

SOCIAL JUSTICE COMMITTEE

Wednesday 14 February 2001
(Morning)

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SOCIAL JUSTICE COMMITTEE

6th 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 :

Fiona Hyslop (Lothians) (SNP)

Mike Watson (Glasgow Cathcart) (Lab)

WITNESSES

Jackie Baillie (Minister for Social Justice)

Ms Margaret Curran (Deputy Minister for Social Justice)

Richard Grant (Scottish Executive Development Department)

Geoff Huggins (Scottish Executive Development Department)

CLERK TO THE COMMITTEE

Lee Bridges

SENIOR ASSISTANT CLERK

Mary Dinsdale

ASSISTANT CLERK

Rodger Evans

LOCATION

The Chamber

Scottish Parliament

Social Justice Committee

Wednesday 14 February 2001

(Morning)

[THE CONVENER *opened the meeting in private at 10:06*]

10:13

Meeting continued in public.

Item in Private

The Convener (Johann Lamont): Under item 2 on the agenda, we are asked to decide whether to take item 5 in private. Do members agree that we should do so?

Members *indicated agreement.*

Housing (Scotland) Bill: Stage 1

The Convener: I welcome Jackie Baillie, the Minister for Social Justice, and Margaret Curran, the Deputy Minister for Social Justice, to this meeting of the Social Justice Committee. We will be taking evidence on the Housing (Scotland) Bill. Margaret Curran is the only one of the current group of ministers who has been a convener. That might cause her trepidation, or it might mean that she is more relaxed. As for her past behaviour, she will be treated as she has treated others.

The Deputy Minister for Social Justice (Ms Margaret Curran): Oh no!

10:15

The Convener: She can be entirely relaxed, I am sure.

I also welcome the ministers' officials—Richard Grant, who is head of housing division 2, and Geoff Huggins, who is head of housing division 3.

I thank you, minister, for the correspondence that you have sent to us—your letter on the new executive agency, your response to questions that we sent and the memorandum that we received yesterday. Some of our questions will be on issues on which you have already given answers, but I am sure that you will appreciate that we will want to explore those issues further. We will want to reflect on what you say and on the information in the papers that are before us.

I am sure that you are all well aware of the format for meetings. I will give you the opportunity to make an opening statement, after which we will move to questions. I hope to have a reasonable go at each section of the bill. It may be that members are not able to ask all the questions that they would like, but I will give them a further opportunity at the end, when I will also give the ministers a last opportunity to comment.

The Minister for Social Justice (Jackie Baillie): Thank you for giving us the opportunity to come before the committee and to share with you our thinking on the general principles of the bill. Before I do that, it might be useful to consider the bill in its wider context. The bill does not exist in a vacuum—it is an integral part of our overall strategy for housing, for communities, and for delivering social justice in Scotland.

We are trying to achieve strong and secure communities in which individuals can prosper—places that will form the foundation for delivering social justice and economic competitiveness. We want communities in which there are opportunities for all, and communities where people can and want to live, work and spend their leisure time.

I do not need to tell anyone in this room that we inherited some very serious housing problems—growing homelessness and rough sleeping, cold and damp housing for many vulnerable people, increasing disrepair and the paradox of housing shortages despite abandoned and empty housing. Above all, we recognised the need to regenerate whole communities and neighbourhoods.

Legislation alone cannot tackle those problems and the Housing (Scotland) Bill is only part of the total picture. It needs to be seen alongside the rough sleepers initiative, the empty homes initiative, the central heating initiative and the warm deal, as well as alongside the resources that we are providing through the Scottish Homes development programme for new housing for social rent—especially in rural areas and to house those in need of care in the community. Above all, the bill must be viewed alongside our community ownership programme as having the potential to secure radical improvements in conditions in the social rented sector.

The two key aims of the bill are spelt out in the original policy memorandum. First, we want to secure a better deal for tenants in the social rented sector. Secondly, we want to provide a framework that will allow all the agencies—whether central Government, local authorities, voluntary organisations, financial institutions or housing professionals—to work together to improve the quality of Scotland's housing and related services. Undoubtedly, there will be different views on the way in which we can achieve those two key aims. However, if we are able to agree on where we are trying to get to, that will provide a standard against which we can judge the proposals in the bill and any suggested changes to it.

Within those broad aims, specific policy objectives of the bill are to prevent and alleviate homelessness and strengthen the rights of homeless people; to provide a comprehensive and consistent set of rights for all tenants in the social rented sector; to create a single regulatory framework to drive up standards; and to provide for the conversion of Scottish Homes into a new executive agency that will be more accountable to ministers, this committee and the Parliament. Finally, the bill is intended to enhance the strategic role of local authorities in assessing and tackling local housing needs, in line with their responsibility for community planning.

Translating those policy objectives into statute has not been straightforward and, in some cases, has required quite detailed and complex provisions to be included in the bill. However, we have gone out of our way to be open, transparent and accessible in the preparation of the bill. By and large, we have achieved a fair degree of

consensus on the way forward. The committee's responsibility is to consider and report on the general principles of the bill, and I have set out what I believe the general principles are and should be. I hope that we will be able to agree on those principles and work together to ensure that the bill delivers, not in our interests, but in the interests of the people of Scotland.

The Convener: Thank you very much. Let us move to questioning. Margaret Curran may also want to say something—that would be a novelty.

The policy memorandum states:

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

There has been some comment about what will happen to tenants in the private rented and owner-occupied sector. Do you have a timetable for your work in relation to those tenants? Do you anticipate that a bill will be introduced during this session of Parliament to deal with them?

Jackie Baillie: There are several different parts to the private sector, which I shall explain. First, we are setting up the housing improvement task force, as we announced, to consider specific quality aspects of housing in the private sector. We envisage that that will involve a two-stage timetable. The first stage will scope what the problems and needs are; the second will try to identify solutions. I anticipate that that group will report in 2002.

Secondly, the homelessness task force has a real interest in the area of private sector tenancies. As part of its longer programme of work, it will consider any changes that may be required to address the needs of private sector tenants. Thirdly, as part of its 2001-02 research programme, the Executive has commissioned a piece of work on private sector occupation and tenancies.

The Convener: In discussing the bill, our committee felt that it would be useful for us to have a role in scrutinising the impact of the Housing (Scotland) Bill, once it is enacted. How would you co-operate with the committee in that matter? Would you be willing to provide the committee with advance copies of draft secondary legislation or guidance for its scrutiny and comment?

Jackie Baillie: I will be happy to co-operate with the committee. All relevant orders and regulations are referred to the committee as a matter of course. In the bill, we have set out the fact that we will consult widely, involving all the interest groups—the Convention of Scottish Local Authorities, Shelter, the Scottish Federation of Housing Associations and so on—on the issue of developing guidance. But I would be happy to

ensure that the committee was included and had a scrutiny role over the draft guidance before it was issued. There is no difficulty in arranging a mechanism to ensure that that happens.

The Convener: I presume from what you have said that you are aware of the anxiety about the amount of secondary legislation and guidance. We are keen for you to assure us that there will be significant consultation with the committee and other organisations at each stage.

Jackie Baillie: Yes, you can have that absolute assurance. As you will appreciate, a number of the issues covered in the draft guidance are complex and detailed, and therefore should not be included in the bill. Equally, with guidance there must be a degree of flexibility so that one can respond to changing needs and circumstances. I am happy to give an absolute assurance that the committee will be involved throughout the process of developing draft guidance.

The Convener: You will also be aware of the committee's interest in fuel poverty. You have indicated that you intend to lodge amendments on that matter at stage 2. I presume that you are working on them just now. How should the bill be amended to address fuel poverty?

Jackie Baillie: You are correct; we are considering an amendment on fuel poverty at stage 2. Our approach is likely to mirror that in the Warm Homes and Energy Conservation Act 2000, which was passed for England and Wales. We will provide the precise details of the amendment when it is drafted, but it is likely to place a duty on ministers in respect of targets and time scales. We are considering the precise wording, but that is the broad approach that we intend to take.

The Convener: The Deputy Minister for Social Justice will be aware of issues regarding skills shortages and protecting the rights of staff who transfer between public and private employers, because she was involved with the committee's stock transfer report, in which those issues were highlighted. Does the Executive intend to ensure that local people gain maximum employment benefit from housing improvements? What will happen to the employment conditions of staff who transfer from local authorities and direct labour organisations? What about the conditions of employment of new staff who are not covered by the Transfer of Undertakings (Protection of Employment) Regulations?

I am aware that that is a broad sweep of issues. I am also interested in your comments on the evidence that was given to us by the Scottish Trades Union Congress, particularly on the way in which the construction industry is organised and how that might impact on the local benefits that we hope to gain from regeneration work.

