SOCIAL JUSTICE COMMITTEE

Tuesday 1 May 2001
(*Afternoon*)

Session 1

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SOCIAL JUSTICE COMMITTEE
14th 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:

Jackie Baillie (Minister for Social Justice)
Ms Margaret Curran (Deputy Minister for Social Justice)
Linda Fabiani (Central Scotland) (SNP)
Mr Kenneth Gibson (Glasgow) (SNP)
Fiona Hyslop (Lothians) (SNP)
Tommy Sheridan (Glasgow) (SSP)

CLERK TO THE COMMITTEE

Lee Bridges

SENIOR ASSISTANT CLERK

Mary Dinsdale

ASSISTANT CLERK

Rodger Evans

LOCATION

The Chamber

Scottish Parliament

Social Justice Committee

Tuesday 1 May 2001

(*Afternoon*)

[THE CONVENER *opened the meeting at 13:32*]

Housing (Scotland) Bill: Stage 2

The Convener (Johann Lamont): Welcome to this meeting of the Social Justice Committee. At our last meeting, we agreed that we would need to revisit the question of timetabling future meetings to consider the Housing (Scotland) Bill at stage 2. At the end of tomorrow morning's meeting, I intend to consider proposals from the clerks on our options. We can then discuss whether those options are acceptable. Members might have other suggestions to make.

It will make sense for us to see how we get on with this afternoon's meeting and tomorrow morning's meeting, because that will inform our discussion at the end of tomorrow morning's meeting. The alternative would be to have a discussion now and to have it again tomorrow. With members' agreement, I intend to ensure that we have proposals for discussion tomorrow.

Members *indicated agreement.*

Brian Adam (North-East Scotland) (SNP): Will we have the proposals in advance so that we can give them some thought?

The Convener: The clerks will have other business to attend to, but there will be a paper ready at the meeting and members will have enough time to consider it before we discuss it.

Ms Sandra White (Glasgow) (SNP): What time will this meeting finish? Did we decide that last week?

The Convener: I understand that it is within the power of the committee to agree when we will finish. I do not intend that the meeting should go on beyond 6 o'clock. I hope that the committee will allow me to stop at a sensible time. Having an absolute deadline might mean that I would have to cut you off in mid-sentence, Sandra, which I would never wish to do.

Let us begin. As we progress through the marshalled list, please note that I will put the question on some amendments that were debated during last week's meeting.

Section 6—Persons living in hostel accommodation

The Convener: We begin with the first group on today's groupings list and an amendment on housing benefit for occupiers of hostel accommodation. Amendment 100, in the name of Kenny Gibson, is in a group of its own.

Mr Kenneth Gibson (Glasgow) (SNP): Amendment 100 is designed to introduce social security reforms, such as a shorter housing benefit application form, for those who seek hostel accommodation, and an up-front six-week payment, as mentioned in the green paper "Quality and Choice: a Decent Home for All". The idea behind amendment 100 is to make clear the urgency of making housing benefit available—where appropriate—as soon as possible. We hope that the amendment will be agreed to, to ensure proper support for those who are in need and to minimise the level of hardship that is endured by those who seek hostel accommodation. I am sure that the Deputy Minister for Social Justice appreciates that the verification process takes a considerable time. The application form should reflect the client group that actually dwells in hostels.

I move amendment 100.

Karen Whitefield (Airdrie and Shotts) (Lab): I am saddened, but not surprised, that Kenny Gibson has lodged amendment 100. Yet again, he seeks to ask Scottish ministers to exercise powers that the Parliament does not have. Benefits are a reserved matter and we are wasting time. We should be concentrating on things for which the Parliament has power, and we should ensure that we use our powers to the best of our abilities. I therefore hope that other members of the committee will not support amendment 100.

Ms White: One of the reasons for having a housing bill is to try to improve the lives of people who are looking for housing. That includes people who are looking for accommodation in hostels. Whether the power is reserved or not, we have the right to mention it. I remind Karen Whitefield that a number of Sewel motions have come before the Parliament. Amendment 100 is like a Sewel motion in reverse. We can discuss it and ask that the measures that it proposes be implemented.

We should be proposing that people in hostel accommodation get housing benefit. We should be looking into the matter. It is an important issue and Kenny Gibson is right to raise it. I hope that some members will support amendment 100.

Bill Aitken (Glasgow) (Con): Amendment 100 is ultra vires. It is not competent for us to consider it, never mind for us to agree to it. I do not know whether Kenny Gibson will push amendment 100 to a vote, but I could not support it.

Tommy Sheridan (Glasgow) (SSP): If an amendment has been accepted by the clerks, I surmise that it is competent. Could we have some clarification for future reference?

The Convener: Yes, it would be helpful to clarify that. I understand that, although it is not within the power of the Parliament to decide on measures in a particular amendment, that does not mean that the amendment is inadmissible for debate. That debate might affect the legislation and might lead to difficulty at a later stage, but the rules are that such an amendment may be lodged for debate. It would not be excluded at this stage.

The Deputy Minister for Social Justice (Ms Margaret Curran): Many of the points that I wanted to make have already been made. It seems that, yet again, we are witnessing an attempt to take a serious issue and reduce it to a discussion of the powers of the Scottish Parliament. Kenny Gibson knows full well that he has lodged amendment 100 simply to make a political point. He must know that Scottish ministers cannot include the powers that are proposed in amendment 100 in the bill. Were the amendment agreed to, it could render the bill subject to challenge under the Scotland Act 1998, because it would be outwith the competence of the Parliament.

There are good and sound reasons for responsibility for housing benefit—including responsibility for the administration of housing benefit—being reserved to the UK Government. However, that is not the subject for argument today. We have plenty of other amendments to consider and, as other members have suggested, we should focus on them. There is much to discuss on housing. We should not be discussing the powers of the Scottish Parliament. I ask members to reject amendment 100.

Mr Gibson: The idea behind amendment 100 was to flag up an important issue. Those who have read in the May-June issue of *Roof* the article by Mary Taylor—a lecturer in the housing policy and practice unit of Stirling University, and a former adviser to the committee—will note that Angela Eagle, the Parliamentary Under-Secretary of State at the Department of Social Security, commented at the conference of the Chartered Institute of Housing in Scotland in March 2001 that

"it would be seven to eight years before reform was on the agenda."

Ms Taylor's article points out that there is concern that policy is designed primarily for England and that liaison mechanisms for future policy change are stronger within Whitehall than between Whitehall and the devolved Administrations. Our concern is that ministers are not speaking to their London masters on the issue—if they were, the issue would have been flagged up. However, I suppose that pigs will fly before our ministers reflect Scotland's concerns fully.

I will press amendment 100, which deals with a matter that is important for homeless people. We have to get a grip of the issue and ensure that it is put to the top of the political agenda. There are serious concerns about housing benefit, which the Executive has chosen to ignore.

The Convener: The question is, that amendment 100 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Adam, Brian (North-East Scotland) (SNP)
White, Ms Sandra (Glasgow) (SNP)

AGAINST

Aitken, Bill (Glasgow) (Con)
Brown, Robert (Glasgow) (LD)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Whitefield, Karen (Airdrie and Shotts) (Lab)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 100 disagreed to.

The Convener: Amendment 101, in the name of Tommy Sheridan, was debated last week with amendment 18.

Tommy Sheridan: I want to ask the Executive—I think that Jackie Baillie already knows about this—to bear in mind the case of Maria Conway v Glasgow City Council, which is being handled by the Govan law centre and which established the supremacy of common law in respect of issues such as those that amendment 101 deals with. I hope that the Executive takes that into account when considering why the amendment was lodged.

I move amendment 101.

The Convener: The question is, that amendment 101 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

AGAINST

Adam, Brian (North-East Scotland) (SNP)
Aitken, Bill (Glasgow) (Con)
Brown, Robert (Glasgow) (LD)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
White, Ms Sandra (Glasgow) (SNP)
Whitefield, Karen (Airdrie and Shotts) (Lab)

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

Amendment 101 disagreed to.

Section 6, as amended, agreed to.

After section 6

The Convener: Amendment 56, in the name of Jackie Baillie, is grouped with amendments 56A and 102.

Ms Curran: I am keen to encourage the introduction of common housing registers on the widest possible basis, and the Executive is already supporting a £2 million project to develop registers in six key areas.

We believe strongly that common housing registers would be best developed voluntarily, through the co-operation and involvement of all the relevant housing providers in an area. However, many organisations have said that they would like the bill to include reserve powers that could be used if sufficient progress was not achieved at local level.

We have listened to those arguments and amendment 56 seeks to achieve that although, for now, we will continue to encourage voluntary development of common housing registers. The power to require submission of proposals, which is set out in the Executive's amendment, will be kept in reserve while we see how the voluntary approach develops. That power will be used only when efforts to achieve voluntary agreement have been exhausted. Although I understand the eagerness of Robert Brown and Kenny Gibson to make progress, I do not believe that having a six month or 12-month time scale would be realistic or helpful in practice.

I move amendment 56.

The Convener: I call Robert Brown to move amendment 56A and to speak to the other amendments in the group.

Robert Brown (Glasgow) (LD): I welcome what the minister has said. Many of us want common housing registers to be put in place and there is increasing recognition of how that would work in practice. In light of the minister's assurances, I will not move amendment 56A.

The Convener: In order to facilitate the remainder of the debate, I ask you to move amendment 56A. Later, I will ask whether you wish to press or withdraw it.

Robert Brown: I move amendment 56A.

The Convener: I ask Sandra White to speak to amendment 102, which is in the name of Kenny Gibson, and to the other amendments in the group.

13:45

Ms White: Amendment 102 is on common housing registers—a topic that I raised at stage 1. Although I am pleased that the ministers have lodged an amendment on common housing registers, it does not go far enough. I raised previously that there must be a time scale for the implementation of common housing registers. That is why we lodged amendment 102. It is not good enough to say that there will be common housing registers and to provide no time scale in which they must reach fruition. There must be a time scale.

Amendment 102 would have Scottish ministers make provision to establish and maintain common housing registers within three months of the new section coming into force. Local authorities would have to help to create the registers within six months of that section coming into force. It is imperative that we have a time scale.

I am sorry that Robert Brown has decided to withdraw amendment 56A, because if amendment 102 fell, I would vote for amendment 56A. I am sorry that the Executive has not included a time scale. It is an issue in which we seem to have a common interest and there was a pledge to introduce common housing registers. I am sorry that the Executive's proposal does not go far enough.

Mr Gibson: As my colleague said, amendment 102 would make the creation of common housing registers a statutory duty on registered social landlords and local authorities. That is important. It would improve choice for people who are seeking housing; it would eliminate duplication and confusion, and it would provide a one-stop shop for prospective tenants. Amendment 102 provides specific timetables, and thus is more robust than Executive amendment 56.

We are somewhat perplexed by the size and scale of the Executive's amendment. Like so many other amendments, it makes clear the inadequacy of the bill as introduced and, despite the time that it took to reach Parliament, how poorly thought out it is.

I understand the comments that have been made on amendment 56A, but the time scale in that amendment is too drawn out. The six-month time scale in amendment 102 would be more appropriate.

I hope that the ministers will consider amendment 102 based not on the party affiliation of the member who lodged it, but on its merits. I note that every Scottish National Party, Scottish Socialist Party, Tory and—so much for the coalition—Liberal Democrat amendment has been rejected, regardless of the arguments that have been put forward. I hope that that will change and

that the Executive will take seriously amendment 102 and support it.

Bill Aitken: It is clear that there is unanimity that there is an advantage in having common housing registers. We are left with the Executive amendment 56 and the SNP amendment 102. Although I can see where the SNP is coming from, the three-month period is unrealistic, therefore I am of a mind to support Executive amendment 56.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): I support Executive amendment 56, and I am thankful that it has been lodged at this stage. The issue of common housing registers came up in the stage 1 debate and in consultation since the bill was published. All those who gave evidence to the committee said that common housing registers would be useful tools in allocating housing to those who are in most need. However, it is clear that on the ground, people are making voluntary arrangements. The Executive proposal allows that to continue.

Judging by amendment 102, it seems clear that the SNP has not listened to the debate or to the evidence that groups—registered social landlords or local authorities—have given. I am grateful that Robert Brown has accepted the Executive's position and that he will not press amendment 56A.

The Convener: I ask Robert Brown to wind up and to indicate whether he wishes to press or withdraw amendment 56A.

Robert Brown: I have nothing to say in winding up. I seek to withdraw amendment 56A.

Amendment 56A, by agreement, withdrawn.

The Convener: The question is, that amendment 56 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Aitken, Bill (Glasgow) (Con)
Brown, Robert (Glasgow) (LD)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Whitefield, Karen (Airdrie and Shotts) (Lab)

AGAINST

Adam, Brian (North-East Scotland) (SNP)
White, Ms Sandra (Glasgow) (SNP)

The Convener: The result of the division is: For 5, Against 2, Abstentions 0.

Amendment 56 agreed to.

Amendment 102 moved—[Mr Kenneth Gibson].

The Convener: The question is, that amendment 102 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Adam, Brian (North-East Scotland) (SNP)
White, Ms Sandra (Glasgow) (SNP)

AGAINST

Aitken, Bill (Glasgow) (Con)
Brown, Robert (Glasgow) (LD)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Whitefield, Karen (Airdrie and Shotts) (Lab)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 102 disagreed to.

Section 7—Housing lists

The Convener: Amendment 57, in the name of Jackie Baillie, is grouped with amendments 57A, 57B and 58. I point out that if amendment 57 is agreed to, amendment 58 will be pre-empted and cannot be voted on. I ask the minister to move amendment 57 and to speak to all the amendments in the group.

Ms Curran: Executive amendment 57 will enable third parties to manage or administer lists on behalf of landlords. We are grateful to the Chartered Institute of Housing in Scotland for making that point to us. The amendment reflects the position that exists under the only operational common housing register in Scotland. That register has been set up in Aberdeen, where a separate organisation has been established, on behalf of the council and registered social landlords, to manage the register.

We are grateful to Sandra White and to Fiona Hyslop for drawing the technical amendments to our attention. I am sure that I will be repeating that thanks throughout the meeting this afternoon. However, we had already spotted the problem. We have corrected it through amendment 57, which redefines a housing list without reference to section 20 of the Housing (Scotland) Act 1987. There is no need to amend section 19 in that respect, because there is no reference to housing lists in either section 20 or 21 of the act. There was a reference to a housing list in section 21, but paragraph 12(3) of schedule 9 to the bill removes that reference.

I move amendment 57 and ask Sandra White and Fiona Hyslop not to move their amendments.

The Convener: Amendment 57A, is in the name of Fiona Hyslop. I ask her to move amendment 57A and to speak to the other amendments in the group.

Fiona Hyslop (Lothians) (SNP): As the minister has noted, the amendment is technical and because the minister has researched which reference is correct, I am happy to listen to the

provisions that she has made. I will not necessarily press amendment 57A, because it is purely technical.

I point out that we have just had a debate on common housing registers. I welcome the fact that the Executive is moving towards adopting CHRs, even if there is no statutory register. I ask the minister to consider the references that she has made in amendment 57 to a housing list. Will those references be affected by the fact that it is likely that there will be a common housing register of some shape or form? If the bill is so amended, there is a technical issue about whether such references to a housing list would include common housing registers.

I move amendment 57A.

The Convener: I ask Sandra White to speak to amendment 58 and to the others in the group.

