

SOCIAL JUSTICE COMMITTEE

Wednesday 14 March 2001
(*Morning*)

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SOCIAL JUSTICE COMMITTEE

† 10th 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 :

Ms Margaret Curran (Deputy Minister for Social Justice)

Richard Grant (Scottish Executive Development Department)

Helen Jones (Scottish Executive Development Department)

John Ritchie (Scottish Executive Development Department)

Murray Sinclair (Office of the Solicitor to the Scottish Executive)

CLERK TO THE COMMITTEE

Lee Bridges

SENIOR ASSISTANT CLERK

Mary Dinsdale

ASSISTANT CLERK

Rodger Evans

LOCATION

Committee Room 2

† 7th, 8th and 9th Meetings 2001, Session 1—held in private.

Scottish Parliament

Social Justice Committee

Wednesday 14 March 2001

(Morning)

[THE CONVENER *opened the meeting at 10:02*]

Subordinate Legislation

The Convener (Johann Lamont): I welcome everyone to the Social Justice Committee's meeting. I particularly welcome Margaret Curran, the Deputy Minister for Social Justice, who will help us deal with agenda items 1 and 2. The Scottish Executive officials who accompany the minister are Richard Grant from housing division 2 and Murray Sinclair from the office of the solicitor.

The committee will consider the draft Scotland Act 1998 (Modifications of Schedule 5) Order 2001. Members have a copy of the order and the accompanying documentation. I ask the minister to speak briefly to the instrument, but not to move the motion yet.

The Deputy Minister for Social Justice (Ms Margaret Curran): Thank you, convener. If I do anything inappropriate, I am sure that you will stop me in your inimitable style. It is good to be back with the committee. I speak with as much trepidation as I did the last time, because I know what the members are like.

As members will know, the Scottish Parliament derives its powers from the Scotland Act 1998. For the Parliament to legislate in areas that are reserved to Westminster, an amendment to the 1998 act is required to extend the Parliament's legislative competence. Section 30 of the 1998 act allows for the amendment, by order in council, of the reserved issues listed in schedule 5 to the 1998 act. A section 30 order must be approved by both Parliaments, then made by the Queen with the Privy Council's advice.

We would like to lodge an amendment to the Housing (Scotland) Bill at stage 2, which requires the committee's prior approval of the section 30 order that the committee has before it. The amendment relates to the procedures for dealing with the insolvency of registered social landlords. At present, section C2 of schedule 5 to the Scotland Act 1998 act states that some matters relating to insolvency are reserved to the UK Parliament.

In response to "Better Homes for Scotland's Communities", the consultation paper on the

Housing (Scotland) Bill, the Council of Mortgage Lenders suggested that the bill should include measures to protect tenants, landlords and other lenders in the event of insolvency action by a creditor against a registered social landlord. The CML pointed to legislation introduced in England in 1996 as a model for that.

We hope to lodge an amendment at stage 2 to provide for a moratorium, in the event of an insolvency action against an RSL, during which the new regulatory agency can enter into negotiations with its secured creditors to agree proposals for the future ownership and management of the RSL's assets. The aim of the provisions is to ensure that the regulator has the opportunity and powers to ensure that tenants' interests are to the fore.

The measures carry an additional benefit. By introducing provisions that are in line with those that apply in England and Wales, we will allow Scottish RSLs to seek finance on a level playing field. The committee will have the chance to discuss the detail of the insolvency provisions at stage 2.

The measures require legislation in areas that are affected by the reservations in relation to insolvency in schedule 5 to the Scotland Act 1998. Some aspects of insolvency procedure are reserved, and our proposals include measures that relate to those reservations. The 1998 act contains a reservation that concerns

"the general legal effect of winding up".

We consider that proposals for a moratorium on the disposal of land and related provisions about the ownership and management of such land may be caught by that reservation. There is also likely to be a provision to give a power to apply to the Court of Session on the execution of the negotiations that take place during the moratorium. That might be caught by the reservation that pertains to

"powers of courts in relation to proceedings for winding up".

For those reasons, we seek approval for the order to be made under section 30 of the Scotland Act 1998, to allow the Parliament to legislate in that area. A draft of the order has been laid at Westminster by the Secretary of State for Scotland.

The committee will have received a copy of the Executive note on the draft order, which briefly sets out some technical details about it and provides some more context to the Executive's intention to introduce insolvency provisions. An explanatory note accompanies the draft order and gives a brief legal summary of its effect.