Ms Curran: I was going to say that I was pleased to be back at the committee, but perhaps not, given your opening remarks that you were going to treat me as badly as I had treated other people. I will hesitate before I welcome the experience.

We are all aware that the committee conducted a marathon inquiry into community ownership and housing stock transfer, and flagged up the interests of workers in that process. I take that seriously in my ministerial responsibilities. Across the Executive there is a strong commitment to maximise employment opportunities not only in the areas that are involved in stock transfer, but for people from deprived areas. A number of measures have been taken, some of which are being pursued by Wendy Alexander. The housing employment working group now has four sub-groups considering the details, on which I am happy to supply information. Work is under way across the board. There is a strong commitment across the Executive to ensuring that we maximise opportunities.

We are also committed to doing what we can to enhance the conditions of workers in the transfer process. We examined closely the evidence that was given to the committee. We will use our powers in whatever way we can to encourage, for example, Glasgow housing association to deliver as enhanced a package as possible. We encourage negotiation to ensure that workers' rights are protected. You will know that we saw no evidence that workers' rights were in any way diminished by stock transfer. We encourage people to see the opportunities that that policy affords, in regard to employment and conditions.

We took note of the significant evidence on the construction industry. I have looked into that matter in depth, and a number of relevant areas are reserved, which makes it difficult for us to give you guarantees, but we would be happy to pursue the matter within our range of powers in whatever way we can. We would try to pursue those opportunities as best we could through the housing employment working group and so on.

Ms Sandra White (Glasgow) (SNP): On the issue of stock transfer and fuel poverty, your letter of response to the committee states that councils are developing proposals for stock transfer in order to

"secure full modernisation of the stock".

The letter goes on to say that every household in the social rented sector and everyone over 60 in the owner-occupied sector will have central heating.

Will you guarantee that, if any council decides not to proceed with stock transfer, those households will be fully modernised and will

receive full central heating? If that is the case, will you give the committee a date on which that might happen? We do not want any such modernisation in those areas to lag behind that in other councils which have decided to proceed with stock transfer.

10:30

Jackie Baillie: We can absolutely guarantee that, irrespective of whether the tenants in any stock transfer ballot vote yes or no, they will receive central heating. If they vote yes to a transfer, the whole issue of central heating will be very much part of the investment programme. If they choose not to pursue community ownership, the Executive will entirely cover those who would be eligible under our central heating programme.

Ms Curran: Sandra White referred to the modernisation programme. The Executive has made clear its commitment to the central heating initiative. The stock transfer and community ownership proposals are based on the benefits that stem from the proposed full modernisation; and the central heating initiative is in addition to those benefits to deliver full modernisation.

Ms White: Although I take on board the minister's comments, stock transfer does not seem to be the only way forward. Jackie Baillie said that people who choose not to proceed with stock transfer will still receive central heating and full modernisation. Is that correct?

Ms Curran: Absolutely.

Bill Aitken (Glasgow) (Con): The facilitating section of the bill dealing with stock transfer and community ownership is silent on the issue of the secondary transfer. If the process is to succeed, we must ensure that large housing areas such as in Glasgow are broken down into manageable units. Why do you not feel it appropriate to accommodate the issue of secondary transfers in the bill and how would you approach that matter?

Ms Curran: We did not feel that it was appropriate to be so prescriptive. Several public commentators have said that the bill is about stock transfer; however, I do not think that those words appear in the bill itself. The bill complements the stock transfer process rather than enshrining it, because it is not appropriate to do so in that form of legislation. As a result, it is not appropriate to include secondary transfers in the bill either. We have made it abundantly clear that we are very committed to community ownership, including secondary transfers. I know that Scottish Homes, for example, has told the committee that it does not agree with an upper limit on the size of housing associations; it would be wrong to be prescriptive and, as you will see from our work in Glasgow on the issue, the way that we are tackling the subject is appropriate.

Bill Aitken: Indeed, your commitment to this course of action is well known. Uncharacteristically, committee members find themselves consensus ad idem, which is no doubt an uncomfortable position for you.

Ms Curran: Latin is a bit hard for me, I must say.

Bill Aitken: Nevertheless, if you are not prepared to legislate, how will the mechanics of the process work?

Ms Curran: The process will work through our negotiations with local authorities and the organisations that are developed; by encouraging negotiations between the sellers and the buyers; and in the guidance that we offer for funding proposals. For example, we will not sign off a business plan that has not built in proposals for community ownership and second-stage transfer. As we are committing substantial public resources to sign off debt, the Executive will strictly scrutinise any proposals that are presented to it.

Because Mr Aitken has flagged up the matter, I will take this opportunity to distinguish our position from that of the Tories; they never tackled debt in Scotland, whereas we are doing so. However, we will strictly monitor how we spend those public resources. Part of the deal will be a commitment to community ownership. We do not need to address that issue in the bill, as we can deal with it through existing means.

The Convener: Would I be right to say that the commitment to housing associations will be in the framework document for Glasgow City Council, even at the first stage, and that there is no spectre of a big body being set up outwith the legislation?

Ms Curran: That is correct.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): I want to ask Jackie Baillie about part 1 of the bill, which deals with homelessness, and the provisions in section 4 on the duty of registered social landlords to provide accommodation.

Section 4(2) states:

"In deciding whether to make such a request, the local authority must have regard to the availability of appropriate accommodation held by it."

Some people might suggest that that provision means that a local authority would have to examine its own stock before it could decide to nominate a prospective tenant to a registered social landlord. Is that correct? If not, what is the Executive's thinking on that subsection?

Jackie Baillie: I will deal with that point directly. We are aware that, contrary to our intentions, the bill could be interpreted as meaning that local authorities are required to examine their own stock first. That was not our intention; our intention was

simply that local authorities should not disregard their own stock in making an allocation under the legislation.

We are minded to lodge an amendment at stage 2 that would make it absolutely clear that section 4(2) is not just about local authority stock and that a local authority should have regard to all accommodation that is available within an area. I hope that that clarifies the situation.

On the wider point, we are keen for local authorities to retain responsibility for discharging the homelessness function. We are aware that, in the context of whole or partial stock transfers, the availability of local authority stock will diminish. We are placing a duty on registered social landlords to co-operate with local authorities in discharging that function and to accommodate people who are homeless. We have set out the specific, limited circumstances in which we would consider it to be appropriate or reasonable for a registered social landlord to refuse to accommodate a homeless person. A system of arbitration that is both speedy and effective will be put in place so that, if a dispute arises between the local authority and the registered social landlord, the homeless person will not be disadvantaged in any way.

Cathie Craigie: I thank the minister for that answer and for the clarification on section 4(2). I look forward to seeing the amendment at stage 2.

The minister pre-empted my second question about the arbiter. There is uncertainty, even among committee members and our witnesses, about how effective the arbiter will be. Will the arbiter's decision be final? Will the registered social landlord have to accept the arbiter's decision? If the arbiter's decision is not final, what power does the minister have to ensure that the period during which a person has to wait to be rehoused is not extended simply because of red tape?

Jackie Baillie: I will deal with the issue of arbitration in slightly more detail.

We will issue detailed guidance on the arbitration process, which will specifically include time scales and procedures to be followed. An arbiter will be appointed from a pre-agreed panel; that appointment will be swift and the process should be concluded within a matter of a few days.

On the arbitration to take place between registered social landlords and local authorities, the arbiter's job will be to focus on whether the registered social landlord has a good reason to refuse the local authority's request. Such a reason might be—I have used this example before—that the only accommodation available from a registered social landlord for a family with four children is a sheltered house for a pensioner, which would be inappropriate accommodation in

the circumstances.

The regulator has the power to do a number of things. They can request information on homelessness strategies; they can require remedial reports to be issued; and, critically, they can appoint special managers. If a registered social landlord refuses to comply with the outcome of the arbitration process, the regulator can appoint a special manager. The special manager can function in two ways: first, in general circumstances and, secondly, in individual cases, particularly those concerning homelessness. In those cases, the special manager can come in, and their decision will be final.

Ms White: You mention that there is an independent arbiter and a regulator, who can pull people in under certain circumstances. Where are those people pulled from? Is it the arbiter who makes the decision on that? Who makes the decision on appointing the arbiter? Are they appointed for each case that comes in? Is the appointment held for three or four years? How much influence do parliamentarians have on the appointment of arbiters and regulators?