Ms White: As the minister said, she is grateful to us for pointing out what is a technicality. The Executive has spotted that there is a technical hitch.

I must follow protocol. I move amendment 58.

The Convener: Amendment 58 is not to be moved at this stage.

Ms White: The convener told me to move the amendment.

The Convener: No—I assure Sandra White that I did not do so. I shall give her the opportunity later to move or not move the amendment.

Amendment 57A, by agreement, withdrawn.

Amendment 57B not moved.

Amendment 57 agreed to.

Section 7, as amended, agreed to.

Section 8—Allocation of housing

The Convener: Amendment 116, in the name of Jackie Baillie, is grouped with amendments 21, 59, 60, 61, 62, 103 and 117. I ask the minister to speak to and move amendment 116 and to speak to the other amendments in the group.

Ms Curran: It is important that everybody who is aged 16 or over should be eligible for social housing. That lies behind the recommendation of the homelessness task force that there should be a universal right to register on a housing list. Houses should be allocated primarily on the basis of housing need. It is right that there should be a limit on what factors landlords can or cannot take into account in decisions about allocations. The suite of amendments supports several changes. It is important that we consider them in the context of a right to register.

Age should not be a barrier to obtaining a house, but it is important to recognise that some houses will be suitable only for some age groups, such as sheltered housing for the elderly or supported housing, such as foyers, for young people. Landlords should therefore in limited circumstances have discretion to take age into account. Amendments 116 and 117 together will allow that to happen.

As for amendment 21, we welcome Robert Brown's interest and his contribution to the debate about whether owner-occupiers should qualify for social housing. However, it would be wrong for landlords to be able to refuse to allocate a house to a person simply because that person was or had been an owner-occupier. In contrast, the bill recognises that owners can get themselves into difficulties—through relationship breakdown, repossession, loss of job or other such factors—and that they might need social housing.

Amendment 59 covers council tax arrears, other non-housing debt and rent arrears in some circumstances. Research that was undertaken by Shelter and the Chartered Institute of Housing in Scotland and published last year found only one case of an applicant being excluded from a waiting list for non-housing debts, such as rent arrears, although exclusions on the ground of rent arrears were much more common.

It is right that such exclusions should happen only infrequently. They might be appropriate when the outstanding debt is very large, for example. However, it would be wrong for landlords to refuse to allocate houses to people who have a clear arrangement to pay off rent or council tax arrears. It would also be wrong to exclude tenants for limited rent arrears, such as arrears that might arise from housing benefit problems. We therefore suggest that Tommy Sheridan should not move amendment 59, while we consider whether it is possible to lodge an Executive amendment that would achieve those more limited objectives.

The Convener: Thank you very much.

Ms Curran: I have still to speak to the other amendments in the group.

The Convener: I am sorry; I thought that you were finished. You were just having a rest.

Ms Curran: A residency test should not be allowable in some circumstances. We support Karen Whitefield's amendments 60 and 61, which recognise that people might need to move to receive support from somebody, irrespective of their age and relationship.

We also support Cathie Craigie's amendment 62, which is designed to protect those who are fleeing harassment from discrimination on residency grounds.

We recognise the significant issues that Kate MacLean raises in amendment 103 about those who are fleeing domestic violence. We support that approach in principle, but we would like to ensure that we get the amendment's wording right. We offer to lodge a similar amendment at stage 3, to deal with terms such as "currently a victim" and "reasonably be expected", and to ensure that we get them legally right. We do not want to prejudice the amendment's impact because of a competency issue. We hope that, in the light of that commitment, Kate MacLean will not move her amendment.

I move amendment 116.

Robert Brown: Amendment 21 is a probing amendment. There is a distinction between admission to the housing list under section 19 of the Housing (Scotland) Act 1987 and priority on the housing list in allocation of housing under section 20 of the act. My intention was to deal with the section 20 issue.

I readily accept the minister's valid points about people on low incomes and those who are struggling with mortgages or other problems. The problem arises with people who have another house. Section 20 of the Housing (Scotland) Act 1987 says that in allocating local authority housing, the local authority shall take no account of some matters, one of which is the ownership of another house. I argue that that goes a little too far.

I would be interested to hear the minister's view on whether a slightly more discretionary approach might be adopted, as that is what I was getting at in lodging amendment 21.

Tommy Sheridan: I welcome what Margaret Curran said and the fact that thought will be given to an amendment to take care of the anomaly. However, as Shelter Scotland asked me to lodge amendment 59, I hope that members will not mind if I press it.

Section 7 addresses exclusions, but the bill does not cover suspensions. Research by the Chartered Institute of Housing in Scotland and Shelter estimates that some 30,000 households are suspended in Scotland every year, sometimes for minor reasons. In Shelter's opinion and my opinion, the bill needs to include criteria that should not be taken into account when deciding whether to allocate housing. Such criteria should include non-housing debt such as council tax arrears, and rent arrears where an applicant has adhered to an agreement to repay or where the liability is less than four weeks' rent. The bill must address those issues to ensure that people are not unfairly denied access to social housing.

14:00

Shelter has a particular concern about the use of council tax arrears as a reason for suspending an offer of accommodation. That discriminates against people who wish to be tenants or who have no option of accommodation outside the social rented sector. People who wish to buy a house on the open market are not restricted from doing so if they have council tax arrears, but council tax arrears can act as a barrier to obtaining social rented housing. It is understandable that a local authority uses suspensions to try to recoup arrears, but Shelter maintains that doing so clearly discriminates against prospective tenants. People who have council tax arrears are not prevented from using schools, libraries, swimming pools or street lighting—nor should they be—but they would have difficulty obtaining housing in the social rented sector if council tax arrears remained a ground for suspension. Amendment 59 calls on the committee to remove any reference to council tax arrears—such arrears should not be regarded as housing debt.

In many cases, rent arrears that are used as a reason for suspension are not the fault of the applicant. For example, housing benefit overpayments are not strictly arrears, but will appear as arrears and can be used as a ground for suspension. Also, someone can be suspended unfairly from housing even though the arrears are quite small and the person already has a repayment plan. I am a councillor and know of an individual who has entered into, and is sticking to, an agreement to repay, but who is excluded from consideration for certain houses in Glasgow because of the arrears.

I hope that we iron out that discriminatory piece of legislation, which delivers social exclusion rather than social inclusion, because it is primarily people who are trying to survive on very low incomes who get into arrears.

I ask the committee to consider amendment 59 and remind the ministers that there was a bit of to-ing and fro-ing between Shelter and the clerks to get the amendment absolutely right. I hope that members will consider it reasonable in its current form.

Karen Whitefield: Amendments 60 and 61 amend the definition of people who cannot be subject to a residency test. Both amendments address concerns raised by the Disability Rights Commission about the suggestion that only people over the age of 60 move home because they need the care of younger family members. Obviously, that is not the case; other people move around because they require the support of carers. We do not want those people to be discriminated against.

I welcome the Executive's support for amendments 60 and 61. I hope that they are successful.

Unfortunately, due to other parliamentary commitments, Kate MacLean cannot be here, so she has asked me to speak to amendment 103. The amendment ensures that victims of domestic violence and harassment are not discriminated against by being subjected to a further residency test. I will listen to what the Executive has to say on the matter, as I know that it appreciates the concerns of the Equal Opportunities Committee. I am sure that the committee will be content if the Executive lodges a similar amendment at stage 3.

Committee members appreciate where Tommy Sheridan is coming from with amendment 59. The evidence that the committee has taken has consistently highlighted the difficulties that people face in meeting their financial commitments and the difficulties they sometimes get into when debt accumulates. For that reason, we believe that it is valid to ensure that someone who has made a genuine effort to pay off their arrears should not be further discriminated against. I appreciate what Tommy Sheridan says, but the evidence from Shelter and the CIHS suggests that often local authorities are reluctant to use their powers to discriminate against people, although it can happen. For that reason, I seek strong assurances from the Executive that any guidance that it issues or amendments that it lodges at stage 3 will address committee members' concerns.

Cathie Craigie: I echo Karen Whitefield's comments on amendment 59 and seek the same assurances from the Executive.

Amendment 62 seeks to ensure that people who live in fear of abuse, whether physical or mental, can move between authorities. Some local authorities adopt good practice in that respect, but that is not the case across the board; therefore, it is important that the bill includes such a provision. I hope that the committee and the Executive will support amendment 62.

Brian Adam: I welcome amendment 59 and the Executive's response to it. The only issue that I raise in connection with it is that the guidelines should clarify what

"rent arrears that … are being repaid … according to an agreement to repay"

might mean in practice. Someone who makes one or two repayments of a long series hardly establishes a pattern. Although I support the idea that people should not be excluded or suspended on the basis of arrears alone from the opportunity to be allocated a house, there must be clear-cut evidence that the arrears are being addressed, out of fairness to tenants who are making payments. Some tenants deliberately do not pay their rent, in the knowledge that it is unlikely that they will be actively pursued. Having said that, I support the intention of amendment 59 whole-heartedly.

Although I support the intention behind amendment 103, I am not convinced that the wording of it is right. Fiona Hyslop's amendment 92 addressed a similar matter, and the definition that it contained might be more appropriate and acceptable. The phrase "is threatened with" violence is a little clearer than the phrase

"may reasonably be expected to run the risk, of domestic violence".

That is more clumsy; the threat of violence is what we are talking about. However, we must be careful, as guidance would have to be provided on the quality of evidence required to prove a threat of violence.

Bill Aitken: Amendment 59 would be unnecessary if people did not accrue arrears or if housing benefit was dealt with accurately and timeously. Unfortunately, this is an imperfect world, and sometimes neither of those things happens. Nevertheless, amendment 59 is far too open. I note what the Deputy Minister for Social Justice said about considering the matter so that some restricted relaxation may be included in the bill. I look forward to hearing what she may say at a later date.

Amendments 60 and 61 have some merit. Frequently, people require the assistance of relatives, and age should not be a bar to that. I am of a mind to support those amendments.

I have problems with the lack of specificity in amendment 103. I note what the minister said, and I hope that the issue will be returned to. On that basis, I feel unable to support amendment 103.

Ms White: It may come as a surprise, but I support most of the amendments in the group, although I cannot support Robert Brown's amendment 21 and Kate MacLean's amendment 103.

I am glad that the Executive's amendments 116 and 117 protect sheltered housing and such like. That is excellent, and I support them.

With regard to Karen Whitefield's amendments 60 and 61, Bill Aitken put it perfectly—age should not be a barrier.

I support Tommy Sheridan's amendment 59. A lot has been said about it, but I will pick up the point about housing benefit, which Bill Aitken mentioned. It is not always the case that tenants are at fault. Sometimes, housing offices do not provide housing benefit timeously, which is a big problem. Amendment 59 would protect tenants, and I support it.

Robert Brown has explained his intention behind

amendment 21. I am glad that he did so, because when I first read it I was horrified. As Margaret Curran said, people get into difficulties, lose their jobs and have their houses repossessed. I was worried by Robert Brown's amendment, but he has explained that it is about people with two houses. I am sure that he will lodge other amendments at stage 3.

I support the amendments in the group, apart from amendment 21 and amendment 103, which I do not support because Fiona Hyslop's amendment 92, which was not accepted, made much more sense and was clearer.

Ms Curran: This has been a useful discussion. I guarantee that we have listened to some of the points that have been raised. I will deal with the amendments in order.

On amendment 21, I understand what Robert Brown says, but we ask him not automatically to rule out owners. The needs of owners should be assessed in the same way as those of any other applicant. Owners should not be disadvantaged in housing allocation just because they are owners. We ask him to consider that.

I understand the points that have been made about Tommy Sheridan's amendment 59. We guarantee him that fairness is the key issue that we will consider. I heard what members said about technical rent arrears, as it were, due to housing benefit not being processed properly, and about people who are managing their situation and are engaged in repayment schemes. We wish to address those issues in future amendments. I guarantee the committee that we will consider the circumstances that the committee has brought to our attention. Nonetheless, outstanding debts should be taken into account if they are very large. Brian Adam's comments on guidance were helpful. We will give serious attention to the issue when we consider the guidance.

On Kate MacLean's amendment 103, I assure the committee that I am close to the equal opportunities issues in the Parliament, and I follow debates on them closely. We want to find wording that meets the aspirations of amendment 103, but that is more appropriate technically.

I thank the committee for its comments.

Amendment 116 agreed to.

The Convener: Amendment 21 has already been debated with amendment 116. I ask Robert Brown to move or not move amendment 21.

Robert Brown: I just want to say, if I may, that—

The Convener: Can you tell me whether you will move or not move amendment 21 and then, very briefly, explain, rather than getting back into a debate?

Robert Brown: In the light of the comments that have been made, I will not move amendment 21. However, I think that the minister slightly misunderstood what I was getting at. Section 20 of the Housing (Scotland) Act 1987 forbids local authorities to take account of such property. All I wanted to do was to make things less compulsory. I accept that the wording goes too far.

Amendment 21 not moved.

14:15

The Convener: Amendment 59 has already been debated with amendment 116.

Tommy Sheridan: I want to move amendment 59. Very briefly, I will say why.

I welcome the Executive's comments and, if amendment 59 is not carried, I look forward to the Executive introducing an amendment that addresses this serious issue. It is sometimes healthy for the Executive to accept back-bench amendments and I hope that this one will be accepted.

No one has defended the exclusion of a person from a housing list on the basis of council tax arrears, which can still happen. The practice of Glasgow City Council—the largest local authority in Scotland—is to refuse management transfer to tenants with rent arrears. Housing managers sometimes have discretion on repayment schedules, but that discretion is not often used. Given that amendment 59 is supported by Shelter Scotland, the Scottish Federation of Housing Associations and the Scottish Council for Single Homeless, I appeal to the committee to support it.

I move amendment 59.

The Convener: I remind members that the opportunity to make a brief statement is not an opportunity to rehearse the argument. However, because this is a serious issue, I have allowed members to make a brief statement.

The question is, that amendment 59 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Adam, Brian (North-East Scotland) (SNP)
White, Ms Sandra (Glasgow) (SNP)

AGAINST

Aitken, Bill (Glasgow) (Con)
Brown, Robert (Glasgow) (LD)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Whitefield, Karen (Airdrie and Shotts) (Lab)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 59 disagreed to.

Amendments 60 and 61 moved—[Karen Whitefield—and agreed to.

Amendment 62 moved—[Cathie Craigie]—and agreed to.

Amendment 103 not moved.

Amendment 117 moved—[Ms Margaret Curran]—and agreed to.

The Convener: We now come to amendment 63.

Tommy Sheridan: Amendment 63 recognises that local authorities and registered social landlords suspend people who are on waiting lists from being offered accommodation. The proposed legislation does not cover that and there is no guidance on the administration of suspensions.

Amendment 63 seeks to identify a statutory minimum that must be covered by guidance. It seeks to prevent the situation in which people are suspended from being offered housing but are unaware of the reason for the suspension and have no means of redress. The amendment proposes that applicants who are suspended be given minimum information on the suspension. It is important that people whose application is suspended are given reasons, so that they can challenge any incorrect assumptions that have been made about their situation.

I hope that the committee will accept that the amendment is, from that point of view, relatively uncontentious and that, if someone's application is suspended, there should be a right of appeal—people should at least have the right to be told why they have been suspended.

Amendment 63 is supported by Shelter, the Scottish Federation of Housing Associations and the Scottish Council for Single Homeless. It has a good degree of voluntary sector backing.

I move amendment 63.

