SOCIAL JUSTICE COMMITTEE

Friday 11 May 2001
(*Morning*)

Session 1

£5.00

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by The Stationery Office Ltd.

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SOCIAL JUSTICE COMMITTEE
17th 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)

CLERK TO THE COMMITTEE

Lee Bridges

SENIOR ASSISTANT CLERK

Mary Dinsdale

ASSISTANT CLERK

Rodger Evans

LOCATION

Committee Room 1

Scottish Parliament

Social Justice Committee

Friday 11 May 2001

(*Morning*)

[THE CONVENER *opened the meeting at 09:32*]

Housing (Scotland) Bill: Stage 2

The Convener (Johann Lamont): I welcome everybody to this meeting of the Social Justice Committee. Despite the fact that this is a Friday, there is a full turnout. I am glad that everybody is here and I hope that we have another productive meeting.

I would like to record in the *Official Report* that I was disappointed that Fiona Hyslop chose to raise the point of order that she did in the chamber on Wednesday afternoon. My disappointment is not in particular about the content of the point of order—although we can debate that—but that the matter was not raised with me or the clerks. I have spoken to Brian Adam and I understand that the matter was not raised with him. Fiona Hyslop did not therefore speak on behalf of members of the committee, who had, in fact, agreed a timetable for the handling of stage 2.

The committee is meeting often. We could meet slightly less often and be more constrained in our debates. It will be acknowledged that there was no constraint on anyone who wanted to contribute at our previous meeting. Perhaps twice during the whole of stage 2, I have not noticed members. That has been entirely by accident. It is important that matters are thoroughly debated and I think that we have done so.

In meeting regularly, we try to ensure that, while we get through the bill in the time that was given to us, we nevertheless afford ourselves the opportunity to consider issues in detail. I am still very conscious of the pressure that is put on clerks in particular to deal with amendments and marshalled lists. In order to facilitate the work of the clerks, I appeal to members again to think carefully about when they lodge amendments.

Brian Adam (North-East Scotland) (SNP): Further to Fiona Hyslop's point of order, I have concerns about receiving two major Executive amendments quite late. One amendment concerns the Insolvency Act 1986 and the other concerns the fuel poverty proposals. I am not critical in any way of the Executive for the late lodging of the amendments; however, it has not given us much opportunity to consider them. I would like to have had the opportunity to review them and lodge amendments.

Could we put those amendments at the end of the order of consideration and deal with them on Wednesday next week? We will have considered the proposals by then and amendments could be lodged.

The Convener: I want to clarify that the amendments were not lodged late. If they were, they would not have been accepted. They were lodged within the time scales that were laid down by the committee.

It is not within our powers to reorganise amendments. Amendments must be dealt with in the order of the bill and of the marshalled list. We will have to deal with those amendments if we reach them on Tuesday. We cannot put them to one side and come back to them. That constraint is placed on the committee as the procedure for handling the bill.

Your comments can be noted and I am sure that the Executive will note them, too. However, I emphasise that the amendments were not late. If they had been, the clerks would not have accepted them.

Ms Sandra White (Glasgow) (SNP): Twice at the other meetings, I raised the matter of the time scale. I hope that the convener takes this in the spirit in which it is meant—I am not reiterating what Brian Adam said about the amendments. We know that the amendments were not lodged late, but I want to raise a point about the tightness of the time scale for the Executive and for the committee.

Once again, I want to request that the committee ask the Parliamentary Bureau whether we could have another week at least to go over the bill. I will not say everything that I have said before. The bill is important and the Parliamentary Bureau is not giving enough time for its scrutiny. Could the clerk or the convener clarify whether I could lodge a motion asking the Parliamentary Bureau for a longer time scale?

The Convener: I indicated that no one who wanted to say anything on any matter throughout the debate has been refused or denied the right to speak. There has therefore been no constraint on the debate whatsoever. However, it is also clear that if we have not got to the end of the bill by Wednesday, we will have to deal with that. We will have to go back to the Parliamentary Bureau and consider the matter. The committee agreed to a timetable that ensured that it got through the business. As you have said, the committee has debated that.

We are meeting regularly, but that is not the same thing as not scrutinising the bill. We are

meeting on six occasions—I think that six working days was the phrase used in the chamber the other day—to scrutinise the bill. If we have not managed to get through the bill at the end of that time, the committee will have to deal with that. We would have to address the matter on Wednesday.

Section 42—Discounts

The Convener: Amendment 371 is in the name of Sandra White and is grouped with amendments 223, 372, 224, 224A, 374, 375 and 376.

If amendment 223 is agreed to, I shall not be able to call amendment 372 as it will be pre-empted.

I invite Sandra White to move amendment 371 and speak to others in the group.

Ms White: Amendment 371 concerns the right to buy and discounts. I will be as brief as possible as the convener has pointed out the time scale.

Amendment 371 is self-explanatory, as are most of the others. It reduces the initial value of the discount to 10 per cent. Obviously, the intention is to lower the burden on local authorities. If the right to buy is extended to registered social landlord tenants, that burden will be put on RSLs, too. Amendment 371 ensures a fairer discount than the other amendments.

I await Karen Whitefield's explanation of amendment 223. I have read it several times, and I might come back to it.

Amendment 372 would change the discount figure in section 42(2)(b) from 2 per cent to 1 per cent, and would increase the qualifying period to 10 years. That would lessen the burden on the public purse, local authorities and others of right-to-buy discounts.

Amendments 224 and 224A are self-explanatory and would reduce right-to-buy discounts in the interest of fairness. Although amendment 224 proposes lowering the discount to 35 per cent or £15,000, amendment 224A would lower the figure further. To keep fairness and equity in the market, the discount should be less.

I move amendment 371.

The Convener: I call Karen Whitefield to speak to amendments 223 and 224 and to the other amendments in the group.

Karen Whitefield (Airdrie and Shotts) (Lab): At last Wednesday's meeting, it was claimed that Labour members of the committee had not engaged in the political debate surrounding housing policy in Scotland. That is not true. This is one occasion on which I do not agree with the Executive. The right to buy has a place in strategic housing policy, but it should be only one part of that policy and we must get the balance right. I do not like being criticised in that way, as I have disagreed with some of the Executive amendments, including amendment 93. If that amendment stands up for Scotland, that is the kind of standing up for Scotland that I do not care for. It does not stand up for the rights of homeless people. It would make bad legislation, and I am here to help to make good legislation. Amendments 223 and 224 address those points, and I ask the Executive to support them.

Amendment 223 would reduce the accrual of discount over time. The Housing (Scotland) Act 1987 contains a differential that means that someone who lives in a flat accrues a discount of 2 per cent rather than 1 per cent each year. I propose to reduce that discount to 1 per cent, as I believe that no such distinction should be made between flatted accommodation and houses. I ask the Executive to support that proposal.

Amendment 224 has the support of the Convention of Scottish Local Authorities and the Chartered Institute of Housing in Scotland. Sandra White thinks that the burden of the right to buy on local authorities is unacceptable; however, COSLA has not asked for a reduction in discounts, or the overall discount, to the levels that Sandra White proposes in her amendments. COSLA has asked for a maximum discount of 35 per cent or £15,000, whichever is less, and that is what amendment 224 proposes.

These are important amendments, which will ensure that the right to buy will operate properly and assist housing policy, while ensuring that communities are diverse and economically sustainable. I ask the Executive to support the amendments and to reject Sandra White's amendments, which are a cover-up of nationalist policy. Last week, she suggested that she had great sympathy for Tommy Sheridan's amendments, but the reality is that she would take the right to buy away from tenants. I want to ensure that tenants have the right to buy as part of good housing policy, not at the expense of other tenants.

The Convener: I call Brian Adam to speak to amendment 374 and the other amendments in the group.

Brian Adam: The right to buy engenders a great deal of heated argument. We have heard some of that in the past few minutes, as Karen Whitefield spoke to her amendments. I am pleased that Karen thinks that the current arrangements are too generous towards those who want to buy their house. Her amendments rightly draw attention to the inequity in the scheme and seek to establish a fairer balance. I commend her on that. However, I cannot commend her on attempting to misrepresent the views of others, as she has done consistently throughout stage 2.

Karen Whitefield has consistently tried to suggest that the SNP wants to remove the right to buy from tenants who already have it. That is incorrect. It is possible to engage in the process, as we are doing, and have differences of opinion over the degree of change that is required. The difference between Sandra White's amendments and those of Karen Whitefield is only of degree, concerning how much the discount should be.

Concern has been expressed—whether it is only anecdotal or whether more substantial evidence might be produced is another matter—that individuals have had the opportunity to purchase more than one public sector house, taking advantage of discounts. Whether that occurs to a large or small extent, it is a sore point for many individuals. Amendment 374 seeks to address that problem. Individuals who have the right to buy should be able to do so, but not time and again.

I am happy to support the principles behind Karen Whitefield's and Sandra White's amendments as well as my amendment 374.

09:45

The Convener: I call Kenny Gibson to speak to amendments 375 and 376 and to the other amendments in the group.

Mr Kenneth Gibson (Glasgow) (SNP): Amendment 375 would remove the power of ministers or, as the 1987 act states, the now-redundant Secretary of State for Scotland, to alter by statutory instrument rather than by amendment of primary legislation the minimum percentage discount for houses and flats, the percentage of increase in that discount each year after the qualifying period of continuous occupation, or the maximum discount. Amendment 375 places those important matters before the widest democratic forum—the Parliament—should changes be proposed. Amendments 223, 224 and 224A, concerning the level of discounts and so on, will be superfluous if amendments 375 and 376 are not agreed to, as the ministers will effectively retain power in that area.

Bill Aitken (Glasgow) (Con): It would be nonsense to suggest that the amendments that have been lodged by SNP members are anything other than a device to deter people from buying their homes or to impede them in doing so. That said, the members should not be criticised for lodging them, as they have been up front in adopting that policy from the start of the stage 2 debate.

Nevertheless, I do not think that a discount scheme is the appropriate mechanism. There is genuine, universal concern in the committee that the right to buy housing association property is likely to cause problems in the years ahead. I suggest that the amendment that I proposed the other day would have been the appropriate device; however, committee members, in their wisdom, declined to agree with me—as is their democratic right.

I am not inclined to support Karen Whitefield's amendments. They reflect her concern over the general issue; however, it would not be appropriate for different scales of discount to apply to different types of public sector housing. Accordingly, I cannot support the other amendments in the group.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): Contrary to what Bill Aitken has just said, Karen Whitefield's amendments would mean that the same discount would apply to different types of housing. That would be different from the current position, whereby tenants get different levels of discount if they live in a flatted or terraced property.

I very much welcome amendments 223 and 224. The bill has introduced changes and modernisation to the right to buy, and the amendments on the maximum level of discount, together with measures that were previously introduced by the Scottish Office on cost floor limits, will help to improve the right-to-buy legislation and housing in Scotland generally.

I would like to make a couple of points about amendment 374, which is about exercising the right to buy for a second time. As I understand it, current legislation takes account of a person who wants to buy for a second time. When somebody exercises that right twice, they get allowances as if they had bought only once, so they do not get a double discount. I should be happy to hear what the minister has to say about that.

Brian Adam took Karen Whitefield up on her point about where the SNP is coming from. I find the SNP position quite strange. Like Bill Aitken, I accept that any member, including an SNP member, has the right to lodge amendments in whatever area they see fit. However, Sandra White seems to be speaking with double tongues. Last week, she indicated that she fully supported Tommy Sheridan's amendments, which sought to abolish the right to buy. As I understand it, Sandra White is the lead spokesperson for the SNP on this committee and she is also the deputy convener of the committee. It is important for members of other parties to take a lead on the SNP's position from the way in which its spokesperson speaks.

I hope that the Executive is able to accept amendments 223 and 224 as a way of improving and modernising the right to buy. I hope that the other amendments in the group will be rejected.

Robert Brown (Glasgow) (LD): We have talked

before about rebalancing the right to buy, and the balance that we are now getting towards will be just about right if amendments 223 and 224 are agreed to. We will then end up with a semi-reasonable capping level and, more particularly, a discount level that bears some relationship to reality. There has been a strong view that the levels of discount, which included a slightly odd discrimination between flats and other sorts of property, were much too high and did not represent a good use of public resources.

I have always had a figure of around a third in my mind. If I am not very much mistaken, that is the sort of level at which sitting tenants used to buy their houses. In the private sector, it was regarded as a sort of reflection of the market value of the sitting tenant aspect. For that reason, I think that amendments 223 and 224 are reasonable and will make a significant difference to the funding of discounts and the reasonableness of the objectives of public policy.

One unfortunate side product of amendment 375 is that it would take away the power of Scottish ministers to vary the levels of discount. I understand that the power in section 42(8) is to be extended to be variable across different areas. I hope that I have understood that correctly, but I would appreciate the minister's confirmation. If that is the case, it moves distinctly towards the sort of local housing strategy that we have had in mind as being the proper way of doing things.

Much comment has been made on those points in the debate. However, the Executive has responded to the valid points that have been made across the housing sector about the difficulties in this area, and has come up with reasonable responses. If amendments 223 and 224 are agreed to, we will have arrived at a position in which the Executive has responded adequately to those matters. I therefore have considerable pleasure in supporting amendments 223 and 224.

The Deputy Minister for Social Justice (Ms Margaret Curran): Here we are again; we are off to a lively start for a Friday morning. After the urban regeneration debate in Parliament, I said to Bill Aitken as we walked down the road together that I have probably seen more of him than I have of my husband lately, which seemed quite a frightening prospect for him.

Right-to-buy discounts have obviously been an area of great discussion, which has exercised the minds of committee members. I welcome the interest that has been shown and the representations that we have received. There are quite a few points for me to respond to, so I shall go through the amendments in turn, starting with those lodged by Sandra White.

It will not surprise Sandra White to learn that we think that amendments 371, 372 and 224A probably go a step too far. We feel that they would undermine the critical balance that we are trying to strike in modernising the right to buy. Starting discount rates of 10 per cent with a cap of £10,000 and a maximum discount of 30 per cent will create a significant gap in terms of entitlement between the existing right to buy and the modernised form. We had some earlier discussion about similar matters when the committee rejected Sandra White's earlier proposal to extend the qualifying period to 10 years. We thought that that was too harsh, and the same kind of argument applies to what her amendments in this group propose, as people would feel unfairly excluded from their rights.

As it stands, the bill provides for a maximum discount of 50 per cent or £20,000. However, we have received representations from COSLA, the CIHS and the Scottish Federation of Housing Associations on the issue. We are willing to listen to informed and reasoned argument; it is the proper job of the Executive to engage in such debate with those organisations. We are well aware of the trenchant representations that we have had, and I am not trying to be too sectarian when I say that they have come from Labour members as well.

We have given the matter genuine consideration; it has exercised our thoughts greatly. We think that Karen Whitefield's amendments 223 and 224 are constructive and represent a workable proposition. I recognise that discussions on those issues had to be carried out, particularly with tenants. That work has been done, and Karen has engaged with tenants about that. We now accept that reducing the maximum discount to 35 per cent, with associated changes in the way in which the discount increases for each year of the tenancy, offers a helpful way forward.

In the past, we said that the average discount should be approximately the same as the average difference between social rents and market rents, which is around 35 per cent. I accept that it is reasonable to say that the maximum percentage should not go above that figure. That is both fair and defensible. I can confirm that Robert Brown's interpretation of the power of Scottish ministers to introduce an order to vary discounts was right.