I hope that the committee will agree that the principle that underlies our intention to introduce

the provisions on the insolvency of registered social landlords merits our seeking the section 30 order.

Therefore, I move—

The Convener: Not yet. I will take questions from members, which will be followed by the procedure for approval.

Robert Brown (Glasgow) (LD): Colleagues blamed me for raising this matter at a previous meeting, so I hope that I am not responsible for the whole mishmash—I do not think so.

The definition of a social landlord in the instrument covers those registered under the Industrial and Provident Societies Act 1965 and the Companies Act 1985. Does it include all conceivable forms of housing body that might be affected by the provisions, such as equity-sharing co-operatives and organisations such as Weslo Housing Management, which is a limited company? They appear to be covered, but I would like some assurance from officials that they are.

Murray Sinclair (Office of the Solicitor to the Scottish Executive): It may be easier if I answer that question. The definition is limited to companies simply because it provides an exception to a reservation that relates to companies. The provision may look as though it is limited, but it is not limited, in the sense that it gives us all that we want. It would not make sense for the exception to refer to bodies other than companies, because the reservation from which we are making an exception is limited to business associations.

Ms Sandra White (Glasgow) (SNP): I have a general question about section 30 orders, for guidance. The instrument was laid at Westminster by the Secretary of State for Scotland because it concerns reserved matters. Could the Parliament do something similar in relation to other reserved matters, such as housing benefit?

Ms Curran: No. That is outwith the scope of the Scotland Act 1998. The arrangement allows us to apply for section 30 orders to let us properly take the action that we seek to take with the stage 2 amendment to the Housing (Scotland) Bill. Extending that to housing benefit would be action of a different order and would change the nature of the 1998 act.

I must make it clear that the proposed amendment is minor and technical, to allow us to put some safety nets into the bill, which the committee will consider when we reach stage 2, when it will have the full detail of what we want to do. The order is in keeping with the spirit and technical details of the 1998 act.

Ms White: Would it be within the boundaries of the Parliament's powers to propose a section 30

order on housing benefit? Is the situation like Sewel in reverse?

Murray Sinclair: Technically, the position is that orders under section 30 can make any amendment to schedule 5 to the Scotland Act 1998. Therefore, if such an order were approved by both Parliaments and made by the Queen in council, it could give this Parliament competence over any matter. However, as the minister said, we are debating a section 30 order that provides a limited exception to the insolvency reservation. Any proposal to devolve housing benefit would be a different matter.

Richard Grant (Scottish Executive Development Department): All section 30 orders must be agreed not only by the Scottish Parliament, but by the Westminster Parliament.

Robert Brown: I think that Margaret Curran said that the exception was limited to the moratorium—as the order says—but that it allowed things to be done after the moratorium ended. Will you explain that? The order seems to mention only the moratorium bit, not any subsequent actions.

Ms Curran: I will try to answer that. Robert Brown will be able to ask more questions if I am not clear enough.

Scottish ministers must be warned before a lender takes any step to bring an insolvency action against an RSL. For 28 days, a freeze is placed on the lender's actions, with the effect that no land can be disposed of without the regulator's consent. That period can be extended, but it provides time during which the regulator can agree proposals with lenders that will determine the future ownership and management of the property. A manager can then be appointed, perhaps to implement the agreed package. That provides a breathing space and allows Scottish ministers and the regulators to try to develop alternatives.

Such provisions exist in England, but have never been used. We are trying to provide a safety net. We seek to add a small part to the complete package, to ensure that our proposals are robust in meeting the interests of tenants and that we get the proper opportunities for the financial sector.

Robert Brown: So the end result is that there will be contractual arrangements. In effect, arrangements by agreement would follow the moratorium, rather than other arrangements that might require legislative powers.

Ms Curran: Yes. No unexpected intervention that would undermine tenants' provisions could take place.

The Convener: I clarify that we are facilitating the possibility of doing that. The committee will have an opportunity at stage 2 to reflect on whether that is an appropriate mechanism. The

section 30 order allows the amendment to be lodged.

Motion moved,

That the Social Justice Committee recommends that the draft Scotland Act 1998 (Modifications of Schedule 5) Order 2001 be approved.—[*Ms Margaret Curran.*]

Motion agreed to.

The Convener: The next agenda item is the Housing Support Grant (Scotland) Order 2001. I ask the next set of Executive officials to take their seats for the item.

After that almost seamless transition, I welcome Helen Jones and John Ritchie, both from housing division 1 in the development department, who accompany the Deputy Minister for Social Justice for this item.