Cathie Craigie: I would be interested to hear what the Executive has to say about amendment 63, as I understand that ministers already have the right to issue guidance. We would all agree that tenants and applicants who have been suspended should have the right to a minimum level of information; we should ensure that they have the right to as much information as possible. However, I believe that the bill already covers that.

Bill Aitken: I, too, would like to hear what the minister has to say about amendment 63. Quite clearly, action such as the suspension of a tenant should not be taken lightly and as much information as possible should be available to a person who finds his application suspended. I do not think that what Tommy Sheridan's amendment 63 proposes is at all unreasonable.

Ms White: When we discussed the matter at a previous meeting, most committee members agreed that people should have access to the fullest possible information about such decisions, as Cathie Craigie said. I support amendment 63. I am interested to hear what the minister has to say.

Ms Curran: Members are all waiting with bated breath for my comments, obviously.

The Executive is sympathetic to the principle behind amendment 63. Shelter and the Chartered Institute of Housing in Scotland have drawn attention to the relatively large number of applicants whose applications have been suspended by the landlord, for example, as a result of outstanding rent arrears or anti-social behaviour. However, the rights and wrongs of suspensions are not straightforward and, as Tommy Sheridan has recognised, guidance is the only way to deal with that.

Amendment 63 recognises that fact by calling for a guidance-giving power rather than detailed legislation to regulate suspensions. We agree with that approach. Cathie Craigie is right to point out that the bill already deals with the matter. Section 70 gives us the power to issue guidance in this area and we are happy to give a commitment to use it in due course. Jackie Baillie has already stated that she would be happy to include the committee in the drafting of guidance. The Executive has commissioned work by the Chartered Institute of Housing in Scotland that could form the basis for such guidance.

In the light of that commitment, and of the fact that the bill already includes provision for guidance-making powers, I hope that Tommy Sheridan will withdraw amendment 63.

Tommy Sheridan: I am left with no alternative but to press amendment 63, because the minister offered no opposition to it. The amendment will do nothing other than strengthen the bill and enhance the rights of tenants who have an application refused. As the minister said, section 70 already gives the Executive the right to issue guidance, but amendment 63 would clarify that and strengthen section 8. Shelter, the Scottish Federation of Housing Associations and the Scottish Council for Single Homeless recognise that and ask that the committee support the amendment. Sometimes, it is healthy for the committee to support amendments that have not been lodged by the Executive.

The Convener: The question is, that amendment 63 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Adam, Brian (North-East Scotland) (SNP)
White, Ms Sandra (Glasgow) (SNP)

AGAINST

Aitken, Bill (Glasgow) (Con)
Brown, Robert (Glasgow) (LD)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Whitefield, Karen (Airdrie and Shotts) (Lab)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 63 disagreed to.

Section 8, as amended, agreed to.

After section 8

The Convener: Amendment 23, in the name of Robert Brown, is grouped with amendment 23A.

Robert Brown: I remind the committee that we are still dealing with homelessness. Amendment 23 was suggested to me by the Scottish Churches Housing Agency. It echoes a point that I have been trying to include in different sections of the bill, concerning the linkage between the support, the tenancy and the ability to sustain the tenancy. The December 2000 report "A Homeless Strategy for Edinburgh" identified that 832 out of 1,816 tenancies—or 46 per cent—that were allocated in 1999 under the homelessness provisions had been terminated by the end of 2000. Those are stark figures that reflect the failure of the policy.

The cumbersome procedures of the homeless persons arrangements are failing to sustain almost half the tenancies that are allocated. There is no argument among members or ministers about the need to provide effective support that will improve those statistics, and there is an important target to be met. The same research also showed that a high proportion of tenancies that failed quickly were those that were given to younger people—teenagers or whatever—and that there were other difficulties in sustaining those tenancies.

I am aware that the issue of resources lies behind all this; I am sure that the ministers will make that point. However, it is important to state in the bill what support, in those difficult cases, will be given to applicants by the local authorities that deal with and assess homelessness applications. I hope that the committee will respond favourably to the principle behind amendment 23. The amendment is not badly phrased and places an obligation on local authorities to do something that, ideally, they should be doing already. I hope that it will receive the ministers' support.

It has been suggested that a similar requirement already exists in the code of guidance, but it is important to include such obligations in the bill. I moved an amendment to make the code of guidance statutory, but that amendment was disagreed to, perhaps with good reason. Nevertheless, obligations that are included in the bill are much more likely to be fulfilled by local authorities, largely because the guidance is contained in one document. I hope that the ministers will support the amendment on that basis.

I move amendment 23.

Fiona Hyslop: Amendment 23A would require guidance to be issued within three months of the bill's enactment. We must ensure that guidance is issued timeously. The main amendment in this group is amendment 23; amendment 23A would simply provide a reference to the time scale in which guidance should be issued.

Robert Brown is right to raise supported accommodation in amendment 23, as that is one of the big issues in connection with the sustainability of tenancies. The argument is whether the stated requirements should be included in the bill or in guidance that will follow later. One issue that may be addressed by the ministers is how practical those options would be for local authorities, on which a great deal of the burden would be placed. Robert Brown may want to say what he thinks is achievable. I am inclined to support amendment 23, although it would be helpful to place the requirement for guidance within a time scale.

On that basis, I move amendment 23A.

Cathie Craigie: I am concerned about amendment 23 and will be interested to hear what the Executive has to say on it. It looks as though local authorities would be provided with guidance and assistance in assessing the level of support that any applicant should be given. I do not think that all applicants would want to disclose that level of information.

Amendment 23 was said to be designed purely for people who become homeless and apply to local authorities under the legislation on homeless persons, so sections 2 and 3 should cover the points that Robert Brown made. I will wait to hear what the Executive says, but I think that amendment 23 goes too far and would allow a local authority or registered social landlord to intrude into areas that applicants would not want them to.

14:30

Ms Curran: We are sympathetic to the principle that underlies amendment 23. We acknowledge the enormous effort that Robert Brown has put into such work and his genuine concerns. He guessed that we would have some concerns about whether amendment 23 would achieve his aim in the best

way. There is a danger that the amendment would increase bureaucracy and place an expensive burden on local authorities, rather than focus resources on the provision of support. It is important that appropriate support and assistance are provided where they are needed, especially to vulnerable people. As Robert Brown said, the code of guidance on homelessness contains extensive references to the circumstances in which support is likely to be required.

During the committee's previous meetings and throughout much of today's debate, a tension has been flagged up between what should be in guidance and what should be in primary legislation. I re-emphasise that putting something in guidance does not represent a lack of commitment to pursuing issues. It reflects the complexity of the issues and good legislative practice. It would be inappropriate to overburden the bill with issues that should be in guidance. In almost every debate, members have said that provisions should be in the bill, rather than guidance. I must tell members that such arrangements would not be workable. Putting issues in guidance does not represent a lack of commitment from us. I ask members to take that seriously.

The wider issues of the argument that Robert Brown makes will need to be addressed through the homelessness strategies, where the issues should properly be dealt with, particularly with reference to social work services. Health services from outside a local authority also play a key role in supporting homeless people. The guidance on homelessness strategies will emphasise the importance of ensuring that appropriate support services are provided.

The homelessness task force is also considering homeless people's support needs. I draw to the committee's attention the wide support that has been shown for the homelessness task force's work and the model of work that has allowed us to develop the legislation and support policies. We have asked the task force to consider whether new legislative proposals should be developed or whether more immediate mechanisms can be used. The approach of engaging with the key voluntary agencies that raise the issues has been widely supported. I hope that, on that basis, Robert Brown will recognise that the issue goes much wider than legislative references and should be addressed in the round.

Fiona Hyslop's amendment 23A represents a wee bit of a contradiction. She says that she is sympathetic about the burdens that are placed on local authorities, but she wants to impose a three-month deadline. Given the complexity of the issues that we face, guidance needs to be developed carefully. It should not be rushed to meet arbitrary deadlines, as the SNP has consistently proposed throughout discussion of the bill. Such deadlines are inappropriate.

Fiona Hyslop: When I spoke to the amendments, I asked the minister and Robert Brown to discuss the burdens that would be placed on local authorities and how achievable the aims are. I think that the options are open for debate. I am sympathetic to Robert Brown's aims, as is the Executive. My question—which I think that other members would want to ask—is whether the aims are achievable or whether they would overburden local authorities. That is why I am interested in hearing from Robert Brown. However, if the proposal is to go ahead and guidance is to be issued, the guidance must be issued timeously. We have argued consistently for that. After two years, we are in a position to ask for that.

The Convener: Do you wish to press or withdraw amendment 23A?

Fiona Hyslop: I will press it.

The Convener: I remind the committee that the member whose amendment is to be decided on has control of the debate, so Robert Brown will not sum up. Members will have to obtain the information that they requested later.

The question is, that amendment 23A be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Adam, Brian (North-East Scotland) (SNP)
White, Ms Sandra (Glasgow) (SNP)

AGAINST

Aitken, Bill (Glasgow) (Con)
Brown, Robert (Glasgow) (LD)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Whitefield, Karen (Airdrie and Shotts) (Lab)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 23A disagreed to.

The Convener: The question is, that amendment 23 be agreed to. Are we agreed?

Robert Brown: I may have misunderstood the procedure. I thought that I would be able to confirm the moving of my amendment formally and make a brief statement.

The Convener: You moved the amendment at the beginning of the debate. Where an amendment is followed by an amendment to that amendment, control of the debate moves to the member who moved the second amendment. In this case, that was Fiona Hyslop.

The question is—

Robert Brown: On a point of order. That makes the debate ridiculous, because all the valid points that were raised could not be dealt with during the summing up on the limited issue that Fiona Hyslop's amendment covers. That is nonsense.

The Convener: With respect, that is not a point of order. The procedure has already been laid out.

The question is, that amendment—

Robert Brown: On a point of order. Will the committee allow me to say something in response to the debate?

The Convener: That is not a point of order.

Robert Brown: Yes it is.

The Convener: No it is not. I am not accepting it as a point of order and we are in the middle of a division.

The question is, that amendment 23 be agreed to. Are we agreed?

Robert Brown: On a point of order.

The Convener: We are in the middle of a division. I will rule you out of order.

Robert Brown: I am making a point of order.

The Convener: I am ruling you out of order on that point of order. We are in the middle of a division.

Robert Brown: You do not know what the point of order is yet. I would like to move that standing orders be suspended to enable me to respond to the debate in the light of the substantial issues that have emerged.

The Convener: My understanding is that only a full meeting of the Parliament can suspend standing orders. We are in the middle of a division. If members have concerns about how the procedure is conducted, there is a place where such concerns can be pursued.

The question is, that amendment 23 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Adam, Brian (North-East Scotland) (SNP)
Brown, Robert (Glasgow) (LD)
White, Ms Sandra (Glasgow) (SNP)

AGAINST

Aitken, Bill (Glasgow) (Con)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Whitefield, Karen (Airdrie and Shotts) (Lab)

The Convener: The result of the division is: For 3, Against 4, Abstentions 0.

Amendment 23 disagreed to.

Robert Brown: Further to that point of order. In the light of what has occurred, I reiterate my point that the debate is made farcical by the fact that there is no opportunity to make a substantive reply on the significant points that were raised in debate. Everyone in the committee would accept that. I ask that the committee make representations to the Procedures Committee that that point be examined.

The Convener: With respect, that is not a point of order either. As a member of the Scottish Parliament, you have the facility to take any matter to the Procedures Committee. If you want the committee to reflect on the stage 1 and stage 2 procedures, I am happy to ensure that that is placed on the agenda at a later stage, with the caveat that I must have agreement from the Parliament that it is within our powers to discuss that matter. That would be a matter for another meeting and would not be dealt with until we have completed stage 2 and can reflect on the procedures.

Amendment 24 was debated with amendment 160 at last week's meeting.

Robert Brown: In the light of earlier decisions that were made, I will not move amendment 24, although I reserve my position on the substance of the matter.

Amendment 24 not moved.

The Convener: In that case, amendments 24A and 24B fall.

Brian Adam: On a point of order. Normally, the amendments to an amendment would be taken first, in order that the amended amendment can be dealt with. Amendments 24A and 24B should have been dealt with before amendment 24.

The Convener: We discussed that matter last week. Amendment 24 was not moved then because it was not the lead amendment in the group. It is not possible to discuss an amendment to an amendment unless the original amendment has been moved. Amendment 24 was not moved last week and Robert Brown has chosen not to move it this week, which means that amendments 24A and 24B fall.

Before section 9

The Convener: Amendment 190, in the name of Fiona Hyslop, is in a group of its own.

Fiona Hyslop: In moving amendment 190, I would like to affirm that the Housing (Scotland) Bill is about the social rented sector. If it accepts amendment 190, the committee has the opportunity to secure the place of the right to rent in the bill.

To those who are concerned about the right to buy, it should be pointed out that the right to buy is not even secured in the bill under the section on the single social tenancy. The Executive proposes to secure it in future by means of chapter 2 of this bill. It is also referred to in the Housing (Scotland) Act 1987. With amendment 190, I want us to secure the right to rent, but I also want to challenge the Executive's thinking on the extension of the right to buy. The amendment renders irrelevant some of the arguments that we have heard about the need for an extension of right to buy to other housing providers so that any tenant under a Scottish secure tenancy has the same rights.

During stage 1, we heard that at least seven different rights to buy are being produced. If the single social tenancy, in itself, does not secure the right to buy, there is no need to argue that some kind of unification of right to buy under the single social tenancy is needed. Let us leave the arguments about right to buy to discussions on chapter 2 and elsewhere in the bill.

The first part of amendment 190 talks of the importance of securing the right to rent "in the public interest". There is a rationale behind that. Some of the arguments about the need for unification in the bill have been about the need to have equality of rights across the rented sector. People may argue that, under the European convention on human rights, people have to have similar rights across the sector. We have to ensure that we have a strong position for arguing that the right to rent is in the public interest.

Arguments to do with the ECHR and proportionality can be met by saying in the bill that the purpose of the Scottish secure tenancy is to secure the right to rent. Stating that in the bill will prevent arguments thereafter that we are somehow diminishing people's rights. The committee and the Parliament would then be free to argue about right to buy in discussions on chapter 2 of the bill. Chapter 1 and the single social tenancy should purely and simply be to secure the right to rent. We want to protect the rented sector, so we want to clear the ground and have the debate on right to buy only in chapter 2. We want the single social tenancy, in itself, to secure the right to rent.

If anyone wants to remove the right to buy, they would have to amend chapter 2 or amend the Housing (Scotland) Act 1987. That has not been proposed. All that has been proposed is that the single social tenancy part of this bill should be purely and simply about the right to rent and securing the rights of tenants.

I move amendment 190.

Robert Brown: I have some sympathy with Fiona Hyslop's points. I have always thought that the right to buy issue was separate from the mainstream tenancy issues. However, I do not think that amendment 190 will do what Fiona thinks it will do. If any ECHR issues arose, it would be the substance of the matter that would be considered. I do not think that the amendment will achieve anything in that regard. The amendment is useful in that it focuses attention on the primary purpose of the allocation of social rented housing. However, it will achieve nothing for the bill and should be rejected.

It would be helpful if, in the course of the debate, the ministers could give us a reasonably clear indication of the date that they have in mind for the implementation of the Scottish secure tenancy. It would help organisations to know when to work towards. I would also like to know what the format of the tenancy is likely to be.

