Brian Adam: The Housing (Scotland) Act 1987 introduced the right for secure tenants to choose their landlord; the bill removes that right—not that anybody ever had the right to choose to go back to a local authority. Will you explain why? Is that consistent with the core objective of securing a better deal for tenants in the socially rented sector?

Richard Grant: To correct a misunderstanding, we have not taken away the existing provisions relating to tenants' choice—those still stand. The existing legislation allows tenants' choice for tenants of public sector landlords who are defined in the relevant act. We have not extended tenants' choice to tenants of registered social landlords who were not included in the original framework. It is the status quo, as far as tenants' choice is concerned.

Brian Adam: How will the bill help to alleviate fuel poverty and how do the provisions relate to other fuel poverty initiatives?

Geoff Huggins: When the bill was introduced, the minister said that she was considering other elements, which might be included in the bill at a later stage. Since then, we have been examining how we might incorporate measures on fuel poverty. We followed the progress through the Westminster Parliament of the Warm Homes and Energy Conservation Act 2000, which was passed in November. It was too late for that act to be included in the Housing (Scotland) Bill when it was drafted, but we understand that the minister intends to introduce amendments at stage 2 to

address fuel poverty directly. In addition, we expect fuel poverty to be addressed through local authority housing strategies and through the changes that will be made to the improvement and repair grant systems to allow energy efficiency improvements to be included in those schemes.

Cathie Craigie: Housing stock transfer will obviously lead to major investment in houses. I thought that the Executive would have taken the opportunity to improve on energy efficiency levels in homes as well as on housing standards generally. Are there any plans to do that?

Geoff Huggins: Are you talking about fuel poverty issues in the context of stock transfer authorities?

Cathie Craigie: Yes. Stock transfer is an opportunity to bring housing up to a modern-day standard. The Executive could lead the way by setting minimum standards.

Geoff Huggins: The Executive certainly expects, as a result of stock transfer, that every tenant who does not have central heating will get it, together with the insulation to make it effective. The minister has made it clear that, should stock transfer not go ahead, resources will be found to ensure that central heating is made available to all tenants who currently do not have it.

Cathie Craigie: Funding for repair and improvement grants comes from local authorities and was previously ring-fenced. However, that ring fencing was removed following consultation and agreement between local authorities and the then Scottish Office. There is some evidence to suggest that the amount of money available for repair and improvement grants has been reducing. Do you think that sufficient funds are going into the scheme? Will there be another opportunity to consider whether the money should be ring-fenced?

Geoff Huggins: Since the ring fence was removed in 1995, the amount invested by local authorities in improvements and repairs has reduced. However, the bill gives us an opportunity to encourage local authorities, through strategic planning, to identify the priorities in each area and to use the appropriate share of the overall funding. We expect local authorities to take a strategic approach. It would be quite odd for us to go back and intervene to ring-fence that pot of money. However, we are always prepared to listen to arguments about that.

Cathie Craigie: What would happen if ministers felt that local authorities were not targeting enough money on those areas of the budget?

Geoff Huggins: The process of strategic planning allows ministers to identify priorities against which local authorities can plan and set

their objectives. That will create expectations. Ultimately, the investment that ministers make available to local authorities will be dependent on the degree to which local authorities act in accordance with Scotland's priorities. That is where persuasion may come into it.

Richard Grant: At the moment, resources for improvement grants are included in the capital consents given to local authorities under local government legislation. Local authorities can choose whether to spend money on housing or on education, for example. That is the position that was reached in 1996. The bill creates a framework that would allow Scottish ministers to pay grants for housing purposes, which are broadly defined, to local authorities. That provision is intended to be used primarily to allow resources that currently go to Scottish Homes to be transferred to local authorities, with a shift in responsibility for development funding. Those resources could be used for any purpose, but the money for improvement grants is currently channelled through those capital consent mechanisms. Should ministers wish at any time to reintroduce a ring fence, there is a legislative mechanism that could allow for that, but the current policy is not to ring-fence money for improvement grants.

Brian Adam: Can you give us an assurance that, as part of the current review of housing standards, the energy rating and the criteria for below-tolerable-standard housing will be addressed?

Geoff Huggins: It is for ministers to give assurances, but I can say that the review will take account of those issues. In December, we announced changes to the tolerable standard, which are included in the bill. We also announced that there would be a consultation on the index of housing quality. That will not dilute the tolerable standard, but it will recognise that there is a category of housing that is so poor that we must act on those houses as soon as possible. A new category will be introduced for poor property that may have energy efficiency or security problems but which is not so bad as to fail to meet the standard.

Over time, we would expect local authorities to take action to identify that second category, rather than putting both groups of houses into the same below-tolerable-standard category. That is a better way of targeting resources over time, because there are things that we must do and other things that we want to do. The working group will consider all those issues.

Brian Adam: Should not there be an improvement across the board, particularly in terms of energy rating, for houses that are below tolerable standards and those that are on the borderline?

Geoff Huggins: Our aim is to improve the housing stock throughout Scotland.

Ms White: I want to ask about the bill's provisions on homelessness. Will local authorities receive adequate finance to carry out the additional functions to ensure that homelessness eventually disappears from Scotland?

Douglas Blair (Scottish Executive Development Department): Just before Christmas, Jackie Baillie announced that the Housing (Scotland) Bill's provisions on homelessness will be backed up with £27 million over three years. We feel that that sum is sufficient to back up the additional duties that are being placed on local authorities, particularly for securing advice and providing temporary accommodation for non-priority applicants for the first time.

Ms White: Is the bill strong enough to cover the requirement on registered social landlords to take in homeless people if local authorities ask them to?

Douglas Blair: The homelessness task force considered that in detail before producing its report last year. The task force was clear that there should be contractual arrangements and day-to-day co-operation between local authorities and RSLs. The purpose of the bill is to give that some statutory backing, and the task force thinks that the requirement on RSLs to comply with a local authority request is enough to back up what should be happening on the ground in any case.

Ms White: The development funding function of the executive agency will reduce as the administration of the development funding is transferred to local authorities. Will the change in administration lead to an increase or decrease in the amount of money that is provided for development funding by the Executive?

Richard Grant: Do you mean money that is provided to the private sector?

Ms White: No.

Geoff Huggins: The funding that is being referred to is that which is allocated through Scottish Homes. Ministers will, in line with their priorities, make yearly decisions on the level of funding that is to be made available for the development of housing stock throughout Scotland. That is compatible with either increases or decreases in the amount of money that is made available—there is simply a different mechanism.

10:45

Ms White: So you cannot say that there will definitely be more moneys?

Geoff Huggins: It is—again—not for us to provide assurances on that.

Ms White: You cannot provide assurances that more moneys will be provided?

Geoff Huggins: No. That is a matter for the Minister for Finance and Local Government and the rest of the Cabinet.

The Convener: In response to previous questions, you have already indicated some areas that are your responsibility and others are the responsibility of ministers. We have taken note of that, and we will seek assurance from ministers on questions that the witnesses have not been in a position to answer.

Ms White: I was merely clarifying the point.