I genuinely understand where Brian Adam is coming from with amendment 374. There have been concerns about that area, so what he proposes is understandable. However, I want to clarify the current legislative position, which I hope will give Brian some comfort. We argue that current legislation provides a sufficient deterrent. Section 62 of the 1987 act, as amended by the bill, allows for any previous discounts to be deducted

before any further discount is paid. He will note that the bill amends the 1987 act to ensure that appropriate deductions are made to take account of discounts previously paid to cohabitees as well as to married people. Those provisions are designed to prevent abuse.

I confirm, as Cathie Craigie asked me to do, that that enables people to exercise the right to buy more than once, but to benefit financially as if they had exercised the right only once. We cannot accept amendment 374 because we think that it is unfair. For example, there could be a situation in which a woman who originally bought as a joint tenant and has since had to leave, because of domestic violence or for some other reason, could be denied her rights if amendment 374 were agreed to. She would be denied the opportunity to gain some sort of parity with others purchasing their own homes, so we do not think that that amendment is justified.

I am not entirely sure what Kenny Gibson is trying to do with amendments 375 and 376. We genuinely do not think that it would be right to set right-to-buy discounts in tablets of stone. As members of the SNP have indicated, there needs to be some discussion about that. Powers to vary discounts, which Robert Brown mentioned, would have to be exercised by an order, which would require a debate and a positive vote. It is important that Parliament can review discounts swiftly without primary legislation.

Amendment 376 demonstrates Kenny Gibson's lack of confidence in the ability of ministers to exercise discretion. Although I do not take that personally, we think that there is a need for ministerial discretion and that that is appropriate for managing issues of this kind.

The cost floor rules, on which amendment 376 is focused, were introduced to ensure that recent landlord investments would be at least partially protected in the event of a right-to-buy sale. The Executive fully supports that position and the Government substantially increased the protection for landlords following a review two years ago. However, we believe that the possibility of further changes to the cost floor rules—for example, to vary the time period or the work to be taken into account—should be retained. The changes would be made by order and subject to parliamentary scrutiny.

The Convener: I ask Sandra White to wind up the debate on this group of amendments and to indicate whether she intends to press or withdraw amendment 371.

10:00

Ms White: I thank the minister for her reasoned reply to this group of amendments. It is a pity that some other members of the minister's party cannot be so reasonable.

As I said, although a general election is coming up, that does not mean that we can use the committee as an electoral platform; I certainly do not intend to do so. I am a member of the committee as an individual. I might be a member of the SNP—I am proud to be a member of the SNP—but I may support other parties' policies as they come along, as I see fit. I thought that every member of the committee was non-partisan, and I take great umbrage at the comments of Karen Whitefield and Cathie Craigie. If they were as reasonable as the minister, we might get on a bit better in the committee.

That said, I intend to press amendments 371, 372 and 224A. Members of all parties have criticised the fact that I propose to reduce the discounts by a greater amount but, as I said, it is fair to reduce them further. The only suggestion that has been made by Karen Whitefield is contained in amendment 224, which was requested by COSLA and tenants associations. That is also fair enough—I could have lodged the same amendment, had I so wished. However, I lodged amendment 224A because I thought that it was better. I take credit for lodging that amendment myself, rather than being pushed into doing so by other agencies.

The minister said that COSLA had approached the Executive with a suggested amendment. She also said that the Executive had listened to COSLA and to tenants organisations—I commend the Executive for doing so. However, I wish that members of the minister's party would listen to members of other parties as much as they listen to organisations.

I will not support Karen Whitefield's amendment 223—if I did, my amendment 372 would fall and therefore I cannot do so. I do not intend to support amendment 224, because I believe that amendment 224A is better.

I will support Brian Adam's amendment 374, because it is important that we listen to people on the street. The minister brought that up—she knows where Brian is coming from, and all members have constituents who come to their surgeries every day to say that people are getting another discount. Tenants will still receive a limited discount when they apply to exercise their right to buy, although they might not get a 10-year discount. I think that Brian Adam's amendment 374 is fair and proper.

I will also support amendments 375 and 376, as they would put a check on the various discounts.

The Convener: The question is, that amendment 371 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 371 disagreed to.

Amendment 223 moved—[Karen Whitefield]—and agreed to.

Amendment 224 moved—[Karen Whitefield].

Amendment 224A moved—[Ms Sandra White].

The Convener: The question is, that amendment 224A 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 224A disagreed to.

Amendment 224 agreed to.

Amendment 373 not moved.

Amendment 374 moved—[Brian Adam].

The Convener: The question is, that amendment 374 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 374 disagreed to.

Amendment 375 moved—[Mr Kenneth Gibson].

The Convener: The question is, that amendment 375 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 375 disagreed to.

Amendment 376 moved—[Mr Kenneth Gibson].

The Convener: The question is, that amendment 376 be agreed to. Are we agreed?

Members: No.

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 376 disagreed to.

Amendment 377 not moved.

Section 42, as amended, agreed to.

After section 42

The Convener: Amendment 329 is grouped with amendments 212, 379 and 398. I understand that Robin Harper is unable to be here and has asked Robert Brown to move amendment 329 on his behalf.

Robert Brown: I will move amendment 329 for the purpose of allowing us to debate the interesting point that is raised by Robin Harper in the amendment, although I am not entirely convinced that we should agree to it.

In amendment 329, Robin Harper tries to identify the difference between how the public sector and the private sector deal with energy efficiency. In the public sector, it is largely left to landlords—councils or RSLs—to make progress on such

matters. In the private sector, energy efficiency is more of an individually stimulated issue.

Robin's point is that, as houses move into the private sector through the right to buy, we might lose track of the importance of energy efficiency. I think that, in amendment 329, Robin is trying to identify a mechanism through which the need for energy efficiency could be firmed up in people's minds. Amendment 329 appears to have a certain identity with the information about obligations of ownership and so on that we dealt with earlier. It is also linked to energy audits and sellers' packs, which have been considered in a broad sense. I make those comments in modest support of the spirit of amendment 329.

Amendments 397 and 398, in my name, are not really to do with fuel poverty as such, but with the need to link into the strategies that we are working on. Local housing strategies are worthwhile mechanisms that provide an important pivot. The provisions of the Home Energy Conservation Act 1995 require local authorities to conduct assessments of home energy and so on. There is an advantage in trying to tie those matters together through the housing strategy, perhaps through the amendments that deal with fuel poverty, which come rather late to stage 2 of the bill. I am not convinced that the present way in which those matters are dealt with is adequate. I would like to hear ministers' views as to how such matters might work in practice—I am looking for a practical way forward.

I appreciate that I have raised a bureaucratic issue, rather than a fuel poverty issue. However, I am interested in hearing members' views.

I move amendment 329.

The Convener: May I clarify whether you took the opportunity of speaking to your amendments 397 and 398?

Robert Brown: Yes.

The Convener: I do not want a row.

Robert Brown: My passionate pleas obviously had a great effect on the convener.

The Convener: I call Kenny Gibson to speak to amendment 212 and to the other amendments in the group.

Brian Adam: Kenny Gibson has left.

The Convener: Do other members wish to speak to the group?

Bill Aitken: I was somewhat amused by Robert Brown's rather lukewarm advocacy of Robin Harper's amendment 329.

Robert Brown: It was the best that I could do.

Bill Aitken: Robert Brown was trying to say, in not too many words, that the idea behind amendment 329 is attractive, but that there are practical problems, so it is not a runner.

I can see the logic behind Robert Brown's amendments 397 and 398, to a certain extent, but I await with interest what the minister will say.

Brian Adam: Amendment 329 has the potential to place significant costs on landlords, which they would pass on. Rightly, I was chastised earlier for suggesting that the Executive's amendments were late, but I did not mean that they were lodged outwith the time within which they had to be lodged. Because the issue has come into the public domain with little time for consideration, we will reserve our position and come back with our thoughts at stage 3. I would rather that we had been able to do so at this stage, although I am not being overly critical of the Executive.

The Minister for Social Justice (Jackie Baillie): Unlike Bill Aitken, I thought that Robert Brown gave a considered advocacy of Robin Harper's position. It goes without saying that the Executive is committed to improving home energy efficiency. Information about energy efficiency and how it can be improved will encourage people to make improvements and change their behaviour. I agree that there is something to be gained from the intention behind amendment 329.

However, as is often the case with amendments, on the face of it amendment 329 is quite attractive, but there are issues. For a start, local authorities should already be assessing the energy efficiency of their stock, to meet their obligations under the Home Energy Conservation Act 1995. Also, it is important to address the issue across all tenures, not only in public sector stock. That is why, as Robert Brown indicated, we have asked the housing improvement task force to consider the whole question of how house purchasers are given the information that they need to maintain and improve their homes.

Nevertheless, I agree that we can and should make progress in energy efficiency. I am not convinced, however, that amendment 329 is practical as it is drafted. For example, the cost of achieving and maintaining "levels of warmth" will depend on household type and size, occupancy patterns, fuel type and the choice of supplier—those all play a part.

While Robin Harper's proposal is right in spirit, it is unduly prescriptive, and possibly unworkable in legislation. I propose that we should instead consider whether landlords should provide further information on energy efficiency to tenants as part of their new duties under section 18 of the bill. As Robert Brown rightly pointed out, last week the committee agreed to amendments that require landlords to give prospective purchasers

information about the implications of exercising their right to buy. In particular, I will consider whether the Executive should produce a guide that will have national relevance and which will supplement initiatives that are developed at a local level. On that basis, we will consider whether there would be merit in amending section 18 at stage 3 to refer to energy efficiency. If there is, we will lodge an amendment.

On Kenny Gibson's amendment 212, I am disappointed that he is not here to hear me say that we had already reached the same conclusion as he had—he was marginally quicker than we were. I want to be clear that we are committed to encouraging owners to carry out works to improve the energy efficiency of their houses. We have extended the scope of improvement grants in the bill to include a wider range of energy efficiency works, and we will be expecting local authorities to encourage their use. We accept that merely sending out application forms is not the best way to achieve that, so we are happy to agree to amendment 212.

Finally, on amendments 397 and 398, I say to Robert Brown that we have already lodged an amendment that will, if the committee agrees, require local authorities to prepare local housing strategies that ensure

"so far as reasonably practical, that persons do not live in fuel poverty".

In order to meet that requirement, local authorities will need to take account of the energy efficiency of their stock, and other factors such as the adequacy of available heating equipment.

Amendment 397 refers specifically to progress in meeting targets set under the Home Energy Conservation Act 1995 and, as members will be aware, there is already a statutory duty on local authorities to report. They might well want to integrate a summary of that report into the local housing strategy, but I do not think that we need an additional statutory duty. I am sure that the bill as drafted allows Scottish ministers to require local authorities to include any other matter in their housing strategies that they think should be included. I therefore think that we have covered the points that Robert Brown is concerned about. On the basis of those assurances, I ask Robert not to press amendments 397 and 398.

10:15

The Convener: I ask Robert Brown to wind up on behalf of Robin Harper and to indicate whether he intends to press or withdraw amendment 329.

Robert Brown: I am struck by the fact that, in their absence, Robin Harper and Kenny Gibson sometimes do better than members who are here.

The Convener: Good attendance has no reward.

Robert Brown: I welcome the minister's assurances on amendment 329 and, because I am sure that Robin will too, I feel entitled not to press it.

The position with regard to Kenny Gibson's amendment 212 has already been made clear. On amendments 397 and 398, I still have a few doubts about how things will join together. However, I am reassured by the minister and am prepared not to press the amendments.

The Convener: Robert Brown has indicated that he wishes to withdraw amendment 329. Is that agreed?

Members *indicated agreement.*

The Convener: Amendment 329 is agreed. No, I beg your pardon, it is withdrawn. [*Laughter.*] Ah—members are awake.

Amendment 329, by agreement, withdrawn.

Amendment 378 not moved.

Section 43—Assistance to tenants to obtain other accommodation

The Convener: Amendment 379 was debated with amendment 340 at a previous meeting. Tommy Sheridan has indicated that he does not wish to move it.

Amendment 379 not moved.

Section 43 agreed to.

After section 43

The Convener: Amendment 330 is in a group of its own.

Robert Brown: I feel that amendment 330 is important and I hope that the ministers will view it with favour. I have said before that we are engaged on an exercise of rebalancing the right to buy, to make it an instrument of housing policy rather than something that exists with no connection to policy. Some of the debate on the right to buy has not been greatly assisted by the lack of evidence on its implications. Amendment 330 is designed to say, "Okay, we have to do a rebalancing exercise. The right to buy has moved a fair distance along the line. It is broadly right at the moment, but times will change, the requirements of local areas will change, and the effects on those local areas will be different."

In some areas, the right to buy has arguably run its course. In other areas, it might need stimulus—a variety of different mechanisms could be used for that. Research should be done into that and monitoring should be done by Scottish ministers

and Parliament. I do not think that a detailed annual report would be required, because it will take a little while to get things in place. However, amendment 330 seeks to require Scottish ministers to let us know within a specified period where they are going, what they are doing, and what the framework is, and thereafter to consider matters periodically as they develop. There might be arguments about the wording of amendment 330, but I hope that the balance of what I am trying to achieve will appeal to the committee. It is important that we keep an eye on matters as they develop and that we respond to changing housing needs as a result of stock transfers and so on. We also need to consider the implications of public investment in improving housing stock.

The implications, not for the viability of housing associations and registered social landlords, but for rents and capital investment, need to be considered in more detail in the light of developments. That was the key point, rather than any points about viability, that the housing associations made.

I move amendment 330.

Brian Adam: Amendment 330 is extremely worth while. Reviewing the effects of any legislation is important; we should not always be content that we have got things right immediately. The amendment suggests a good way to review especially controversial areas, over which opinions have differed. The differences have been genuine, and the report might indicate who got it right and who did not. The production of a report within a year of the legislation coming into effect would be useful. Although amendment 330 does not specify this, it would also be useful if any such report were to come before the committee, because we will have had a part in producing the legislation. The ministers have indicated willingness to do that kind of thing in other areas, and I am sure that they will be happy to do so again, if they agree to amendment 330, which I am delighted to support.

Bill Aitken: Amendment 330 has merit. Nothing is set in tablets of stone nowadays. Housing policy, as I suggested the other day, has moved on fairly dramatically during the past 20 years, and I have little doubt that there will be further changes in the years ahead. The amendment suggests a valuable mechanism whereby the appropriate research and any policy review that might be necessary could be carried out. I support amendment 330.

Ms White: I do not like to disagree with my colleagues all the time, although it sometimes happens. I do not disagree with amendment 330, but I wonder what it will achieve and who will pay for the monitoring. Will local authorities be given extra moneys to produce the reports? Are Scottish ministers and the Parliament the best people to monitor those reports? When we get the reports back, what will be achieved? Will we be able to change the legislation on right to buy? I do not think so.

Although I know where Robert Brown is coming from, I wonder what the end product will achieve. We will have lots of people looking at lots of figures and producing lots of statistics, but at the end they will be just statistics. If they do not lead anywhere, I do not see the point in producing them. What Robert Brown suggests would be a good exercise, but I wonder whether it would be a good way in which to use resources. I do not think that I can support amendment 330.