14:45

Ms White: It is important that we make a statement about the right to rent in the Housing (Scotland) Bill and in the Parliament. We should remind everyone that we believe that people have a right to rent. It is fine and dandy having a right to buy and various discounts, but people must also have a right to rent.

I have lodged an amendment on the right to rent, which we will come to later in the bill. Not everyone can afford to own their home and, as the legislators, we should recognise that. The Parliament must make a statement that people have a right to rent. I welcome amendment 190 and intend to support it.

Brian Adam: It is important that we specify precisely the purpose and limits of the tenancy. There is a right to rent and an enhancement of the rights and responsibilities that come with a tenancy appears to be a very significant purpose behind the bill. Spelling that out is well worth while. We need a reasonable supply of affordable housing for rent.

The issue of the right to buy, as Robert Brown rightly suggested, is totally separate. There has been a considerable amount of confusion because of the way in which the bill has been drawn up. Clearly, the extension of the right to buy is a significant element of the bill, but it is not a universal or singular right. It is not part of the Scottish secure tenancy. Spelling those two things out on the face of the bill is a worthwhile exercise.

Linda Fabiani (Central Scotland) (SNP): It is clear that no one can argue with anything that Fiona Hyslop has said in amendment 190. The two points are clear. Would anyone deny that the purpose of the Scottish secure tenancy is to protect and support the right to rent in the public

interest? Everyone knows that the Scottish secure tenancy does not give tenants the right to buy, because there are exceptions to the right-to-buy rules as proposed in the bill. It would be admirable for the Parliament to state clearly that we support people's right to rent and that that is in the public interest.

Karen Whitefield: I would like to think that no member of the committee does not believe that there is a place for social rented housing in a modern Scotland. Indeed, the bill has often been criticised for its over-emphasis on the social rented sector. The intention of the bill is to strengthen that sector and the rights of tenants.

Having listened to the arguments, I am still not convinced of the purpose of amendment 190. I hope that it is not a rerun of what happened last week, when we attempted to be friends with everyone but ended up further disadvantaging homeless people. I hope that, on this occasion, it is not the intention to disadvantage people in Scotland who aspire to own their own homes. My constituents believe that they should have a right to buy, just as they should have a right to rent. There is no obvious purpose in the amendment. I would like to know what lies behind it. I hope that other members see the amendment as an attempt to make political capital rather than to make the bill workable.

Cathie Craigie: I strongly oppose amendment 190. As Robert Brown has said, it adds absolutely nothing to the bill and I wonder what Fiona Hyslop, the SNP housing spokesperson, intended in lodging the amendment. Sandra White let us into the secret when she said that the amendment was intended as a statement. I refer members to page 1 of the bill. They will see that the intention is for social landlords to provide accommodation.

The bill also is about the rights of those tenants. In the guidance notes that were issued with the bill, the Executive set out its reason for including the Scottish secure tenancy in the bill—to provide a set of enhanced rights for tenants in the social rented sector. If that guidance does not make clear that the bill is in the main about rented accommodation, I do not know what does. The SNP is guilty of wasting the committee's time, as its members know that we have a heavy work load. The amendment adds nothing to the bill and I hope that members will reject it.

Bill Aitken: I will not join in the condemnation of the SNP for lodging the amendment. However, at the same time, the amendment is an exercise in semantics as it is not going to achieve very much, although it might not do a great deal of harm. It may be that the SNP was in the mood to introduce some sort of statement, but it was not necessary as the point is covered. I will listen to what the minister will say for the Executive. No doubt, in her usual manner, she will be suitably reassuring.

Ms Curran: I take it that Mr Aitken's reference was directed at me. How did he know that I was going to answer that point?

I want to clarify that the purpose of legislation is to set out a framework of powers and duties to achieve policy objectives. The purpose is not to make a series of empty statements. Moreover, as has been pointed out, stage 1 is the time to debate and scrutinise carefully the principles of the bill. I remind Fiona Hyslop and other members that Parliament agreed unanimously to endorse the principles of the bill at stage 1.

Unfortunately, we have witnessed today some confused understanding of policy and the legislative process. Our commitment to ensuring the provision and quality of social housing for those who need it has been well articulated and demonstrated through our policies on areas that include homelessness, community ownership and fuel poverty, and by our willingness to back our priorities with increased resources.

I do not intend to be drawn into a debate on the principles of the right to buy. When we get to the appropriate section, I will be more than happy to deal with the details of our proposals and to enter into a constructive debate on the subject. I intend to be persuasive and I am sure that our robust package will persuade members.

At this stage, it is interesting to note that the SNP does not seem to believe that the right to buy should be linked to the Scottish secure tenancy. We are bound to ask what exactly that is supposed to mean. Does it mean that no tenants should get the right to buy, or that only existing tenants should get it? What exactly does the SNP believe? I want to say categorically that it is not the job of the Scottish Parliament to draft legislation that is based on empty assertion. It is one thing to say that we aspire to the right to rent; it is quite another to deliver it. What we have in the Housing (Scotland) Bill are not empty assertions but the means to deliver. I ask members to reject categorically amendment 190.

Fiona Hyslop: It is important to say that the purpose of a single social tenancy is to secure the right to rent and associated rights. Including amendment 190 in the bill would allow us to secure that right. I draw Karen Whitefield's attention to the fact that it is not the single social tenancy that would provide her constituents with the right to buy, but provisions in chapter 2 of the Housing (Scotland) Act 1987.

I want to respond to a point that was made by Robert Brown, when he asked what amendment 190 would add to the bill. It would allow the Parliament to have an open debate about the issues on the right to buy under the relevant

sections of the bill. If the Parliament chooses not to extend the right to buy, that would shore up the argument that it was in the public interest to do so. If the right to rent was challenged at a subsequent date, it would be clear that it was secured in the bill. This is an opportunity for us to analyse where rights are secured. The right to buy can be secured elsewhere. Margaret Curran is over-anxious about the right to buy. Nobody, but nobody, would argue for the taking away of existing rights under right to buy. The issue is about extending the right to buy.

By making sure that we restrict the remit of the single social tenancy purely and simply to the right to rent, we allow the Parliament to have an open debate at stage 3. John McAllion, who is a member of one of the Executive parties, argued at stage 1 for the right to rent, so it is wrong to say that the issue was not raised. As it was raised in the stage 1 debate, it is right and proper that the committee should consider whether to include references to the right to rent at stage 2. There is a strong case for saying that there should be a right to rent, and the best time to address that is at stage 2. I press amendment 190.

The Convener: The question is, that amendment 190 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Adam, Brian (North-East Scotland) (SNP)
White, Ms Sandra (Glasgow) (SNP)

AGAINST

Aitken, Bill (Glasgow) (Con)
Brown, Robert (Glasgow) (LD)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Whitefield, Karen (Airdrie and Shotts) (Lab)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 190 disagreed to.

Section 9—Scottish secure tenancy

The Convener: Amendment 166, in the name of Robert Brown, is grouped with amendments 119, 167, 120, 121 and 122. Please note that if amendment 119 is agreed to it will pre-empt amendments 167 and 120.

Robert Brown: The phraseology "only or principal" when related to homelessness is tautologous. Section 9 deals with the result of allocations: the right to allocation is dealt with in other sections of the bill. It does not matter if it is your home or someone else's: the issue is whether you are homeless. The phrase "only or principal" has no meaning or purpose in this context. We could end up with a curious loophole, such that if an allocation is made and there is a change in circumstances as to who stays where, there may be a question mark over whether it is a Scottish secure tenancy. I am sure that that is not the intention of the bill.

To some extent this is not a major issue, but there is a tautology, which arguably leaves a loophole in the way in which the Scottish secure tenancy is defined. My preference is to have more Scottish secure tenancies than not and not to have other tenancies in amorphous categories, where different and less precise arrangements apply.

I move amendment 166.

Ms Curran: We are keen to promote the best ever tenants rights package. The right to joint tenancy is part of that, particularly for those whose landlords have been unwilling to recognise them. We are aware of concerns about the current drafting of the bill, whereby the requirement that the house should be the sole or principal home of only one party could give rise to abuse. In particular, it has been suggested that it would be possible for a joint tenant to exercise the right to buy even if the house were not his or her only or principal home. We have listened to the concerns of the Scottish Federation of Housing Associations and the CIHS. Executive amendments 119, 121 and 122 make it clear that we will require the house to be the only or principal home of all joint tenants.

Amendment 120 aims to achieve the same thing, but it is not necessary, given that amendment 119, in effect, levels the playing field on only or principal residences for sole and joint tenants alike. I hope that Brian Adam will not move amendment 120 in favour of the Executive's more comprehensive approach, which distinguishes between applicants who wish to become joint tenants and for whom the house is not yet their only or principal home, and established tenants.

Amendments 166 and 167 go in a completely contrary direction to the other amendments. They would make it possible for social rented housing to be used as a holiday or second home and could increase a right-to-buy loophole. That does not appear to be Robert Brown's intention and I hope that he will not press his amendments in the light of that fact.

Brian Adam: I listened with interest to what the minister said. I accept that amendment 119 is a little more comprehensive than amendment 120. Nevertheless, I have concerns that amendment 119 may deny proper tenancy rights to anyone who has a joint tenancy. I am sure that that is not the Executive's intention. Perhaps we can have some clarification of that.

The Convener: Do you seek clarification on whether the minister will respond to amendment

119?

Brian Adam: Yes.

15:00

The Convener: The minister will have the opportunity to respond to amendment 119. Robert Brown will wind up the debate.

Brian Adam: That is helpful.

The Convener: I aim to please.

Brian Adam: I will bear in mind what the minister says about amendment 119 when deciding whether to press amendment 120.

I am sure that amendment 121 will be effective in ensuring that a joint tenancy cannot be used as an avenue to secure succession for someone who lives somewhere else. Therefore, I am happy to support amendment 121.

The Convener: Brian Aitken wishes to speak.

Bill Aitken: Or Bill Adam.

The Convener: Sorry. I shall say nothing about coalitions.

Bill Aitken: I usually have great faith in Robert Brown's drafting skills, as he was involved professionally in that pursuit for many years, but I am concerned that what he suggests in amendment 166 is not what he intends. The wording seems to contradict what he said in speaking to the amendment. The other amendments are fairly self-evident. I would be grateful if Robert Brown would provide some clarification in his summing-up.

Karen Whitefield: I am glad that Brian Adam thinks that amendment 119 is more comprehensive than amendment 120. Having read both, I agree that the Executive has got it right.

I am slightly concerned about amendments 166 and 167, as they appear to allow social rented housing to be used as a holiday or second home. I hope that that was not the intention behind them, but I would like some clarification. Many housing organisations would not be happy with that, and neither would I.

Ms Curran: I thank Brian Adam for engaging in debate on amendment 119 and I advise him that joint tenancies have full tenancy rights. I hope that that addresses his concerns about the possible limitations of the amendment. I support the comments that have been made by other members.

Robert Brown: In a previous discussion, we dealt with the allocation of social housing and issues relating to people who own another house. What we are dealing with is the status of the resultant tenancy. I take the points that have been made about the possible other uses of homes, but amendments 166 and 167 deal with the status of the home and the requirement that a Scottish secure tenancy—which, after all, is one of a number of possible forms of tenancy—should be the norm.

The situation should not become ambiguous as tenants' positions change, as sometimes happens, for example when they get new partners. Such changes should not alter the status of the tenancy, which will specify tenants' rights and the way in which they can exercise them. If there are matters consequential to that, they should be dealt with in the appropriate sections, for example under the repossession arrangements; they should not alter the status of the Scottish secure tenancy. That is a somewhat technical argument, but I believe that there is substance to it. I do not intend to press amendment 166, but I ask the minister to consult officials and to decide whether there is any substance to my argument.

The committee has accepted that the Executive's amendments are comprehensive, and I hope that they will be agreed to in place of Brian Adam's slightly less comprehensive amendment 120. I did not entirely follow what he wanted reassurance or confirmation of, as I did not think that the omission of section 9(5), if amendment 119 is agreed to, would produce the damaging results that he envisaged. That is a matter for ministers to ponder. I seek the committee's agreement to withdraw amendment 166.

Amendment 166, by agreement, withdrawn.

The Convener: Amendment 118 is grouped with amendments 124, 143, 146, 148, 154 and 156, all of which are in the name of the minister. I call the Deputy Minister for Social Justice to move amendment 118 and to speak to the other amendments in the group.

Ms Curran: In the past, tenancies of fully mutual housing co-operatives have been exempt from the provisions of the secure and assured regimes because of their rather special status. In particular, because all tenants are members of the co-operative and have a £1 share, there is an element of co-ownership.

However, it is quite clear that residents are, in practice, tenants of the association rather than joint owners in the conventional sense. As tenants, it is important that they have clearly established rights. It is for that reason that we want to integrate fully mutuals into the Scottish secure tenancy; the SFHA also recognised that that was right in principle. Therefore, we agreed that we would exempt fully mutuals from the Scottish secure tenancy in the bill as introduced and discuss with the SFHA how fully mutuals might be integrated into the Scottish secure tenancy in a way that

recognises their unique status.

The amendments in the group are designed to achieve just that. They delete the previous exemption in section 10 and add a requirement for tenants of registered social landlords that are co-operative housing associations to be members of the co-op for the tenancy to be a Scottish secure tenancy.

Furthermore, the amendments introduce changes to the succession, assignation and exchange provisions of the Scottish secure tenancy to allow co-ops to insist that successors, assignees and persons exchanging into the co-op become members.

Finally, in recognition of the co-ownership element of fully mutual co-ops, such co-ops are exempt from the right to buy.

We are grateful for the constructive spirit in which the SFHA entered into the discussions. I commend the amendments to the committee as a positive way forward, which allows fully mutual co-ops, for the first time, to be brought within the mainstream tenancy regime.

I move amendment 118. I say that with some trepidation, convener. Is that right?

The Convener: Yes. Excellent.

Linda Fabiani: On a point of clarification, amendment 118 talks about the tenant being

"a member of the association".

The current provision applies at allocation time. If a tenant ceases to be a member of the co-op, they cannot be evicted if they claim that they are no longer a member of the co-op. How does that tie in with amendment 118, which states quite clearly that members must be tenants and vice versa?

The Convener: Having resisted the temptation to contribute to any other part of the debate, I should, as a member of the Co-operative Party, declare an interest. I seek the minister's reassurance that there is no suggestion that fully mutual co-ops do anything other than provide a full range of rights to tenants and others who are members of the co-op.

I ask the minister to wind up.

Ms Curran: I thought that there would be a debate so that I could catch my breath.

I reassure the convener on the point that she raised. On Linda Fabiani's point, tenants who give up their membership would usually be in breach of the tenancy agreement and the co-op would be able to instigate recovery of possession proceedings. However, there is absolutely no reason why any tenant should want to give up their membership; the £1 share is not refundable and the tenant would lose his or her entitlement to the Scottish secure tenancy.

Amendment 118 agreed to.

Amendment 119 moved—[Ms Margaret Curran]—and agreed to.

The Convener: As amendment 119 has been agreed to, amendments 167 and 120 are pre-empted.

Amendments 121 and 122 moved—[Ms Margaret Curran]—and agreed to.

Section 9, as amended, agreed to.

15:11

Meeting adjourned.

15:31

On resuming—

Schedule 1

TENANCIES WHICH ARE NOT SCOTTISH SECURE TENANCIES

The Convener: I call the minister to speak to and move amendment 123, which is grouped with amendments 168, 294, 157 and 158.