Jackie Baillie: I did not envisage a role for Parliament in this matter. As you will appreciate, we want the process to be speedy—not that I am suggesting that Parliament slows things down, I hasten to add. We want to operate a pre-agreed panel on which would be people with professional experience in housing, particularly homelessness. They would have regard to equal opportunities issues and would be familiar not just with homelessness legislation but with its operation and application. I think that it is best left to agreement between registered social landlords and local authorities to set up a panel from which people can be drawn. I think that the regulator will have a role in ensuring that the process is quick. We have to consider the needs of the homeless person as paramount in this process.

Ms White: Would that apply per area, ward or constituency, and not overall?

Jackie Baillie: I will bring in my officials on this, but I would have thought that we might want to consider one pre-agreed panel. Clearly, we want to ensure that people are also aware of local circumstances.

Richard Grant (Scottish Executive Development Department): It is likely that there would be an agreed panel within a local authority. In some cases, there might be a shared panel for local authorities. If there was no agreement between the RSL and the local authority, the bill provides for Scottish ministers to make the appointment.

The Convener: Would you log where there are difficulties? That might reflect on reports about any

individual registered social landlord.

Jackie Baillie: Yes. That would be part of the process that the new executive agency would undertake in the context of monitoring and regulation. As you will appreciate, it will have responsibility for monitoring homelessness strategies and for the discharge of those strategies. We would be keen to flag up the existence of any hot spots, to find out whether there are underlying problems and to attempt to resolve them.

Ms White: The Housing (Scotland) Act 1987 is the main homelessness legislation. Section 3(3)(d) of the bill would insert new subsection (5) in section 31 of the act. The proposed subsection says:

“‘permanent accommodation’ includes accommodation—

(a) secured by a Scottish secure tenancy,

(b) secured by an assured tenancy that is not a short assured tenancy.”

That sounds like the private sector to me. Could you clarify that? If it refers to the private sector, it would mean that homeless people would be referred more to the private sector than to RSLs.

Richard Grant: This is about defining the suitability of accommodation and its meeting the permanent accommodation test. Assured accommodation in the private sector would be permanent accommodation. Sometimes, people are rehoused in the private sector. However, most accommodation belongs to the local authority or to the RSL sector and would be on Scottish secure tenancies.

Ms White: I just wanted to highlight that, as it occurred to me that that paragraph might be referring to the private sector rather than to RSLs.

Mike Watson (Glasgow Cathcart) (Lab): I would like to ask about the right to buy and—

The Convener: Hold on. If you want to ask about the right to buy, can you wait until we reach that part of our questioning, so that we can all ask our questions on that subject together?

Mike Watson: Yes, of course. I am sorry.

The Convener: That will let us move seamlessly from one section to another, without anyone noticing the joins.

Mike Watson: That will be an innovation in a parliamentary committee, but a very welcome one.

The Convener: I guarantee that I will bring you in later, Mike.

Brian Adam (North-East Scotland) (SNP): Minister, you have talked a little about the arbitration process between local authorities and other registered social landlords. There is a

disputes mechanism that deals with tenants—either individuals or tenants associations—and registered social landlords. It has been suggested to us that that might be a very costly exercise and that we seem to jump to legal recourse a little too early. There is a lack of clarity. Can you give us some ideas on how you would like to see that done quickly and inexpensively—especially for individual tenants, or even tenants associations?

Jackie Baillie: I am unclear as to the question, so if I do not answer it the first time, do come back to me.

Brian Adam: I noticed that you did not quite catch it. I am asking about dispute resolution between individual tenants and their landlords and/or tenants associations and their landlords. The view has been expressed to us that disputes can be sorted through the courts, but perhaps too early. The costs involved in that for tenants or tenants associations may be considerable, which does not seem the best way to go about resolving difficulties.

10:45

Jackie Baillie: I will ask Margaret Curran to pick up on the specifics of tenants associations and the programme of tenant participation.

We are keen that dispute resolution is not left to the courts. The bill gives some specific circumstances in which it is appropriate to have recourse to the courts—for example when someone has the short Scottish secure tenancy and they feel that they should have the full Scottish secure tenancy. However, in discharging the homelessness function, we are mindful that the process of going to the courts—apart from being costly and beyond the means of a lot of people—is long and drawn out. We have not taken up the suggestion that homelessness appeals should go to the sheriff courts. We prefer to keep the whole process tighter and therefore shorter. There are already internal review processes within local authorities. People can have access to the regulator, to the local government ombudsman and, as a last resort, to judicial review. There are therefore a number of possible processes, but the idea is to make things quick and cost effective while maintaining the rights of the individual and the landlord.

Brian Adam: Would you consider making available—or making it compulsory for landlords to make available—financial support to allow people to get independent advice? That support could be for individual tenants in particular circumstances or for tenants associations.

Jackie Baillie: As part of the new duties that we are placing on local authorities, they will have to provide advice and assistance to somebody who

is deemed to be homeless. There is also a new duty to provide temporary accommodation. From the £27 million, we are already providing assistance to local authorities to develop that advice function. However, I do not think that we would be willing to set aside additional funds to go towards the resolution of disputes when those funds could be used for housing purposes. We feel that we already have a robust mechanism in place. The rules that apply to legal aid, which my colleague Jim Wallace deals with, will obviously apply in the situations to which Mr Adam refers.

Brian Adam: As I understand it, it is currently quite difficult for individual tenants to deal with disputes with either local authorities or housing associations. This is an opportunity to address that.

Jackie Baillie: I can certainly pass that comment on to Jim Wallace, but Mr Adam will appreciate that we will not be dealing with aspects of legal aid in what is essentially a housing bill.

Ms Curran: In the context of our proposals for tenant consultation and participation, I would like to pick up on the points about tenants associations, which may answer some of Brian Adam's questions. There are often disputes and conflicts at a local level, around information, clarification and interpretation.

We are making proposals for tenant consultation and participation, so that those issues can be dealt with at a much earlier stage, so that landlords have to recognise tenants organisations and so that the tenant participation strategy can be funded. That will go some way towards addressing the issues that have been flagged up—tenants having proper information to marshal their case, for example. Judging from experience, the idea of early intervention and getting people to talk and to understand the issues would lead to greater resolution and would minimise the need for court action.

Brian Adam: I welcome that. The sort of suggestion that was being made might not be a burden on the Executive's finances. There could be a compulsory levy on registered social landlords, which could be made available directly to a recognised tenants association. That would allow tenants to get wholly independent advice and support. That was the thinking behind the suggestion. You may want to respond to that.

Ms Curran: That would obviously have a knock-on effect on rents, which registered social landlords would have to think through. I am sure that they would argue that early intervention would minimise the cost of any legal expenses, so that public resources would be used appropriately. The drive is to support registered tenants organisations and put in place effective strategies.

Jackie Baillie: In addition to the £4.5 million that we have made available to develop our capacity-for-change tenant participation project, we already provide just over £1 million from central funds to service independent tenant participation organisations, which provide a huge degree of support in training and development for local associations.

Fiona Hyslop (Lothians) (SNP): I want to ask about the single social tenancy, which will lead into the right to buy, if that is okay.

The Convener: Please deal only with the single social tenancy just now, as there are other questions on that. There will then be a general section on the right to buy, which will give you an opportunity to ask your question.

Fiona Hyslop: In that case, I shall hold back and ask my question later.

Brian Adam: I gather that the minister planned to bring in the Scottish secure tenancy on a specific day, but the latest letter leaves the door open as to whether that will actually be done. I understand that if some tenants choose to go down the route of stock transfer, the Scottish secure tenancy may be phased in for some tenants. What is the current thinking on that and why does the Executive prefer the idea of the big bang, in spite of the advice that we have heard from a number of organisations that might be affected?

Jackie Baillie: That is an interesting question, because the majority of organisations that we have spoken to have favoured the big bang approach. They think that it is sensible for all new tenants to have the rights at the same time. We certainly favour the big bang approach, but we are mindful that there is a lot of work involved in that and that we need to have discussions with all interested parties before final decisions are made. We must ensure that there is adequate preparation. We are already well advanced in developing our model tenancy agreement, which was done in conjunction with COSLA and the SFHA. However, we recognise that in the case of whole stock transfer it might be sensible to implement the Scottish secure tenancy on a different timetable.

Richard Grant: I would like to elaborate on that a little. The tenancy agreements comprise statutory elements and contractual elements. When we talk about big bang, we are really talking about bringing in the statutory elements of the tenancy at a specific date, as provided for in section 9. Our legal advice is that the existing contractual elements of the tenancy would continue to apply at that date. If the landlord wants to change the tenancy more widely and change some of the contractual elements, or wants to

bring in the model tenancy agreement that the minister referred to, the statutory elements will apply from a certain date and there would have to be an information process to ensure that tenants understand that. Subsequently, the landlord would probably need to sign up the tenant to the full tenancy agreement, including any new contractual elements.