Karen Whitefield: Amendment 330 has merit. As we know, the right to buy has generated considerable discussion in the committee and outside it. However, the review that Robert Brown suggests should not necessarily be about who got it right and who got it wrong, as Brian Adam suggested; it should be about monitoring the right to buy and its effects. The Executive has accepted that the old right to buy had some negative effects. That is why it has attempted to modernise it. Today, the committee has pushed for positive amendments that will ensure that the right to buy is a positive tool in a range of tools that influence housing policy in Scotland. Monitoring should examine how the right to buy operates, but it should not do so to determine whether it is right or wrong. Also, local authorities should not be left to do the monitoring; the new executive agency should be responsible for that.

Ms Curran: This has been an interesting discussion that has helped to inform how we should progress. I acknowledge Robert Brown's strong interest in this field. He has raised similar issues on many occasions. I acknowledge what he is trying to do and I am happy to assure him that we had always intended to keep the right to buy under review, by monitoring its financial and other effects.

I have said several times in this debate that the right to buy has value as a strategic tool, and that it is a right for individuals. However, as Karen Whitefield pointed out, it had a negative impact before it was reformed. I was very sympathetic to Robert Brown's speech, particularly the point that we must keep the overall effect of the agreed changes under review. For that reason, I am broadly sympathetic to amendment 330.

We should be able to get a wealth of good quality evidence from work on local housing strategies and from applications for pressured area status. In fact, we have already commissioned research to help local authorities assess the impact of the right to buy, as part of the Executive's research programme and, of course, we collect information regularly and routinely from

local authorities and other landlords.

As a result, we have no difficulty accepting the principle that there should be a statutory commitment to monitor the effects of the right to buy, even though it is unusual to have statutory commitments to undertake research of that nature. However, we are somewhat anxious about being too prescriptive in the bill. It is widely accepted that legislation is not the proper place to set out research specifications. We must consult before finalising the scope of the work and we need flexibility to adjust to changing requirements. That said, I will be happy to send details of the agreed programme of work in due course to the Social Justice Committee. I appeal to Robert Brown's better nature and ask him not to press amendment 330—we will try to come back later with an amendment that meets what he is trying to achieve with amendment 330, but which does not tie our hands too much.

Robert Brown: I said that amendment 330 was quite important. However, I accept the minister's comments about some of its possible implications and I am happy to accept her assurances. As we reach the end of the debate over the right-to-buy aspects of the bill, I will just mention that the debate has been interesting for the light that it has thrown on the relationship not only between the Executive and the committee, but between the Executive parties. Although Labour members have been mentioned, it is fair to say on behalf of the Liberal Democrats that I have taken many hours of the ministers' time myself. I will end simply by thanking the ministers for taking that time and for coming back to the committee with considered responses to my proposals. With those words, I seek leave to withdraw amendment 330.

Amendment 330, by agreement, withdrawn.

Section 44—Right to buy: miscellaneous repeals

Amendment 380 not moved.

Section 44 agreed to.

After section 44

The Convener: Amendment 331 is grouped with amendments 187 and 188.

10:30

Brian Adam: The minister said that the right to buy is a strategic tool for addressing the general issue of housing. The Conservatives made major changes to housing legislation throughout the 1980s; part of their attempt to change the face of housing for ever was the introduction of the right to acquire housing properties. Through that measure, the Conservatives aimed to encourage, cajole or persuade people to buy their houses. They also sought to label local authority housing departments as bad and to claim that anyone else was bound to be better; their legislation did not allow local authority landlords to acquire other public sector houses even if the tenants wished or chose that option. The right to choose eventually came to the tenant, although there were also a number of collective transfers. My concern about the existing legislation is that, even when the margin is very small, we allow collective decisions in some areas to overwrite an individual's right to exercise choice about their landlords.

Many tenants would prefer to stay with council landlords. Amendments 331, 187 and 188 would ensure that such a choice was available and, indeed, would allow those who are considering changing their landlords to choose the local authority. I am aware of the problems that arose with the deregulation of the buses, when some deregulated bus companies started acquiring other deregulated bus companies all over the country. I am not suggesting that we create some monster local authority landlord that will swallow everyone else up, which is why the amendment would allow the local authority to acquire properties only within its area. However, if we genuinely want to extend choice to tenants, the right for tenants to choose their landlord should be part and parcel of that. I do not mean just a one-off ballot that binds everyone collectively; I mean the opportunity for individual tenants to choose.

Difficult or awkward tenants might try to manipulate the situation by saying, "Look, I'm not happy with this particular housing association landlord; I'm going to choose another one." However, it is up to the acquiring landlord to make that choice; we cannot compel landlords to accept tenants. As a result, I do not think that that situation will cause landlords problems, although it might put them on their mettle.

One of the driving forces behind the move to stock transfer that the Executive wishes—and which the Conservatives started—is a feeling, or perhaps rather strong evidence, that at least some local authority landlords are not very good. It is felt that they do not look after individuals' interests, perhaps because they are too big or too remote, or perhaps because they simply do not have the finances. My approach might put pressure on landlords to ensure that they maintain appropriate standards, if we accept the Conservative philosophy that the market rules. We must allow an extension of choice.

I think that I have covered most of the main points. I do not intend to go into the detail of my proposals.

I move amendment 331.

Ms Curran: Brian Adam's comments were

interesting and I tried to follow them as much as I could. We are not all that clear about the substance of amendments 331, 187 and 188; there are some flaws in their construction and I hope that members will bear with me as I go through them.

The amendments seem to enable any RSL to acquire properties from any local authority, subject to the exceptions set out in proposed subsection (4)(b) in amendment 331. That is simply not necessary. Any RSL that wished to acquire properties in that way could apply for approved status under the existing provisions.

Furthermore, as I said, the amendments are flawed. For example, amendment 331, which would amend section 56(1) of the Housing (Scotland) Act 1988, appears to allow a local authority to acquire a house where the house in question is not owned by a local authority. However, the amendment to the definition of public sector landlords would mean that the local authority could acquire a house only from a local authority—that is, a council—or the Scottish Special Housing Association. As the 1988 act dissolved the SSHA and as amendment 331 makes it clear that a local authority cannot acquire a local authority house, we have a dead-end—the local authority cannot acquire from anybody, so that part of the amendment would have no effect.

Brian Adam will not be surprised to hear that, leaving aside the text of the amendments, I do not agree with his point on the policy. We have made it clear in policy statements and other provisions in the bill that we want a strategic move from local authority ownership to community ownership, where appropriate and where tenants vote in favour of it—we have made it clear that any such proposals for transfer should be subject to a ballot.

The 1988 provisions are a hangover from a previous Administration, which never quite had the courage or readiness to face up to providing the additional investment that was necessary to secure the real achievements in the stock that community ownership can deliver. That is the big policy difference.

We recognise that those provisions can be useful in certain circumstances and we have no desire to take away that option from bodies and tenants who have it at the moment. Equally, we recognise that extending the provisions to allow RSLs to acquire houses from other RSLs would place considerable extra burdens on landlords. It could undermine the business plans and funding arrangements of some RSLs and introduce turmoil into the social rented sector, which would be both unnecessary and unhelpful.

We are strongly opposed to the proposals in the amendments, as are other key housing bodies. We will therefore simply introduce some minor consequential amendments to schedule 9, which reflect the changes in the status of Scottish Homes and are designed to maintain the status quo. I urge the committee to reject the rather confused amendments in this group.

Brian Adam: I was interested in the minister's response. There is recognition in many quarters that the initial legislation was rather unfair on local authorities. The minister appears to take the view that local authorities do not have a long-term role as housing providers and I find that disappointing.

Ms Curran *indicated disagreement.*

Brian Adam: I apologise if I have misconstrued the minister's comments—I have no wish to misrepresent her.

It may well be that some local authorities, such as Glasgow City Council, do not have a good track record in looking after the interests of their tenants, but equally it may well be that the right to buy has had a significant effect on their capacity to deliver high-quality housing. The cost of the discounts have had to be picked up by the other tenants, which has meant that rents have had to rise. There are many good local authority housing providers and they should not be discriminated against. Tenants ought to have the option to have those providers as their landlord. Having said that, I recognise that this is a difficult subject to get technically correct and I do not want to press amendment 331.

Amendment 331, by agreement, withdrawn.

Amendments 187 and 188 not moved.

Section 45—Tenant participation

The Convener: Amendment 381 is grouped with amendments 332, 382, 333, 383, 384, 334, 385, 335, 386 and 387.

Cathie Craigie: Following discussions with tenant representatives and taking into account the evidence of tenants groups, I decided that the provisions relating to tenant participation needed strengthening. Although the Executive's proposals go quite far in enhancing tenants' rights to information and consultation, tenants organisations are still concerned that the bill does not include a statutory right to participation. Section 45 imposes a duty to produce tenant participation strategies, but there is little indication of what such a strategy would include.

Tenants of local authorities and RSLs want to be involved at the earliest opportunity in taking decisions that affect their homes and lives. They do not want a system that some landlords might consider to be participation in which landlords consult on their own proposals. Tenants should have the opportunity to be involved from the very

start, influencing the process before the landlords put proposals out for consultation.

Amendment 382 specifies what a tenant participation strategy should contain. Amendment 381 links that text to a reference to the tenant participation strategy. Amendment 385 is important; it would mean that tenants who are consulted on landlords' proposals could make representations to the landlord within a reasonable period. The bill is silent on the time scale, but it is important that tenants organisations have enough time properly to consider proposals and gather the views of members and other tenants before responding to the landlord. Guidance could be set out on how landlords and tenants should handle that. I would welcome the views of the minister on that.

Amendment 386 is a technical and consequential amendment, which makes clear how registered tenants organisations are defined for the purposes of sections 45 and 46. Amendment 387 would ensure that the contents of any consultation under section 45 were without prejudice to what might be contained in the tenant participation strategy—landlords would have to make commitments under sections 45 and 46.

The purpose of the amendments is to ensure that tenants can engage in proper participation. I hope that the Executive will support the amendments. The amendments that I lodged cover what tenants organisations have been seeking, so I hope that members who have lodged other amendments in the grouping will withdraw them in favour of mine.

I move amendment 381.

Robert Brown: A common theme runs through the grouping of amendments, although members are approaching the issue from different directions. Purely on a technicality, I am not sure that I follow what amendment 381 would do, although perhaps that is to do with the way that I read it. Its effect seems to be that the new section would read, "Every local authority landlord and registered social landlord must, by such time as the Scottish Ministers may direct, prepare a strategy ("a tenant participation strategy") for promoting the participation of tenants". Perhaps I am missing something, but I would appreciate some guidance on what that change to the wording would achieve.

Amendments 381, 382, 385, 386 and 387 set out broadly the sort of things that one would want in a tenant participation strategy. However, there are one or two other points, which is why I lodged amendments 332 to 335.

Issues of housing costs and rents are of great importance to tenants. I accept the fact that the landlord must make strategic financial decisions. However, that is a different issue from whether the landlords should consult tenants on the balance between rent levels and service provision. My amendments are designed to take that on board. Amendment 332 is a general statement that the strategy should include such things.

Amendment 333 relates to section 45(2). It is all very well for local authorities and RSLs to assess the resources for tenant participation, but they should also say how they will bring about that participation.

Amendment 334 defines the phrase "participation of tenants" and comes from a suggestion made by the Dundee Federation of Tenants Associations. I believe that the tenant movement is in fairly broad agreement on the definition.

Amendment 335 is a little more controversial. It suggests that landlords should consult on their budget, finance and the setting of rents. That seems to be reasonable in principle and I would be interested to hear views on the practicalities of the proposal.

I support the thrust of Cathie Craigie's amendments and draw the attention of the committee to the ones that I have lodged.

10:45

Brian Adam: I think that we have all had a genuine stab at trying to improve the tenant participation aspect of the bill. When we took evidence, considerable concern was expressed at what might or might not be meant by participation. Did it mean that information would be provided, that tenants would be consulted or that tenants would be able directly to take part in making decisions at an early point?

Public sector housing providers have a duty to their tenants but there has been a feeling that they have been somewhat remote from those who will be affected by the decisions reached by the various landlords. In that regard, amendments 383 and 384 are a little stronger than those in the name of Cathie Craigie. I do not know why the amendment proposes to add paragraphs (b), (c) and (d) to section 45(2) instead of paragraphs (a), (b) and (c), but let us not worry about that—perhaps it is because amendment 382 would insert a paragraph (a).

Certainly, amendment 382 and amendment 383 are not mutually exclusive. However, proposed paragraph (d) in amendment 383 would ensure that landlords made

"provisions to allow registered tenant organisations and other participating tenants to be involved in the policy making and review processes of the landlord."

That would allow tenants to initiate discussion on

policy and be involved in the development of policy rather than merely being asked to endorse or reject a fully developed proposal from the landlord. That is the kind of proposal that the tenant organisations that spoke to the committee and others whom we have consulted are seeking. Obviously, the landlord has the final decision, but we need to specify the point at which that decision can be made.

Amendment 334, which defines the phrase "participation of tenants", is helpful and clear. If we are to change the landlords' outlook and force them into directly involving tenants at an early stage and throughout the process, we will need to define what that participation should be.

We will also need amendment 384, which lets the landlord know that participation is not simply a question of producing a label or an action plan. Amendment 384 would impose a duty on each landlord who prepares a strategy under the section to implement it. In the past couple of decades, many action plans and strategies have been produced to no consequence.

I am broadly content with most of the amendments that we are discussing. However, some are rather stronger than others.

The Convener: You asked why the amendment proposes paragraphs (b), (c) and (d) instead of paragraphs (a), (b) and (c). The reason is that the text that currently makes up section 45(2) would become paragraph (a) if your amendment was agreed to.

Brian Adam: Thank you.

Bill Aitken: The amendments in this group are much of a muchness, although all have merit. The minister may be slightly concerned that the bill will contain fairly prescriptive requirements. However, good tenant participation processes are a valuable management tool for any RSL. One would have hoped that such procedures would be in place without our having to legislate for them.

Some of the amendments have definite attractions. The ironic thing is that, on an issue on which there is some consensus, we have to be careful, because, given the way in which the amendments appear on the marshalled list, some would have the effect of excluding the beneficial provisions of others.

Ms Curran: The discussion on this group of amendments has been interesting. The Executive regards section 45 as very important and has strong commitments on tenant participation and consultation. We genuinely welcome the committee's interest and the level of discussion that there has been.

There is a lot to go through and I will deal with it as systematically as I can, if members can bear with me. As Cathie Craigie mentioned, we were aware of concerns of tenant bodies such as the Tenants Information Service and the Tenant Participation Advisory Service that the bill does not go far enough in specifying what a tenant participation strategy should include. They are concerned that landlords should allow tenants to help set the agenda and should ensure that tenants have sufficient warning and relevant information to contribute effectively. They are also concerned that some landlords will not consult at an early enough stage, but will present tenants with what is effectively a done deal and will not give tenants adequate time to consider proposals and express their views on them.

I am aware of the work that Cathie Craigie has done in this area and, from my time on the Social Inclusion, Housing and Voluntary Sector Committee, I am well aware of some of the issues that she has raised on previous occasions. We have a lot of sympathy with her amendments. Amendments 382 and 385 reflect the concerns of some tenant organisations and emphasise that participation is a two-way process. That means landlords asking tenants for their views before they formulate proposals on which they will be required to consult their tenants. Amendment 385 also recognises that tenants must have reasonable time to absorb the detail of proposals and to give their response.