Ms Curran: Amendments 123, 157 and 158 were drafted to facilitate the establishment of distinct occupancy terms for short-term accommodation for some categories of ex-offenders who receive support and supervision in the community. Such specialised supported accommodation is provided by Safeguarding Communities Reducing Offending—SACRO—some housing associations and local authorities. It is made available to some ex-offenders, for example, who may be under supervision following release from prison. At present, such accommodation is let under several different arrangements, none of which is entirely satisfactory, because they do not take account of the requirements of all the parties involved.

Following significant representations from SACRO, there have been discussions in both the Scottish Executive, with our colleagues in the justice department, and between SACRO and other interested organisations such as the SFHA and Shelter. The conclusion from those discussions was that section 6 should be used to prepare statutory occupancy terms for such accommodation.

Members will recall that section 6 was intended primarily to allow occupancy terms to be drawn up for hostel residents, but has been drafted in more general terms. We imagine that, in practice, most, if not all, of the occupancy terms that are required for hostel accommodation will also be appropriate for short-term supported accommodation for offenders. In both cases, landlords must cope with

some clients who may display challenging behaviour and have chaotic lifestyles. In both cases, the safety of staff and the safety and welfare of other residents and possibly neighbours must be secured. It must also be ensured that each occupant has appropriate rights. The precise terms of occupancy will be set out in an order or orders in due course.

Amending section 6 is unnecessary, but some adjustments need to be made to other legislation that might otherwise apply. Amendments 123, 157 and 158 therefore exempt that specialist supported accommodation from the provisions of the Scottish secure tenancy, the assured tenancy regime under the Housing (Scotland) Act 1988 and some provisions in the Rent (Scotland) Act 1984. Those amendments seek to respond constructively to a problem that has been raised with us by SACRO. The proposed solution has been considered and discussed with other interested parties, such as Shelter, the SFHA and the Scottish Council for Single Homeless, which agree in principle with what we are doing. I commend the solution and the relevant amendments to the committee.

There may be aspects of the Scottish secure tenancy—for example the right to compensation for improvements and the right to repair—that could conflict with the main lease. If we accepted Robert Brown's amendment 168, we would prevent landlords from leasing property where the lease on offer would prevent them from offering the rights that are part and parcel of the Scottish secure tenancy. It would make no sense to allow for a Scottish secure tenancy in circumstances where that tenancy could lead to a breach of the terms of a lease between the landlord of the Scottish secure tenancy and a third party.

An alternative approach would be to encourage landlords to offer, within what is permitted by the main lease, as many as possible of the rights that form part of the Scottish secure tenancy. I can give an undertaking that we will ask the regulator to encourage that as good practice. On that basis, I hope that Robert Brown will agree not to move his amendment.

Amendment 294 is a small technical correction to the original bill. Section 33 should refer to a tenancy, rather than a house, being excluded from the terms of the Scottish secure tenancy in certain circumstances.

I move amendment 123.

Robert Brown: I welcome the minister's comments as I was concerned that, broadly speaking, there should be a presumption in favour of social tenancies of whatever kind and origin being Scottish secure tenancies. There are a number of exemptions for various reasons and the single short tenancy is in a slightly different category. I was not entirely convinced by that. If, however, the intention is to ensure, in practice, that tenancies that lack the full requirements are covered, I would be happy to accept the minister's assurance and not move amendment 168.

Ms Curran: I hope that I have persuaded the committee and I repeat that we have heard representations from SACRO. I am happy to give Robert Brown the reassurance that he seeks about our guidance to the regulator.

Amendment 123 agreed to.

Amendment 168 not moved.

Schedule 1, as amended, agreed to.

Section 10—Exception for co-operative housing associations

Amendment 124 moved—[Ms Margaret Curran]—and agreed to.

Section 11—Restriction on termination of tenancy

The Convener: Amendment 125, in the name of the minister, is grouped with amendments 191, 150 and 150A.

Ms Curran: During the debate at stage 1, I made it clear that we would be prepared to consider additional provisions to help tackle anti-social behaviour. We took on board the committee's comments on the matter. Amendments 125 and 150 are one part of that. In addition, amendment 151, which we will debate later, aims to give landlords the power to offer probationary tenancies to prospective tenants where the person concerned or anybody in his or her household is subject to an anti-social behaviour order.

The key amendment in this group is amendment 150, which allows landlords to convert a tenancy from a full Scottish secure tenancy—an SST—into a probationary tenancy if the tenant or any person in the household becomes subject to an anti-social behaviour order that is granted by the court at the request of the local authority. That offers an alternative course of action to eviction proceedings and so can be used to offer a second chance to the person concerned.

Converting the tenancy in that way also puts the tenant clearly on notice that anti-social behaviour will not be tolerated and, if necessary, the landlord is able to terminate the tenancy altogether by using the special procedures that are available for short Scottish secure tenancies. Equally, if the behaviour improves and no recovery action is necessary, the tenancy will automatically convert to a full tenancy after 12 months.

Amendment 150A, which Robert Brown has lodged as an amendment to our amendment, is generally helpful, although the detailed drafting needs to be looked at carefully in view of the existing provisions on appeals. Subject to his comments—I appreciate that this is frustrating—I propose to lodge an amendment at stage 3 that will achieve substantially the same effect.

As I said, I know that the committee is concerned about anti-social behaviour and I see merit in what is proposed. We think that the Executive amendments offer a useful extra provision to deal with anti-social tenants. We note the concerns that have been raised. Perhaps I will address those concerns in winding up, depending on the comments members make.

We are not entirely sure of the rationale for Fiona Hyslop's amendment 191. There are inevitably some circumstances in which it does not make sense to offer a Scottish secure tenancy and those exceptional circumstances are set out in schedule 1. Similar provisions for secure tenancies were included in the 1987 act and, in fact, exceptional arrangements of that nature are well understood by all parties.

In addition, amendment 191 is technically flawed as those arrangements are not within the tenancy regime that is set out in the bill. Fiona Hyslop provides a list of tenancies that, as schedule 1 sets out, are not SSTs. Therefore, it is illogical to add them to a list of the circumstances in which an SST can be brought to an end. Amendment 191 makes very little sense, and I urge Fiona not to move it.

I move amendment 125.

Fiona Hyslop: There may be a technical issue relating to the contents of schedule 1. Part of the reason for preparing and lodging amendment 191 was to explore the Executive's rationale in schedule 1 for providing that tenants of the police and fire services, and students and others cannot have a Scottish secure tenancy. The main reason for not including such tenancies in Scottish secure tenancies relates to termination of tenancy. If the only reason why those tenancies cannot be part of the Scottish secure tenancy is the rights of the landlord to termination, would it not be better to exempt them from the restriction on the termination of tenancy in section 11 than to exempt them completely from the Scottish secure tenancy? Those tenants might well benefit from participation in the Scottish secure tenancy

On a technical issue, as we have not removed those tenancies from schedule 1, it may be difficult to pursue amendment 191, but I ask the Executive to reflect that if the only reason not to include them in the Scottish secure tenancy is the rights on restriction on termination, this may be an opportunity to expand the application of the Scottish secure tenancy to a wider number of people. However, I am happy to take guidance from the convener and the Executive on whether it is possible to do that at this stage. If it is not, I ask the Executive to reflect on the matter for stage 3, so that we can expand the number of tenants who can have access to the Scottish secure tenancy.

15:45

Robert Brown: I am grateful for the minister's undertaking. Section 11 would be improved if an appeals procedure were included. However, I have major concerns over the direction in which amendment 150 is going, and I echo the concerns that have been expressed by organisations such as the Chartered Institute of Housing in Scotland and Shelter about the effect of such orders.

There is a growing acceptance of the fact that anti-social behaviour is a significant problem that must be tackled. The traditional way of tackling it has been through management procedures in housing. Those procedures have, in large measure, been unsuccessful. We seem to be linking anti-social behaviour orders, which are in the semi-criminal field, with the management position on housing. That may produce the opposite result to that which is intended by the ministers.

When an anti-social behaviour order is being considered, the focus is primarily on the anti-social behaviour order and not on the effect that it might have on a tenancy. There are two difficulties with the proposal. First, it is a lopsided way in which to address the issue. Secondly, it raises considerable concerns over establishing a fair procedure for the people who are involved. In Shelter's opinion, it could reduce the number of ASBOs that are granted in the first place, as sheriffs might be anxious that, as a by-blow, they would blow away the secure tenancy as a result of the fast-track procedure. Therefore, there might be more appropriate ways in which to address the matter.

Another point that relates to the equity of the matter is that these measures apply to tenants of social rented housing but not to tenants of private rented housing or owner-occupiers who are subject to ASBOs. The procedure therefore discriminates between different types of householders. I do not want to over-egg the pudding, but that is not an unimportant point, and amendment 150A is designed to redress the balance slightly. I accept that there should not be a lot of bureaucracy and that the procedure should be a speedy one, but we must not lose sight of the social policy objective and throw the baby out with the bath water.

If amendment 150 is agreed to—and I am not enthusiastic for that to happen—the resident

should have a right to say, "Okay, there is an ASBO against me, but this, that or the other is my position on the matter," and secure a hearing on the matter. That would at least negate the extremes of the problems that may be created. It would not get over the original difficulty that the procedure might reduce the number of ASBOs that are granted—which is not great anyway.

People have to deal with those policy considerations. The primary point is that the anti-social behaviour of tenants is probably primarily a police matter, and not one to be dealt with by management through a procedure that has not been successful for many years. There are a number of remedies, and we make a mistake by linking together anti-social behaviour orders and the loss of secure tenancies.

Linda Fabiani: Like Robert Brown, we all recognise the huge problems of anti-social behaviour that must be dealt with. I, too, have serious concerns over amendment 150. Anti-social behaviour orders are fairly new, and the research that has been carried out into them is at an early stage. However, they were a step forward in dealing with anti-social behaviour. They defined anti-social behaviour as a social order issue rather than a housing management issue, and they affect the perpetrator rather than the entire household. When anti-social behaviour is dealt with as a housing management issue, the entire household is generally affected.

It is crucial that anti-social behaviour orders can be applied not only to tenants and social landlords, but to the private sector and owner-occupiers. Sheriffs grant anti-social behaviour orders in the knowledge that any breach of them will incur a penalty. I am concerned that, if that penalty includes the loss of a secure tenancy, sheriffs will be wary of granting anti-social behaviour orders. Sheriffs are generally reluctant to evict tenants, especially when children are involved.

I worry about whether sheriffs would grant a landlord the right to end a tenancy. As I understand the position, even if there is no breach of the anti-social behaviour order, a person who is the subject of such an order has no security of tenure. That is a crucial point. Like Robert Brown, I am worried that fewer anti-social behaviour orders will be granted and that the onus of dealing with anti-social behaviour will fall back on the housing officer, which is a backward step.

Robert Brown touched on my final concern, to which I alluded earlier. At present, anti-social behaviour orders can be served on anyone: social landlords' tenants, private tenants and owner-occupiers. However, amendment 150 proposes that only tenants in the social rented sector could lose their home, even if there is no breach of the anti-social behaviour order. That both stigmatises people and is discriminatory. I suspect that it might also breach the European convention on human rights.

Brian Adam: I think that the Executive has tried genuinely to strike a balance between concerns about anti-social behaviour and the rights of tenants. Other than the minister, members who have spoken so far believe that the Executive may have gone too far, but I do not agree with that view.

In the past, anti-social behaviour was a housing management issue rather than a public order issue. Those who were responsible for housing management used the excuse that, because so many new rights had been established in law, they were unable to act because no one would let them. The Executive has made a genuine attempt to deal with the situation, but whether that attempt is successful is another matter. I am not certain that the balance is right.

Robert Brown's amendment 150A is likely to introduce too much bureaucracy into the process. The first duty must be to people in the population at large who are tenants, while the rights of the individual must also be protected. I shall listen with great interest to the minister's comments to see whether she will convince me of the need for amendment 150.

Given that members have raised concerns, as have the external organisations that will have to apply the act, I hope that the minister will be willing to give the matter some further thought before we reach stage 3.

I do not doubt the minister's motivation, which I support. I have experience of working as an elected member of a local authority for a long time and of the frustrations brought about by the lack of any real power to deal with anti-social behaviour. However, the argument that sheriffs may choose not to issue an anti-social behaviour order, which has been advanced by those opposed to the Executive's proposal, should be borne in mind. Perhaps the way ahead would be to find a slightly different solution for stage 3.

Cathie Craigie: I will speak against Fiona Hyslop's amendment 191. Like the minister, I am concerned about the amendment and I wonder why Fiona considered it necessary to lodge it, given that people who are in tied accommodation are not covered by the Scottish secure tenancy and that there is no proposal in the bill to alter that position. The definitions in schedule 1 are fairly clear on that point.

If Fiona Hyslop is suggesting that tenants in tied accommodation should be covered by the Scottish secure tenancy that the Executive is introducing, is she then suggesting that they should have the enhanced rights that go with that tenancy,

including the right to buy? I am worried that, by extending the Scottish secure tenancy to cover those tenants, the warden's house in a sheltered housing complex or the parkie's house at the side of the park might go. I think that she has lodged amendment 191 without thinking it through.

I hope that Fiona Hyslop will not move amendment 191, and that she will accept the way in which the bill is drafted, with the present definitions in the schedules, as sufficient. Also, as we have just agreed to the relevant schedule—schedule 1—I do not know what would happen if we were now to agree to amendment 191.

Bill Aitken: On amendment 125, there is a growing and welcome recognition that anti-social behaviour is something that requires a much more robust response than heretofore. However, the response that is proposed in the amendment is not adequate. I have my own proposals in that respect. We must consider the situation with regard to anti-social behaviour orders. For example, in the city of Glasgow, only three such orders have been granted so, as yet, the experience is limited, although hardly encouraging. As Linda Fabiani suggested, at the end of the day, sheriffs are decidedly reluctant to grant evictions, particularly when young children are involved, which is understandable. However, at the same time, we must strike a balance to protect the vast majority of tenants, who are sociable and prepared to behave themselves, from the depredations of those who seek to make people's lives a misery in many of Glasgow's housing estates and elsewhere in Scotland. It does not really matter whether we take on board the question of the ASBOs because there have been so few of them and sheriffs have repeatedly demonstrated that they are inhibited about using them. I will support amendment 125, but with the caveat that we are not showing a determined enough approach to the matter.

On amendment 191, I would be interested to hear what the minister says about whether the right to buy would be included in its terms. In my view it would not be included because houses of the designation in section 11 are clearly necessary so that the temporary occupier of the house can fulfil the job that he or she is carrying out for the local authority, police force, fire brigade or whatever. If there is an appropriate exclusion elsewhere in the legislation, or if the matter is covered under some other legislation—although I cannot see where—there would be no requirement for amendment 191. I will listen carefully to what the minister has to say and, if the matter is not resolved today, to whatever proposals she has at stage 3.

Karen Whitefield: I am looking for some assurances from the Executive on amendment 150. I have been contacted by the CIHS and my local authority, both of which are experienced in the problem of anti-social behaviour. Although the local authority wants to do all that it can to address the problem, it is concerned that the link between the granting of ASBOs and short secure tenancies will be a deterrent to sheriffs. Although local authorities want to address the problem of anti-social behaviour—something that all members of the committee want, because we are faced with such problems in our surgeries every week—they do not want to do that in a way that will limit sheriffs and make them less reluctant to grant ASBOs.