The Convener: It is not an issue for the officials; it is an issue for the committee to deal with.

Richard Grant: Primarily, the bill would change the mechanisms by which development funding may be paid out to development agencies. At the moment, the money is allocated through Scottish Homes. In future, it could be paid by the Scottish ministers through the executive agency. It could also be paid by local authorities. Most of the Scottish Homes' powers relating to development funding are to be transferred to the Scottish ministers. We have also sought to provide those powers to local authorities. Under the new powers, there would be nothing concerning the funds that go through Scottish Homes now that local authorities would not be able to deal with.

Ms White: That brings me neatly to a further question on Scottish Homes. Perhaps you—or, if we do not get the proper answers, the minister—can explain the following. On 1 November 2000, the Minister for Social Justice—then the minister elect—told the Social Inclusion, Housing and the Voluntary Sector Committee that Scottish Homes' outstanding debt would be around £100 million when it was wound up. To whom is that debt due? How did it accrue? When is it due to be repaid? Will the winding-up of Scottish Homes have any effect on the repayment on the debt? What impact will there be on the housing budget?

Geoff Huggins: The debt came to Scottish Homes along with the assets that it received in 1989, when it was set up. It was accrued by the Housing Corporation in Scotland and the Scottish Special Housing Association. The debt is owed by Scottish Homes to the Scottish ministers, who in turn owe it to the Secretary of State for Scotland, who in turn owes it to the national loans fund and another loans fund.

I understand that some of the debts are 60 years old. At the point when Scottish Homes no longer exists, we expect that the Scottish Executive will still owe the money to the Secretary of State for Scotland, who will still owe it to the national loans fund. At the moment, we have arrangements in

place that allow us to pay money to Scottish Homes yearly, which allows it to meet its obligation to us yearly. We pay that to the Secretary of State for Scotland, who then pays it to the national loans fund. That payment is currently met from provision that we make to Scottish Homes. The provision is already in the line, and there is no reason why it cannot continue to be met yearly by us—the Scottish Executive—and paid directly to the secretary of state, to allow for the discharge of the debts over time.

We would expect the winding-up of Scottish Homes to have no effect on the development programme.

Ms White: So, basically, the debt will be transferred.

Geoff Huggins: It will not be transferred—we already have the debt. We just gave the debt to Scottish Homes, which has to pay us back.

Ms White: If Scottish Homes no longer exists, the new arm will have to pay you back in the same way.

Geoff Huggins: Ultimately, we have to pay the Secretary of State for Scotland for the debt, and we will still have to do so. Nothing really changes.

Ms White: That is what I was saying. The debt transfers to the Scottish Executive, and you are already paying it, but through Scottish Homes—which will no longer exist.

Geoff Huggins: Effectively, yes.

Ms White: I am glad we got to the end of that one at last.

The Convener: I reiterate that it is not a question of us being unable to "get the proper answers" from the Scottish Executive officials to some of our questions. They have authority to answer on some matters. If, however, they are unable to answer questions because they do not fall within their remit, we are noting that and will pursue those questions with the minister. We understand the constraints upon the officials.

Robert Brown (Glasgow) (LD): I am bound to say that, after his explanation about the Scottish Homes debt, Mr Huggins has a great bureaucratic future. [*Laughter.*]

I wish to make some points about commencement times and so on. The secure tenancy is being replaced by the Scottish secure tenancy. Is there a gap? It appears that the order to instigate the new tenancy would be made at a later date, but that the existing secure tenancy would be repealed straight away.

Richard Grant: There is no intention for there to be a gap. Section 101 would allow for the commencement of the act as a whole. Once it was

commenced, we would introduce orders under section 9 to allow for the introduction of the Scottish secure tenancy. Given the way that the order-making powers are drafted, we could bring in the Scottish secure tenancy for all new tenants and existing tenants at the same time. Alternatively, we could stagger its application to existing tenants. That would mean that it was introduced in different areas and for different individual landlords at different times. The drafting is very flexible in that regard.

Our current preference is for all tenants to move on to Scottish secure tenancies at the same time, if possible. It will take some time to prepare for that, and we need further discussions with local authorities and with the Scottish Federation of Housing Associations on that. It might be desirable to introduce the tenancy in some local authorities before we do so in others.

Robert Brown: I take it, then, that it is not a matter of the existing secure tenancy ending as a result of one of the schedules, or because of the bill being passed before the relevant order is made.

Richard Grant: That is certainly not our intention. I invite Murray Sinclair to comment further on that.

Murray Sinclair (Scottish Executive Development Department): There is not much that I can add, other than to underline Richard Grant's point that we have very flexible powers for commencement of the bill's provisions. They are flexible not only in the way that Richard indicated. They would allow different provisions for different purposes to be commenced on different days and, accordingly, for different areas and different types of landlord. They also carry extensive powers to make what are known in the trade as transitional and savings provisions, which are expedient for a proper bridge to be built between the existing law and the law as it will stand after the bill is passed. That should be sufficient to ensure that an appropriate staggered commencement can be achieved.

Robert Brown: A few Scottish Homes tenants remain. They seem not to come under the new Scottish secure tenancy. What will their status be?

Richard Grant: They will remain secure tenants. We gave some thought to what we should do about Scottish Homes tenants. Given that ministers' policy is to seek to transfer ownership of the remaining Scottish Homes stock, it did not seem to be a good idea to go to the trouble of changing all existing Scottish Homes tenancies from secure tenancies to Scottish secure tenancies before the transfers.

In any event, the bulk of transfers may take place before the bill's provisions are

commenced—we are not sure about that at the moment. Our current intention is that stock that is owned by Scottish Homes at the point just prior to that organisation's being dissolved would transfer to some form of residual body, which we might need to tidy up Scottish Homes' procedures. As I said, the tenants concerned would retain secure tenancies.

Robert Brown: Section 9(2) allows ministers to

"make provision for ensuring that rights of the landlord, the tenant and any other person . . . are not adversely affected by the tenancy becoming a Scottish secure tenancy."

To whom does that apply? Who are the other people who might require protection, and why do they need it? It seems to be rather an unusual subsection.

Richard Grant: That encompasses some of the flexibility that Murray Sinclair mentioned. It is ministers' policy to keep the existing right-to-buy provisions for existing tenants. Other provisions apply to particular types of tenancy.

For example, housing association tenants with tenancies dating back to the 1980s are entitled to fair rents that are set by a rent officer. That provision is not general, and other rents that are set by housing associations and local authorities are not affected by it. However, we would like to continue those tenants' entitlement to apply to a rent officer to have their rent fixed.

The other issue that I should mention concerns heritable creditors. Under the provisions relating to assured tenancies in the Housing (Scotland) Act 1988, heritable creditors have certain rights if a person to whom they have lent money becomes insolvent. We have deliberately not included those rights in the new tenancy, but we have conducted discussions about them with the Council of Mortgage Lenders. There are cases in which those rights are relevant, and we might want to protect them by using that mechanism.