We accept that amendment 382 would ensure that the bill strikes the right balance between what should be included in it and what should be in guidance—that sort of question gives rise to constant discussion. The amendment makes it clear that tenant participation strategies must include arrangements for obtaining and taking account of tenants' views, for notifying tenants of matters that are under discussion and for providing tenants with information. Those are essential requirements that can be augmented by guidance issued under section 70. I can assure Cathie Craigie that we will issue supplementary guidance on those matters, but ask the committee to recognise the distinctions.

We think that amendments 381, 386 and 387—all in Cathie Craigie's name—can assist in developing the links between sections 45 and 46. In particular, amendment 387 makes it clear that landlords are bound by the duties under both sections 45 and 46, which is helpful.

As ever, Robert Brown gives us much food for thought with his package of amendments—332, 333, 334 and 335. We are broadly sympathetic to them, but there are one or two issues on which we have a few concerns.

I am not exactly sure what amendment 332 tries to achieve. We do not think that it is detailed enough for inclusion in the bill. We are not sure

what Robert Brown means by "housing costs". If he means the cost of the services the landlord provides, I would argue that that is implicit in any formulation by the landlord of proposals on which he will seek the views of tenants and that it will be covered in guidance. If "housing costs" is wider than that, I am not sure that it would always relate to tenant participation strategies. I want to reassure Robert Brown of our genuine commitment in this area, but we do not know whether amendment 332 achieves what he wants it to.

However, we think that there are arguments for amendment 333. We are happy that landlords should assess both the resources that might be required and those that it proposes to make available. Those resources might be provided by the landlord, in cash or in kind, by tenants themselves—through a tenant membership levy—or through accessing resources from central Government, from lottery funds or by other charitable means. We can therefore accept amendment 333 in the terms in which it has been lodged.

Amendment 334 appears to be a policy statement taken from the national strategy on tenure participation, "Partners in Participation". We have no objection to it as a policy statement and think that it should be and will be used to inform guidance, but it is not appropriate for legislation. I have said it before and I am sure that I shall say it again: the purpose of legislation is to set out a framework of powers and duties to achieve policy objectives, rather than to set out policy statements. The policy objectives are well captured in Cathie Craigie's amendments, which we have indicated we will accept and which refer explicitly to the content of tenant participation strategies. I am afraid that I must ask Robert Brown not to press his amendments.

We have genuine reservations about amendment 335. We do not believe that it is practical or appropriate for landlords to consult all tenants on budgetary and financial matters. The relationship between the landlord and the tenant should be one of good service delivery in return for a rent paid. Landlords could have real concerns about that provision. It is entirely reasonable to expect tenants to be consulted on matters that affect their tenancies, including rent levels, but we would argue—and I hope Robert Brown will recognise the fact—that that provision is already included in section 20. It is integral to the tenancy agreement between the landlord and the tenant and it is right that the bill places it in the context of any variation in the tenancy agreement.

Any consultation with tenants on proposals under section 46, and any policy agenda items in the tenant participation strategies under section 45 will address the resource and cost implications of any proposals. For example, a landlord consulting on repairs will have to say how much they are going to cost and where the money will come from. I suspect that that is what Robert Brown is trying to achieve. However, budgetary and financial matters can extend beyond the cost of providing housing services—for example borrowing money from private lenders and the intricacies of local government finance. It would be wrong to require landlords to undertake consultation on such issues as, in some cases, that could lead to significant delays in the budget cycle and would be an onerous burden on landlords. I do not think that that is what Robert Brown is trying to achieve.

I accept that Brian Adam's amendment 383 tries to capture the concept of participation. I recognise what he is trying to achieve and I welcome his contribution, but I have problems with the way in which it is drafted, not because of party politics. For example, what does "participating tenants" mean? What is a participating tenant? Also, the amendment's reference to information being made available to tenants to "ensure effective tenant participation" is quite vague. We are sympathetic to the amendment's intention, but we believe that amendment 382 is more precise and we are, therefore, more comfortable with it. I also understand that the Tenants Information Service supports Cathie Craigie's approach in amendment 382.

Amendment 384 proposes a duty to implement the tenant participation strategy, but there is no point in having a strategy if it is not to be implemented. It is therefore implied that the strategy will be implemented. Landlords need to have the flexibility to take account of changed circumstances and should not have to regard tenant participation strategies as a form of legal document. I assure the committee that the regulator will examine tenant participation strategies—as to content and as to implementation—and that the guidance to landlords will make that clear.

I ask the committee to support Cathie Craigie's amendments and amendment 333.

The Convener: I call Cathie Craigie to wind up and to press or withdraw amendment 381.

Cathie Craigie: I intend to press amendment 381 and I thank the minister for her support of my amendments. In view of the time the minister took speaking to these amendments, I shall be brief.

Tenant participation has been an interest of mine for many years. It is not just about consulting people, but about involving them and exchanging information and views. It is about tenants and landlords sharing information, to ensure good

housing policy and practices in an area.

I believe that the bill, including the amendments that I hope we will agree today, will go some way to improve what landlords who exercise good practice already deliver. There will be a push to ensure that landlords who are not exercising good practice involve and consult their tenants. I look forward to seeing improved rights for tenants and more participation by them.

11:00

Amendment 381 agreed to.

Amendment 332 not moved.

Amendment 382 moved—[Cathie Craigie]—and agreed to.

Amendment 333 moved—[Robert Brown]—and agreed to.

Amendments 383 and 384 not moved.

Robert Brown: I want to move amendment 334. It is an important statement that should be in the bill because there has been a lot of controversy about what consultation is in this context. It should be set as the standard in the bill.

I move amendment 334.

The Convener: The question is, that amendment 334 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 334 disagreed to.

The Convener: We have reached the end of section 45. We have the opportunity to have a debate at the end of each section, which I have not been affording members, but I have not been interrupted and I assume that members would have let me know if they wanted to have a discussion. We have that opportunity now; I will allow a discussion if members indicate that they want to speak.

Section 45, as amended, agreed to.

Section 46—Consultation with tenants and registered tenant organisations

Amendment 385 moved—[Cathie Craigie]—and agreed to.

Amendment 335 not moved.

Amendments 386 and 387 moved—[Cathie Craigie]—and agreed to.

Section 46, as amended, agreed to.

Section 47—Tenant management agreements

The Convener: Amendment 388 is in the name of Cathy Jamieson. I understand that Cathie Craigie will speak to and move the amendment on her behalf.

Cathie Craigie: I give the committee Cathy Jamieson's apologies; she is unable to attend the committee today. Cathy Jamieson has a great interest in this matter. Most people will be aware of the Co-operative Party MSPs. Amendment 388 is about fully mutual co-operative societies, which are a specific form of community housing and housing ownership. Cathy Jamieson is keen to ensure that they are able to operate on a level playing field.

I am sure that the Executive acknowledges the issues that face tenants who wish to set up fully mutual co-ops. I want to be sure that tenants are given appropriate support and information if they are considering co-operative options. It is in that spirit that Cathy Jamieson lodged amendment 388.

I move amendment 388.

Ms Curran: I am aware of Cathy Jamieson's strong interest in this area. We are committed to community empowerment as part of our approach to housing. We are strongly committed to tenant involvement in, management of, and ownership of housing. Tenant participation initiatives, culminating in the new rights to information, consultation and participation, which have just been referred to, are about sharing power and decision-making between landlords and tenants.

Fully mutual co-ops and tenant management co-ops are models through which much housing renewal has been achieved. They have been effective and have stood the test of time. We are committed to building on that tradition. We want to ensure that tenants are aware of their options, including other possibilities, such as community-based housing associations. There is a range of community models and it is important that tenants and local communities are aware of the strengths of each model in making decisions on the structures that are best for them.

The bill already empowers ministers to promote housing associations and co-operatives as part of the handover of responsibilities from Scottish Homes. Local authorities are given equivalent powers. Scottish Homes already works with local communities to investigate different approaches and can provide promotional grants and advice to develop new housing associations, including fully mutual co-operatives. We expect the new executive agency to carry on that tradition and, in particular, to play an important role in encouraging local authorities and tenants to consider the tenant co-operative options, which may in turn evolve into fully mutual co-operatives or community-based housing associations.

We cannot agree to the text of amendment 388, because fully mutual co-ops are not directly applicable to tenant management agreements where the ownership of the houses remains with the local authority, but I hope that Cathie Craigie, representing Cathy Jamieson, will accept that the Executive is committed to recognising the contribution that fully mutual co-ops and other tenant-led initiatives have made to tenant empowerment and community regeneration. In that spirit, we ask Cathie Craigie to withdraw the amendment.

Cathie Craigie: I am sure that Cathy Jamieson would be reassured by the minister's response and, on those grounds, I will not press the amendment—or whatever it is I am supposed to say.

The Convener: Cathie Craigie has indicated that she wishes to withdraw amendment 388. Is that agreed?

Amendment 388, by agreement, withdrawn.

Sections 47 and 48 agreed to.

Section 49—The register of social landlords

The Convener: Amendment 410 is grouped with amendments 411, 412, 413 and 414.

Brian Adam: Amendment 411 was lodged prior to the lodging of amendment 392 by the Executive. In light of that fact, it is unlikely that I will press amendment 411. I will have something to say about amendment 392 when the time comes.

We have had lots of debates about what reasonable may or may not mean, but on this occasion the reason for removing "reasonable" from section 49(1) is that the Executive has not taken account of the fact that the worldwide web exists and that the register of social landlords can be open for inspection at any time merely by posting it on the web. There is therefore no need for "reasonable" on this occasion, or for a debate about it, which is perhaps a slightly different argument from the one I have used up to now. That is why I lodged amendment 410. I hope that the Executive might be willing at least to consider it. Information technology can make such information available at any time, which means that "reasonable" is not needed.

I have already mentioned amendment 411. I lodged amendment 412 to try to get a little explanation from ministers about why the bill mentions "members of the body" and restricted membership. I assume that that is a reference to co-ops. That is why amendment 412 would insert "whether or not". It is a probing amendment, designed to provoke a response, rather than an amendment that I intend to press.

We have been assured on many occasions that if we introduce constructive amendments, ministers will be willing to consider them. Amendment 413 is a constructive amendment that I believe enhances the bill. I certainly hope that registered social landlords will take an active interest in contributing to the regeneration of urban areas. I hope that amendment 413 is helpful. I cannot see any technical reason why it cannot be agreed to, as urban regeneration activities could be dealt with appropriately in terms of registration.

The reason for amendment 414 is that we believe that tenants also ought to have a say on registration, rather than landlords exclusively. In the spirit of tenant participation and a voice for tenants, amendment 414 would allow that to happen.

There are some reasoned and reasonable amendments in this group.

I move amendment 410.

Bill Aitken: Amendment 410 causes problems, yet again, with the definition of reasonable. I certainly have no objection to information being available on the web, as Brian Adam suggests, but I am a little concerned that the wording that he envisages would require that information to be available in every form and at every time, such as at 4 am on 1 January. Offices' having to be open to provide that information would be tremendously problematical. What he is trying to do is basically worthwhile. Putting information on the web would not be a difficulty, but that wording would mean that people would have to have their offices open all the time.

There is definite merit in amendment 413 and I would certainly not object to its being agreed to.

Linda Fabiani (Central Scotland) (SNP): There seems to be a wee bit misunderstanding about the register of social landlords. We are not saying that all landlords' offices would always have to be open; we are saying that the Scottish ministers would maintain the register, so the information

would be available at all times because the Executive's website is already up and running and can be utilised. That is not something that we particularly want to argue about, I have to say.

Brian Adam mentioned amendment 412, which is a probing amendment. It would amend

"houses for occupation by members of the body, where the rules … restrict membership",

which concerns member or tenant co-ops. Housing associations have members who sometimes become tenants. Sometimes, they do not. We wondered whether it might be better to insert "whether or not" before

"the rules of the body restrict membership".

Following yesterday's urban renewal debate in Parliament, amendment 413 would add

"activity contributing to the regeneration of an urban area",

which we feel is in the spirit of what the Executive is trying to achieve with the bill in terms of community regeneration and balanced communities.

Many communities already carry out activities—not necessarily in respect of housing—that are of direct benefit to themselves. Sometimes, those activities can be used by people who do not live in the RSL's houses. We think that what amendment 413 proposes would be a very useful tool to encourage such activities.

Amendment 413 concerns the criteria for registration or removal from a register. We feel very strongly that if bodies representing RSLs are to be consulted before varying or establishing any such criteria, it is only fair that bodies that represent the tenants of those landlords should also be consulted.

11:15

Robert Brown: I want to talk about amendment 413 in particular. The area of the bill to which the amendment refers is quite tactical.

I may be wrong about this, but I had understood that although housing associations operate in some of these fields, there is a question mark about how far their powers go. In Partick, for example, I think that the pavements are run, administered and maintained by the housing association that operates in that area. That seems valid and possible in some situations. There are others. If there are question marks about acquiring commercial premises or businesses and improving, repairing or converting commercial premises—which are some of the activities that housing associations get into—I think that amendment 413 is quite a useful addition and, subject to the minister's comments, I am prepared to support it.

I have some sympathy for amendment 414 too and will be interested to hear the minister's comments on it.

Ms Curran: There is quite a lot in this group of amendments too. I again thank the committee for the spirit in which it has submitted the amendments and hope that I will give the reassurances it is seeking—if not necessarily the voting instructions, shall I say.

Perhaps the biggest point of disagreement will be over what is meant by "reasonable" in amendment 410. There may be a fault line in the committee if we fall out about that.

Brian Adam seems to be arguing that we should have a statutory commitment to make the register available at all times. I am not sure that that would be practicable. As Bill Aitken says, we do not see the value of keeping the register open at 3 or 4 o'clock in the morning. We accept the point about the web and I understand that Scottish Homes staff are looking at putting the register on the internet so that, even in the small hours of the morning, Brian Adam may get access to it—if that is the kind of activity he engages in.

In statutory terms, we need the fallback position. The net might fail or the register might not get on the web on time. I understand what Brian Adam is saying, but we think that what he suggests goes a step too far. I assume that Brian Adam does not wish to press amendment 411, so I will not address it at the moment. We will come to it later.

Section 50(2)(b) is intended to provide for the registration of fully mutual co-operatives. Amendment 412 would widen that provision to include all not-for-profit bodies that provide housing for their members. We do not think that that is necessary as those bodies are caught by section 50(2)(a) and the bill simply carries forward those provisions from the Housing Associations Act 1985. We are therefore not aware of any problems with the existing provisions and would prefer to retain the clarity of the current legislative position.

Some of the comments that have been made about amendment 413 are interesting. I recognise the background that members are bringing to such issues, but I would like to take the committee through some of our thinking on them.

Amendment 413 would allow RSLs to carry out urban regeneration activities. We are very sympathetic to that and we all know why. We know what Brian Adam is seeking to achieve and recognise what many housing associations have done. They have been at the forefront of much urban renewal in cities and towns.

RSLs can also play an important role in rural regeneration and we would prefer the term

"community regeneration" to cover both situations. As well as housing renewals, RSLs—with encouragement from Scottish Homes—have developed wider role activities that have been of considerable benefit. All that has been possible within the existing legislative framework.

An important debate is going on—we are all part of it—about the respective community regeneration responsibilities of local authorities and the new executive agency. We need to think carefully about the legitimate scope of RSLs' wider role activities—the activities, which Robert Brown talked about, they undertake as RSLs rather than through subsidiaries. We need to get the balance right on those issues. If necessary, we can modify the permitted activities of RSLs by order under section 50(3). I ask Brian Adam not to press amendment 413. The matter will obviously be a subject of some discussion between us.