Brian Adam: "Better Homes for Scotland's Communities" included two new grounds on which a landlord could repossess property—anti-social behaviour and persistent rent arrears. Why have they been dropped from the bill?

Ms Curran: I will kick off on that answer, but Richard Grant may help me.

As members know, extensive consultation took place on the proposals for the bill. We received feedback that said that those grounds would not work—COSLA stressed that—because local authorities were thought unlikely to use them. We changed our approach on the basis of that consultation.

I know that the committee is interested in broader anti-social behaviour issues, so I will speak about them too. I am aware of some of the difficulties, especially in the experience of tenants and landlords, and across the board with local authorities and registered social landlords. The Executive has taken several steps, through supporting the Dundee families project, appointing the neighbourhood champion and trying to implement more monitoring and evaluation to facilitate early intervention. We are putting that package of measures together.

However, we recognise that the criminal justice system is more appropriate for other elements of the package. We are aware of the evidence about frustration and delay in processing some cases. The Minister for Social Justice has made strong representations to the Minister for Justice to pursue that, which he will do. I understand that he appreciates the difficulties and considers them an issue for the justice department. Our conclusion from the evidence from the relevant bodies is that the issue rests with the justice department.

Brian Adam: Is the justice department likely to take action? Making representations to the department does not solve the problem of anti-social tenants.

Ms Curran: I am more enthusiastic than you are.

Brian Adam: Do you intend to do nothing in the bill to tackle the issue?

Jackie Baillie: It is not a matter for the bill; it is a matter for the justice department. As Margaret Curran said, I have spoken to Jim Wallace at length. He is aware of the problems that we have

outlined and has undertaken to monitor how anti-social behaviour orders are processed, with a view to deciding whether changes are required. That is helpful.

Brian Adam: With the greatest respect, the problem has been going on for many years. Monitoring how sheriffs react to the problems that anti-social tenants produce will not resolve it. We need a positive commitment to taking action.

Jackie Baillie: Anti-social behaviour orders have existed for only two years, so I do not know where you get the idea that monitoring has been conducted for many years.

The Convener: Anti-social behaviour has been around for some time. Our experience of local authorities' representations has been that anti-social behaviour orders are not tackling the identified problem. Given ministers' desire to have an effective housing strategy, we look for a fairly strong commitment from you to obtain more than a watching brief from the justice department. Important issues such as tenants' quality of life are involved. Anti-social behaviour orders do not work effectively and sheriffs do not seem to regard anti-social behaviour as a serious problem, so we look for assurance from ministers that you will do everything in your power to drive the Executive on the issue.

Ms Curran: I have no hesitation about giving that guarantee. We too feel strongly about the issue. We represent people locally for whom the issue is important. I understand Brian Adam's passion about the issue. I understand the issue and the difficulties.

A range of initiatives across the board is required to tackle anti-social behaviour. The issue is as much about the quality of life in some communities as the powers of local housing associations. I argue strongly that the criminal justice system is one part of the answer, but across the Executive we are taking several other steps to tackle the issue. Neighbourhood regeneration is a big part of that, but the sociable neighbourhood initiative, to which we have committed £250,000, also has a role.

We take the issue very seriously and we are moving across the board. I wish the Minister for Justice could wave a magic wand and solve the problem overnight, but we all know that it is not that simple and it would be wrong for us to imply that it is. However, I can assure the committee that the Executive will pursue rigorously the evidence we receive about the effect on neighbourhoods of anti-social behaviour.

Brian Adam: Many people will be disappointed that that measure has disappeared from the bill. It is the only bill before Parliament that has the potential to address the issue directly. I

understand the difficulties and I sympathise, but just because things are difficult does not mean that they should not be tackled. The minister said that there are several technical issues that she and her staff have worked hard to address. Perhaps you might want to think again about such problems and make proposals at stage 2.

11:00

Ms Curran: I have to say that I think Brian Adam is wrong. The consultation showed not that lots of people would be disappointed, but that there would be difficulties in implementation. You cannot say that we must consult, yet never listen to the consultation. We will draw conclusions from consultation and we may not always agree with it. However, in this case, we were persuaded that such a measure would not be particularly effective. If people have any proposals as to how to address the serious social issue of anti-social behaviour, we will consider them. However, I must emphasise that we take a co-ordinated approach across the different parts of the Executive. It is something that we will not lose sight of.

Karen Whitefield (Airdrie and Shotts) (Lab): As has been noted, there is considerable interest in the right to buy and that part of the bill has attracted much comment from housing professionals and people working in the sector. In light of that fact and the many representations that the committee and the Executive have received on the matter, does the Scottish Executive remain committed to the basic principle of right to buy? If so, why?

Jackie Baillie: We remain absolutely committed to the principle of right to buy. It is an integral part of the Scottish secure tenancy—it is about raising and improving people's rights across the sector. Thankfully, there was no logical reason to leave the right to buy with only those who have secure tenancies and not to extend it to assured tenancies when they all became the new Scottish secure tenancy. That would have created two sets of conditions.

You talked about housing professionals and those with an interest in the sector being opposed to the extension of the right to buy, but tenants aspire to owning their own homes. Current figures suggest that 75 per cent of all tenants wish to own their own homes. That figure rises to 80 per cent in the 25 to 59 age band, where one would reasonably expect most people to be interested in home ownership. We need to balance our responsibilities towards landlords and the wider community with our responsibilities towards tenants.

Having worked in area regeneration before I took up this post, I know that the right to buy has

been an extremely useful tool in ensuring that we have mixed tenure, stable communities. I have seen the effect on a community where, when someone improves their individual circumstances, the first thing they seek to do is move out of the community. That creates estates that are unstable and in decline. In evidence to the committee, COSLA recognised that the right to buy has had a positive impact on the development of stable, mixed communities.

People's terms and conditions are important, as are their rights. In the modernised right to buy, we have achieved a better balance between the rights of tenants and the needs of landlords and the wider community. We remain committed to the principle.

Karen Whitefield: The minister indicated that it is a modernised right to buy. At times, that point seems to have been lost. Do you think that the modernisation in the bill, particularly in relation to the right to buy, will deal with the concerns that have been expressed about the impact on housing stock levels?

In particular, do you share the concerns of organisations such as Shelter and the Scottish Federation of Housing Associations that the extension of right to buy—even a modernised right to buy—would contribute to a significant increase in homelessness? Shelter has stated that, with right to buy in the 1990s, people bought their homes, sold them quickly and moved on. Do you have any evidence that that is the case? Do you agree with that premise? If so, will the changes that you propose to the right to buy help address the problems that have been highlighted by organisations that understand and are working in this field?

Jackie Baillie: We have taken account of the concerns that have been expressed. I cast my mind back to when we first suggested the extension of right to buy. It was going to be extended as it was; since then, there have been significant concessions to take on board people's concerns. If we had left right to buy alone and had not modernised it, we would have ended up with less stock in the socially rented sector than we have under our proposals. By modernising it, we are recognising that there will, as a consequence, be fewer sales. It is more strategic.

It will be useful if I go through the ways in which we have modernised right to buy. We have considered the financial viability of registered social landlords and, based on their concerns about financial viability, there is a 10-year exemption. We have introduced pressured areas in the rural and urban contexts, where there are issues of excessive demand over supply of socially rented housing. We have dealt with and reduced the levels of discount and we have

introduced a cap. We have increased the qualifying period and, based on advice from the SFHA through the consultation process, we have moved the date for charitable exemption. It is a much fairer package, which is about balancing the needs of tenants, landlords and the wider community.

Shelter has made much of homelessness. I respect its position, but it is nonsense to suggest that right to buy is a cause of homelessness. We have done the research. In the period when right to buy sales were decreasing, homelessness was increasing. We need to recognise that homelessness is not simply an issue of bricks and mortar; there are deep, underlying, complex reasons for people becoming homeless. In some cases, it can be family breakdown; in other cases, it can be an alcohol or a drug addiction. Many people become homeless when they come out of institutions and are unable to sustain a tenancy. It is clearly not a bricks and mortar issue. The void properties throughout Scotland tell a story in themselves.

The other indicator for us is that the level of lets in the social rented sector has not decreased dramatically as right to buy sales have been taken up. It has remained broadly constant. It more than covers the number of homeless applications that are received in any given year.

You asked about people buying their homes and selling them on quickly. There will always be a minority who attempt to abuse whatever system is in place, but our research shows that the overwhelming majority of people who purchase their homes stay in them for at least 10 years. People are genuinely exercising their aspiration to own their own home, rather than doing it for profiteering motives.