Robert Brown: I have a couple of questions on the right to buy. Two separate systems of the right to buy are proposed; the existing one and a new one under the proposed Scottish secure tenancy. Does that undermine the objective of achieving a single social tenancy? What is the reason for proceeding in that way, rather than moving all tenants on to a new system?

Beverly Francis (Scottish Executive Development Department): Ministers had to make decisions about that. In taking a view, their concern was to ensure that existing tenants' rights were not diminished in any way, especially in relation to the right to buy. Tenants accrue eligibility for the right to buy and associated discounts. In taking up their tenancies, they had a reasonable expectation that they would be able to exercise that right on certain terms. The ministers'

preference, in policy terms, was to retain those rights. Therefore, only new tenants would take on the modernised right to buy. Over time, as houses are re-let, uniformity will be achieved across the sector.

Robert Brown: I have a final question on pressured areas. Under section 39, there is provision for local authorities to apply for exemptions under the various arrangements. I worry that, in some areas, there might be a gap between the introduction of the new right to buy and the implementation of an exemption—that there will be a sort of leakage from the system in situations in which there ought not to be. Do you share that fear? If so, how can it be countered?

Richard Grant: The intention is that the pressured area would affect new tenancies, not existing ones. In a working group—which I chaired and which was set up by the minister in the summer—with other interested parties, we have considered in detail the possible procedures for designating pressured areas. I would be happy to send a copy of that group's report to the clerk, if the committee is interested in reading it.

We discussed whether the designation of pressured areas should be linked into what were then called single housing plans—now called local housing strategies—as was originally suggested in the consultation paper. Several bodies put it to us that it would take time for those documents to be in place and that, therefore, there would be a gap. As a result, we agreed that there would be a separate procedure for designating pressured areas and that local authorities would need the relevant supporting evidence, which they may already have to hand in the form of their or Scottish Homes' existing planning documents. I hope that local authorities that want to designate areas will be able to make cases soon after the bill is enacted. They could think about doing so now.

Brian Adam: The intention is to designate pressured areas geographically. However, to attain a balance in the housing stock, has consideration been given to basing exemptions on house type or size? For instance, there are few large houses for large families in the housing stock.

11:00

Richard Grant: We have given that some thought. In the bill as it is drafted, pressured areas are primarily geographical areas. If a whole area is designated, house types in that area that are especially in demand will also be caught by the designation. It is difficult to imagine how objective tests of need could be carried out in the designation of specific types of housing that are slightly more popular, in areas in which there is a

general surplus of housing. The bill already provides for exemptions for some types of property—for example, grouped houses and houses in which there have been significant adaptations for persons of pensionable age.

If there were a general surplus of houses, it would be possible to convert some properties into larger or smaller houses. At the moment, the emphasis is on pressured areas rather than specific types and sizes of house. When we discussed the matter in the working group that I mentioned, members of the group thought that there would initially be some difficulty in procuring the necessary evidence to support a designation of the sort that you describe, but that, in due course, that might be a sensible solution.

Ms White: Do you think that there will be any problems with the European convention on human rights, regarding the policy of designating areas for five or 10 years? Will people appeal to the European Court of Human Rights?

Richard Grant: The short answer is no. I ask Murray Sinclair to expand on that.

Murray Sinclair: We hope that there will be no such appeals. We take great care in putting together legislative proposals, to ensure that they do not infringe on the ECHR. The proposals in the bill, as it is drafted, would not do so. We have received reports of suggestions to the contrary, based on a Greek case involving someone called Larkos, but we do not regard that case as directly relevant. It concerned discrimination that was based on the man's status as a civil servant and involved an infringement on his right to respect for his home—he was evicted.

No one will be evicted as a result of our proposals for the right to buy; we are concerned with conferring rights, not with taking rights away. Furthermore, we are not discriminatory in our view. Although some people have different rights to buy, those differences apply by reference to the time at which the right is required, not by reference to any status. They will apply to all tenants who acquire such rights, regardless of their status. In any event, any differential treatment can be justified on an objective, reasonable basis. There is ample convention case law to demonstrate that, even when an infringement of rights has been based on discrimination, the ECHR will not have been contravened if there is objective and reasonable justification in policy terms. Beverly Francis has suggested that that will be so in the situation that has been described.

Karen Whitefield (Airdrie and Shotts) (Lab): I have a final question on pressured areas. Some housing associations have suggested that the system that would be introduced would be so burdensome and bureaucratic that local authorities

would be reluctant to apply for pressured area status. It has also been suggested that local authorities would come under a great deal of political pressure from people who live in those areas and who want to exercise their right to buy, and that such pressure would be greater than that from people who are on waiting lists. Local authorities would, for that reason, be reluctant to apply for pressured area status. Has your working group considered those points and what measures will it take to ensure that the process is simple?

Richard Grant: The working group considered the first of those points very carefully. Although we have not yet produced detailed guidance for local authorities on the material that they will have to produce, we have agreed a list of broad considerations and possible indicators. That work will need to be refined further. We were particularly conscious of that issue. However a balance needs to be struck between ensuring—before taking away rights of tenants—that there is good and proper justification and making it so difficult that local authorities would have to do so much work that it would never happen. I think that the working group found the right compromise between the two positions. I will circulate the paper and members will be able to judge that for themselves.

It would be a matter for local authorities to judge whether they wished to apply for a designation. The bill would require them to consult. The working group considered in more detail what the procedures should be and suggested that there should be consultation with RSLs and other relevant interests in an area. At the end of the day, the local authority, in taking a view on the housing needs in its area, must decide whether to ask for a designation.

Karen Whitefield: Can you explain how you balanced the right of individual tenants to participate in decisions that are taken by their landlord with the rights that are being given to strengthen the operation of tenant organisations?

Richard Grant: Do you mean the balance between individual rights and those of housing associations?

Karen Whitefield: Yes.

Beverly Francis: As members might be aware, the Tenants' Information Service was commissioned by the national tenant participation working group to undertake a feasibility study into the statutory right to tenant participation. One of the crucial points that came out of that study was that it is difficult in practical terms to give an individual right to participate. It was suggested that, to make the right to participate meaningful, it had to be collective. The bill would introduce significant rights to information and consultation

for both individuals and collective tenant groups. It would also place a duty on landlords to recognise what we are calling registered tenant organisations. Those organisations would have a right to participate and to be consulted collectively about decisions that a landlord was taking that would affect them. We do not see that as being a one-or-the-other situation. We want to create a framework that will allow individual tenants who choose to become involved in the decision-making process to participate as well as those who want to become more active through some form of collective vehicle.

Karen Whitefield: My final question is about the regulation of social landlords. Following an inspector's investigation into the affairs of a registered social landlord, Scottish ministers may choose to leave things as they are or to appoint a manager to conduct the affairs of a landlord. Did you consider giving ministers other options, such as requiring a landlord to produce a remedial plan, as afforded to local authorities? If not, why not?

Tim Ellis: The provisions seek to build on the current provisions for RSLs and the general process. The difference between provision for local authorities and that for RSLs reflects the fact that we recognise that local authorities have very different democratic responsibilities and may therefore need to have alternative approaches. The bill tries to establish one regulatory framework, but not one regulatory system; it recognises that there are differences between different types and sizes of landlord.