I understand the sympathies the committee has expressed towards amendment 414, which would allow the Scottish ministers to consult bodies that represent the tenants of a landlord prior to establishing or varying the criteria for registration. We already have this power. Section 53(3) refers to "such other persons", which includes organisations. Were such bodies to exist, we would of course wish to consult them. There is no need for amendment 414. I ask Brian Adam not to press it and not to hope for it to be agreed to if he does.

The Convener: Do you wish to add anything in winding up?

Brian Adam: It is not often that I have had most of my points about a section accepted by the minister. I was a little taken aback.

I will not press amendment 410 or amendment 411. I also accept the minister's explanation about amendment 412, so I will not press that amendment.

I understand the minister's point on 413 and I accept her point about urban regeneration as opposed to community regeneration. I would prefer the bill to contain something clear-cut about that, rather than to rely on other provisions. I wonder whether the minister would be willing to insert "community regeneration" into the bill at stage 3 and, if not, whether she would be willing to accept an amendment to do that at stage 3.

I was not persuaded by the minister's argument against amendment 414. I understand her point about being able to consult other interested parties, but we are trying to elevate the status of tenants and the importance of their role. It is important to mention tenants explicitly in the bill with regard to consultation on changes to the criteria for registration as an RSL. I will press amendment 414.

Amendment 410, by agreement, withdrawn.

Section 49 agreed to.

Section 50—Eligibility for registration

Amendments 411 to 413 not moved.

Sections 50 to 52 agreed to.

The Convener: We should note a little milestone: we are now more than halfway through the bill.

Section 53—Criteria for registration or removal from register

Amendment 414 moved—[Brian Adam].

The Convener: The question is, that amendment 414 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)
Brown, Robert (Glasgow) (LD)
White, Ms Sandra (Glasgow) (SNP)

AGAINST

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 4, Against 3, Abstentions 0.

Amendment 414 agreed to.

Section 53, as amended, agreed to.

Sections 54 and 55 agreed to.

11:24

Meeting adjourned.

11:42

On resuming—

After section 55

The Convener: Amendment 391 is grouped with amendment 392. I invite the minister to move amendment 391 and to speak to both amendments.

Ms Curran: As members will remember, these provisions were the subject of the section 30 order which, having been approved in draft by the Scottish and UK Parliaments, was made by the Queen and the Privy Council last month. In response to "Better Homes for Scotland's Communities," the consultation paper on the housing bill, the Council of Mortgage Lenders suggested that the bill should include measures to protect tenants, landlords and other lenders in the

event of an insolvency action by a creditor against an RSL. The CML pointed to legislation that was introduced in 1996 in England as a model for the measures that it suggested.

Amendments 391 and 392 provide for a moratorium period during which the new regulatory agency, in the event of insolvency action against an RSL, can enter into negotiations with its secured creditors to agree proposals for the future ownership and management of the assets of the RSL. Given the powers and duties of the new executive agency, it is unlikely that those provisions will be required. However, in the unlikely event of an RSL encountering financial difficulties, there is clear benefit in allowing a breathing space during which future options can be discussed.

In lodging the amendments, we have made minor departures from the provisions that apply in England in order to reflect the different legal institutions in Scotland. We have also extended the moratorium period from 28 to 56 days. That reflects a suggestion that was made to us by Scottish Homes and which was endorsed by the CML and the SFHA.

The basic aim of the provisions is to ensure that the regulator will have the opportunity and powers to ensure that tenants' interests are to the fore, but the measures will have an additional benefit. The introduction of provisions in line with those that apply in England and Wales will enable Scottish RSLs to seek finance on a level playing field. There is a lot to the provisions and I would be happy to address any points of detail in my response to the debate. The provisions are intended as a safety net for lenders, landlords and tenants alike, and I ask the committee to accept amendments 391 and 392.

I move amendment 391.

11:45

Brian Adam: Amendment 392 is extensive—it is six pages long and contains a lot of detail. The tight time scale meant that it was difficult for us to give it the scrutiny that we would have liked. I welcome the extension from 28 days to 56 days that was highlighted by the minister, but before we pronounce whether we support amendment 392, we should review it at stage 3. I hope that, when the Presiding Officer decides what he will accept at stage 3, he will bear in mind the fact that there are significant areas in which there has been limited time to consider the detail.

At this stage, I cannot support amendments 391 and 392, although I am happy to accept the principle behind them and I especially welcome the use of section 30 of the Scotland Act 1998. For most of the Parliament's existence, we have been happily sending devolved matters back to Westminster for decision. This is the first occasion on which Westminster has agreed to allow a reserved matter to come here for decision. I welcome the fact that the Executive is prepared to use that power—it is highly appropriate in this case.

Ms White: Amendment 392 is very detailed. I glanced at the part about the appointment of managers to implement proposals and the powers of managers, but I would like more time to consider the details. That is one of the reasons why I am unable to support the amendment. The powers of the manager are detailed: they are listed from paragraph 9(1)(a) of the proposed new schedule to paragraph 9(1)(p). I would like more time to go through the amendment, especially where it concerns the selling off and disposing of land. In principle, I agree that the amendment is necessary, but I will probably abstain.

Ms Curran: I appreciate that Brian Adam and Sandra White are new to the committee and were not part of the discussions in our previous, marathon inquiry into the housing stock transfer, during which the issue of insolvency was raised frequently. With all respect, the committee had a grasp of the issues that are involved.

I want to reassure Sandra White and Brian Adam by saying that we have had extensive discussions with the key agencies and players on this matter. Those key players are happy with the amendment, which is the result of those discussions. The principles behind what we are doing are clear. I take the point that the matter before you is detailed, but the principles are fundamental to the issues that we are considering. The provisions will enable a freeze to be put on matters if an RSL becomes insolvent, so that the regulator can agree proposals with the RSL and its creditors. The proposals will ensure that tenants' best interests are put first. I ask the committee to accept the amendments.

The Convener: The question is, that amendment 391 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)

ABSTENTIONS

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

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

Amendment 391 agreed to.

Schedule 7

REGULATION OF REGISTERED SOCIAL LANDLORDS

The Convener: Amendment 415 is grouped with amendments 416 and 417. I invite Linda Fabiani to speak to all the amendments and to move amendment 415.

Linda Fabiani: Amendment 415 is—I am sure the committee will agree—straightforward and sensible. It is quite obvious that any inquiry into the affairs of an RSL should be carried out by someone who is

"not a person who is, or at any time has been, a member of the staff of the Scottish Administration".

For an inquiry to be fair and entirely accountable, it is crucial that the person who conducts the inquiry should not be a person who is, or at any time has been, a member of staff either of the RSL that is being investigated or any subsidiary or associate body of that RSL. A lot of suspicion would be created if someone who at any time had had a direct involvement with an organisation were to carry out the inquiry into the organisation's affairs. I hope that amendment 415 will be accepted.

Amendment 416 relates to subparagraph 16(9) of schedule 7, which reads:

"The Scottish Ministers may publish the report".

Amendment 416 would change "may" to "shall" in the interests of accountability and transparency. Some may say that some things in such a report could cause difficulties, but there are plenty of safeguards; the second part of subparagraph 16(9) also says:

"or such part of it as they think fit."

I do not ask that that should be deleted. It is essential that some part of the report be published. Members should bear in mind that individuals are protected by other rules, regulations and legislation, such as the Data Protection Act 1984.

I lodged amendment 417 because I was interested to know the motivation behind giving 14 days' notice to someone who is to be removed from an organisation for misconduct. Perhaps there is something that I am unaware of, but it strikes me that, if an inquiry has found bad practice, giving someone at least 14 days' notice could damage the results of the inquiry. Such a period would give someone an awful long time to cover their tracks—if they had been doing anything that required that tracks be covered. I would like an explanation of the 14 days' notice.

I move amendment 415.

Bill Aitken: Amendment 415 is sensible. Clearly, one would hope that no one in the category that Linda Fabiani has suggested would be appointed to conduct such an inquiry, but it might do no harm to include the provisions of amendment 415 in the bill just in case.

There is potential for difficulty with amendment 416. In principle, I agree with what Linda Fabiani said, but sometimes the realities of a situation mean that it might not be in the public interest—in the wider public interest, I stress—for a full report to be made public.

The 14 days' notice is an issue of some concern. The Executive may be trying to be fair to the individual who has been the subject of the inquiry, but 14 days gives an opportunity for a bit of track covering and ducking and weaving. There may be some logic that I am not seeing, so I shall listen to what the minister has to say.

Brian Adam: One of my constituents has had considerable difficulties with his housing association, which led to an inquiry. The inquiry was held by Scottish Homes, but no report was published. In such situations, it is easy for people to leap to conspiracy theories and believe that the world is against them. Putting the results of an inquiry into the public domain, with the safeguard that part of the report could be withheld in the public interest, would offer some comfort. The idea that ministers should have discretion to sit on the whole report and almost not acknowledge its existence gives credibility to those who are always looking for conspiracies and who point the finger, saying that things are not transparent and are not being done openly. That accusation has been made to me in at least one case. We should do all that we can to make the process as transparent as possible, but allow for material to be withheld in the public interest.

Amendments 415 and 417 speak for themselves and I am more than happy to support them. Is the minister aware of cases in which concerns have been expressed—by either tenants organisations or individual tenants—about inquiries that have taken place into the activities of housing associations, but which have not come to light because the reports have not been published, even when the report has been requested not only by the individual but by the individual's elected representatives?

Karen Whitefield: Amendment 415 is sensible. I like to think that when the Executive took such steps, it would not appoint anyone who had a connection with the RSL, but the amendment would ensure that there was no dubiety about that in the bill. The amendment is positive and I hope that the Executive feels able to support it.

Bill Aitken expressed a few concerns about amendment 416. I agree with some of the points

that Brian Adam made. We want investigations to be completely transparent, but that might not always be possible. My concern would be that, if it were necessary for criminal proceedings to be taken as the result of an inquiry, publishing a report in full might jeopardise the case. Reports should be published when it is possible to do so and those with an interest should have access to them, but on some occasions that might not be appropriate.

Ms Curran: I am grateful to Linda Fabiani, who has considerable background in this sector and is knowledgeable on such matters, for introducing the issues. I can see the point that she is making with amendment 415. I hope that in practice it would not be an issue, but I am happy to put the matter beyond doubt by accepting the amendment.

There are one or two concerns about amendments 416 and 417. I understand the arguments that have been made; we are all coming from a similar position. A couple of reservations have been expressed about amendment 416. It has been suggested that the reports are not always about the generality of an RSL's performance: sometimes they deal with specific and sensitive issues, such as the performance of an individual or the prospect of criminal proceedings. In such circumstances, we do not think that the regulator should be forced to publish material that was not appropriate. I accept the point that has been made about subparagraph 16(9) of schedule 7, which states that "part of it" could be published. That creates some difficulties as well, because people might ask questions about which part of the report was missing. It is best to retain a degree of discretion; that would be an operational concern for the regulator. I understand Brian Adam's concerns, but the vast majority of inquiry reports would be and should be published. We should retain some discretion so I ask Linda Fabiani not to press amendment 416.

I hear what Linda Fabiani is saying on amendment 417. The power in schedule 7 does not take away the RSL's ability to dismiss an employee in line with the relevant employment and other legislation. It allows the regulator to step in when, after a full inquiry has been undertaken, it appears that an individual has been responsible for misconduct or mismanagement. In such circumstances, 14 days' notice seems reasonable. If there is concern about such an individual behaving unacceptably during those 14 days, ministers will be able to suspend that person under the other powers in schedule 7, until the period of notice has passed. With that reassurance, I ask Linda Fabiani not to move amendment 417.

12:00

Linda Fabiani: I listened carefully to everyone and I will press amendment 415.

I am not entirely convinced by the arguments on amendments 416 and 417. Many other factors could be relevant. I will not press amendment 416. I am of the mind that, when I am asked to move amendment 416, I shall not do so, but I reserve the right to rethink the intention behind the amendment, because many issues are involved. I may lodge a revised amendment at stage 3.

The same applies to amendment 417. I know that we are talking about an individual, but an assumption is made that an individual always acts alone. Depending on the seriousness of the inquiry that has been undertaken, questions arise about the course of action that should be followed. I will not move amendment 417, but I reserve the right to reconsider that issue and perhaps to lodge a more detailed amendment at stage 3.

Amendment 415 agreed to.

Amendments 416 and 417 not moved.

Schedule 7, as amended, agreed to.

After schedule 7

Amendment 392 moved—[Ms Margaret Curran].

The Convener: The question is, that amendment 392 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)

ABSTENTIONS

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

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

Amendment 392 agreed to.

Sections 56 to 59 agreed to.

Section 60—Inspections

The Convener: Amendment 418 is grouped with amendments 419, 393, 420, 394 and 424 to 426.

Brian Adam: The convener will be delighted to know that we are about to debate the word "reasonable" again. I will take another approach. Given that section 60 relates to someone who is guilty of an offence and is liable on summary

conviction to a fine, I do not know how "reasonable" should be defined, and I do not know whether it is up to us to define it. As far as I am aware, the procurator fiscal would dispose of such a case and has discretion about what is reasonable. We should leave it up to the fiscal to decide whether a reasonable excuse was provided. The word "reasonable" is confusing. We should use it as little as possible, because it is ill defined.

I will listen to the debate on the other amendments in the group.

I move amendment 418.

Ms White: Amendment 419 centres on the word "reasonable" again, but not because of the way in which it is defined. As my amendment points out, it is only reasonable that under section 60 an RSL should be able to

"request the Scottish ministers to review the outcome of an inspection"

for clarification or other purposes. We should be told exactly what is happening. Although section 60 explains most things quite clearly, the opportunity for a review should be available.

Amendment 420 seeks to include

"any tenant organisations registered with the registered social landlord under section 45(3)"

in the list of people who receive a published copy of the outcome of an inspection. Such a provision is in the interests of ensuring transparency and that such organisations participate in the process. That is only right and proper.

Convener, you did not mention amendment 421.

The Convener: We will deal with that in another group.

Ms White: Thank you.

Amendment 424 deletes the word "reasonable" in section 63(6) to ensure that an inspector has the right of access at all times. Although it is a small word, it is bandied about very often.

Amendment 426 will ensure that, in the interests of participation and consultation, published inspection reports are sent to tenant organisations that are registered with the local authority.

The Convener: I call the minister to speak to amendments 393 and 394, and to the others in the group.

Ms Curran: As there are several issues to address in the group, I will begin by speaking to amendments 418 and 424.

I think that we are damned to discuss the word "reasonable" for ever. Although I accept that it cannot be scientifically precise for all circumstances, it serves a purpose. At present, anyone who fails to comply with an inspection must have a "reasonable" excuse for doing so. Amendments 418 and 424 would remove the "reasonable" proviso, which means that even an unreasonable excuse for not complying could be accepted. That argument does not logically stand up. Although the explanations from Brian Adam and Sandra White make it clear that that is not what they intend, we must be very careful when framing legislation not to leave that interpretation open. Although I do not want to get into the whole debate about reasonableness, I ask both Brian and Sandra to give consideration to those points.

I am not convinced that I understand the point of amendments 419 and 425, which would allow an inspected RSL or local authority to request a review of that inspection. I accept that there should be an opportunity for RSLs and local authorities to appeal against the outcome of the inspection process, and members will see that we have allowed for that in the draft code of practice, which has been circulated to the committee. However, a statutory requirement for Scottish ministers to review something undertaken by them does not seem particularly sensible.