Karen Whitefield: The minister mentioned pressured area status. Obviously, that is a concession that the Executive has made in response to concerns. We have heard it suggested that it may not achieve the Executive's hoped for objectives.

The SFHA in particular has stated that while the mechanism is correct in principle, there are a number of reasons why it will not achieve the desired objective. For example, because of tenant pressure on elected representatives, local authorities will feel pressured into extending the right to buy to all tenants in their areas.

The procedures for the application of pressured area status will be cumbersome and overbureaucratic. What proposals does the Executive have for monitoring the efficacy and implementation of pressured area status, particularly in relation to homelessness, to ensure that it meets the Executive's objectives? Is there

room for improvement in the system that is proposed?

Jackie Baillie: There is always room for improvement. Karen Whitefield will appreciate that a number of the details relating to pressured areas will be covered in separate guidance. We established a right-to-buy working group, on which COSLA, the SFHA and a variety of housing interests were represented, to help us to think through the details of the application of pressured areas in urban and rural contexts. We are clear that we want to make the regulations as streamlined and efficient as possible, while balancing the need to consider carefully whether pressured area status should be applied, as in effect it removes quite significant rights from tenants. I will invite Richard Grant to discuss in more detail the work of the right-to-buy working group—I am aware that we have sent you information on it.

We are keen to monitor the impact of right to buy across the board and not just in relation to pressured areas. We are already working on a model of financial viability that will monitor the impact of the right to buy on registered social landlords. That is being developed by Scottish Homes, the SFHA and others. It will be a robust model, which will reveal the local impact as well as what is happening at the national level. As the policy develops, we are keen to monitor the right to buy generally, so that we understand its impact and can make changes if they are required to mitigate any negative effect or enhance any positive effect.

The Convener: Can I ask you to be brief? If you feel that you have not been able to say everything that you want to say, you can give more details. There are many other questions that I do not want to lose.

Richard Grant: I will be brief. I sent the working group's report to the committee. There was a consensus among the various interests on the group about the procedures that should be adopted and about the need for balance between introducing a measure that can be implemented speedily and recognising that pressured area status removes rights. The group concluded that we need a separate procedure, which is different from local housing strategies, as the time scale for local housing strategies is such that they will probably not be introduced until 2003. The bill provides for a separate procedure, which means that designations could be made very soon after the bill receives royal assent.

Mike Watson: There is a great deal that is very good in the bill and that I welcome. However, I think that on the right to buy you are plain wrong. That is not just a personal opinion. On the basis of constituency experience, I advance it as the view

of many housing associations and even housing association tenants.

Your memorandum to the committee says that

"75% of all households in Scotland aspired to own their own home."

Was that question asked only of tenants in the social rented sector? What proportion of those people have that aspiration? Such a figure is not reflected in the lobbying that I have received on this issue.

Jackie Baillie: We could share constituency experiences—mine have been slightly different. We took the percentage to which you refer from the Scottish house condition survey. You are right that it is 75 per cent of all households that want to become owner-occupiers, whereas 60 per cent of tenants in the social rented sector want to become owner-occupiers.

Mike Watson: I accept that as I have no means of countering it. Everyone shares the aspiration to maintain the socially balanced communities that are mentioned in the same memorandum, but that has already been achieved to a significant extent. In Castlemilk, in my constituency, a lot of the housing used to be Scottish Homes or local authority housing, but changes such as new build have altered the mix dramatically. Such a mix can be achieved without extending the right to buy by providing more new homes for sale.

The memorandum says that the level of uptake is down to about 2 per cent. Is that likely to be because the most desirable housing has already gone? Given that the new housing association houses will be much more attractive, the 2 per cent level is not likely to be realistic, year on year.

11:15

Jackie Baillie: Everyone aspires to the creation of socially balanced communities. Castlemilk is unique in that it was one of Scotland's four new life for urban Scotland partnership areas that had significant levels of investment levered in, particularly around housing-led regeneration. However, there are other communities in Scotland in which public sector housing has become ghettoised. In such areas, there is no mixed tenure, the communities are in decline and people move out as their personal circumstances improve.

The question is how we achieve that mix. We think that the right to buy can be a strategic tool in such circumstances, subject to safeguards. I should point out that, for years, housing associations have developed and worked alongside low-cost home ownership schemes and a third of their stock is subject to the right to buy. We are not talking about doing something new; we

are talking about extending the right to buy to another 40,000 tenants in 10 years' time, subject to financial viability.

Uptake has been around 2 per cent across the sector that enjoys the right to buy. We profiled what the likely uptake would be based on past experience and on what we knew about the income levels of people living in those households. At the end of the day, people's ability to purchase their houses will be dependent on their income. A significant number of people, some of whom are on extremely low incomes and are dependent on full housing benefit, would not be financially able to access the right to buy. I accept the point that, in year 1, because people want to exercise the right, there will be an increased uptake when the right to buy is extended, but the uptake will tail off to roughly 2 per cent after that.

The Convener: I want to let Fiona Hyslop in at this point. I am conscious that a lot of people want to come in.

Mike Watson: I have not finished yet.

The Convener: I appreciate that but I will allow others to ask questions. If you do not think that the points that you want to cover have been dealt with by them, I will let you come back in.

Fiona Hyslop: I want to ask about the single social tenancy. Obviously, minister, you had to have an eye to the European convention on human rights. It is quite clear that a number of things in the consultation document do not appear in the bill, quite likely because they may have contravened human rights—I am thinking particularly of the anti-social behaviour aspects that were in the original consultation.

You mention that the right to buy is a fundamental right as part of the single social tenancy, but you must also be aware that the European Court of Human Rights has judged that it would be discriminatory for people to have different tenancies with the same landlord. In relation to that, I cite the *Larkos v Cyprus* case. Have you considered what would happen if one housing association tenant in a pressured area decided to take the landlord and the Government to court on the basis that they were being discriminated against?

The court said that

"a difference in treatment is discriminatory if it has no objective and reasonable justification, that is if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised."

Bearing in mind your argument that the extension of the right to buy is a fundamental right, do you see a danger of one housing association tenant jeopardising the whole pressured area argument

by using the ECHR to protect their position?

Jackie Baillie: No, I do not see that as a major issue. I am conscious that this matter was explored with officials when they came to this committee, so I will get them to respond in more detail. I regard the right to buy as a fairly fundamental right that is part of the single social tenancy. As you said, we do not want two different sets of rights, because that could legitimately be challenged. I take it from your comments that you will support the extension of the right to buy on that basis.

Fiona Hyslop: I say to the minister—

Jackie Baillie: You asked the question; let me finish the answer. Right to buy has to be strategic. We want socially balanced communities and mixed tenure, so there is an objective. Close consideration will be given before pressured areas are designated. Indeed, we are talking about offering cash incentive schemes to enable tenants to move out and purchase in the private sector. We think that the proposal is robust and cannot be challenged but, as with all things, the devil is in the detail. I will ask the officials to deal with the detail.

Fiona Hyslop: I have another question, which the officials may wish to respond to. Section 38 concerns the 10-year deferral on right to buy. The proposed section 61A(2)(c) states that deferral does not apply

“to a tenancy of a house which was let on a secure tenancy at any time before 2nd January 1989”.

Does that mean that any house that is currently owned by a housing association, and which was previously let by a local authority, will be subject to right to buy immediately? If it does, that could affect at least 10,000 housing association tenants. In the debate about the right to buy being a fundamental right, the question is whether it should be an integral part of the single social tenancy. Minister, you may find that we are on different sides of that argument. The officials may be able to answer those points.

Richard Grant: Our lawyers carefully considered the bill before it was introduced and gave advice on ECHR compliance, including compliance of the right to buy. In their view, the right-to-buy provisions in the bill are fully compliant with the ECHR, and Parliament accepted that.

On the case that you mentioned, when we gave evidence I was accompanied by the head of the legal services advisers on housing, and he referred to the same case. I am not familiar with the details, but I know that he has not changed his mind. You may be able to get more details from the *Official Report*.

On your second point, we are talking about an exception to the exemption. In effect, there is a 10-

year exemption for RSL property. Because we want that exemption to be targeted on properties that are being brought in to the right to buy retrospectively, various exceptions are spelled out in the legislation. We want to except houses that were not built with any private lending, that is, houses that were let on secure tenancies pre-1989, which have the right to buy at the moment. You are right to say that we do not wish to except new lets in houses that transfer to RSLs and which were secure tenancies. The preserved right to buy will apply to the tenants who transfer, but we want re-lets to be caught by the exemption. The bill may have to be amended at stage 2 to make that clear.