Remedial plans would be another option. To date, we have not considered that to be the most appropriate approach. However, as always, we will listen to views on that.

The Convener: I would like to ask about the responsibilities of registered social landlords. There is an issue in relation to homelessness. In some cases there may be no local authority housing, but instead an agreement between the local authority and RSLs to take on tenants who are defined as homeless. Where there is no agreement, it has been decided that an arbiter should be put in place. Rather than saying that the minister is allowed to establish a timetable for that, should not the bill have identified a reasonable amount of time for that process to be completed?

Douglas Blair: In case of disagreement between the local authority and the RSL, the provisions in the bill would allow Scottish ministers to set a period in which the parties would need to agree amongst themselves before they go to arbitration. That would be left to secondary legislation, to allow flexibility in the time scale. Arbitration is meant to be a quick process. We were keen not to put a lot of detail in the legislation about the way in which the arbiter would be

appointed and whether local authorities and RSLs would have an agreed list and so on. We want to leave that to the guidance so that it does not become a bureaucratic and lengthy process. Key stages of arbitration are included for the quick resolution of disputes and that is backed up by guidance on the way in which local authorities and RSLs may wish to proceed. We did not want to make people jump through hoops before a dispute could be resolved.

Bill Aitken (Glasgow) (Con): I would like to explore the relationship with local authorities. The bill is silent on the criteria that will be applied by ministers in the award to any local authority of a strategic housing budget. As far as I can see, there is no reference to any guidance—it seems that things will be done on a nod and a wink. Should there be guidance?

Richard Grant: Bill Aitken is right to say that that is not set out in the bill. “Better Homes for Scotland’s Communities” set out the broad criteria that would be used and those remain the essential criteria. The intention is that ministers will consider allocating funding in cases where local authorities have transferred their stock and have demonstrated that they are able to produce local housing strategies and have the ability to undertake the development funding. That is the only safe route that was identified.

In addition, there might be circumstances in which that is not taking place, where there is agreement locally that the transfer should go ahead and the local authority has the necessary skills and ability both to deliver the housing strategy and to manage the programme.

Geoff Huggins: We have been working with Scottish Homes and the Convention of Scottish Local Authorities to determine the detail of the checks and balances so that all parties are clear at the outset. The system must be transparent, so that housing associations and others can see how it would work in practice and are satisfied that it would also protect their interests. It is important that we get that work right, but it needs a degree of flexibility that might not sit so well in legislation.

Bill Aitken: Will you issue a guidance note at some stage?

Geoff Huggins: Yes, we will.

Bill Aitken: Local authorities are required to submit their strategic housing plans to Scottish ministers. One might question why that is necessary when the bill includes no procedure for ministers to scrutinise and comment on those plans.

Richard Grant: The intention is that the Scottish Executive would scrutinise plans and comment on them. We do not have a procedure, as such, for

the formal approval of the plans, but the bill envisages that the plans would be submitted to Scottish ministers and that they would take account of the plans in allocating resources to local authorities under the other provisions.

Bill Aitken: What would be the mechanics of that? Without a legislative framework, it could be a recipe for conflict.

Richard Grant: I need to check the bill, but I think it would establish requirements for the submission of local housing strategies. The mechanics are that we would expect the executive agency to play an important role in that. It would work closely with the local authority and receive the housing strategy on behalf of the Scottish ministers. It would then assess the strategy and it might send views back to the local authority, revise the strategy and give the Scottish ministers views on the strategy’s implications.

11:15

Geoff Huggins: The planning process is part of a dialogue between central and local government. The process of receiving plans allows the Executive to find out what local housing priorities are, through the additional information that is made available and the requirement to have an understanding of local housing conditions and to be better informed in making policy. A key dialogue will take place, which perhaps does not happen as it should at the moment. Local authorities make it clear that they want more feedback from the Executive on their housing plans. They consider that to have the potential to be positive and to allow better working and understanding of one another.

The Convener: We spoke about Scottish Homes and its complicated money situation. Why was it considered necessary to create a new agency instead of reforming Scottish Homes?

Geoff Huggins: The key change is the transfer of the key functions of Scottish Homes, which is a non-departmental public body that is accountable under statute, to the Scottish ministers. Henceforth, the Scottish ministers will be accountable to the Parliament for registering and regulating social landlords and local authorities. The Scottish ministers will be accountable to the Parliament for the distribution of development funding, whether through Scottish Homes or local authorities. That is a key accountability issue.

The Executive would expect many of those functions normally to be carried out by an agency, but the agency would be part of the Scottish Executive and not an external office. It would be the direct responsibility of ministers. Under current structures, that is the appropriate relationship—to allow ministers to be accountable to the committee

and the Parliament as a whole.

Cathie Craigie: I will focus further on the right to buy and the amendments to the scheme. Most people who work in the field and in the administration of the right to buy welcome some of the changes. Legislation requires local authority landlords to notify their tenants annually of the right to buy. Would it be fair to notify tenants who are considering exercising their right to buy that they have responsibilities as well as rights? When people take on a property such as a flat in a block that contains four flats, they have a responsibility to become involved in common repairs. Despite the maximisation of grants, there are difficulties with involving owners. Is there now an opportunity to try to modernise the legislation to take account of experience?

Richard Grant: You are right that there are two sides to the issue. When tenants buy, they take on responsibilities. We have tried to ensure that local authorities make that clear to purchasers.

Beverly Francis: The bill will make extensive changes to the current arrangements for information on the right to buy. As Cathie Craigie said, current legislation provides that landlords must tell tenants about the right to buy annually. The bill introduces an additional obligation on landlords, to provide information to tenants before they take on a tenancy about whether the right to buy applies to the property.

One concern about the extent of exemptions and suspensions in the modernised right to buy is that tenants must receive better information about the right to buy and how it might be exercised. More extensive information will have to be provided. The provisions on the right to information say that a tenant should be able at any time to request information from their landlord about what the right to buy would mean for them.

Cathie Craigie is correct about information on obligations. We want to create a balance between individuals' rights to exercise the right to buy and their obligations as joint owners. The Executive chairs a common repairs working group, which ministers established some time ago following the publication of the Scottish Consumer Council report "In A Fix", which highlighted some of the issues that are involved. That working group has drawn up a fairly extensive work plan of good practice and guidance to allow us to consider best practice.

We are working on completing some leaflets for tenants who are considering exercising the right to buy. One leaflet will be about not just the right to buy scheme, but common repairs, factoring and what all that means for tenants. We are trying to warn tenants in advance about some of the implications of purchase, particularly if some form

of common property is involved. That leaflet will be followed by a further leaflet for those who have bought property under the right to buy scheme or through the normal housing market. That leaflet will go into some detail about the obligations and the sources of support for difficulties.

The bill attempts to bring factoring within the regulator's remit for the first time. That will make a significant difference, because it will ensure that the regulator can take a view on practices in the registered social landlord and local authority sectors. Research into that suggests that good and bad practice exist. Some landlords offer a good factoring scheme and do the work well; others do not work so well. We would like to create some model good practice policies and procedures for people to adopt.