As Bill Aitken rightly said, very few ASBOs have been granted in Scotland to date, so we are still waiting to see how effective they can be. I seek assurance from the Executive that those concerns are appreciated, that they will be taken on board and that those points will be made to sheriffs.

Ms White: I realise that amendments 125 and 150 attempt to address anti-social behaviour which, as Karen Whitefield said, we have debated long and hard in the committee. One of the functions of the committee was to take evidence on anti-social behaviour. The Housing (Scotland) Bill is a missed opportunity—we have not addressed properly ways in which to deal with anti-social behaviour.

Amendment 150 does not address the issue properly. It makes a stab at it and I agree that landlords should take certain responsibilities. However, it has been pointed out that, in Glasgow and throughout the country, sheriffs are just getting used to the fact that they can use ASBOs. However, to give landlords the power to put people on a short secure tenancy because an ABSO had been granted and they had or had not committed another misdemeanour would leave an awful lot of power in the hands of landlords.

We have debated the issue, and the minister has answered questions on it. Margaret Curran said that housing is not the only area in which anti-social behaviour occurs—it occurs throughout society—which means that anti-social behaviour cannot be addressed only in the Housing (Scotland) Bill. Amendment 150 is a genuine stab at alleviating people's fears about anti-social behaviour, but it is not the right one.

I will support Robert Brown's amendment 150A, because we must protect people. Amendment 150 does not reach out to folk who know, as we all do, that people who live in the private housing sector and owner-occupiers can be just as anti-social as people who live in public housing. That is why I have real fears about amendment 150—it would give too much power to landlords, who are not the right people to have that amount of power.

16:00

Ms Curran: This has been a substantial debate, and there are a number of points to which I must respond. Today's debate and the committee's previous comments reveal the complexity of the issue. I remind the committee that it said assertively to the Executive that we had to come back with other proposals on anti-social behaviour. No proposal will be perfect—I am sure that, as experienced politicians, all the committee's members grasp that—but we ask that the committee give serious consideration to our amendments on the matter. If our amendments are not right, we look forward to the committee telling us where we are going wrong, and to the amendments that its members will lodge. The lack of such amendments illustrates some of the issues that we face.

Just because the issue is complex and we cannot come up with the perfect solution for all situations does not mean that we will turn our heads away from it. We all know, as Karen Whitefield said, the serious and troublesome issues in our communities. I say to Robert Brown that it is local authorities that are asking us to move forward on the issue. In fact, amendment 125 was inspired by representations from Glasgow City Council. I ask members to take that into account when they vote on amendment 125.

I reassure Karen Whitefield that we take seriously the reservations that have been expressed about the disincentives regarding ASBOs, but we must be clear that there will be no automatic conversion: it will be for a landlord to decide whether that is appropriate. As has been said, we are trying to provide a clear deterrent. Profound anti-social behaviour is not acceptable in certain communities. We must include in every aspect of the system something that says, "We will take action where we find anti-social behaviour, because it is unacceptable."

Furthermore, landlords should provide support and assistance for tenants who have probationary tenancies, to encourage them to change the behaviour that caused problems. I understand that we will discuss presently amendments from Karen Whitefield on that matter. The amendment is not a purely punitive measure; it is meant to be about trying to solve problems, but it is also about laying down the standards of behaviour that we will not tolerate.

I ask committee members to be clear, when making a decision, that the matter is only one aspect of a wider policy. We are not for a moment suggesting that anti-social behaviour is not an issue for the criminal justice system, or that it does not take place in sectors other than housing. We are responding to people and local authorities that have made strong representations. They have told us that we must take action and agree to the amendments, because those people need desperately to tackle the serious problems that have been mentioned. If members reject the Executive amendments, that will send an unfortunate signal about the seriousness with which the Parliament treats anti-social behaviour and about our determination to deal with it.

I will address Fiona Hyslop's amendment 191 quickly. It is reasonable that persons who live in local-authority owned housing that is linked to their contract of employment should be exempt from the Scottish secure tenancy for a number of reasons. In practice, I understand that relatively few houses are reserved for the police or fire service, but in some parts of Scotland, such as remoter rural areas, such houses can be essential to the operational effectiveness of those services. Many parts of the Scottish secure tenancy—for example the provisions on succession, assignation and exchanges—would be irrelevant. If we exempted the right to buy, we would have to make special provisions.

Amendment 191 also refers to students. Where local authorities and RSLs let houses to students, it is reasonable that those students should not be tied to the terms of the Scottish secure tenancy. For example, it would make no sense to require landlords to have to go through the recovery procedures that are set out in the bill or for students to have succession rights or other rights through the Scottish secure tenancy. That is why we reject amendment 191.

Amendment 125 agreed to.

Amendment 191 not moved.

Section 11, as amended, agreed to.

After section 11

The Convener: Amendment 126, in the name of Jackie Baillie, is grouped with amendments 133, 134 and 135, which are all in her name. I ask the minister to speak to all the amendments in the group and to move amendment 126.

Ms Curran: Early on, we made a commitment to ensure that the new single tenancy would include a right to a joint tenancy, which was included in the bill. However, we recognised that we needed to look at situations in which one party wishes to leave. The issue is technically complex, which is why we have not lodged the amendments until now.

Amendment 126 provides for circumstances in which one party leaves voluntarily. The party that wishes to leave will be required to give notice to the landlord and to the other joint tenants, who will become liable for the tenancy obligations. The requirement for four weeks' notice means that the

other parties will be aware of the need to meet on-going obligations, such as rent, and it will give them an opportunity to make alternative arrangements, such as finding a new tenant.

Amendment 133 provides arrangements for landlords to end the interest of a tenant in a joint tenancy, if the tenant appears to have abandoned the tenancy. The procedures reflect existing abandonment arrangements and are couched in a way that is designed to protect the interests of all three parties—the landlord, the tenant who has abandoned the property, and the remaining tenants.

Amendment 134 will entitle an aggrieved joint tenant who has been subject to an abandonment notice to have recourse to the courts. It will entitle the courts to overturn a landlord's termination of a joint tenancy or to require the landlord to make available suitable alternative accommodation.

Amendment 135 will amend schedule 2 to apply the test of suitability—set out in that schedule—to any alternative accommodation that is provided by the landlord.

I move amendment 126.

Amendment 126 agreed to.

Section 12 agreed to.

After section 12

The Convener: Amendment 169, in the name of Robert Brown, is in a group of its own. I ask Robert Brown to speak to and move the amendment.

Robert Brown: We looked at the terms of amendment 169 previously, when we dealt with the member's bill that I introduced, the Family Homes and Homelessness (Scotland) Bill.

Amendment 169 is designed to ensure that the interests of other people who are legitimately in the household are not ignored. Although one can envisage an extraordinary number of circumstances in which such a situation might conceivably arise, I think that the situation would occur relatively rarely. For example, it sometimes happens that the parents move abroad and leave their adult children in the house. The amendment deals with people who are legitimately in the house, whose right to be there arises from their relationship with, or the permission of, the tenant. Amendment 169 does not deal with people who are squatting or who moved in after the tenants moved out. It seems inappropriate that people who are legitimately in a house can be evicted from what is practically their sole home without having the right to make their case to a court. Obviously, how those people are dealt with will depend to some extent on the nature of their relationship with the previous tenant.

If the occupants' relationship to the property is relatively remote, they will not be given too much credence once they reach court proceedings. If they are in occupation, and if it is their sole or principal home, it seems to me that it would be inappropriate and against the policy objective of preventing homelessness if we do not give them some rights. Amendment 169 makes provision for a technical device that would enable occupants to become involved in an action when eviction proceedings were raised by a registered social landlord. The amendment would enable the occupants to argue their cause before the sheriff.

I hope that the committee will give amendment 169 a fair run and, if difficulties in the detail are brought out in the debate, that the principle will be accepted. We can deal with difficulties through subsequent amendments. I cannot think immediately of any such problems, but other members will have a different perspective on the amendment.

I move amendment 169.

Linda Fabiani: The intent of the amendment is admirable, but implementation would be a nightmare. Perhaps, in his summing-up, Robert Brown will clarify whether the person who is living in the property at the time that it is repossessed should be given a new tenancy, because those people are deemed to be not guilty when a tenancy is repossessed. I foresee tremendous operational difficulties for landlords.

Ms White: Although I agree with Linda Fabiani that the intention behind the amendment is good, how would we know whether the people in the property should lawfully be there? Are they joint tenants? Are their names in the rent book? We should protect people who do not know that they are going to be thrown out into the street because their house is going to be repossessed. Perhaps Robert Brown will clarify how we would protect the landlord if people appeared in a property a couple of weeks before a repossession and said that they had been there for a number of years.

Cathie Craigie: I have sympathy for the intention behind Robert Brown's amendment, but difficulties would be created if the rights of the tenant were given away to other people. However, the mother of one of my constituents was a tenant who got into difficulties. The mother did not tell the daughter about her difficulties, although the daughter could have helped her mother by paying off her rent arrears. The problem was resolved, but if the landlord had not been so understanding, perhaps the mother's house would have been repossessed. Perhaps the wording is not quite right and I will be interested to hear the Executive's response to that.

Bill Aitken: In this instance, practicality has

been somewhat subsumed by idealism. I see the intent, but I foresee all sorts of evidential difficulties and arguments about the definition of a person who is legally occupying a property. In some respects, I can see this becoming a bit of a chancers charter. I am not attracted to amendment 169.

Karen Whitefield: I accept the admirable aims of amendment 169, but I have concerns about the definition of "lawfully occupies". Perhaps, in his summing-up, Robert Brown will explain that more fully. It would also be helpful to have the Executive's response to that concern.

16:15

Ms Curran: What Robert Brown proposes is interesting. He has a track record in trying to bring such issues forward. While this may seem like my usual mantra, we are sympathetic to amendment 169. We will think about it and lodge a re-worded amendment at stage 3. Given what Robert Brown said earlier, I hope that he will find that useful. The opinion that Cathie Craigie expressed is probably the closest to the Executive's.

Of course, the tenant or joint tenants are responsible for ensuring that the tenancy conditions are met—that is obvious—and, if necessary, for ensuring that other residents do not behave in ways that conflict with the tenancy agreement. It is, therefore, clearly right that the tenant should be a principal party in any recovery actions. I think that Robert Brown acknowledges that.

Courts also have discretion to take account of a wide range of matters in considering whether it is reasonable for a recovery to take place. The criteria that we have proposed, which will be debated in the next group of amendments, will not fetter that wide-ranging discretion. I am sure that Robert Brown and I will discuss the matter soon. Therefore, courts can at present take account of the circumstances of other residents. Nevertheless, we agree that it could be helpful in some cases to give other residents similar rights to tenants to take part in repossession proceedings in court, to ensure that their interests are taken into account. The example that Cathie Craigie gave is a case in point.

We are, therefore, happy to agree to the principle behind amendment 169, but we want to examine it in detail—some members have concerns about the detail—with a view to lodging an amendment at stage 3. For example, we need to clarify exactly what is meant by "lawfully occupies". A number of members have mentioned that—I think that Sandra White alluded to it. "Lawfully occupies" is not a particularly precise term, our lawyers tell me. In addition, we want to consider whether there is any need to amend the notice provisions that are associated with recovery proceedings. I will be interested to hear what Robert Brown says about that.

Robert Brown: I am grateful for the minister's response to amendment 169. Her response was helpful and supportive.

I will make two points. One relates to lawful occupation. It might be that the definition needs to be examined by the lawyers—I accept that entirely. On the definition of "lawfully occupies", my understanding is that "occupies" is a term of art. That means that the person concerned is the occupier—if members follow my point—as opposed to being simply there as an adjunct of some other occupier, such as the tenant.

In a situation in which the tenant has a wife and children, the wife and children would not, apart from under the Matrimonial Homes (Family Protection) (Scotland) Act 1981, have rights if the tenant was still there. However, if the tenant was away, the wife and/or children might arguably be occupying the house, for example when parents go abroad and leave adult children in their house, which I have come across in practice. That is the kind of issue that we need to discuss and get right.

My second point is that I am not suggesting in any shape or form that the person who is occupying the house should become the tenant. The meaning of the words of amendment 169 would not allow that. The person who is occupying a house will have the same rights as the tenant in any proceedings for repossession. In such proceedings, the court must give an opinion on whether the rent has been paid, on whether it is reasonable to evict or on whatever else it is that has led to the repossession proceedings.

There are two separate issues: the right to enter the proceedings and argue one's case and the criteria that should be applied when one argues that case.

With that clarification, and with my thanks to the minister for hers, I seek to withdraw amendment 169.

Amendment 169, by agreement, withdrawn.

Section 13—Powers of court in possession proceedings

The Convener: I call Robert Brown to speak to and move amendment 170, which is grouped with amendments 171, 172, 127, 128, 173, 192 and 218.

Robert Brown: I ask members to pay careful attention, because the argument will get complicated. I hope that I can follow it myself.

This group of amendments relates to the eviction arrangements under the Scottish secure

tenancy. The amendments reflect discussions that the committee has had about my member's bill, the Family Homes and Homelessness (Scotland) Bill.

A number of themes emerge in the group. I ask the committee to refer to schedule 2 to the bill and, in particular, part 1 of that schedule. I am primarily interested in rent not having been paid as a ground for eviction, although the schedule also goes into conduct-related grounds for eviction.

I am trying to do a number of things with amendments 170, 171, 172, 173 and 192. First, I am trying to change the onus of proof. That is what amendments 170 and 172 are about. At the moment, it is up to a person who is resisting possession proceedings to establish to the court that it is reasonable for them not to be evicted. I am seeking, in the spirit of not evicting people unnecessarily, to put the onus of proof on the evictor or social landlord to satisfy the court that cases are appropriate for eviction. That does not have as much of an implication as members might think; it means that landlords cannot simply come forward and say that a case is an appropriate one for eviction and that they must make a case with which the sheriff is satisfied. That is appropriate only when the obligation to deal with the results of evictions is, in effect, being put on the public purse—to say nothing of individuals' inconvenience and upset. Those would be the effects of amendments 170 and 171.

Amendments 172 and 173 deal with circumstances. We had a lengthy, but not very illuminating, debate at stage 1 of the two members' bills—the Family Homes and Homelessness (Scotland) Bill and the Mortgage Rights (Scotland) Bill—on whether there was to be a general discretion or a list of circumstances. That argument has moved on: when we discuss amendments to the bill, they are about general circumstances and specific examples in the context of those circumstances, to which the court must have regard.

My argument is that the court should consider three particular factors, among others. First, the court should consider the personal and financial circumstances of the tenant and the household. Those circumstances include the person's income, how they have landed in their problem and everything that surrounds their immediate difficulty, which will most often be rent arrears.

Secondly, the court should consider the effect of repossession orders. Those orders do not always lead to people becoming homeless, because there is sometimes an alternative. The alternative arrangements are relevant, even if they do not always provide conclusive answers.

Thirdly—I think most important—the courts' attention should be directed to the whole issue of housing and money advice. I must have said this a number of times, but I return to the evidence that we received from people in the organisations that know best, such as the Edinburgh sheriff court in-house project. We received similar information from Glasgow. All those representatives indicated that they are able to sort out a majority of the people who come to court and with whom they deal, who have run into financial problems with rent payments or whatever. They are able to get them back on track. If that can be done with the majority of people at that late stage—when they go to court—it is a big prize that is well worth going for. I hope that the committee will be sympathetic to the idea that the courts should be a bit more proactive than they sometimes are in that regard.