Brian Adam: There has been some debate on pressured areas, and whether we should include different house types—not just those that have been purpose built—and take into account factors such as size. In your letter to us you say:

“We would like to get more experience of operating the proposals for pressured areas before deciding whether it is practicable to consider allowing landlords to seek more general exemptions for houses of particular types or sizes”.

Do you intend to take powers under the bill to allow that to happen, but not exercise them? How do you intend to regulate that? Would you have to amend the legislation to allow that to happen?

Jackie Baillie: You are correct that, as it states in our letter, the right-to-buy working group did consider designation of pressure, not only on the basis of areas, but according to house type. The working group felt that it would be extremely complex to do that, although it might be desirable in some instances. We must understand how we designate pressured areas first and then consider designation by house type.

In order for us to take powers, we would probably have to tweak—that is the technical phrase—the wording of the powers within the bill.

Brian Adam: Would it be better to amend the bill at stage 2 to allow you to have that power and then decide, in the light of experience, whether it is necessary?

Jackie Baillie: We may choose to exercise that option.

The Convener: The committee has discussed whether there could be a scheme whereby landlords opt into the right to buy rather than introduce the proposed pressured areas. That would address the issue of areas where there is low home ownership and it might offer some stability. Has the Executive considered that option? I understand that it happened before the right to buy was introduced, as individual authorities sometimes decided to sell off some of their stock in that way.

Jackie Baillie: We have considered that option.

I am afraid that we have rejected it, because our view is that the concept of unpressured areas and opting in is tantamount to abolishing the right to buy. People would end up with a lottery, based on where they live, as to whether they could access the right to buy. We are mindful that that would be unacceptable to tenants. We are trying to balance the rights of tenants alongside the needs of landlords and the community.

The Convener: Do you agree that being able to exercise the right to buy is currently regarded as a lottery, as you may not get into a property that you wish to buy because it has already been bought?

Jackie Baillie: No, I do not think that it is a lottery. We are saying that everybody on a Scottish secure tenancy has the right to buy, but in certain areas where there are housing pressures, it is about balancing the needs of tenants against the needs of landlords and communities. We must deal with the situation strategically to ensure that we achieve socially balanced communities. That is why we have protection mechanisms in place to ensure that it is exercised sensibly, not as under the current right to buy.

Cathie Craigie: I hope that you did not ask my question, convener. I was not listening to what was going on. I am sorry about that, minister. I will have to read what was said in the *Official Report*.

You said earlier that the right to buy does not cause homelessness and that the level of available socially rented housing for let has not varied too much since the introduction of the right to buy. I ask you to share that information with the committee; it would be interesting to see the figures for that across the country.

The SFHA has given evidence to the committee and I have spoken to it privately. It believes that the extension of the right to buy will devastate its supply of socially rented housing and will have an adverse effect on their members being able to meet the demand that is placed on them. This is a supply issue. If the evidence that the SFHA has given the committee is right, why on earth would the Executive want to extend the right to buy to this sector?

Jackie Baillie: We are extending the right to buy to this sector because we disagree with the SFHA's perception of the impact.

I am happy to share information with the committee about the impact of the right to buy on homelessness. I will give you headline figures, which we will clarify later. Each year, there are about 50,000 lets of houses in the socially rented sector. If you consider that that has been maintained in the past, you will see that the right to buy has not had the impact that people perceive. I emphasise that, once they have purchased them, people stay in their houses for at least 10 years, if

not longer.

11:30

There are around 120,000 housing association tenants, of whom a third have the right to buy and a third are exempt because they are in the charitable sector or for some other reason. It is to the remaining third, those 40,000 tenants, that we are proposing to extend the right to buy. Issues of supply have exercised our minds. As we had an initial programme for government commitment to build 18,000 houses in three years—we have now increased that number to 20,000 houses in three years—we are keen to monitor the impact of extending the right to buy. The fact that our budget for that will have increased by 36 per cent by 2003 shows clearly that our priorities lie in developing new and affordable housing for rent.

We also have pressing problems with the quality of housing, the number of void properties that we have and the fact that housing is often not in the right location. Some issues may be covered in local housing strategies, in which people can take a close look at the needs in their areas. A lot of the issues will depend on the way in which we approach development funding and, as the responsibility transfers to local authorities, the way in which local authorities apply that funding. We disagree fundamentally with the SFHA on this point, as we think that the impact of extending the right to buy will not be significant. We are mindful of the need to ensure an adequate supply of housing in the socially rented sector, which our predecessors did not do.

Ms Curran: Let us return to the points that Mike Watson made. We are receiving contradictory evidence. On one hand, we are told that the idea of pressured areas will not work because tenants will rush to the doors of councillors to ensure that it is not implemented because they really want the right to buy. On the other hand, people tell us that tenants do not want that right.

We concur with the SFHA's view on the need to balance the rights of individuals and the rights of communities, and that is what we are doing. It would be politically unsustainable to withdraw rights if tenants believed that they were entitled to them. We have made it clear that everything in the bill is about standardising rights up the way, and we will do that. The extension of the right to buy should be viewed in that context. We all have responsibilities for our own areas, and we want to maximise opportunities, especially for the most vulnerable people in our communities.

I ask you to view our policies in context. First, we are reforming the right to buy, which will have a progressive impact on the number of socially rented houses that are available and, generally, on

regeneration. Secondly, we are inaugurating a package of community ownership issues, which will lead to investment in and, as Jackie Baillie said, a better supply of housing. I believe that we are meeting the rights of both individuals and communities, and that the Housing (Scotland) Bill is an appropriate measure. The balance of the evidence that you have received supports that argument as well.

The Convener: Bill Aitken will ask the next question, after which I shall bring Mike Watson back in, as he got cut off in mid-flow. We have a couple of minutes in which to finish this debate, after which we will move on to other sections.

Bill Aitken: Ironically, one of the other things that your predecessors did not do was sell housing association houses.

I am interested to know how would you direct yourself to this issue. Suppose that the chief executive of a housing association controlling 1,000 houses said to you, "Over five years, I shall lose 10 per cent of my houses"—which is a plausible situation—"although I have based my calculations on a rental stream of 25 years. If the right to buy is extended, the critical mass of my housing association will be undermined." How would you address that situation?

Jackie Baillie: I must correct my esteemed colleague. A third of housing association stock under your predecessors' tenure had the right to buy applied to it.

The situation that you outline is covered by our proposals on financial viability. We have moved significantly to address the concerns both of the SFHA and the Council of Mortgage Lenders, a fact that was acknowledged in evidence to the committee. The combination of reduced and capped discounts and the 10-year exemption on grounds of financial viability will protect housing associations in the situation that you described.

We are convinced that the viability of housing associations will be adversely affected only in a few circumstances. Nevertheless, we are minded to ensure that they are exempt for 10 years. If issues of viability remain after that time, subject to consultation with creditors, it will be possible to extend that exemption period. That provision should cover issues regarding rental streams and the amount of debt that is repaid.

Bill Aitken: Smaller rural housing associations may, as you are aware, control only a few hundred houses, and even a minimal haemorrhage of properties from such associations could cause real problems. Is there not a case for saying that when a housing association has fewer than a certain number of properties, the housing association should be exempted from the right to buy?

Jackie Baillie: That would be a difficult route down which to go. We deal with issues of pressure in rural areas through allocating pressured area status. I suspect that the issue is not just about the viability of the associations but about the availability of socially rented accommodation in those areas. The housing associations are covered by financial viability under the 10-year exemption and beyond. A substantial amount of public subsidy also goes into building those homes, which ensures that the amount that housing associations have to borrow through private finance is significantly less. Therefore, I am not minded to set a certain number of houses as the minimum level at which housing associations would be included in the right to buy.

The Convener: My charity has been regarded as weakness, and other members have indicated that they want to speak. That is a lesson learned.

Mike Watson: Contrary to what Margaret Curran said, I was not advocating taking rights away from people, but extending the right to buy. I have two further points, which I shall put together for ease of response, although they are not directly related.

First, it has been suggested that the 10-year exemption could cause a pressure cooker situation, as people who want to buy their properties will not be able to do so during that period. When the lid comes off, at the end of the 10 years, there could be an explosion of sales, which could have a serious effect on our housing supply.

Secondly, the exemptions for charitable housing associations will apply only to those that were registered as such at the beginning of this year. What is the rationale for not extending that exemption to all charitable housing associations, including those that may come into being as a result of housing stock transfers in the short to medium term?

Jackie Baillie: During the 10-year exemption period, many people will want to exercise their right to buy. However, we set a period of 10 years so that, through financial planning and assessing the likely demand, housing associations will be able to replan their finances to accommodate the right to buy. If there are continuing concerns about financial viability, the 10-year exemption can be extended.