The committee will be aware of the work that colleagues elsewhere in the Executive are doing on land tenure reform, the proposed bill on title deeds and the law of the tenement. All those matters will have an impact on the legal infrastructure. Any appropriate legislative work should be done with those bills, rather than with the Housing (Scotland) Bill, because the law is complex and it would be dangerous to take a quick run and jump at it. The common repairs working group will be heavily involved in examining the consultation documents that are produced for those future pieces of legislation, to ensure that social landlords and housing management are fully taken into account.

The Convener: After Bill Aitken asks his question, we will finish the questioning. I had not realised that the previous question would open up such a big subject.

Bill Aitken: In my experience, Scottish Homes has performed its regulatory function extremely well. Under the new relationship whereby Scottish Homes becomes an arm of the Executive, is not there a danger that part of the previous body's regulatory strength will be lost? To some extent, the new body will have to comment on and measure the effectiveness or otherwise of the Government's housing policy. At this stage, the body is not expected to be at arm's length. Is not there a difficulty with such a body criticising the effectiveness or operation of the Executive's housing policy?

Richard Grant: We do not think that the new regulatory part of the executive agency will comment on Government policy. Its responsibilities will relate to regulating the management functions and homelessness duties of local authorities, as well as the traditional function of regulating housing associations and other registered social landlords. We certainly agree that Scottish Homes has a very good track record of carrying out its regulatory function, on

which we will be able to build when the regulatory role is extended.

Bill Aitken: Could there not be a conflict of interest, given that, inevitably, there will be occasions on which Scottish Homes, as an executive arm, will have to comment on a failure that could be attributed to a flaw in policy?

Richard Grant: The regulator's primary task will be to look at the day-to-day management, although it may want to make more general points about how functions are carried out. There is a need to keep the day-to-day regulatory work of the executive agency at arm's length from ministers. That is one reason why we have opted for the executive agency model rather than bringing Scottish Homes directly into the Executive.

There is a clear commitment in the bill to having a statutory code of guidance to which the regulator will work. Although it is not in the bill, there is in "Better Homes for Scotland's Communities" a proposal to appoint non-executive directors to the management body for the executive agency, who would have a particular interest in overseeing its regulatory work.

The Convener: We may want to pursue that point further with the minister.

Brian Adam: Geoff Huggins kindly gave us an interesting explanation of how the debt of Scottish Homes is serviced. Perhaps we could explore further how it was accrued. Is any of that debt due to the discount that was offered to Scottish Homes tenants who bought their properties? If so, what proportion of the debt is due to the sale of Scottish Special Housing Association houses?

Geoff Huggins: I understand that the debt has diminished yearly since the creation of Scottish Homes in 1989. The debt was wholly accrued on the construction of the properties that became the assets of Scottish Homes. As those assets were sold, either to tenants under the right to buy or to other housing associations, and the receipts were used to redeem part of the debt, I cannot answer your question, but I can certainly write to you on that.

Richard Grant: Perhaps I can explain further. Until about 1997—I am not sure of the precise date—the receipts from right-to-buy sales by Scottish Homes were channelled back into its programme. The decision was then taken that all the money from right-to-buy and large-scale voluntary transfer sales should be used to redeem debt. There was a general change of policy on receipts, which applied also to local authorities.

The debt originates in pre-Scottish Homes days, when the Scottish Special Housing Association borrowed money to build houses and the Housing Corporation borrowed money to lend on to

housing associations for the construction of houses.

The Convener: I thank the witnesses for their attendance. I think that members have found this a useful session. I also thank the witnesses for their offer to send a report from the committee that was chaired by Mr Grant—I am not sure what the group was called. We would welcome that report and any other information that is relevant to today's session.

11:30

We will now take evidence from the Chartered Institute of Housing in Scotland. We have with us Alan Ferguson, who is the director of the institute, Gavin Corbett, who is the policy officer, and Michael Thain, who is the parliamentary officer. I am delighted that you are here today. You may wish to give a brief presentation before we move to questions.

Alan Ferguson (Chartered Institute of Housing in Scotland): We are extremely pleased to be here to give evidence on the bill. A couple of us have given evidence to the committee on a couple of issues before, but we are happy to be back and hope that what we have to say will be of interest to you.

The Chartered Institute of Housing is the professional body for people working in housing. We have more than 1,600 members in Scotland, who work in local authorities, housing associations, Scottish Homes, educational institutions, voluntary organisations and the private sector. We even have a member who is an MSP. The institute is concerned to encourage the provision and management of good quality housing for all and sustainable communities. To that end, we promote good practice through publications, training and seminars and we try to influence policy generally.

It is fair to say that several of the institute's broader objectives are met by the bill, such as ensuring that tenants have the same rights through the single tenancy; improving the standard of service delivery through the single regulator; enhancing the local authority's strategic role through local housing strategies and development funding; and improving the rights of homeless people. Indeed, we have worked on a number of those objectives for a long time and will submit to the clerks some reports that will give background information.

We believe that the bill has the capacity to change Scottish housing. However, it cannot be taken in isolation from other issues. For example, it will not in itself improve the quality of housing or increase investment. The new housing partnership programme links in here. Ensuring that the bill

leads to real change will require a culture change in organisations and staff with skills to do the job, for example in relation to local housing strategies.

Although we agree broadly with much of the bill, I will highlight some important issues that it does not cover. First, there are a range of problems in the private sector, including disrepair and a lack of investment. We hope that, rather than parachuting anything into the bill now, the housing improvement task force, which the minister recently announced, will consider the whole area and propose action that the committee will consider in future. Secondly, the housing improvement task force may have a role on fuel poverty and energy efficiency, but if any measures are included in the bill, the committee should consider implications such as the need for resources.

The committee should be alert to the fact that the bill is not the end of the story. Clearly, implementation issues arise from many parts of the bill, such as the provisions for a single tenancy. Also, much of the bill will result in the Executive having considerable powers and being able to act through regulation. It is important that the committee has a role in scrutinising those powers and the minister's proposals.

Finally, I want to highlight a couple of issues that we would like the committee to think about. The first relates the introduction of the single tenancy. We believe, and have always argued, that the implementation of what is now called the Scottish secure tenancy should be from one date, when all existing secure and assured tenancies convert to the new tenancy. The bill allows for the phased implementation of the tenancy. We are concerned that that route will lead to further confusion about tenancy arrangements. We would like the committee to consider the big bang approach to implementing the tenancy.

Secondly, it is absolutely clear that the right to buy has had damaging effects. Most housing professionals would love to do away with it, but we do not believe that that is a realistic option. We have tried to argue that we need to reform the right to buy, making it more strategic and reducing discounts so as to mitigate its effects. The bill has moved in that direction, although there is potential for further reform.

The biggest problem with the right to buy is not the right in itself, but the existence and level of discounts. We would like the committee to consider further reductions to the discounts. We would also like the committee to encourage the Executive to use the powers in the bill to vary discounts by local area, depending on local circumstances, the strategy for the area and the need to promote home ownership or, on the other hand, to maintain a certain level of affordable

rented housing.