We have before us the draft Housing Support Grant (Scotland) Order 2001 and the accompanying documentation. I ask the minister to speak briefly to the Scottish statutory instrument, but not as yet to move it.

10:15

Ms Curran: Message received and understood, convener. The draft Housing Support Grant (Scotland) Order 2001 sets out the amount of housing support grant that is payable to local authorities in 2001-02. Only two authorities, Shetland Islands and the Western Isles, remain in receipt of grant, totalling about £6 million, in respect of their housing costs. Housing support grant remains a substantial proportion of total housing revenue account income for those two councils. Without the subsidy, rent levels would have to increase to around £70 per week.

The other element of HSG is hostels grant, which is payable to authorities on the basis of the estimated deficit between hostels' income and expenditure. In 2001-02, 17 councils will be in receipt of grant, totalling £3 million.

Brian Adam (North-East Scotland) (SNP): There appears to be a slight discrepancy between the amounts being paid out and what appeared in the spending plans. The spending plans indicate that housing support grant would be about £12.7 million. It appears that £9.26 million was paid out. The £12.7 million is given in terms of current prices; the figure of £9.26 million came from the housing finance review of 2000-01. Can the minister or her officials explain why there was a difference?

John Ritchie (Scottish Executive Development Department): The £12.7 million was planned expenditure. Housing support grant is a deficit subsidy, based on need. In effect, the £12.7 million was not needed. The settlement of

just over £9 million was based on the housing support grant calculations, calculated on the basis of need.

Brian Adam: I take it that the money will be paid out to the two councils that have just been mentioned.

John Ritchie: Roughly £6 million will be paid out to Shetland Islands Council and Western Isles Council. The remainder of the money will go on hostels grant for a number of other councils.

Brian Adam: What are the technical reasons for such a large difference? Does the difference relate to the hostels grant or to council housing?

John Ritchie: I think that the £12.7 million relates to entitlements in the spending plans from a number of years ago and that our finance colleagues have continued to use the figure for future planned expenditure. The figure will probably be reduced for future years. It seems that the housing support grant entitlements in future will be roughly similar to what they are today.

Robert Brown: On the hostels grant, it is difficult to distinguish the figures from the other bits of information. I am struck by the oddity of the division between different councils. Glasgow, which I would imagine would be top of the league of need, has only £81,000. Fife, which is immediately above Glasgow in the table that I am looking at, has £311,000. I appreciate that we are talking about a deficit, but is there any underlying reason why the figures are so bizarre?

John Ritchie: As we explained previously, the figures are based on the actual income and expenditure that the councils give us in relation to their hostels. It may be that Glasgow City Council has not spent as much on upgrading its hostels for some reason, and that its loan charge expenditure may be less than for other areas. It is perhaps also getting more income through housing benefit than other councils. We use the figures that councils give us; we just measure the deficit between income and expenditure. The grant is paid out on that basis.

Robert Brown: This is not quite related to that issue, but Glasgow City Council will be phasing out its bigger hostels. Presumably, their replacement is a fairly major capital issue for the council. Is that likely to be reflected in differences between the figures in future years? Do you have any feel for how that might develop?

Ms Curran: I will start to answer that, but I will refer to Helen Jones and probably John Ritchie later.

As Robert Brown knows, we have been doing a lot of work on hostels in Glasgow—the homelessness task force has taken the issue very seriously. There are profound and difficult issues

in trying to develop the provision. It often concerns extremely vulnerable people and we need to consider the knock-on effect on other areas of provision, including social work. We will come back to the committee with any proposals that we develop on that and we will review the knock-on effect in future.

Helen Jones (Scottish Executive Development Department): There was to be extra provision for hostels. The sum is for a deficit grant and reflects the current position.

Karen Whitefield (Airdrie and Shotts) (Lab): Does the minister believe that housing support grant will continue to be paid to the two authorities?

Ms Curran: That is very much in the hands of the local authorities concerned and depends on how they pursue the issues in the longer term. Both Shetland Islands Council and Western Isles Council are considering the possibility of community ownership strategies. I am in discussion with the authorities and intend to visit them both in the next few months to assess how they are pursuing that possibility. It is a decision for the local authorities; they will need to decide how the grant can assist them to come to terms with some of the debt and housing provision issues that they face.

The grant may or may not continue to be paid. It depends on how the local authorities take forward their proposals. We would want to assist them—as we would want to assist any local authority in Scotland—to resolve the issue of debt, which is crippling social rented housing. We are decisive about dealing with that.