In any case, the regulator will in both cases have produced a report which, in practice, will have been discussed in draft with the body that has been inspected. As we discussed earlier, where an RSL has been inspected, quick action might be of the essence and a statutory review could simply be a bureaucratic hindrance. Similarly, in the case of local authorities, an inspection report does not mark the end of a process, and where a report finds standards to be unsatisfactory, a remedial plan—which will be negotiated between the regulator and the local authority—will be the next step.

We are consulting on that issue in the code of practice. We propose that inspected bodies should be able to appeal against the outcome of the inspection process, and that the final stage of the appeals procedure should be heard by a regulation sub-committee. It is important that we consult fully on the subject and that any final mechanisms allow for fair and effective regulation. I ask the committee to reject amendments 419 and 425.

It has always been our intention that RSL inspection reports would in general be published. We have received representations from the CIHS, which felt that the original drafting left room for a degree of uncertainty. We are happy to clear that up in our amendments 393 and 394.

Sandra White's amendments 420 and 426 require regular inspection reports to be provided to tenant organisations that are registered with an RSL. We accept her proposition with a caveat about drafting, as the amendments are not entirely

consistent with the drafting style. A registered tenant organisation is defined in section 46. It would therefore be better if the amendments referred to that definition. However, we accept them in principle. If Sandra White is prepared not to press them, it would be possible to come back at stage 3 with amendments that are consistent with the drafting style.

The Convener: I ask Linda Fabiani to speak to amendment 425 and to the other amendments in the group.

Linda Fabiani: I am sorry—I ask the convener to give me a few seconds. I have read my list wrongly and I am looking at the wrong amendment. This is where I will start to babble. The amendment has come up so quickly that I am totally unprepared. However, it is all coming back to me now.

If the local authority is unhappy with the results of an inspection that was carried out by the appointed person, and it believes that it has been unfairly dealt with in the matter, it should have the right to request that the Scottish ministers review the outcome of the inspection. Amendment 425 is a straightforward amendment to give local authorities the right to say that they do not agree with the outcome of the inspection and that they have been unfairly treated. It gives them another level to which they can go.

Cathie Craigie: I have sympathy with the provisions of Sandra White's amendments 426 and 420. I am glad that the minister has accepted the amendments in principle. I hope that Sandra White will agree about bringing amendments 426 and 420 back at stage 3.

In her amendment 425, Linda Fabiani has raised points about the appeal procedure. As I was in the office late last night, I was able to get a copy of the code of practice when it was sent by e-mail. If members had read that, it would have made a difference. The role of the regulator is important. Any RSL or local authority should take seriously the points made by the regulator. If we were to introduce another form of appeal into the bill, it would add to the time that the regulator would take to address issues that had been raised. As the minister pointed out, when the regulator writes a report, it will be in draft form for consultation with the local authority or the RSL. If they were unhappy about particular parts of the report, they would be able to discuss it and to reach agreement. We have got the provisions right. There is no need for another form of appeal.

I do not support amendments 419 and 425.

Bill Aitken: The appeal procedure is as outlined in the new executive agency's code of practice. Although I am not criticising SNP members, if they had had time to read the code of practice, they might not have lodged their amendments. Unfortunately, sad people such as me, with nothing else to do last night, read the code of practice.

The term "reasonable" is used differently from the way in which we have dealt with it in the past. If the word "reasonable" were to be removed through amendments 418 and 424, that would create what is known as an absolute offence. That would remove an important defence for someone who was charged under those sections of the bill. I am always dubious about the advisability of having absolute offences. It can create all sorts of difficulties in the courts and it does not make for good justice. On that basis, I am not able to support amendments 418 and 424.

12:15

Brian Adam: My amendment 418 refers to the word "reasonable". I made the point earlier that only the fiscal should exercise discretion, not anyone else. However, I understand the technical points that have been made and I do not plan to press amendment 418.

On the appeals procedure proposed by Sandra White in her amendment 419, I commend the Executive for letting us have sight of ministers' intentions in relation to guidance, although that might have come too late as far as amendments to the bill are concerned. I presume that that welcome development was in response to our earlier argument that we would have a more informed discussion if the guidance were to be made available to us. I understand the pressure that officials and ministers were under to produce that guidance, and the fact that they have produced it in advance is welcome. It is up to Sandra White to decide whether to press amendment 419, but I accept the point that the Executive has made. However, the amendments were lodged and debated against a background of not having the information about guidance.

The Convener: Members might have noticed an obvious mistake there—Brian Adam should have wound up after the minister had spoken. However, I have discretion to allow him to speak in a general debate, so it was not really a mistake. I will call him to wind up after I call the minister.

Ms Curran: I will be brief.

Because I know you so well, convener, I know how hard that was for you to admit. I will say nothing else, as I realise that my comments are on the record. I had better watch out for my future prospects.

Most of the points that I wanted to make have been made. We will be happy to engage with the committee on such matters in future and to enter into discussions. We want to encourage that sort

of approach. I also want to say how sad Cathie Craigie and Bill Aitken are if they were working late last night, although they are very competent members of the committee.

The Convener: I call Brian Adam to wind up the debate and to indicate whether he intends to press or withdraw amendment 418.

Brian Adam: I do not wish to press amendment 418.

Amendment 418, by agreement, withdrawn.

Amendment 419 not moved.

Section 60 agreed to.

Section 61—Inspection reports

Amendment 393 moved—[Ms Margaret Curran]—and agreed to.

Amendment 420 not moved.

Amendment 394 moved—[Ms Margaret Curran]—and agreed to.

Section 61, as amended, agreed to.

After section 61

The Convener: The procedure for the next group of amendments is a little complicated.

The next amendment on the marshalled list is amendment 421. However, I have decided under rule 9.10.6 of standing orders to allow a manuscript amendment. Members know that that is a rare occurrence—in fact, it is so rare that I have not dealt with the procedure before and members should not take this as an indication that I will repeat the exercise.

The manuscript amendment, which was published this morning and distributed to members earlier, is amendment 434. I have grouped it with amendments 421, 427 and 428, and I call amendment 421. However, I presume that Sandra White will not move amendment 421.

Ms White: That is correct.

Amendment 421 not moved.

The Convener: In that case, the debate will take place on amendment 434.

I ask Sandra White to move manuscript amendment 434 and to speak to the other amendments in the group. Do we all know what we are doing?

Cathie Craigie: I cannot find amendment 434.

The Convener: The amendment is not on the marshalled list because it is a manuscript amendment.

Cathie Craigie: I am sorry, convener.

The Convener: The note on manuscript amendment 434 states:

"It will be called immediately after amendment 421".

I have done that. I call Sandra White.

Ms White: I hope that I am following the correct procedure with manuscript amendment 434, on remedial plans. Because of my commitments with other committees, it was difficult to lodge amendment 434 on time, so I thank you for accepting it, convener.

Amendment 434 is not contentious. It is about balancing things fairly. Sections 60 to 62 are about RSLs. Section 63 is about the inspection of local authorities' housing provision. Remedial plans for local authorities are dealt with in section 65. Amendment 434 seeks to ensure that the provisions on remedial plans that apply to local authorities apply also to RSLs. That is all amendment 434 does. Whether the measures were missed out on purpose or because, like us, the Executive had too much work to do and forgot to include them in the bill, they should apply to RSLs in exactly the same way as they apply to local housing authorities. That is why I lodged amendment 434.

I move manuscript amendment 434, to insert after sectuin 61,

Remedial plans

(1) The Scottish Ministers may require a registered social landlord to prepare, and to submit to the Scottish Ministers by such time as they may direct, a plan (a "remedial plan") setting out the registered social landlord's proposals for dealing with the matters identified in the report in pursuance of section 61(2), or such of those matters as are specified in the requirement.

(2) Before making a requirement under subsection (1), the Scottish Ministers must send a draft of the requirement to the registered social landlord and must specify a period within which the registered social landlord may make comments to the Scottish Ministers on the proposed requirement.

(3) In deciding whether to make a requirement under subsection (1) and what its terms should be, the Scottish Ministers must have regard to any comments received from the registered social landlord under subsection (2).

(4) On receipt of a remedial plan from a registered social landlord, the Scottish Ministers may—

(a) approve it (with or without modifications), or

(b) reject it.

(5) Where the Scottish Ministers approve a remedial plan, they may impose conditions as to its adoption and implementation by the registered social landlord.

(6) The Scottish Ministers must not—

(a) approve a remedial plan with modifications,

(b) reject a remedial plan, or

(c) impose conditions under subsection (5),

unless they have given the registered social landlord notice of their intention to do so and have had regard to any

comments received from the registered social landlord within such period as the Scottish Ministers may specify.

(7) Where a plan is approved under subsection (4)(a), the registered social landlord must adopt and implement it in accordance with any conditions imposed under subsection (5).

(8) Where a plan is rejected under subsection (4)(b), the registered social landlord must prepare a revised plan and submit it to the Scottish Ministers by such time as they may direct.

Robert Brown: Amendments 427 and 428 seek to amend section 65 by requiring Scottish ministers to bear in mind, when dealing with remedial plans, the original local housing strategy, the production of which would have involved the local authority and Scottish ministers. It is a reasonable requirement that the strategy should be the framework within which things operate, and it avoids the situation whereby, without forethought and notice, people depart on a different track altogether because of aspects of the remedial plan.

Linda Fabiani: Sandra White's amendment 434 is trying to be helpful. Where we have housing management plans, it would be much simpler and more helpful all round if all landlords were treated in the same way. Sandra White is trying to achieve that with amendment 434. For all social landlords—RSLs or local authorities—there should be a level playing field in terms of regulation and operation. I ask members to bear it in mind that it would be better in the long run if the legislation was in that simplified form.

Ms Curran: I understand Sandra White's intention with amendment 434, but we have some difficulties with it. I ask the committee to bear with me while I say why we framed the single regulatory framework in the way that we did. The intention was to ensure consistent standards, not to take a one-size-fits-all approach regardless of the significant differences between RSLs and local authorities. While I accept the point that has been made about consistency, we have to recognise that RSLs and local authorities are very different bodies.

For local authorities, remedial plans represent an important point of contact when things are not going well between a regulatory agency and a local authority. In our regulation of local authority landlord roles, it is important that we balance the need for effective regulation with respect for the authority and autonomy of local democracy. The situation with RSLs is different—the need for effective and speedy regulation is more to the fore.

Registered social landlords face different risks from those faced by local authorities and swifter action could be required to protect tenants if, for example, there were financial problems or difficulties. That is also why we have taken powers to allow for statutory inquiries into the affairs of registered social landlords, a measure that would not be appropriate in relation to local authorities.

I can see why Sandra White might have been attracted by the symmetry suggested by the amendment, but it fails to take account of the different position of registered social landlords and local authorities and the issues around democratic structures.

Our problem with Robert Brown's amendments is that there is a significant difference between remedial plans and local housing strategies. Remedial plans will be concerned with rectifying serious failures in service delivery, whereas local housing strategies are concerned with housing needs and the policies and programmes to meet them. For example, if a local authority provides a poor repair and maintenance service to its tenants, it might be asked to produce a remedial plan. The trigger for action should be the quality of the service, and I think that it would be wrong to prevent Scottish ministers from requiring a remedial plan simply because the issue had not been identified in the local housing strategy or to have to reject a remedial plan on similar grounds.

I understand that Robert Brown has a strong commitment to making sure that local housing strategies are appropriate mechanisms, but I do not think that his suggestions fit in at this point. With that explanation, I ask Robert not to move his amendments.

Ms White: I accept that registered social landlords were not left out of this part of the bill by mistake, but I would still like to press my amendment. There should be clarity and fairness on both sides, and if local authorities have to submit a remedial plan, registered social landlords should do so as well.

The Convener: The question is, that manuscript amendment 434 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 434 disagreed to.

Section 62—Appointment of manager

The Convener: Amendment 422, in the name of Linda Fabiani, is grouped with amendments 423, 429 and 430.

Linda Fabiani: Amendment 422 relates to the appointment of managers. It would introduce greater fairness into the legislation by ensuring that ministers consult registered social landlords before a manager is appointed. Clearly, if problems with management mean that a manager has to be appointed, the consultation will be necessary to ensure that everyone is clear about why the manager is being appointed and what the problems have been.

The amendment contains an exception in that, if the appointment is made in connection with the duty of the registered social landlord under section 4, that consultation should not be required as that part of the bill deals with homelessness, which is the most serious issue that the bill touches on. As the bill does not place a statutory duty on registered social landlords to provide for the homeless, it is clear that, if the registered social landlord tries to get out of that obligation, there should be a mechanism for putting in place a manager immediately.

It is essential that the partnerships in a local authority area work. It is clear that partnership agreements have to be in place, and the regulator must be able to ensure that the aims of the bill in relation to provision for the homeless are met. That is why the amendment contains an exception to deal with a landlord who is trying to get out of his obligations. The regulatory framework should be strong enough to allow us immediately to take action.

Amendment 429 allows me to ask a question. I want to know why, when a manager is appointed in the local authority, anyone other than the local authority should be consulted. Why do ministers have to consult the Accounts Commission for Scotland and

"such bodies representing local authorities as the ministers see fit"?

I am quite happy to take the minister's advice on that.

Amendment 430 is the last of my amendments in the group and relates to section 66, page 39, line 32. We have been talking about strategy in housing. It is worth while that strategy be mentioned as often as possible in the bill, hence my amendment that, at the end of subsection (5), it be clearly stated that, when a manager is carrying out their functions, they should

"have regard to any local housing strategy"

that is proposed by the local authority.

I move amendment 422.

Ms White: Amendment 423 concerns the appointment of managers. I feel that to ask RSLs to pay for the remuneration and expenses of a manager who has been appointed by the Scottish ministers is punitive. As we know, RSLs do not have as much funding as local authorities. Members will note that I have not lodged a similar amendment in relation to local authorities which, obviously, I would do normally for parity. The remuneration and expenses of a manager should be paid by the Scottish Executive.

12:30

Cathie Craigie: When considering amendments 422, 423, 429 and 430, the committee should remember that, if a manager is appointed to run the affairs of an RSL, that means that the RSL has got itself into serious trouble and has obviously breached codes of guidance or the law. It is not necessary that the RSL should be consulted at that stage. I imagine that it will have been in discussions with the executive agency or the regulator. Long discussions will have gone on about why the RSL had got into the situation in which a manager had to be appointed. We do not have to do that.

Amendment 429 seeks to delete from section 66(4) paragraphs (b) and (c), which refer to:

"such bodies representing local authorities as they think fit, and

(c) the Accounts Commission for Scotland".

I imagine that it would be important to keep those lines in, because an RSL could have houses in more than one local authority area. It might be best to consult an organisation that represents the local authorities rather than individual local authorities. It is important that those paragraphs stay in.

On the question of who pays for a manager, RSLs must live up to their responsibilities. If they have got themselves into difficulties—I emphasise again that it must be a very serious situation if a manager has to be appointed—I do not see why the public purse should pick up the cost. If we were to pass amendment 423, we would detract from the seriousness of the situation. Retention of the requirement for an RSL to pay for the remuneration and expenses of a manager would allow the board of management of an RSL to understand fully the implications of getting the RSL into a position in which a manager had to be appointed.