I thank committee members for their attention. We will be pleased to answer any questions.

The Convener: Thank you for the written evidence that you provided for the committee. We look forward to seeing your further reports.

You have said that you can see that it is not now possible to introduce into the bill an element to deal with private tenants. Would it be appropriate to identify a time scale for the Executive for addressing the question of private tenants?

Alan Ferguson: There is a major problem concerning the private sector. Most organisations, including the institute, have said that we need to do something about it. A range of issues arise—such as disrepair, owners not taking responsibility and a lack of resources.

We hope that the housing improvement task force will discuss the issues. It is important that a time scale is set for that, that this committee is aware of the time scale, and that the committee then considers any information that the task force supplies. A time scale is crucial. The sooner the task force gets started and is given a timetable, the better.

The Convener: You will have noted that the policy memorandum says that the bill will

“ensure that a range of decent housing options is available to all, regardless of social, cultural or ethnic background.”

As it stands, can the bill do that? Can it deliver on the equality agenda? Are you satisfied that what is in the bill can match that claim?

Alan Ferguson: A number of things in the bill are crucial to that. For example, it is important that the regulator sets robust standards and keeps equality in mind when considering access issues or housing management performance standards.

In the parts of the bill that deal with single tenancies, the introduction of the ground of harassment is an important step in the right direction and will be beneficial. A number of organisations have raised concerns about that issue.

Several parts of the bill will contribute to equality of opportunity, but we cannot consider equality on its own. Access issues are important, but access to property is not just an issue for this bill. We need to ensure equality of access and opportunity through the bill, but we need to keep other things in mind as well.

Brian Adam: Does the bill offer any substantive improvements for secure local authority tenants where the authority does not pursue housing stock transfer?

Alan Ferguson: The institute has argued for the introduction of a single tenancy for some time and, in 1998, we produced a report called "One for All". Although stock transfer is an important element, the crucial thing about the single tenancy was rights. We wanted to ensure that rights were protected across the board. For existing tenants, or for tenants of local authorities that are not considering transfer, the bill contains improved rights—rights to information and consultation, for example. Those rights will apply regardless of whether a council is considering transfer.

The bill contains important rights for homeless people. The bill is not only about stock transfer: it is about many other things and it will lead, I think, to improved rights across the board for tenants.

Brian Adam: What is the view of the Chartered Institute of Housing in Scotland on the possible implications of the bill for the right of secure tenants to choose their landlord? Has an opportunity been missed, in that tenants in the social rented sector who are not local authority tenants do not have the right to choose the local authority as their landlord?

Michael Thain (Chartered Institute of Housing in Scotland): Tenants choice is often perceived as the tenant's right to choose a landlord. I think that I am right in saying that it is actually a right that qualifying landlords have to offer themselves to tenants of councils. The tenant's right to choose is not actually written into the statutory rights of local authority tenants. I think that that is what the civil servants were trying to explain earlier. The bill does not change that. Tenants choice will remain as it is just now for council tenants.

I do not think that many of us have given a great deal of consideration to whether tenants choice should be extended to registered social landlords or to housing associations, or to what the implications of that may be. That may be because we would then be dealing with much smaller landlords where the loss of tenancies through tenants choice may have a significant impact on viability.

Brian Adam: Will the bill help to alleviate fuel poverty? If so, how?

Alan Ferguson: As it stands, the bill in itself will not alleviate fuel poverty. Fuel poverty and fuel inefficiency are crucial issues that must be tackled, but I do not think that the bill contains much that will do that. The civil servants have, I think, already spoken about whether ministers will lodge amendments to that effect. How we tackle fuel poverty and how we would resource that will be issues. As I said in my introduction, the housing improvement task force may have a role to play.

The new housing partnership programme is partly about stock transfer and partly about

improving the quality of housing. A concern that the institute has tried to raise is that, at the moment, we have not been assured that we will get energy efficient houses at the end of the stock transfer. The new housing partnership advisory group has touched on that issue a number of times, but there has not as yet been any real discussion on it. A lot of emphasis has been put on stock transfer as a means of improving housing, but we do not know what the result will be in terms of energy efficiency and tackling fuel poverty.

The bill does not do an awful lot about fuel poverty. We need to consider other things, although there are still questions over whether those other things will do anything to alleviate fuel poverty.

Brian Adam: Has the institute a particular view on how the alleviation of fuel poverty might be achieved? Will it be possible through this bill? What is your advice?

Gavin Corbett (Chartered Institute of Housing in Scotland): The Home Energy Conservation Act 1995 has been around for some time now, which suggests that legislation alone is not especially effective in tackling fuel poverty. It has been suggested that certain things be put in the bill—for example targets and improvements to the tolerable standard. We are worried that if that is done in isolation from the discussion on the funding that would be required to make it real, we may simply go up a cul-de-sac and have to retrace our steps.

We feel that the matter should be discussed by the housing improvement task force. Backing up what Alan Ferguson said, I think that that should not be an excuse for inaction. As with the homelessness task force, it would be possible to have two phases, in the first of which we can identify what needs to be done urgently and in the second of which we can take a longer-term perspective. I will be very interested to see whether the Executive's amendment at stage 2 will help matters along the road, but I do not think that a bill itself can end fuel poverty, which is an aim that we all share.

11:45

Cathie Craigie: As Brian Adam has already touched on some of the points that I wanted to make, I will raise another issue. You have mentioned that the bill does not touch on the private sector, which also faces big housing problems. I believe that the changes to the repairs and improvement grants can go a long way to tackling those difficulties. This morning, I asked Scottish Executive representatives about changes to the right to buy. Should the bill contain an

element of compulsion that would make owner-occupiers become involved in repair and improvement schemes with local authority or registered social landlords who are the majority holder in the stock?

Alan Ferguson: We must consider how we can encourage owners to take responsibility—I mean owners in the traditional sense as well as people who take up the right to buy—and how we help owners on limited incomes carry out repairs.

Another issue is how we encourage in Scotland the kind of property management system that exists in most other parts of the western world. I am not sure that it is particularly helpful to consider the people who are exercising their right to buy, as the problem is much broader than that. It is clearly important that any tenant who wants to take up the right to buy receives clear information on their responsibilities, but beyond that we must find out how much disrepair there is in the owner-occupied sector and how we encourage owners to take responsibility. That can be done partly through a property management system.

Some of the more general discussion on how we tackle the problem will emerge from the law of the tenement and the house and improvement task force. The difficulty with properly regenerating many estates is that there are now many owners as well as tenants in those areas and the owners say that they cannot afford to make repairs and improvements. That problem must be tackled, not least in Cathie Craigie's constituency. Although we can take some short-term and some long-term measures, I am not sure that we can do so through the bill on its own.

Cathie Craigie: You are right that there is a problem in my constituency. We are trying to deal with it. Many people who have exercised the right to buy have told me that they wish that they had been more organised when they bought their house and that there had been a scheme that they could have paid into so that they could carry out major repairs. Do you agree with Beverly Francis that we should not be tackling those problems in this bill, but in future bills or amendments to existing legislation?