The Convener: If there are no further questions, we move to the formal procedure. I invite the minister to move motion S1M-1704.

Motion moved,

That the Social Justice Committee recommends that the draft Housing Support Grant (Scotland) Order 2001 be approved.—[*Ms Margaret Curran.*]

The Convener: There is now the opportunity for formal debate.

Brian Adam: I think that we ought to bear in mind the discrepancy between the projected figures and the actual figures when it comes to discussing the budget for next year. If I found a budget line that was £3 million out, I would be interested to know what had happened to the money. I have absolutely no problem with the proposal, but we ought to flag up, for our own benefit, the fact that the Executive appears to have provided £3 million more—

The Convener: I am not sure if that qualifies as formal debate on the motion. It is, however,

interesting to note that the Executive has over-identified need—people often feel that need is not met. We might perhaps want to reflect on the figures. However, I do not want to pursue the matter further now. If members want to consider it further, they can bear it in mind in the context of our consideration of the budget process.

Motion agreed to.

The Convener: I thank the minister for her attendance.

We move to item 3 on the agenda, which again concerns subordinate legislation, but this time a negative instrument. We are to consider the Housing Revenue Account General Fund Contribution Limits (Scotland) Order 2001. Members have a copy of the order in front of them, as well as the accompanying documentation. I propose to allow some time for discussion, after which we must agree whether we are content with the instrument.

Brian Adam: Am I right in thinking that, in essence, this device stops councils making contributions from their general funds to their housing revenue account? Does that have to be done annually? How necessary is it these days? I do not imagine that councils do that voluntarily anyway; they do not have the money to do so.

The Convener: I think that it is known as a technical requirement of the law—a just-in-case. The law does not rely on people's good nature, unfortunately. Do members have any comments on the instrument or are they quite content with it?

Robert Brown: As a matter of interest, why did the minister come for the other two statutory instruments that we considered this morning, but vanish for this one? It seems a little odd.

Lee Bridges (Clerk): The first two were affirmative instruments, so we had to make a positive decision on whether to approve them. Under negative procedure, if members are unhappy with an order, they have to lodge a motion to annul it; the order is already in place. The procedure gives the Parliament time to annul the order if it so wishes.

The Convener: Is the committee content with the Housing Revenue Account General Fund Contribution Limits (Scotland) Order 2001 (SSI 2001/37)?

Members indicated agreement.

The Convener: We therefore conclude that the committee does not wish to make any recommendation under the order in its report to Parliament.

When we read the *Official Report* of this meeting later, we can perhaps reflect on what all that meant.

Drug Misuse and Deprived Communities

The Convener: Item 4 is very brief, and relates to drug misuse and deprived communities. There will be a debate on the Social Inclusion, Housing and Voluntary Sector Committee's report on the matter on Thursday next week. Lee Bridges is handing out the motion that has been lodged for the debate. We are all aware that a number of the members who were directly involved in producing the report are not now on the Social Justice Committee and that a significant number of current committee members were not involved in producing the report.

I think that those most directly involved in producing the report should be the ones who represent the committee in the debate. I hope that members find that acceptable. Normally, the convener would open such a debate, but in my view, it would be inappropriate for me to do so on this occasion. I seek the committee's agreement on who should open and close for the committee.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): I suggest that Karen Whitefield open for the committee. I accept what you have said, convener, but the opportunity is still open to current committee members to take part if they wish. If Karen were to open for the committee, perhaps Robert Brown could close.

Robert Brown: Almost by dint of elimination.

Brian Adam: I think that Bill Aitken was also involved.

Robert Brown: Yes, he was.

The Convener: Has he expressed an interest in opening or closing for the committee?

Brian Adam: He has not.

The Convener: We should also consider the fact that it will be a long debate. I am sure that anyone from the committee—in either its past or present form—who wants to contribute will be able to do so.

I believe that the view that we are taking on who will represent the committee in opening and closing is the correct one. Is there agreement that Karen Whitefield open on behalf of the committee?

Members *indicated agreement.*

The Convener: And to close?

Robert Brown: I closed on the housing stock transfer debate last September, for various reasons. However, if Bill Aitken is interested, I have no difficulty with him closing. That would effectively widen the support. I am easy about it.

The Convener: We will leave it to Lee Bridges, in discussion with Robert Brown and Bill Aitken, to agree on who will close for the committee in the debate.

Meeting closed at 10:28.

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