It might be that—human nature being what it is—sheriffs are not minded to allow eviction proceedings in cases in which they do not have to. I am bound to say that the matter contains an element of variation, and that issues of shrieval training also come into it. The public interest is in keeping people in their houses when problems can be managed, because to do so is far better and cheaper than heaving them out, with all the consequences that that has.

On amendment 192, I am conscious that different considerations might apply to what I describe as the conduct grounds for repossession—anti-social acts of one sort or another. I think that it is appropriate to strengthen the pointer that goes to the court regarding the effects of anti-social behaviour on other people in a vicinity.

I am sorry to have gone on at such length, but I think that we have been dealing with important and significant issues, and I would move the group of amendments that I have lodged in my name.

The Convener: No, you will not—you will move the first one in the group, which is amendment 170.

Robert Brown: Sorry about that, convener—I am a bad learner.

I move amendment 170.

The Convener: You did not go on for too long—you were speaking to a substantial group of amendments.

Ms Curran: I will explain the Executive's approach, in lodging amendment 127, to setting out the criteria that courts must take into account when considering reasonableness in repossession cases and how that differs from the approach adopted by Brian Adam and Robert Brown. I will do my best not to go on too long, but there is a bit of work involved in outlining this.

We have taken on board the broad argument that specified statutory criteria would help to achieve greater consistency in the decisions that courts make in repossession cases on the ground of conduct. Everyone agrees about that. We have also worked hard to produce criteria that are fair to all parties. We are determined that the criteria should not allow tenants to break the terms of tenancy conditions and escape the consequences of their actions. Robert Brown will not be surprised to learn that I have some doubts about his amendments on those grounds.

Amendment 127 will require the courts to take account of specified factors in considering the reasonableness of recovery action. Courts will be able to consider any other factors that they think are relevant and will also need to be persuaded that there are valid grounds for recovery. The four criteria in our amendment will require the court to consider first the nature, frequency and duration of the offending behaviour—how serious the behaviour has been. The court will also be required to consider how much the tenant was responsible for the behaviour—whether he or she was an innocent third party, for example if rent arrears resulted from a delay in processing a housing benefit claim. The court will be required to consider the extent to which the behaviour has an effect on others, including the wider community or public interest. That would be relevant in anti-social behaviour cases. The court will also be required to consider the steps that the landlord took to tackle the problem before initiating repossession action. Repossession action should be a last resort and the court would want to consider whether other courses of action had been tried.

Brian Adam's alternative in amendment 128 is based on proposals that Shelter made. Although it is on the same lines, I hope that Brian Adam recognises that it is not as fully developed as our proposals—I make that comment without prejudice. Shelter saw our suggestions in draft and, at that stage, it was content with them.

I appreciate that the criteria that Robert Brown proposes in amendment 173 would encourage the courts to intervene to prevent evictions. That is a laudable and honourable objective, but courts can sist proceedings if they want to give the tenant more time to pay arrears or to obtain advice, as Robert Brown suggests. As I have said to Robert Brown before, I have several concerns about his proposal. Despite the addition of a reference to the desirability of protecting persons in the area in anti-social behaviour cases, I fear that Robert Brown's requirement to take account of personal and financial circumstances and the possibility of homelessness for the tenant and others in the household could make it difficult in practice for courts ever to grant eviction orders. I am worried about the requirement to be satisfied that the tenant has had the opportunity to obtain money and legal advice. What happens if the tenant does not bother to seek that advice? His proposals would create several opportunities for people to exploit the provisions unfairly.

Therefore—surprise, surprise—I ask Brian Adam not to move amendment 128 and I ask Robert Brown not to move amendment 173. [*Interruption.*] I note that that is a great shock to Brian.

I will speak broadly about the other amendments. Amendments 170 to 172 would make relatively minor changes to section 13, which is based on the 1987 act. If those amendments are more than drafting amendments, they would seem to be designed to make it more difficult for courts to evict. We see no reason why a change is required, as the existing wording is fair to both parties and is well understood.

Amendment 218 concerns a different matter—the duty on landlords to provide alternative accommodation in management repossession cases, such as when a house is to be demolished or when a house is overcrowded. It is important that alternative accommodation is provided and is suitable to the needs of the tenant and their family. The bill includes the long-standing suitability tests, on which we have had no representations. The criteria to which courts must have regard are wide—they concern not just the house, but the location in relation to work and schooling. Amendment 218 is more subjective, as it refers to the locality's character. Given that proximity to employment and schools is taken into account, I am not sure what Tommy Sheridan has in mind. Perhaps it is some form of assessment of social status or respectability. We would have considerable doubts about that. In practice, it would be virtually impossible for the courts to apply such criteria. I therefore ask Tommy Sheridan to withdraw amendment 218.

The Convener: You are, of course, asking Robert Brown to withdraw amendment 170 and asking Brian Adam and Tommy Sheridan not to move their amendments.

Ms Curran: I am terribly sorry that I got that wrong, convener.

The Convener: I was just clarifying what you said.

16:30

Brian Adam: During the progress of the bill, members of the Executive parties have called on Opposition members to withdraw their amendments. That is part and parcel of politics and stems from the idea, "We aye get it right and you aye get it wrang." On this occasion, I

recognise that the Executive has got it right and that amendment 127 is better than my amendment 128. However, I would like the opportunity to speak to the other amendments.

The minister's response to amendment 218 was a little harsh, as what the amendment seeks to achieve is quite reasonable, in as much as we can ever define what is reasonable. The locality in which accommodation is offered is an important element in making a choice. As far as I am aware, many local authorities have regard to that when there is a management transfer. I was not persuaded by the minister's argument and I support amendment 218.

I have considerable concerns about the detail of Robert Brown's amendments, particularly amendment 173, which appears to open the door to all sorts of legal challenges. Of course, that might reflect Robert Brown's professional background—I do not mean that unkindly. I am not convinced that making the legislation as specific as amendment 173 would make it would help. A lot of lawyers would get a lot of legal aid money, but not a lot would happen with regard to the management of properties. It is difficult to strike a balance between ensuring that people are properly accommodated and protecting the rights of the landlord. Robert Brown's amendments are rather unfair, although I am sure that the motivation behind them is not.

The Convener: To clarify, the minister will be called to speak again and Robert Brown will wind up.

Tommy Sheridan: The purpose of amendment 218 is to provide for recognition of the character of a locality rather than just the character of the accommodation. If a tenant has been offered a similar-sized home in a different area, that deserves to be recognised. If a landlord acts wrongly to gain possession of a home, the tenant has a right to be rehoused. However, if the house has been let to someone else, it will be unavailable. The very least that the tenant deserves is for the character of the area in which their new house will be to be taken into account.

I am surprised that the minister wondered whether amendment 218 was necessary. The fact that the Executive is talking about introducing a section to deal with pressured areas shows that it recognises that the character of an area must be considered in relation to social housing. As the convener will know, there are parts of Glasgow that are in much greater demand than other parts of the city. A four-roomed apartment in one area is not the same as one in another area even though, sometimes, the areas are close enough to each other to mean that children would not have to change school.

Linda Fabiani: I would have thought that good landlords would take into account many of the things referred to in amendment 173. When I speak on behalf of housing associations, I do so not because I am saying that the same good practices do not exist in local authorities, but because I have never worked in a local authority. Any landlord worth his salt should be considering all those circumstances and ensuring that the person gets good advice. Part of that advice should be on having a defence when the matter goes to court. It would be up to the defence to make statements about outstanding housing benefit claims and so on. When the regulator of RSLs comes into being, it should lay down guidance to ensure that RSLs implement the appropriate checks and balances and that a person is represented before they go to court and when they are in court.

Bill Aitken: I can see the motivation behind amendments 170, 171, 172, 173 and 192—Robert Brown seeks to minimise the number of people who are evicted from their properties, which is worthy and worth while—but the practicalities are important too. On some occasions in life one can take the horses to the water, but they just do not seem to want to drink. It is likely that a tremendous amount of cost and bureaucracy would be occasioned in respect of Robert Brown's proposals. On balance, I am not convinced that the amendments are a satisfactory way forward and I will not be able to support them.

I am intrigued by amendment 218, which contains a degree of sense. As Tommy Sheridan made clear, housing areas are not all the same. If someone loses a house that they should not have lost and requires to be rehoused, there would be a degree of equity in the new house being in a comparable area. I will be interested to hear the Executive's views on the amendment.

Karen Whitefield: I have some concerns about amendment 173. I do not believe that any member would want someone to be evicted or to have their home repossessed needlessly, but occasionally eviction will be necessary. The criteria that Robert Brown seeks to include—to take account of personal and financial circumstances along with the possibility of homelessness for both the tenant and anyone else living in the property—would mean that it was almost impossible to evict someone. For that reason, amendment 173 would be unhelpful and unworkable.

Ms Curran: I will not reiterate what I said. I listened carefully to Brian Adam and Tommy Sheridan and I understand where they are coming from. However, we have made appropriate provisions in the bill to deal with the issues that Tommy Sheridan flags up—the wider issues such as schools and employment. The bill mentions

considering proximity to members of the tenant's family. Amendment 218 opens doors that we would rather not have open; it would make the consideration too broad.

Robert Brown: I thank colleagues for their comments on my amendments. It has been an interesting debate and several valid points have been made. I would like to address one or two issues.

I accept Linda Fabiani's point that good landlords should not get into a position where the issues have not been addressed before the matter goes to court, but the regrettable fact is that that does sometimes happen, perhaps through inadvertence or procedures breaking down. I go back to the experience of the in-house projects, which suggests that such cases are salvageable—the committee has heard evidence to that effect. No one has dealt with how to add to the number of cases that can be salvaged.

Bill Aitken made a point about the cost of bureaucracy. The amendments would not add any bureaucratic cost to the procedure; they simply elaborate the grounds that the sheriff must take into account when a repossession procedure comes to court. That does not add any bureaucracy. It may take a wee bit longer to argue before the sheriff, but that is another issue.

I say to Brian Adam that the issue is not simply the rights of landlords and tenants. It is about the rights and interests of tenants, but, given that we are considering social landlords, the issue in fact relates to social policy. In other words, we have to consider what we are trying to achieve.

The point about the regulator was valid.

Underlying this debate is a slight problem about the distinction between rental evictions and other sorts of evictions. The committee, rightly, has been concerned with anti-social behaviour, on which we all receive a lot of pressure. Most evictions are rental evictions. I am aware that some rental evictions hide anti-social evictions and that concerns me. We should try to separate the two sorts of evictions and apply the proper criteria to them.

I want to talk about amendment 127. I hope that the minister will not be unduly offended if I say that it is a gobbledegook amendment, largely because of the civil service wording. The amendment is badly worded, partly because of what it says about the ground for recovery of possession being largely to do with rent or, if it is not to do with rent, with breach of contract. That has nothing to do with behaviour or conduct; it has to do with a contractual issue. There is therefore a fundamental misunderstanding of what the different grounds for repossession in schedule 2 mean.

The Scottish Executive—having fought tooth and nail in the committee to argue that talking about circumstances was a waste of time and fettered the discretion of the sheriff—has now, with amendment 127, introduced half a page of circumstances. Those circumstances are not all that well expressed and relate to conduct. The amendment talks about major issues, such as the way in which we judge the effect of conduct on persons other than the tenant and how we deal with the question of things that have happened previously. A series of issues arise from those considerations.

It will be no surprise to the minister to hear that I will pursue amendment 170. I am satisfied that a number of the issues that arise from amendment 173 are well worth debating. That does not alter the fact that rental eviction cases must be central to our considerations. We must consider the background circumstances, how the situation got where it did and the possibility of sorting out the problem.

I expect that amendment 127 will go through—I can see the writing on the wall. Nevertheless, I hope that the minister will consider the matter further before stage 3. Issues must be addressed if we are to deal with the courts' dreadful non-success in handling such matters.

I know that I have gone on a bit, convener, but I feel strongly about this. I reiterate my movement of amendment 170.

The Convener: I take that as meaning that you are pressing your amendment.

Robert Brown: Pressing, yes—that is the word.

The Convener: The question is, that amendment 170 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Brown, Robert (Glasgow) (LD)

AGAINST

Adam, Brian (North-East Scotland) (SNP)
Aitken, Bill (Glasgow) (Con)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
White, Ms Sandra (Glasgow) (SNP)
Whitefield, Karen (Airdrie and Shotts) (Lab)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 170 disagreed to.

Amendment 171 moved—[Robert Brown].

The Convener: The question is, that amendment 171 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Brown, Robert (Glasgow) (LD)

AGAINST

Adam, Brian (North-East Scotland) (SNP)
Aitken, Bill (Glasgow) (Con)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
White, Ms Sandra (Glasgow) (SNP)
Whitefield, Karen (Airdrie and Shotts) (Lab)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 171 disagreed to.

Amendment 172 moved—[Robert Brown].

The Convener: The question is, that amendment 172 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Brown, Robert (Glasgow) (LD)

AGAINST

Adam, Brian (North-East Scotland) (SNP)
Aitken, Bill (Glasgow) (Con)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
White, Ms Sandra (Glasgow) (SNP)
Whitefield, Karen (Airdrie and Shotts) (Lab)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 172 disagreed to.

Amendment 127 moved—[Ms Margaret Curran].

The Convener: The question is, that amendment 127 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Adam, Brian (North-East Scotland) (SNP)
Aitken, Bill (Glasgow) (Con)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
White, Ms Sandra (Glasgow) (SNP)
Whitefield, Karen (Airdrie and Shotts) (Lab)

AGAINST

Brown, Robert (Glasgow) (LD)

The Convener: The result of the division is: For 6, Against 1, Abstentions 0.

Amendment 127 agreed to.

Amendment 128 not moved.

The Convener: I ask Robert Brown to move or not move amendment 173.

Robert Brown: I will not move it, simply because of the outcome of the previous divisions.

Amendment 173 not moved.

The Convener: I ask Robert Brown to move or not move amendment 192.

Robert Brown: I hesitate, but I will not move it in the light of what happened to the others.

Amendment 192 not moved.

16:45

The Convener: Amendment 215 is grouped with amendment 219.

Tommy Sheridan: Amendments 215 and 219 are quite technical and legalistic, but they have an important purpose, as they could prevent up to 20,000 needless evictions a year. Therefore, I hope that the committee will bear with me as I explain the purpose behind the amendments.

Amendments 215 and 219 seek to consolidate the current legal position on the recall of decrees in eviction cases in Scotland. It is important to appreciate that the amendments would not in any way alter the current procedure for the recall of eviction decrees in the sheriff court. That procedure has been developed and interpreted through case law and it is right and proper that it should now be set out in primary legislation.

In essence, amendment 215 takes on board the core elements of the procedure that can be found in paragraph 9 of rule 18 of the summary cause rules. The amendment makes it clear that, where no defence was previously stated, the application for recall, which can take place only once, can occur up until physical ejection. That is important, because the summary cause rules do not say as much, although in practice in the sheriff courts, sheriffs usually allow the recall of eviction orders to take place up until ejection. However, many sheriffs have interpreted the rules differently. We are now trying to have the procedure stated in the bill. Amendment 215 would put it beyond any doubt that it is the right of any tenant who faces eviction to have a right of recall heard up until the eviction physically takes place.

The reason for lodging amendment 215 now is that I have been informed that the Sheriff Court Rules Council is considering the rules that are applicable in the sheriff court and may be considering imposing a 14-day limit on recall once decree is granted. The effect of that would be that, once a decree is granted, if the affected tenant does not seek recall, they will lose the right of recall at any stage of the eviction process.