Gavin Corbett: We would push a title conditions bill and a law of the tenement bill. Perhaps we would be critical of the extent to which the housing world—which probably includes ourselves and officials in the development department—has engaged with those issues. We do not have the right to be confident that those two pieces of legislation, which are currently being progressed, will provide the solutions that housing managers and tenants want. There is a lot of urgency to make the contents of these bills more available for scrutiny instead of making them seem more of a Scottish Law Commission-driven tidying-up of the

process. There is a big question about those bills and I am not at all confident that they will provide the right framework.

Cathie Craigie: What is your view on ring-fencing?

Alan Ferguson: The institute has argued for a long time that there is a problem with a lack of resources. When we took away the ring-fence, there was a reduction in resources going to local authorities, which then decided to spend the money in other ways. As a result, there has been a big reduction in the money for improvement grants.

The issue is whether there is willingness on the part of ministers, council leaders and council finance directors to return to ring-fencing. There are ways to deal with that. Why not consider the money for grants as being part of a single budget, rather than coming from the general fund? That way there would be a pot of money that is, in reality, a single housing budget that is used to fund council housing, development funding of RSLs or improvement grants for owners. It would not be considered in the traditional sense of ring-fencing.

Cathie Craigie: I am surprised to hear you say that there may be a move back to ring-fencing by local authorities. How do you square that with the fact that local authorities are democratically elected to take decisions at a local level? If the Executive were to ring-fence any pot of money, in effect that would mean that decisions were being taken more centrally on how that money should be spent.

Alan Ferguson: There is already a ring-fenced budget in the housing revenue account. With the proposal to move towards a single budget, that would include development funding, but there would still be a ring-fenced budget. What we are saying is that there would also be resources in that budget for improvement grants for owner-occupiers.

Part of the difficulty is that there is a mindset in some local authorities—especially among some councillors—that all owners are well-off and do not need improvement grants. We need to change that. Education and social work are considered to be important, but grants to owners are not. We need to explain, in a dialogue with elected members of councils, the importance of putting money into the owner-occupied sector. First, it is the biggest sector; secondly, it is still a growing sector; thirdly, there is a huge problem with disrepair. The danger is that we have a time bomb because we are not investing now. We have to get across to local authorities the importance of that, part of which might be to consider it through the single housing budget.

The Convener: Thank you. I think Cathie Craigie has managed to get more than her quota of supplementaries.

Ms White: I want to ask you about your response to the homelessness provisions in the bill. In your response to the bill, you raise concerns about the creation of administrative barriers that might prevent access to the housing lists and housing for homeless people where a local authority has transferred its stock to community ownership. Will you describe briefly the barriers and explain what changes would be required to remove them?

Gavin Corbett: One is a general barrier, which is the practice by RSLs and local authorities of excluding people from housing registers and waiting lists. A welcome aspect of the bill is a provision to prevent that happening.

Homelessness legislation grew up in the context of local authorities having by far the most stock. Housing associations were generally quite small and specialised; it was probably reasonable to expect them to have an occasional or marginal role in responding to homelessness. That has changed in the past few years. In some areas, housing associations are as significant as local authorities in housing provision. With stock transfer, that will accelerate.

The arrangements for nominations have been worked around 200 or 300 houses in a housing association; that is not appropriate when there are hundreds or—in some cases—thousands of homeless people in a local authority. “Better Homes for Scotland’s Communities” and the homelessness task force set out a robust set of arrangements for dealing with that. The question is whether the bill adequately develops it. It could be inferred from the bill that a local authority has to ensure that it has exhausted the options in its own stock before it asks the housing association to help out. That would be unhelpful.

There is also a question about whether the arrangements for arbitration are sufficiently backed up by the power to appoint a special manager, which was suggested by the homelessness task force. The power is in the bill, but it has been decoupled from the homelessness provisions. We might come back to those issues in more detail, but they are the ones to watch at the moment.

Ms White: Housing stock transfers may lead to time gaps. I know that there are short-term tenancies, but they are not always suitable for homeless people. Do you see a problem there?

Gavin Corbett: There does not need to be a problem. As many people have said, much of this will depend on how robust the guidance is; that is an implementation issue. The framework that is in

the bill could be sufficient to ensure that homeless people do not lose out in transfers, but the devil will be in the detail.

Robert Brown: On the Scottish secure tenancy, you point out—in relation to section 10—that tenants of local housing co-operatives are excluded from the new tenancy. Am I right that that leaves them as assured tenants? Is that not a bit of an oddity? Are there any problems in connection with that?

Alan Ferguson: The co-operatives you mention are the fully mutual ones; the tenancies are neither assured nor secure because to be a tenant you have to be a member and every member is a tenant. It is an anomaly, but it has always existed. They have never had either secure or assured tenancies; tenancies have been based on a tenancy agreement. That is why it is proposed that they should be excluded from the new tenancy. I understand that there are discussions between the Executive and the SFHA about whether there should be any change to that and whether, at stage 2, an amendment could be lodged to change it. At the moment, housing co-operatives are excluded because the tenancies are different, in that they are neither assured nor secure.

Robert Brown: I want to return to Cathie Craigie’s points about maintenance. You expressed reservations about the right to buy. Do you have a view on the extent to which the right to buy should be extended before a regime for adequate maintenance and sinking funds is in place? Is the right to buy making the situation in multi-ownership buildings worse? There might be a link there between the discount people get through exercising the right to buy and adequate arrangements for paying into a fund to help people, who tend to buy at the limits of what they can afford, with the problems that that causes. Do you have any observations on that?

Alan Ferguson: There are a number of points I can make in the first instance. If we do not tackle how we resource the problems in the owner-occupied sector, there is a danger that we will add to the problem. To go back to the convener’s point, a time scale must be set. We need to consider those issues and try to introduce further legislation—or whatever other guidance is required—as soon as possible. There is a danger that any extension of the right to buy could add to the existing problems because no other system is in place.

I hope, however, that the proposals in the bill on designating pressured areas and exempting associations for 10 years—and the possibility of that period being extended—will lessen the problems that could arise if nothing else to fund the problem is in place. There are several steps that might reduce that problem.

Robert Brown: Those other steps have a different purpose, as their effect may be to reduce the number of sales.

You touched on the right to buy in pressured areas without expressing any particular observation. The whip hand on approving proposals seems to be with the Scottish ministers, although there is a tiny gap. Are you concerned that that provision will lead to a restricted and niggardly application of the exemption? That would create major problems in areas such as the west end of Glasgow and East Kilbride, where there has been considerable demand and a large number of sales in the social rented sector.

12:00

Gavin Corbett: Yes. The point that came up earlier was that we should be trying to get the right balance between making the process useable, particularly in the short term when local authorities will be gearing up for, or developing, their new strategic role, and ensuring that people are not unfairly discriminated against. In the short term, transitional arrangements should be considered, to make it relatively easy for an authority that hitherto has not gathered evidence or provided information—such as a smaller, rural authority—to do so for legitimate reasons without compromising the interests of new tenants. In the long term, it is right to fit that into the strategic planning process. You identified the short-term problem earlier.