Robert Brown: I have some sympathy with some of Linda Fabiani's amendments and I am bound to say that I think that the committee is grateful to her for the work that she has put into them with her background and knowledge.

I would be interested to hear the minister's view on amendment 422, but the requirement that Scottish ministers consult an RSL before appointing a manager to it might not be unreasonable in most circumstances. That does not mean to say that Scottish ministers would have to follow what the RSL says, but they would have to consult it.

I accept entirely what Cathie Craigie said about amendment 423—it is inappropriate. If something has gone wrong with an RSL, the cost of that ought to fall on the RSL. That is an accountability-related provision.

Amendment 430 is a slightly different version of what I proposed in amendments 427 and 428. I accept the minister's strictures on the way in which remedial plans would operate; those strictures are correct. Amendment 430, however, deals with a slightly different case—that of the manager coming in, as a result of the remedial plan, to carry out potentially all the authority's functions. It is not necessary for the manager to abide by the local housing strategy—the amendment does not suggest that. However, it is important that the manager should at least have regard to the local housing strategy. After all, that strategy is devised and promoted by the local authority as the elected body, with the earlier approval of Scottish ministers. Therefore, Linda Fabiani's amendment 430 does not seem unreasonable. I support it.

Karen Whitefield: I appreciate Sandra White and Linda Fabiani's concerns. As the MSP for Airdrie and Shotts, I know from considerable personal experience just how badly my constituents in Airdrie were let down by a housing association that failed. For that reason, I do not agree with Sandra White's amendment 423, because that housing association failed people and I do not see why the Scottish Executive should pick up the tab for a housing association's failure to meet its obligations to its tenants. Amendment 423 is inappropriate.

Amendment 422 suggests that there should be consultation with the RSL before the appointment of a manager. I am all in favour of consultation. It is very important. However, before we get to the stage at which Scottish ministers appoint a manager, there will have been lots of discussions between the RSL, the executive agency and the minister. People will be well aware that they have not been able to get their act together sufficiently to stop that happening. Amendment 422 would simply slow down the process. Sometimes we need swift action and in my experience, and that of my constituents, often action has not been as swift as it should have been. I know that my constituents feel strongly about that.

On amendment 430, it would surely be appropriate that an RSL would give full regard to a local authority's housing strategy; an RSL would have to do that to meet its obligations.

Ms Curran: I wish that members would not have all these substantial debates, because it makes my job very difficult. Once again, I thank committee members for bringing their experience to bear on these matters. That has led to a very informed discussion. I will deal with the issues systematically.

Like committee members, I am extremely committed to appropriate and meaningful consultation. The principle of conducting consultation is of great importance. However, that does not mean that consultation is appropriate in all circumstances. Not applying it in all circumstances does not militate against good, effective practice. I ask members to bear in mind the circumstances in which the executive agency would wish to appoint a special manager. Those would be circumstances in which it had become apparent to the executive agency that standards in an RSL had slipped and, in order to protect tenants, a special manager ought to be appointed to the RSL to raise standards. The committee is obviously fully aware of such circumstances. In the vast majority of cases, no such measures will be needed but, where they are, I am not convinced that there would necessarily be benefit in placing a statutory duty to consult with an RSL.

I understand the motivation of the amendments in the group and I understand that members are trying to maximise opportunities for consultation. That is proper; but I remind members that they are asking for a statutory provision that would have to apply in all cases. I think that it was Karen Whitefield who said that, by the stage that we are considering, there will have been ample opportunity for the executive agency and the RSL to talk to each other. In some cases, there might be a need for urgent action, but formal consultation could prevent that from happening. As Linda Fabiani said, amendment 422 recognises that, by seeking to exclude action in homelessness cases under section 4 of the bill. However, I argue strongly that that is not the only possible situation in which that may be necessary. I think therefore that there are problems with amendment 422.

Similarly, in relation to Sandra White's amendment 423, the point has been made that, where standards have dropped and a special manager has been appointed to work as the agent of an RSL, it is appropriate that the RSL should bear the costs of maintaining appropriate standards for its tenants. I understand, from the way that Sandra White has presented her arguments, where she is coming from. However, there are circumstances in which the Executive would not be best placed to pick up the costs for

other agencies that have not delivered their services. It would not be proper to place that requirement on the Executive.

I want to return to amendments 429 and 430. Amendment 429 would remove the duty on Scottish ministers to consult the Accounts Commission and local authority representative bodies, when a manager is being appointed to a local authority. The Accounts Commission has a statutory duty to oversee local authorities. I have talked about the need for care in dealing with the regulation of local authorities where staff report to democratically elected members. It is absolutely appropriate that the existing duties to consult should stand.

In the same vein, I have outlined the importance of keeping the regulation of the landlord role separate from a local authority's strategic functions. I understand Robert Brown's points but again, the matter is about the distinction between the landlord role—service delivery and so on—and the strategic plan. I assure Robert Brown that we would expect any guidance on the role of the special manager to address the issues that I outlined. I therefore urge the committee to reject all the amendments in the group.

Linda Fabiani: I would like to correct a misconception—the comments of some members make it clear that the thrust of the amendments has not been understood fully. Amendment 422 relates to the appointment of a manager within an RSL. However, amendments 429 and 430 relate to the appointment of a manager within a local authority. We are talking about two different things.

Karen Whitefield said that by the time it gets to the position of appointing a manager to an RSL, there must already have been a lot of talk. It was also said that things must have come to a pretty pass if the point of appointing a manager has been reached. It would also follow that, by the time the point of appointing a manager to a local authority housing department is reached, things must have come to a pretty pass and that an awful lot of talk must have gone on. In that case, why would it be okay to consult the local authority, but not the RSL? There is a provision on consulting on the appointment of a manager to a local authority, yet when it comes to RSLs, under section 62 there is no need to consult before appointing a manager. Clearly, that is a case of unequal treatment.

I see puzzled looks around the committee. If members examine section 62 on the appointment of a manager to an RSL—to which amendment 422 applies—and then examine section 66, on the appointment of a manager to a local authority, they will see that amendments 429 and 430 apply. We seem to be saying that one landlord has the right to consultation, but another does not. I put it to members that that is extremely unfair.

On amendment 423, I can see both sides. It seems unfair that the public purse and the Scottish ministers would have to pay, but it is also unfair that, within an RSL, the tenants would pay for bad management by their landlord.

I ask members to think again about my points on consultation, given that there was a misunderstanding. If we give local authority landlords the right to consultation—I will not press the amendment on the deletion of the consultation—and we must consult the Accounts Commission and bodies that represent local authorities, would not it be fair to consult the RSL? I will consider lodging an amendment at stage 3 to the effect that bodies relating to that RSL and the industrial and provident society—which would be largely responsible for the rules and regulations—should be consulted.

The Convener: The question is, that amendment 422 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 422 disagreed to.

Amendment 423 moved—[Ms Sandra White].

The Convener: The question is, that amendment 423 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

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)

ABSTENTIONS

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

The Convener: The result of the division is: For 1, Against 5, Abstentions 1.

Amendment 423 disagreed to.

Section 62 agreed to.

Section 63—Inspections

Amendment 424 not moved.

Amendment 425 moved—[Linda Fabiani].

The Convener: The question is, that amendment 425 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 425 disagreed to.

Section 63 agreed to.

12:45

Section 64—Inspection reports

Amendment 426 not moved.

Section 64 agreed to.

Section 65—Remedial plans

Amendments 427 and 428 not moved.

Section 65 agreed to.

Section 66—Appointment of manager

Amendment 429 not moved.

Amendment 430 moved—[Linda Fabiani].

The Convener: The question is, that amendment 430 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 430 disagreed to.

Sections 66 and 67 agreed to.

Schedule 8 agreed to.

Section 68—Power to obtain information

The Convener: Amendment 431 is in a group on its own. I ask Linda Fabiani to speak to and move the amendment.

Linda Fabiani: Amendment 431 is straightforward. It relates to the power to obtain information. Quite rightly, the Scottish ministers should be enabled to serve a notice on any person requiring that person to provide information

"in the form and manner specified in the notice"

and

"at a time and place specified in the notice".

Parliament should also be recognised in that regard, and I therefore ask the committee to agree to amendment 431, which would insert after "the Scottish Ministers" the words:

"or a committee of the Scottish Parliament established to consider matters relating to housing".

My first thought was to specify the Social Justice Committee, but the clerks rightly pointed out that titles and ministerships can change at any time, and that the wording of amendment 431 would enable the appropriate committee to ask for information. That would be an extremely useful tool for the appropriate committee of this Parliament.

I move amendment 431.

Brian Adam: Amendment 431 would certainly be a useful addition to the bill. I presume that the minister will clarify whether such powers already exist. I know that the Audit Committee has powers to get evidence from anybody that it likes, but I am not certain that that is the position of all committees, including this one, which has responsibility for housing. Perhaps the minister can clarify that.

Robert Brown: That is the point that I wished to make.

Karen Whitefield: I wanted to make a similar point. I also think that we must be careful about committees being involved in day-to-day running and regulation—a balance must be struck.

Ms Curran: I recall my days as convener of the committee. I am sure that Linda Fabiani will agree with my strong plea that we do not confuse the Executive with the Parliament.

Linda Fabiani: Absolutely.

Ms Curran: I am sure that I have heard Linda Fabiani say from a slightly different perspective

why she would not wish Parliament to be responsible for some of the things that the Executive does. I think that Bill Aitken has said that, too.

There is an issue about the different roles and powers of committees and the Executive. It is in nobody's interests to confuse those roles and powers. We have talked a lot about independent regulation, for example. People out there see the committee as having a distinct and separate role from the Executive. Broadly, most people think that that is a very helpful introduction into our parliamentary system.

Karen Whitefield made the point that it is not appropriate for committees to get involved in the day-to-day regulation of housing issues. That would take the committee down a path that I do not think it wants to go down.

Brian Adam made a point that Robert Brown and Karen Whitefield are also interested in. Under section 23 of the Scotland Act 1998, Parliament has powers to require any person to "attend its proceedings" and to produce documents on any matter for which the Parliament has responsibility. The committee therefore has considerable powers. That is a much more appropriate role. It is better—and in all our interests—to keep the Executive's and Parliament's powers and roles separate.

The Convener: I invite Linda Fabiani to wind up and indicate whether she intends to press or withdraw amendment 431.

Linda Fabiani: I will not press amendment 431.

The Convener: The question is, that amendment 431 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

Linda Fabiani: I said, "I will not press amendment 431."

The Convener: I beg your pardon. I am not sure whether I am tired or deaf. I apologise.

Amendment 431, by agreement, withdrawn.

Sections 68 and 69 agreed to.

After section 69

The Convener: Amendment 336 is in a group on its own.

Bill Aitken: The issue to which amendment 336 refers is straightforward. Of course, it is always difficult to strike a balance on the amount of information that should be imparted. Sometimes the information is superfluous and sometimes it causes difficulties when it is supplied; however, I seek an appropriate balance.

Earlier, we dealt with tenant participation. Amendment 336 is a tool at least to encourage tenant participation. If tenants can see exactly what is happening with the funds of the RSL, how the moneys are distributed and the percentage of moneys that are allocated across fairly limited headings, that will encourage participation.

I am mindful of the fact that sometimes the vigilance of tenant members of management committees can be excessive, but I do not think that what I seek is excessive. No RSL could reasonably complain about being asked to make available the information that is outlined in amendment 336. The costs involved would be minimal. Confidential management issues such as salaries would be concealed within the figures—that is appropriate. However, there is a case for a little open government for RSLs.

I move amendment 336.

Linda Fabiani: In general, RSLs are housing associations and housing co-operatives—there are a few other odds and sods and no doubt there will be more when the bill is enacted. Under the current regulatory framework and performance standards, housing associations and co-operatives do everything that is stated in amendment 336. They certainly publish annual reports that contain a summary of their accounts. Although not all RSLs send their annual reports to all tenants, the annual reports are available. Perhaps someone can enlighten me on whether local authorities are obliged to do anything similar.

Cathie Craigie: My approach to amendment 336 is along the same lines as Linda Fabiani's. From my experience in local government, I know that North Lanarkshire Council annually advised its tenants and anyone else who wanted the information how the rent was spent—perhaps because it was such a good landlord. The council also advised what its proposals were for the following year. Councils have a statutory obligation to publish information on the breakdown of council tax expenditure, but I am not sure whether there is a statutory obligation on local authorities to publish an annual report.

In my experience, most good RSLs make information available to their tenants, but I am interested to hear what the minister has to say on the issue. I think that annual reports should be published and made available to tenants—which is what Bill Aitken is seeking—but, as section 70 enables Scottish ministers to issue guidance, there is no need for amendment 336. I think that what Bill Aitken is looking for already happens. Why do local authorities and RSLs already provide the information? What instrument, if any, do ministers have to ensure that they continue to do so?

Ms Curran: I understand what Bill Aitken is arguing for. We fully accept that transparency and accountability are important principles that should apply to the activities of RSLs and local authorities, but amendment 336 is unnecessary. Schedule 7 already requires RSLs to provide accounts to Scottish ministers as part of the regulatory process. In any case, because they are industrial and provident societies or companies, RSLs' accounts will already be in the public domain. In practice—as Linda Fabiani said—RSLs normally publish annual reports, which are sent to their tenants.

Let me clarify some of the points that have been raised. Local authorities are under a statutory duty to produce annual accounts and make them available. There is also separate legislation under which a code of practice sets out the information that local authorities must include with their council tax demand and in their annual report. In addition, Audit Scotland is responsible for establishing indicators against which local authorities can be measured and for publishing information about individual authorities' performance against those criteria. We do not need to add much more to that.

Bill Aitken should be assured that section 70 gives ministers the power to issue guidance and set the performance standards on governance and financial accountability that he is seeking. That is a bit more flexible and comprehensive than amendment 336. We are happy to give the commitment that we will use the power in consultation with the Accounts Commission and Audit Scotland to encourage the greater openness that he is seeking.

I also remind Bill Aitken that in section 18 we have introduced extensive rights to information. I hope that that gives him the reassurance that he is looking for and I ask him to withdraw amendment 336.

Amendment 336, by agreement, withdrawn.

Section 70—Issue of guidance by the Scottish Ministers

The Convener: Amendment 112, in the name of Tommy Sheridan, is grouped with amendments 337, 395 and 432. Members will probably have realised that Tommy Sheridan is not here. Unless someone else is prepared to move amendment 112, that amendment will not be moved and amendment 337, in the name of Brian Adam, will become the lead amendment in the group.

Linda Fabiani: I will move amendment 112.

The Convener: In that case, I ask Linda Fabiani, on behalf of Tommy Sheridan—

Ms Curran: She is not on the committee.

Linda Fabiani: Oh sorry—I cannot move the amendment as I am not on the committee.

The Convener: It does not matter that you are not a member of the committee.

Linda Fabiani: Does it not? Margaret Curran should be quiet then.

The Convener: As Linda Fabiani has been allowed to contribute to the business, we might have noticed by now if she were not allowed to move amendments.

I ask Linda Fabiani to move amendment 112, on behalf of Tommy Sheridan, and speak to all the other amendments in the group.

Linda Fabiani: I did not know that I would have to do that when I said that I would move the amendment.

The Convener: You are not obliged to speak to all the other amendments in the group. You are obliged only to move amendment 112.

13:00

Linda Fabiani: The minister's comment threw me.