In the experience of all the housing organisations, law centres and debt advice agencies, after a decree is granted, the individual tenant will usually seek legal advice only when the

sheriff officers have delivered 48 hours' notice of eviction. The effect of a change in the sheriff court rules would be that, unless the tenant had sought advice and recall within 14 days, they would not be able to seek recall thereafter, even if they sought assistance within 48 hours of sheriff officers delivering the notice of eviction.

Amendment 215 seeks to consolidate and improve the position of tenants who are facing notice of eviction. It consolidates best practice. In view of what the Sheriff Court Rules Council is doing now, it is important that that is flagged up and included in the bill. If, in responding, the Executive gives assurances that there will be no rule changes and that anyone who is threatened with eviction will continue to have the right to raise a recall action right up to the last minute before eviction, I will be happy. My worry is that changes are under way that could threaten that right.

I move amendment 215.

Robert Brown: I have considerable sympathy with the objective of amendment 215 and would appreciate some response from the minister on its detail. However, I am not entirely convinced that the amendment would do what Tommy Sheridan alleges it would. As I understand it, in such proceedings, a summons is issued and people either go to court or do not go to court. If they do not go to court, a decree in absence is granted.

I think that proposed subsection (6)(b) of amendment 215 does not express the matter correctly, because the court will not have looked at the matter one way or the other and, in any event, does not have to be satisfied about anything in terms of the phraseology of the principal section. I am, therefore, not sure whether the subsection would apply.

The tenant has not come to grips with the issue, if you like, and, apart from the fact of the non-appearance—which I think is deemed to be an admission, thus allowing the decree in absence to pass—I do not think that there has been any form of an admission, sufficient or otherwise, in that context. I have a little qualm about that, but I agree entirely that there should be the possibility for a tenant to come back at the late stage. Regardless of the technicalities, that is the central point.

An ostrich syndrome can materialise in such proceedings, but only a small number of people appear in court. There must be an effective opportunity for the tenant to come back, if need be, when stimulated by the last stage procedure. I hope that the minister will respond on that.

Ms Curran: In proceedings that may lead to the loss of tenants' homes, it is right that tenants' rights are sufficiently defended. If the tenant has not been able to be present during the court proceedings, or to be represented, it is only fair that the tenant should be able to ask the court to recall proceedings.

I am not sure why Tommy Sheridan feels that a further right of recall is necessary. The procedure for the recall of a decree is set out in the relevant rules of court. In particular, I understand that rule 19 of the summary cause rules provides that, if a defender does not appear or is not represented, and has not stated a defence, he may apply for recall of decree within 14 days. Amendment 215 is therefore not necessary.

Amendment 219 would insert a prescribed form for recall of decree. The prescription of forms for use in court procedure is also a matter for the court to regulate by act of sederunt. A form is already prescribed, so amendment 219 is also unnecessary.

I accept that amendment 215 refers to:

"any time prior to full implementation of the order"

and that that goes further than the current provision of 14 days. The critical point is that it would be unreasonable for tenants simply to sit back and do nothing until the 11th hour and then to demand and get a recall. To be fair to both parties, some specified time period is required and 14 days seems a reasonable period for what is, in effect, a safety net.

The time scale can be changed without legislation if there is clear evidence that there is a widespread problem. If Tommy Sheridan has evidence of significant problems, we would be happy to share that evidence with colleagues in the Executive who have responsibility for court procedures so that they may pursue the matter.

The Convener: I invite Tommy Sheridan to wind up and indicate whether he intends to press amendment 215.

Tommy Sheridan: I intend to press the amendment.

The minister referred to the key element—the current rules in the sheriff court. My understanding is that there is a move to change those rules; that is why I lodged the amendment. If the Executive assures us that those rules will not be changed, the amendment would not be required.

The difficulty is that a tenant has only one right of recall. The minister is absolutely right that currently, once a decree is granted, the tenant can use the right of recall right up until the 48 hours' notice from the sheriff officer before eviction. The potential change to the sheriff court rules would appear to be that, once the decree is granted, the tenant would have only 14 days.

Around 20,000 eviction notices are dealt with in the courts in Scotland every year and Robert Brown is absolutely right that, in many of those

cases, the tenant is not in court or is not represented and the action is not defended. Tenants tend to have an ostrich-type approach—the result of all sorts of problems and debts—and respond only when the eviction is upon them. If, when that happens, the tenant no longer has the right to recall the decree, the result will be an increased number of evictions across Scotland. I am sure that the Executive and the committee want to avoid that happening.

If the Executive is willing to give an assurance that the sheriff court rules will not be changed so that the recall of decree has to be moved within 14 days of the decree being granted, that is great. However, the information that I have—from the Scottish sheriff court users group and others—is that the sheriff court rules are under review right now. The change to those rules that I have described would be dangerous. That is why I am asking the committee to provide an extra line of defence for tenants.

The Convener: I am interrupting Tommy Sheridan to let him know that the minister has sought to make an intervention, after which I will allow him to complete his winding-up. He can then decide whether to press amendment 215.

Ms Curran: I thank Tommy Sheridan for allowing me to intervene. He will appreciate that the provisions that are covered by his amendment are not in our portfolio and that it is quite difficult to give him assurances about matters that are not my responsibility. Anything that I say is covered by that caveat.

My understanding is that the intention is to retain the existing 14-day period within which an application for recall of decree may be made. I am happy to take on the representations that Tommy Sheridan is making to ministers today and to return to the committee with a more detailed response to some of the issues that he has flagged up. I hesitate to give him assurances. I cannot do so, as the provisions are not within my portfolio, but I am happy to pursue the issue.

The Convener: My understanding is that Tommy Sheridan must decide, on the basis of what the minister has said, whether he wishes to press amendment 215. The only stage at which the minister could bring clarification back to the committee would be at stage 3.

Tommy Sheridan: The issue is not whether the 14-day period for recall of decree is retained, but whether the tenant will have the right to recall. That is an important distinction as, if the decree is recalled once, it cannot be recalled again. Will tenants retain that right up until the physical eviction, or will the new procedure mean that once the decree is granted—often that happens months in advance of the physical eviction—the right of recall can be lodged only 14 days after the grant of decree? That would leave a lot of tenants open to the risk of physical eviction, without a defence that they have at present. The practice now is that, despite the fact that the decree was granted three months ago, the individual tenant can raise a right of recall 24 hours before the actual eviction.

Given all that, including the minister's point about her portfolio and the potential complication, the situation may be clearer once the Executive has had a chance to consult the Sheriff Court Rules Council on its suggestions and the review that is under way. The minister has given me an assurance that the Executive will revisit the matter and, on that basis, I will not press amendment 215. I would rather lodge an amendment later, if we find that there are to be changes in the sheriff court rules, and ask the committee if it would be willing to support that amendment to get the necessary protection for our tenants.

Amendment 215, by agreement, withdrawn.

Section 13, as amended, agreed to.

Section 14—Abandoned tenancies

The Convener: Amendment 129 is grouped with amendments 216, 130 and 217. I call Brian Adam to move amendment 129 and to speak to amendment 130.

Brian Adam: Amendment 129 is fairly simple. The intention is to include the same phrase as appears elsewhere in the bill to ensure that the provision applies to the "only or principal" residence. I do not want to pursue that any further. It is just a tidying-up exercise.

I move amendment 129.

17:00

Tommy Sheridan: Amendments 216 and 217 are much simpler than amendment 215. They would insert "reasonably" in section 15(1)(c) and section 15(2)(a)(ii). The purpose is to ensure that the landlord acts reasonably. The abandonment procedure is very powerful. It means that a house can be repossessed without the need to go to court and establish a ground for recovery. No one disagrees that a landlord should act reasonably in carrying out the procedure.

As section 15 is currently drafted, it would allow a landlord absolute discretion. That should be tempered by a requirement to act reasonably, which is a commonly used term in public law and would mean that the landlord would have to have reasonable grounds for believing that the tenant did not intend to occupy the property. The landlord's apprehension would have to be linked to some objective standard, which is a common requirement in public law.

I said that one of my earlier amendments was uncontentious, but saying that again might prove incorrect.

Linda Fabiani: Inserting "only or principal", which is what amendment 129 proposes, is more than simply tidying up. The definition of someone's principal home is important. There are people who, for good reason, will be away from their home for some time. I am thinking of people who have to work overseas for three months or who go to college. There are many reasons why people might have to have a temporary home while maintaining their principal home. The amendment is necessary to tidy that up and to ensure that it is not up to a landlord to decide whether someone having a short assured tenancy for the purposes of study or something like that is valid.

There is often healthy disagreement among the SNP and Brian Adam will not be surprised to hear that I disagree with amendment 130.

Brian Adam: You can disagree, but you havenae got a vote.

Linda Fabiani: Right. I havenae got a vote.

We should not be prescriptive about where the inquiry should be made. That would open up problems with management and dealing with individual cases.

Amendments 216 and 217 seem "reasonable".

Karen Whitefield: I share Linda Fabiani's concerns about amendment 130, which would place unnecessary and unhelpful burdens on the landlord.

I understand what Tommy Sheridan is trying to do in amendments 216 and 217 by adding the reference to act "reasonably", but I am not sure that that is necessary. Landlords already have to have reasonable grounds for pursuing action to evict a tenant and they must provide evidence that the house is no longer being lived in. For that reason, I am not sure what the amendments add. If the tenant is concerned that the landlord is going to repossess, they have the right to take legal action and go to court. Although I understand what Tommy Sheridan is trying to do, that provision already exists.

Ms Curran: It is possible that, through amendment 129, Brian Adam is responding to a concern that was expressed by the SFHA by proposing to allow the use of the recovery procedures that are linked to abandonment if the house is not the tenant's only or principal home. We initially thought that there was some merit in that course, but on further consideration we decided that as a house is genuinely abandoned only if nobody is living in it, it would be wrong to use the special and less burdensome procedures for recovery in other, rather different, circumstances.

If someone has a Scottish secure tenancy that is not their only or principal home, there is a clear route to recovery without recourse to abandonment procedure, as the tenant has broken a basic condition of the tenancy. Normal recovery procedures under the bill are, therefore, the way to solve the problem, and provide the most appropriate level of protection for the tenant concerned.

We therefore ask Brian Adam not to press amendment 129.

Was that the right phrase, convener?

The Convener: Well done!

Ms Curran: Oh my God!

Amendments 216, 217 and 130 are prompted by similar concerns but they approach the matter in different ways. We share the concerns—it is essential that landlords make proper and full inquiries—but we are not persuaded that, as has been argued, further amendments are required.

In the case of amendments 216 and 217, I do not think that adding two references to reasonableness adds much to the existing provisions, which already require landlords to have reasonable grounds for believing that the house is unoccupied, to serve notices on the tenant and to make such inquiries as is necessary. The tenant also has recourse to the courts if they are aggrieved by the action of the landlord and we have strengthened the remedies that the courts can apply.

Amendment 130 sets out in detail the type of inquiries that landlords should make, but it is important that the bill is not over-prescriptive. The amendment could place unnecessary burdens on the landlord, particularly when one inquiry is sufficient to establish the tenant's intentions for the property. Again, tenants have recourse to the courts, which will be able to assess whether the landlord has made satisfactory inquiries in the circumstances of the case.

I therefore ask Brian Adam to withdraw amendment 129 and not to press amendment 130 and I ask Tommy Sheridan not to press amendments 216 and 217. The amendments concern matters that are best dealt with in guidance.

Brian Adam: I have been asked to withdraw amendment 129, but I will press it.

I understand what Tommy Sheridan is trying to get at with his use of "reasonably" in amendments 216 and 217, but I am not convinced that it is helpful in this case. I will oppose amendments 216 and 217.

The intention of amendment 130 was to give an idea of the kind of inquiries that could or should be made, but I presume that many of them will appear in the guidance. I will accept the minister's assurance to that effect.

I will not press amendment 130, but I press amendment 129.

The Convener: The question is, that amendment 129 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

FOR

Adam, Brian (North-East Scotland) (SNP)
Aitken, Bill (Glasgow) (Con)
White, Ms Sandra (Glasgow) (SNP)

AGAINST

Brown, Robert (Glasgow) (LD)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Whitefield, Karen (Airdrie and Shotts) (Lab)

The Convener: The result of the division is: For 3, Against 4, Abstentions 0.

Amendment 129 disagreed to.

Section 14 agreed to.

Section 15—Repossession

The Convener: I ask Tommy Sheridan to move or not move amendment 216, which has already been debated with amendment 129.

Tommy Sheridan: The minister referred to landlords acting reasonably; "reasonably" does not appear in section 15. If it did, it would give grounds for legal action if the landlord appeared not to have acted reasonably, but if it is not it cannot give such grounds.

I move amendment 216.

The Convener: The question is, that amendment 216 be agreed to. Are we agreed?

Members: No.

The Convener: There will be division.

FOR

Aitken, Bill (Glasgow) (Con)
White, Ms Sandra (Glasgow) (SNP)

AGAINST

Adam, Brian (North-East Scotland) (SNP)
Brown, Robert (Glasgow) (LD)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Whitefield, Karen (Airdrie and Shotts) (Lab)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 216 disagreed to.

Amendment 130 not moved.

The Convener: I ask Tommy Sheridan to move or not move amendment 217.

Tommy Sheridan: Given the result of the previous division, I will not move it.

Amendment 217 not moved.

Section 15 agreed to.

Section 16—Tenant's recourse to court

Ms Curran: Amendments 131 and 132 are technical amendments. When a tenant abandons a tenancy, it is right that the landlord should be able to recover the property, but the tenant should also be able to challenge the actions of the landlord in court if he or she thinks that the recovery is not justified. The bill provides for that in section 16. The amendments seek to clarify and expand the options that are available to the courts if they conclude that the circumstances did not justify the landlord's using the abandonment procedure to recover the property.

Amendment 131 is straightforward. It allows the courts to issue a declarator, which would make null and void the notice of abandonment. Amendment 132 would confer a new general power on the courts in such cases to make further orders as they think appropriate in the particular circumstances of the case. That might include, for example, requiring the landlord to pay compensation to meet the removal or other expenses of the tenant, in addition to providing alternative accommodation in line with the existing provisions of section 16.

I move amendment 131.

Robert Brown: I am not entirely clear about the purpose of amendment 132. Although it gives a general power, which is quite common in these sorts of matter, I am not clear what other forms of order could be made. Either the thing is reinstated or it is not. What else is there to say?

Ms Curran: As I said, the purpose of the order is to ensure that other matters, such as compensation, are considered.

Amendment 131 agreed to.

Amendment 132 moved—[Ms Margaret Curran]—and agreed to.

The Convener: We have come to the end of section 16 and no one has indicated that they want to contribute further to the debate.

The question is, that section 16 be agreed. Are we agreed?

Tommy Sheridan: I may be wrong, but we have come to the end of section 16 and we have not had a vote on amendment 218. Or have we? We

have discussed it, but I cannot find it on my marshalled list.

Lee Bridges (Clerk): Amendment 218 relates to schedule 2.

Section 16, as amended, agreed to.

The Convener: Given how well you have all done, I intend to close the meeting now and reconvene in the morning, if the committee agrees.

Members *indicated agreement.*

The Convener: Thank you all for your co-operation today. I look forward to seeing you in the morning.

Meeting closed at 17:13.

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