Designation of charitable housing associations up to 1985 meant that only charities were exempt. A significant number of houses were built after that, especially from 1989 onwards. The reason for our choice of date was that it was suggested to us, on the basis of the consultation, as being more appropriate. To have extended it further would mean that housing associations could potentially—

I am not suggesting that many of them would do this, but the possibility is there—engineer an exemption, simply by applying for charitable status. We do not wish to encourage that. It is a question of balancing the rights of tenants with the needs of landlords and of the wider community.

The fact that we have extended the timetable for the exemption has been widely welcomed, particularly by those housing associations that achieved charitable status between 1985 and 2001.

The Convener: If you have not made the research on the effects of right to buy available to us, could you please do so, minister? You referred to that earlier.

Jackie Baillie: Yes.

Karen Whitefield: I want to ask you about the regulation of registered social landlords. Why is it necessary to bring the functions of the regulator under the direct political control of the Scottish Executive? Are you aware that there are concerns that that may allow for political pressure to be involved in regulation of RSLs? Can you assure us that that will not be the case, and that the regulator will remain free from political influence?

Jackie Baillie: I would not dare influence anybody in an untoward fashion. Scottish Homes has existed as a non-departmental public body. Given the changes in its functions for the future, we were keen for it not to focus just on housing in the housing association sector, but to have new responsibilities for all social landlords in Scotland and a key supporting role in community regeneration activity. We felt that it was more appropriate for it to become an executive agency.

As a point of principle, I favour an approach that involves an executive agency that is directly accountable to Scottish ministers and, in turn, accountable to Parliament and its committees. I am aware that people are nervous about the possibility of the minister or ministers interfering. Any adverse interference would be very transparent. The code of practice, which we intend to develop as part of the overall framework, will ensure transparency and accountability. We and the executive agency will report annually, and the agency will be subject to the full gamut of parliamentary questions that I am sure you will all rush to lodge.

In addition, we will have two or three non-executive directors, whose remit will be to ensure that the regulation function is carried out objectively. Somehow, under those circumstances, I do not think that I would get away with political interference.

Ms White: You have already answered some of the questions that I was going to ask, minister.

The organisations to whom we spoke, notably COSLA, mentioned a conflict of interest and a potential lack of independence. Now you have come up with the idea of having two or three non-executive directors. You talked about not setting up new quangos, but it seems like you are setting up a wee mini-quango in this case. What exactly will the role of those new non-executive directors be? Where will they come from? You say that you will appoint them—you yourself, the committee or whatever. Could you elaborate on that?

Jackie Baillie: Let me be clear on that, in case anybody is under any false impression: it is not a new quango; it is quite the opposite, Sandra. We are abolishing a quango, and I think that that should be welcomed. I will leave Geoff Huggins, who has been dealing with the detail of Scottish Homes and the transfer, to deal with the precise issues of Sandra White's question.

Geoff Huggins (Scottish Executive Development Department): I will do so, as well as adding something on the previous question, on political influence. The code of practice that will be introduced in respect of regulation and registration will be approved by the minister, who will be accountable to the Parliament for the code's content. That will involve decisions about what is right and wrong for housing associations to do, and about how they operate.

There is a political and Executive context to that decision. However, the application of the code in respect of registration and regulation is a matter for the professional decisions of the individual officers within the agency; those decisions must be entirely free of political interference. The board is composed largely of civil servants who are answerable to the minister, and we saw value in appointing some non-executive directors to the board. That is common practice for agencies—to bring external expertise and an outside-the-department, independent view to the work of the agency. Those directors would have a particular role in respect of the application of the code, to ensure that there was an independent dimension to questions that might be raised by RSLs or others. It would also allow the board to take a sideways look at the process.

11:45

We would expect the independent directors to play a part in the preparation of reports on the regulatory function of the agency and in drafting annual reports. We would expect them to put their names to a report confirming their satisfaction with the application of the processes.

Ms White: Would it be open to members to ask questions of non-executive directors?

Geoff Huggins: I think that you are allowed to

ask questions of anyone.

Ms White: Yes, but they do not always answer. Those who will remain tenants of Scottish Homes at the wind-up are rather concerned that they do not retain the right to choose their landlord by ballot. Why do they not qualify for the Scottish secure tenancy? We are talking about 4,000 tenants.

Jackie Baillie: Scottish Homes has already successfully transferred about 45,000 tenants, and we are aware that at vesting day—we intend that to be in November 2001—it is likely that about 4,000 tenants will remain. We estimate that, by the time we introduce the Scottish secure tenancy, about 1,000 tenants will remain, because the rest are actively engaged and interested in the prospect of transfer to another landlord.

When we consider that small group of 1,000 tenants, we must take a judgment as to whether to extend the Scottish secure tenancy across the board to them or to wait because they may transfer, as have all the others. It is mainly a judgment about timing. However, a residual element of Scottish Homes will deal specifically with the housing management function for the remaining tenants. Although it is not required to do so, Scottish Homes automatically ballots tenants on the prospect of transfer. In all those 45,000 cases, the ballot has been overwhelmingly in favour of transfer.

Ms White: However, sometimes tenants are offered only one name on the ballot paper. That has happened in the past.

Brian Adam: Can you elaborate on the proposed function of regional offices for the executive agency? How might that impact on the new strategic role of local authorities, particularly in relation to development funding? Will not there be some tension between regional offices driving the Executive's view forward and local authorities thinking that at last they have some freedom with development funds?

Jackie Baillie: I am confused as to why people think that there will be any difficulty on the ground. The regional offices already exist.

The role that we envisage for the executive agency is very much a supporting role. It will still have development funding functions where they have not transferred, and I shall say more about that in a minute. We are also conscious that housing markets do not conform to local authority boundaries. They cross boundaries and we are therefore keen to see collaboration between local authorities, as already happens in some areas. We have already agreed to consider producing regional context housing statements, so that people know about the housing pattern across a much wider area.

I also believe that the closer people are to the community that they are working with and serving, the more positive that is. A decentralised model of working has many attractions. In discharging its community regeneration function, the agency will also be working very much in support of local authorities. We currently have 48 social inclusion partnerships across Scotland. The area regeneration function of the Scottish Executive will transfer to the new executive agency, and I am keen to see civil servants taking a more proactive, encouraging, supporting role out in the communities, rather than being stuck in Victoria Quay. That is a positive thing; civil servants should get out and see the world.

Where a local authority has transferred its stock, it should get development funding, subject to having the capacity and having robust housing strategies. We have also said that, where there is local agreement with other housing providers and where the local authority has not entirely transferred its stock, it is perfectly legitimate that development funding should transfer in those circumstances. We want to be supportive, and I think that a decentralised model has many benefits, rather than disadvantages.

Bill Aitken: You mentioned the strategic housing functions of local authorities. Can you give a positive, cast-iron, underlined guarantee that local authorities will be given appropriate funding so that they can carry out those functions in a satisfactory manner?

Jackie Baillie: I heard Margaret Curran saying "That's rich" while you were asking that question, but I will not comment on that. I can give you a cast-iron, underlined, positive guarantee that, where local housing strategies are in place, where there is agreement on the ground or where stock is transferred, we will make development funding available. We have been quite clear about that. I see the development funding function of Scottish Homes in the new executive agency reducing over time. It is a matter for local authorities to work towards achieving the development funding. I cannot give you any financial guarantees beyond the current comprehensive spending review round. I simply point to the fact that, by the time we finish in 2003, the overall housing budget will have risen by 36 per cent. That is a more substantial rise than took place under the previous Government, but I am sure that you will correct me if I am wrong. That is an indication of our intention to ensure that development funding actually gets down to where it is needed and that we end up building more houses for rent in Scotland.

Bill Aitken: I think that we can take that as a definite maybe. *[Laughter.]*

I refer to improvement grants. I am tempted to go back to the 1980s, when those of us who come

from cities saw, under a more enlightened Administration, the positive effects of the input of substantial funding for grants for home improvements. I note that, between 1994 and today, grant levels have fallen by some £80 million a year. Will the proposed administrative changes to the grants system be accompanied by an increase in grant levels?

Ms Curran: We are trying to do three things with the improvement and repair grants. First, we want to ensure that scarce resources go where they are needed most. That targeting is very important. Secondly, we need to widen the scope of the system and, thirdly, we need to simplify the system.

We ask you to consider those comments in the context of what the housing improvement task force will do. The task force is taking on substantial arguments about what needs to be done in the private sector. We recognise that there are specific issues around low-income households and we would argue that we should be maximising and increasing assistance to those most needy people, while trying to restrict those who may not need support so much.