I will not make specific points about amendment 112, but I think that it is admirable. As a member of the Equal Opportunities Committee, I think that the inclusion of such a provision is something that everyone in this Parliament should aspire to.

I will leave my colleague, Brian Adam, to speak to amendment 337. Having examined amendment 395, I think that I will not comment on it either. The last amendment in the group, amendment 432, is in my name, so I had better speak to it.

The Convener: You will not get another chance, so take it now.

Linda Fabiani: In fact, I will not speak to amendment 432, as it relates back to amendment 431, which I withdrew earlier, on the committees of the Parliament. I do not intend to move it, as I will consider the matter again with a view to lodging other amendments at stage 3.

I move amendment 112.

Brian Adam: During the evidence-taking sessions at stage 1, we explored at some length whether an appropriate dispute resolution process was available. Concerns were expressed about the availability of independent advice and information for individuals or for tenants groups that had a difficulty with their landlord.

Amendment 337 is not utterly prescriptive, as it adds to matters on which guidance may be issued. I propose to do that a lot as part of this process. I have allowed the ministers some flexibility and scope. Tenants have expressed concerns about access to independent advice and information. I

hope that the ministers will address that problem by accepting the amendment or producing another appropriate solution. There might be debate on how the independent advice and information might be funded. I have not gone into the detail of that, but will leave it in the minister's capable hands.

I am glad that Linda Fabiani has decided not to move amendment 432, as I am not sure whether it would have helped. I am also not convinced about amendment 112; it is worthy, but I do not know how relevant it is to the Housing (Scotland) Bill. I look forward to the minister's response on the technical details as to whether it is necessary.

Ms Curran: I apologise for disfranchising Linda Fabiani earlier. Nothing personal was meant. I have lost all the understanding of the process that I gained in my previous position.

On amendment 112, we have discussed equal opportunities before in the committee and we have made it clear that we are introducing an equal opportunities provision—I think that the amendment is lodged—which we believe covers the matter. I am not sure what "cultural" needs would be and how that would be defined in primary legislation—that could cause some difficulty. The intent behind amendment 112 is covered by the equal opportunities amendment, which we will discuss at a future meeting. We therefore ask that amendment 112 not be pursued. I am looking to Linda Fabiani to ask to withdraw it.

Amendment 337 seeks to add to the list in section 70(2) a landlord's provision of information on independent advice in relation to housing disputes. It seems reasonable to me that landlords should offer advice on complaints procedures and should point tenants in the direction of bodies such as Citizens Advice Scotland if tenants feel that they would like independent advice on their concerns. It could be argued that existing powers already provide for that, but it is obviously important to use the regulatory system to promote the interests of tenants. I am therefore happy to accept amendment 337 in principle, but I ask Brian Adam not to move it today in return for a stated commitment to introduce a revised version at stage 3, which would primarily be linked to guidance on complaints procedures.

Section 70 sets out the matters on which Scottish ministers can give guidance in respect of the provision of housing accommodation and services by social landlords. In effect, section 70 sets out the scope of the new executive agency's regulatory functions. Amendment 395 makes it clear that the powers to issue guidance under section 70 do not extend to local authorities' functions in respect of improvement and repair grants. That is because those functions are strategic and are not landlord functions. Amendment 395 is desirable because the power to issue guidance on

"the provision of services for owners and occupiers of houses",

which is set out in section 70(2)(h), could capture matters beyond factoring services, which were the intended target of the provision. Capturing wider matters would inappropriately extend the scope of the regulatory framework beyond what we consider necessary. The Convention of Scottish Local Authorities asked us to introduce amendment 395 to ensure that the legislation could not be taken to capture matters beyond the proper scope of the regulator.

I am sure that Linda Fabiani and I will debate the issues raised by amendment 432 another day.

Robert Brown: I have some sympathy with Linda Fabiani's reasons for lodging amendment 432. The committee may remember that, when we debated houses in multiple occupancy, there was some discussion about whether statutory instruments could be amended. Some inconvenience was caused by the fact that they could not be amended and one can imagine situations in which that might be the case in future. I understand that that is being considered.

The bill contains an awful lot of stuff that has to be dealt with by subordinate legislation or by guidance, and we have broadly accepted the rationale for that. However, we must ensure that we get right the formulation for doing that, so that the committee can have an input where appropriate. I know that the minister has views on that. In addition, if we could amend subordinate legislation or guidance, we would not have to go back and start all over again if something awful materialised. We need some phraseology to cover exceptional circumstances so that we have a fail-safe mechanism. Amendment 432 will not be moved today, so that is not a live issue, but we need to be conscious of the matters that it addresses.

Ms Curran: We will obviously return to the matters that amendment 432 deals with. I hear what Robert Brown is saying, but I think that there are some difficulties in his argument. Again, I allude to earlier points about changing the powers and roles of committees. I am not yet convinced that that is appropriate, because Executive ministers are properly accountable to and scrutinised by members of Parliament. That is the proper balance of relationships. If legislative issues are not properly addressed, the balance may need to be reconsidered, and I would be open-minded about any issue that committee members felt frustrated about. I am keen not to confuse the roles and powers, but I make it absolutely clear that we intend to involve the committee and discuss matters with members,

wherever possible, in the best interests of government.

Linda Fabiani: In winding up, I will speak mainly to amendment 112. Although I agree that what the amendment lists can all be noted in other places, the issues of equality are so important that the more places they can be included the happier I am. It is appropriate to include such statements in every piece of Scottish Parliament legislation and at every available opportunity. All too often, although seldom intentionally, we do no more than pay lip service to equality of opportunity. On behalf of Tommy Sheridan, I therefore want to press amendment 112 to a vote.

Other members have said more adequately than I could what the other amendments in the group are about.

The Convener: The question is, that amendment 112 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

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)

ABSTENTIONS

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

The Convener: The result of the division is: For 1, Against 5, Abstentions 1.

Amendment 112 disagreed to.

Brian Adam: In light of the minister's reassurance that a similar amendment will be lodged at stage 3—[*Interruption.*] What was that?

Ms Curran: I will tell you what I wanted to say later.

Amendment 337 not moved.

Amendment 395 moved—[Ms Margaret Curran]—and agreed to.

Amendment 432 not moved.

Section 70, as amended, agreed to.

Section 71—Code of good practice

The Convener: Amendment 396 is in a group of its own.

Ms Curran: The first line of my speaking notes says that the committee should by now have had a chance to see the draft code of practice. I believe that some members have seen the code, which sets out in detail the measures that we think will ensure best practice by the new regulatory agency together with independence in the exercise of its regulatory function. We have consistently been clear about those commitments.

The bill may not contain much detail, but that is because the issues are important, complex and live. They provide another example of the need to distinguish between the legal framework and the day-to-day working principles. It is important, therefore, that the code of practice evolves and adapts with the development of the new executive agency.

However, we thought that it would help to make a formal commitment in the bill to ensuring that the code of practice and the issues that it addresses remain under review and up to date. That will help to ensure that a current set of standards exists against which the operational independence of the regulator can be measured. Amendment 396 therefore requires ministers to review the code of good practice at least once every five years. Given the debates that the committee has had and my reassurances, I hope that members will accept that the power will be useful.

I move amendment 396.

Robert Brown: I will make two observations. The concern about the provision was whether the relative independence of the regulatory role would be enhanced by the inclusion of provisions in primary legislation. I will be interested in whether the minister concludes debate on the amendment by saying why such provisions should not be in the bill. Some issues are important. If Fiona Hyslop were here, she would raise that issue, as she has talked about it before.

The other issue is not closely linked to the amendment, and this may be the wrong time at which to raise it. The relationship between Scottish Homes, which is now the executive agency, and the local authorities raises issues about the balance of resources, because of local authorities' new roles and Scottish Homes' diminished role. I would appreciate hearing the minister's view, now or later, on whether the balance of resources will change. That is an important non-legislative matter underlying some of the arguments that the committee has had.

Ms White: Robert Brown highlighted a few issues and Fiona Hyslop has raised other issues. My problem with amendment 396 is its brevity. It does not cover enough matters. The phrase

"may from time to time"

sounds quite blasé. The amendment is not meaty enough. I have no doubt that further amendments on the issue could be lodged at stage 3. The Executive may even expand on amendment 396. I

am worried that the amendment is too short.

The Convener: I call the minister to wind up. I assume that you will press the amendment.

13:15

Ms Curran: Absolutely. I should clarify for Sandra White what we are trying to do on the code of practice. We are trying not to include substantial measures in the bill; we are trying to produce a code of practice that will provide us with a mechanism for ensuring proper regulation and accountability. Robert Brown and I have often discussed—and will continue to discuss—the fact that it is not appropriate for the bill to be too restrictive. We are not trying to undermine any principle that members might want to construct a legislative framework around and we are not trying to undermine any of the policy direction that members want to imply in legislation. It is standard practice to use other levers, such as guidance, to operationalise what a bill is trying to do.

As the bill's provisions are implemented, there will be complex and evolving circumstances that will require shifts in the guidance. We need to maintain that flexibility and not make the bill too prescriptive—that is the standard approach. I understand why members of the committee are pushing to include more provisions in the bill—presumably, because they want assurances about the direction that the detail will take. I would argue that that is the proper function of guidance; that is why we are open about publishing codes of practice, which we will consult on and involve the committee in drafting.

Finally, it is not for the bill to balance resources; the Scottish Executive will keep the issue of resources uppermost in its mind and will deploy them as it thinks appropriate to meet the needs of the people of Scotland.

Amendment 396 agreed to.

Section 71, as amended, agreed to.

Section 72—Charges for regulatory functions of the Scottish Ministers

The Convener: Members will be glad to note that we now move to today's final group of amendments. Amendment 433 is grouped with amendment 201.

Linda Fabiani: It is interesting that although Margaret Curran says resources are uppermost in the Executive's mind, in section 72 it wants to charge the poor local authorities and RSLs for its regulatory functions.

Amendment 433 presupposes that amendment 201 will be disagreed to.

The Convener: You cannot presuppose anything.

Linda Fabiani: Can I not? Sorry.

The Convener: It is not advisable to presuppose anything.

Linda Fabiani: My amendment seeks to change section 72, whereas Kenneth Gibson's seeks to delete section 72.

I am open to receiving any information that I may have missed in my years of working in housing associations, but I am not aware of any mechanism whereby housing associations and co-ops may be charged for the onerous work they have to do to be monitored and regulated by Scottish Homes. I suspect that there is not and that the proposal is fairly new. I understand the logic behind it and I am not getting at Margaret Curran, Jackie Baillie or any of their colleagues here by lodging amendment 433. I have absolute trust in the integrity of Margaret, Jackie and most members of the Scottish Executive, but we are drafting legislation that will be in place for years and years—and we do not know who will be in government in 10 or 15 years' time, when the legislation will still be in place. Therefore, we must guard against every eventualilty.

That is the purpose of amendment 433; it is not intended as an insult to anybody in the Executive. Amendment 433 states that when money must be paid out for the regulatory function, that charge should not exceed what the Scottish ministers have had to spend. In other words, the Executive should not make a profit from the regulatory function it carries out and should not run it as a private business.

At the appropriate stage, I will be happy to move amendment 201, which is in the name of my colleague, Kenneth Gibson. By proposing that section 72 be left out of the bill, amendment 201 suggests that there should be no charges for the regulatory functions.

I move amendment 433.

The Convener: Brian Adam informed me that he would speak to amendment 201 on behalf of Kenny Gibson.

Linda Fabiani: I am sorry, convener.

The Convener: As that was the first piece of information I received about amendment 201, that is the information I will act on.

I call Brian Adam to speak to amendments 201 and 433.

Brian Adam: The committee deserves to know which members of the Executive Linda Fabiani does not trust—that information should be on the table now.

Section 72 is a continuation of the Scottish Office's policy of trying to make almost all functions self-financing. It reflects the arrangements of agencies such as the Scottish Environment Protection Agency, which must recover their costs. I understand that the general public should not pick up the costs if a commercial interest is involved, but as the Executive has such a strong interest in regulating the function of housing, it should also have responsibility for financing housing. It should not pass the cost on to local authorities or to the RSLs, as that would be fundamentally unfair.

There appears to have been a crossover of ideas. There is the idea of the polluter paying, or of SEPA recovering the full costs from those who are required by the agency to have tests undertaken; there is also the proposal that local authorities and RSLs pay for the regulation that ministers want. If ministers want the regulation, they should pay for it. I am more than happy to support amendment 201, which would leave out section 72, as an absolute backstop.

I am not convinced that we should agree to the Executive recovering costs from RSLs and local authorities. Amendment 433 would stop the Executive using RSLs and local authorities to balance its books. I can envisage an escalator being introduced, although I know that the present minister would not dream of doing so. Heaven forbid that we should at some point have someone else in power who might choose to introduce such an arrangement.

The bill does not need section 72—the Executive ought to accept its responsibilities for regulation.

Bill Aitken: There must be a presumption that the Executive, whatever its future manifestation, will act in a manner that is conducive to public trust.

I have a little difficulty in relation to financial accountability, as all parties should see that as part of the costs of the regulatory function. That is probably what the Executive has in mind in relation to section 72. There is no harm in that and I am prepared to support it.

Ms Curran: In that case, I will try to persuade Bill Aitken—

Bill Aitken: I meant that I am prepared to support the Executive.

Ms Curran: That is all right, then—I thought Bill Aitken was talking about amendments 433 and 201. Now I can relax.

Scottish Homes already has the power to charge RSLs. That power will transfer to ministers under the proposals in the bill. Section 72 ensures that the charging regime for RSLs and local authorities will be fair.

I assure members that we were not out to create a profit to subsidise either other policies or our personal expenses. Section 72 will allow ministers to charge a fee based on their expenses in undertaking their regulatory functions. We would argue that that is an appropriate approach. If the Scottish ministers sought to make a profit, they would be acting outside the scope of section 72. I hope that that reassures Linda Fabiani that the charges levied will be reasonable.

On amendment 201, I advise members that we have no plans to charge—the power would be transferred to ministers simply on a contingency basis. In the interests of prudent finances, we would want to ensure that we retain the possibility of reconsidering our position in future.

Scottish Homes registers some organisations under contract and we do not want to rule out charging for such non-core regulation in future. Other regulators charge, and it may be appropriate to reconsider our policy as circumstances change—for example if the costs of regulation have a significant effect on expenditure priorities. We would charge in the interests of public finance, but in the meantime we will keep that power as a contingency.

I ask Brian Adam to ask Kenny Gibson not to move amendment 201.

The Convener: I call Linda Fabiani to wind up the debate and to indicate whether she intends to press or withdraw amendment 433.

Linda Fabiani: I take on board the minister's comments, but I wish to press amendment 433 as it contains an important principle.

I advise Bill Aitken that I have spent too many years in housing to presume anything about non-profit-making or anything else.

The Convener: The question is, that amendment 433 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 433 disagreed to.

Amendment 201 moved—[Brian Adam].

The Convener: The question is, that amendment 201 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

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

AGAINST

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 1, Against 6, Abstentions 0.

Amendment 201 disagreed to.

Section 72 agreed to.

Sections 73 and 74 agreed to.

The Convener: That concludes our business. We meet next on Tuesday at 9.30 am. I remind members that the deadline for lodging amendments to the remainder of the bill is 2 pm today.

Meeting closed at 13:26.

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Printed in Scotland by The Stationery Office Limited

ISBN 0 338 000003 ISSN 1467-0178