Robert Brown: Do you think that there might be scope for what might be described as an interim designation of pressured area—that is, an area where it might take a year for someone who has applied for housing to go through the procedures? If such a designation were applied straight away, the position would be held until an area had been properly designated. Would that be a useful addition to the bill?

Gavin Corbett: Yes.

The Convener: That is the sort of answer we like.

Brian Adam: One of the consequences of the right to buy is a distortion in the balance of the housing stock that is left in the social rented sector. Is there any merit in extending the exemptions in pressured areas, in relation not only to geographical spread but to house type or size? I am thinking in particular of the lack of large houses for large families.

Gavin Corbett: I get to deal with these questions because I was on the working group that Richard Grant alluded to earlier. As he said, the working group discussed the extension that you mentioned.

The problem lies in identifying particular house

types and in gathering evidence. We would like the guidance to make it clear that if pressure is applied to particular house types—such as the example you gave—that will be taken into account by the minister when he or she decides whether to exempt a whole area. That short-term measure would have to be balanced against the interests of other new tenants.

In the long term, it would be useful to consider whether we could refine the system to take account of house type or size. A crucial aspect of the new right to buy is that we should not simply unleash it and walk away, coming back to it in five years' time to see how it has worked. Its impact should be monitored continuously, refinements that can be made must be made and ministers must use their powers actively to refine it.

Brian Adam: Some housing associations have schemes where tenants can buy part of the house and rent part of the house. What consideration has been given to the bill's implications, if there are any, for the folk who are in that sort of arrangement?

Alan Ferguson: You are describing shared ownership, which a range of housing associations developed and provide. I am not aware of any difficulty for shared ownership, nor have difficulties been raised through our members. We could think about that and come back to the committee.

The Convener: That would be helpful.

Karen Whitefield: I will ask Gavin Corbett the same question on pressured areas that I put to the Executive witnesses, given that he sat on the working party.

Are you aware of concerns that might exist among those who work in this area about a reluctance to apply for pressured area status? What would you like to be done to ensure that the criteria for such designation are not too complicated?

Gavin Corbett: Robert Brown's suggestion on the interim arrangements is quite good and worth exploring.

Two issues were raised in the working group. One was to do with political reluctance, although that did not put us off. The working group discussed whether housing associations should be able to apply to ministers separately from local authorities when there is a problem with a particular pressured area. The decision was that that would be inconsistent with the new strategic role for local authorities and I think that that was probably the right decision.

The second issue was about the short-term capacity of local authorities, which presumably will be faced with a huge amount of new guidance and regulations to implement, and whether seeking

designation for pressured areas will be a priority. Related to that genuine concern are issues to do with resourcing the new strategic function, but those issues have not been covered in full in the financial memorandum. The financial memorandum says something about the homelessness function of local authorities, but there are major questions about their capacity to deliver the local housing strategy, particularly with regard to evidence and the right to buy, in at least the first three or four years of the new system. Perhaps we could come back to that issue.

Karen Whitefield: In your written evidence, you state that the ability of Scottish Homes to regulate new forms of landlord has become strained due to current legislation. Why do you believe that? Why do you think it is better to create a new agency than to reform Scottish Homes?

Michael Thain: The advent of new housing partnerships in particular strained the current regulatory framework as there was a move to develop and introduce innovative forms of landlord that are not covered by the definition of the sort of organisation that can register as a housing association. Scottish Homes had therefore to introduce a form of contractual regulation and everyone agrees that regulating by contract rather than by statute is not the perfect way in which to regulate a body.

This is a difficult area and while we could take the approach that the bill takes and define particular types of landlord, that would not take account of the potential for developing new forms of landlord and the innovation that may be thrown up in future. The other approach would be to suggest that the executive agency, or Scottish Homes, should regulate all landlords that provide social housing, but that would give us the problem of finding a precise definition for social housing, given that many landlords are involved in different activities.

We have not come to a conclusion on how to resolve those issues, but it is worth looking into them. For example, there are landlords that are not regulated by statute, such as Weslo Housing Management or Waverley Housing, which are outwith the forms of regulation and may even be outwith the definition of who can register under the bill.

The imperative that drives us within the single framework of regulation is getting some sort of equality of protection for tenants, irrespective of landlord. To a certain extent, that has been achieved across local authorities, housing associations and the other bodies that fall within the definition of registered social landlord. It would be useful for the committee to consider that area as you take evidence from other organisations.

Karen Whitefield: Despite the repeal of the secure tenancy, tenants who live in the residual stock of Scottish Homes will not qualify for the new tenancy. What does that mean for those tenants?

Michael Thain: It means that they will be left with a potentially inferior tenancy.

We make a suggestion in our written evidence. If the committee believes that it is right for Scottish Homes tenants to benefit from the new tenancy—no matter how short a time they remain tenants of Scottish Homes—depending how the transfer goes, it would be fairly straightforward to insert Scottish Homes, for as long as it exists, into section 9, which mentions local authorities, registered social landlords and water and sewerage authorities. Perhaps such an amendment should be considered, as our initial reading of the bill threw up that obvious gap of a group of tenants who will not become Scottish secure tenants.

Bill Aitken: Will the requirement for local authorities to draft, implement and review strategic housing plans result in plans that are relevant, achievable and contemporary? If not, what action should be taken to ensure that those objectives are achieved?

Alan Ferguson: I hope that the plans will be robust and that local authorities will produce plans on which they consult and that are based on proper assessments. However, we must have checks and balances. Not only should the plans be submitted to ministers, there is a need to monitor the plans to ensure that local authorities do what they say they will do or are able to justify why they are digressing from the plans.

Bill Aitken: Is it significant that, in your response to the bill, you make no comment about the strategic housing budgets? Do you have any comments to make on the proposal to create such budgets?

Alan Ferguson: We supported the idea of a single housing budget, which is a positive measure. In our written evidence, we say that the Executive should also consider making the resources for improvement and repair grants part of that budget. We argued that there is a need for a single budget. If the local authority is the strategic body and if we are to enhance the powers of that body, it makes sense for it to have a single budget and to carry out the strategy. However, that is where the checks and balances are needed, as they will ensure that local authorities deliver.

Bill Aitken: What about ring-fencing in the single housing budgets?

Alan Ferguson: That goes back to our earlier discussion about whether we can say to local authorities, "Even within the single housing budget you have to ring-fence some money to go on this area and not on that area."

There is an issue around the development funding for housing for RSLs. It is clear that many RSLs are concerned that the local authority could either skew that funding against them or not provide them with resources. The committee must consider whether there is a need to ring-fence that development funding and use it only for housing for RSLs. The committee will be made aware of those concerns and will have to consider them.

The Convener: As there are no further questions from members, I thank the witnesses for attending today and for their evidence, which we found useful. I am aware that today was not their first visit to the committee, but we have had a change of membership since their previous visit. I suspect that it will not be their last visit, given the important continuing work that is not covered in the bill, particularly on private tenants.

We now move into private session.

12:13

Meeting continued in private until 12:36.

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