Jackie Baillie: The improvement and repair grants allocation is part of the single capital allocation. Over the years, that has been squeezed considerably—starting with you, Mr Aitken, or your predecessors. When we introduced improvement and repair grants, there was an element of ring fencing. That focused the minds of local authorities on spending the money where it was required. Since we removed ring fencing, the amount of expenditure—rather than the amount going in by way of allocation—has indeed reduced as local authorities have determined other priorities.

I respect the right of local authorities, which are democratically elected institutions, to determine their own priorities. However, we are trying to ensure that we get as much out of the system as possible, so that improvement and repair grants are accessible to the people who need them most. That is why we have introduced the minimum percentage and means testing—so that we get the money to where it matters most.

Bill Aitken: But if you are not to disappoint people, should not those funds be ring-fenced? Should not an assurance be given that those funds will be substantially increased from the present amount of £40 million a year? That figure compares unhappily with what was once being spent.

Jackie Baillie: If we had a limitless pot of money, we could fund everything that was a priority. We are trying to ensure that money is used better. It is right that we should do that,

because the money must get to where it is needed most. That is why we have brought in changes in the bill. However, Mr Aitken will be aware that we have set up the housing improvement task force. We recognised that we had to have a deeper and clearer look at improvement and repair grants, and at the private sector and owner-occupation, before we came to any conclusions.

We will return to that subject, but at the moment we are simply trying to make the system better. Bill Aitken used to be an elected member of a local authority, and I should have thought that we in the Parliament would respect the democratic accountability and priorities of local authorities.

Bill Aitken: I am this week's gamekeeper.

Geoff Huggins: We have also found other ways of investing in private tenure accommodation in local authority areas. Over the past three years, we have been providing resources, through the warm deal, for energy efficiency improvements throughout local authority areas. That has come from separate, ring-fenced central Government money. The central heating programme will also offer significant amounts of money—again ring-fenced—that will improve properties in local authority areas that are privately owned or rented. There is additional investment, but it has been targeted and controlled to achieve particular objectives that the Executive thought important.

Cathie Craigie: I want to talk about tenants' rights and tenant participation. Tenants will have the right to be notified annually of their right to buy, and landlords will have the obligation to notify them. Would the Executive consider any changes to the bill so that landlords were obliged to notify tenants of their responsibilities and obligations should they exercise the right to buy?

Ms Curran: Yes, I think so. I know that you have a record of pursuing those issues, both as a councillor and as an MSP. A number of times in the Parliament, you have spoken about spelling out the obligations and responsibilities of home ownership. I am looking to Jackie Baillie for confirmation, but I am sure that we could look into that and respond.

Jackie Baillie: I do not know whether that is an issue for the bill or for guidance. However, Cathie Craigie's point is absolutely right. There is provision at the moment under the Housing (Scotland) Act 1987, which deals with factoring schemes, common repairs and so on, for those rights to be spelled out. However, you are quite right that that should be given prominence. We will examine whether it can be covered in guidance.

12:00

Cathie Craigie: From evidence and personal

experience, we know that that is a problem. The law of the tenement is meant to deal with that, but if we are telling people about their rights, we should also be telling them about their responsibilities.

In her response to Brian Adam, Margaret Curran made clear the Executive's commitment to encouraging tenant participation and to ensuring that landlords resource it. I welcome that commitment. Tenants in local authority stock have access to minutes of meetings, papers that are referred to in meetings and information on waiting lists. How will you ensure that tenants of registered social landlords are able to have those same rights and access to information such as the papers that are discussed at housing association board meetings?

Housing associations often have tenants on their boards. We have to recognise that a tenant who is on the board is a landlord as well as a tenant. How will we ensure that there is tenant participation that is separate from membership of the housing association board?

Ms Curran: I think that I understand the point that you are making.

We recognise what has happened in the housing association movement as a model of community empowerment that has allowed tenants to contribute to landlord decision making. We support that, but we also acknowledge that it is not the only model of tenant involvement. I think that you are saying that there are other models in which one has to consult specifically on tenant-related issues. The bill tries to achieve that tenant emphasis.

In the first instance, we do not want to be over-prescriptive, because that might militate against good practice. As you say, good practice exists; local authorities, in particular, have developed fairly sophisticated strategies for tenant involvement and participation. We encourage people to consider those models. We will follow up a number of points in the guidance that we will issue, and we will consult on the guidance. I am sure that we can address your concerns in that way.

Ms White: I want to follow up what Cathie Craigie said about tenant participation. I will use the example of Glasgow. When stock transfer takes place, and the housing stock is transferred to Glasgow housing association, will there be tenant participation on the board?

The Convener: There already is.

Ms White: I have asked a parliamentary question on this. The answer that I received is that it is up to Glasgow housing association who will participate once the stock is transferred. Will

tenants participate on the board that will oversee 92,000 houses?

Ms Curran: There are a number of stages. We recently published a code of guidance on tenant participation throughout the process of stock transfer and at various stages. We have been quite specific on that. I understand that there is very clear tenant involvement in the board of GHA. The local housing organisations that will evolve will involve tenants.

Again, as I said in response to Cathie Craigie, there is a strategy on tenant involvement at various stages of the process of transfer or for any other policy that the landlord is enacting. Beyond that, there is now a requirement for landlords to consult tenants as they develop their landlord function. Tenant participation is embedded across a range of issues on which tenants will have a view. Tenants should participate at various levels.

Brian Adam: You said that you were quite keen to extend tenants' rights and that the right to buy should be a fundamental right.

Previous legislation gave some tenants the right to choose their landlord. In your view, is that a fundamental right? If so, should not the fundamental right to choose any registered social landlord be included in the bill?

Ms Curran: I agree. That is why ballots will be conducted on stock transfers. People will have the right to say whether they want the transfer to proceed.

Brian Adam: You are arguing for a collective right, but previous legislation made such a right an individual right.

If it is true that the right to choose one's landlord is a fundamental right, surely that should be a fundamental right for the individual, rather than being a collective right.

Ms Curran: I am not quite sure I understand the distinction that you draw, unless you are suggesting that people could choose any landlord. If I am following your logic correctly, that would lead to chaos.

Individuals have a clear right to choose their landlord, given the code of practice on participation that we have inaugurated and the ballot arrangements, in which no change of landlord can take place without individuals having the right to participate in a ballot. For example, the ballot in Glasgow will be postal.

Brian Adam: But a transfer could go through by 51 per cent to 49 per cent. There might be a significant number of people who do not wish to transfer.

Legislation already gives some tenants the right to choose their registered social landlord. I am

asking whether that is a fundamental right, in your eyes. If so, are you prepared to extend that right, with exemptions that you consider appropriate, to all tenants in the same way as you are extending the right to buy in the bill? My question is about individual choice, not about collective—

Jackie Baillie: My understanding is that the right to which you refer was never framed as a matter of individual choice for tenants. While it was termed the right to choose, it was about rights in relation to acquiring landlords, and would expire at the point of transfer.

Richard Grant understands the fine detail of those matters and I ask him to give an explanation.

Richard Grant: The provisions to which Brian Adam refers, which are not being changed by the bill, allow certain qualified landlords that register with and are approved by Scottish Homes at present to seek the transfer of public sector housing to their ownership. Such transfers must have the approval of the individual tenants involved. The bill will not extend those provisions, and ministers decided that it would not be sensible to do so, as RSLs might try to persuade tenants of other RSLs to transfer to their ownership.

The Convener: We will finish there. If the ministers wish to make final statements, we will be happy to hear them.

Jackie Baillie: I never refuse an invitation to speak, but I will be brief.

The Housing (Scotland) Bill is a significant and positive bill around which there is consensus, with, perhaps, the exception of one issue. The development of the bill has been inclusive—we have involved a wide range of groups, both on the homelessness task force and on the housing interest group—and it must be seen in the wider context of what we are trying to achieve for housing in Scotland.

The bill balances needs—legislation is always about balancing needs. It balances the needs and rights of tenants, the needs and rights of landlords and the needs and rights of communities. We believe that that general principle is right.

The Convener: I thank the ministers for attending and for allowing us to run slightly over time.

On a point that was raised earlier, members should be aware that the Presiding Officer's statement on legislative competence refers to ECHR compliance. The Parliament's lawyers have agreed with the Executive's advice on that question and the bill is therefore acceptable in relation to ECHR compliance.

If, on reflection, there are points that the

ministers would like to clarify, we should be happy to receive further comments from them. In particular, we would welcome further information on the research on the right to buy and homelessness.

Jackie Baillie: I want to make it clear that it is not independent research—we pulled it together from information in our possession.

The Convener: We now move into private session.

12:09

Meeting continued in private until 12:15.

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