SOCIAL JUSTICE COMMITTEE

Wednesday 15 January 2003
(*Morning*)

Session 1

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SOCIAL JUSTICE COMMITTEE
1st Meeting 2003, Session 1

CONVENER

*Johann Lamont (Glasgow Pollok) (Lab)

DEPUTY CONVENER

*Mr Kenneth Gibson (Glasgow) (SNP)

COMMITTEE MEMBERS

*Robert Brown (Glasgow) (LD)
*Cathie Craigie (Cumbernauld and Kilsyth) (Lab)
*Linda Fabiani (Central Scotland) (SNP)
*Mrs Lyndsay McIntosh (Central Scotland) (Con)
*Karen Whitefield (Airdrie and Shotts) (Lab)

COMMITTEE SUBSTITUTES

Sarah Boyack (Edinburgh Central) (Lab)
Ms Sandra White (Glasgow) (SNP)

*attended

THE FOLLOWING ALSO ATTENDED:

Jackie Baillie (Dumbarton) (Lab)
Des McNulty (Deputy Minister for Social Justice)

CLERK TO THE COMMITTEE

Jim Johnston

SENIOR ASSISTANT CLERK

Mary Dinsdale

ASSISTANT CLERK

Craig Harper

LOCATION

The Chamber

Scottish Parliament

Social Justice Committee

Wednesday 15 January 2003

(*Morning*)

[THE CONVENER *opened the meeting at 10:04*]

The Convener (Johann Lamont): I welcome everyone to this meeting of the Social Justice Committee. I start by wishing everyone a happy new year as this is the first meeting of the year. I hope that we have a productive period before the end of the parliamentary session.

I also indicate to the committee that one of our long-standing clerks, Mary Dinsdale, will be leaving. This is her last meeting, so she is the one who is looking cheery and jumping up and down in the background. I am sure that the committee thanks her very much for all her hard work. She is a great person to work with and we wish her the very best in her new position.

Item in Private

The Convener: I ask members to agree that item 3 should be taken in private as it relates to the committee's consideration of its work programme. Is that agreed?

Members *indicated agreement*.

Homelessness etc (Scotland) Bill: Stage 2

The Convener: I welcome Des McNulty, the Deputy Minister for Social Justice. We begin our consideration of the Homelessness etc (Scotland) Bill at stage 2.

Section 1—Amendment of section 25 of the 1987 Act

The Convener: Amendment 6 is grouped with amendments 1, 7, 24, 2 and 8.

The Deputy Minister for Social Justice (Des McNulty): Thank you, convener. I also wish members of the committee and the clerks a happy new year.

As members are aware, the Homelessness etc (Scotland) Bill is directly informed by the final report of the homelessness task force. That report took an open and consultative approach and it drew on the experience and expertise of a range of individuals and organisations that have a long history of preventing and tackling homelessness. The policy direction that was laid out in the report is implemented in the bill. It reflects the views and commitment of those closest to the issues.

Amendments 6, 7 and 8 are intended to respond to issues that were raised by members and witnesses during stage 1 consideration and to matters that the committee raised in its stage 1 report.

All the amendments in the group relate to the categories of homeless persons who are to be considered by the local authority as having a priority need for housing. As members know, the first phase expansion of priority need that the bill provides for, which is based on the homelessness task force's recommendations, is to move into legislation those groups that are currently considered vulnerable under the code of guidance.

Executive amendments 6, 7 and 8 alter the current wording of the bill to ensure that in moving from the code of guidance to legislation, we use clear and up-to-date descriptors. We have added religion to the list of factors that, if they give rise to harassment, will result in a homeless person having a priority need.

I move amendment 6.

The Convener: Kenny Gibson has sent apologies because he will be arriving late. He is obviously unable to speak to amendments 1 and 2. Robert Brown will speak to amendment 24 and the other amendments in the group.

Robert Brown (Glasgow) (LD): Amendment 24 relates to refugees, which we discussed at stage

1. There is some support for the amendment from housing organisations, on the basis that refugees form a vulnerable group, particularly given what they have been through before they come to seek permanent housing. Therefore, it is reasonable to consider adding refugees to the provision about priority need.

I am not anxious to get into the realms of reserved and devolved powers, and I do not think that the provision does that. It relates to what has happened since the national asylum support service came into existence. I know that the minister is quite sympathetic to the general thrust of what I am saying. To some extent, I am looking for practical moves forward on the issue, with a view to ensuring that the refugee issue is seen as central either in the bill or in the homelessness advice and guidance. Those are the motivations behind the amendment.

Des McNulty: I will speak briefly to Kenny Gibson's amendments 1 and 2. Amendment 1 is covered by Executive amendment 6. If amendment 6 is agreed to, I hope that amendment 1 will not be moved.

Amendment 2 would raise from 20 to 24 the upper age limit for a young person who may be considered to be in priority need. That might be desirable, but when the bill was introduced, we gave the commitment to move the existing code of guidance into legislation. Twenty was identified as being the appropriate age to ensure consistency with the Homeless Persons (Priority Need) (Scotland) Order 1997, which covered people who were formerly looked after by local authorities. The bill will consolidate that order into primary legislation.

The change in the age limit could be considered in the next phase of priority need expansion, which will happen in due course, but we need to consult fully on that move and discuss it with local authorities. Therefore, making the change at present would be inappropriate. In the meantime, I remind members that local authorities can continue to find someone vulnerable for "other special reason", so the legislation has considerable flexibility. The code of guidance encourages local authorities to exercise discretion in considering who is vulnerable, so I ask members to oppose amendment 2.

I move on to Robert Brown's amendment 24. The homelessness task force's final report recommended that all categories of people who are considered to be vulnerable under the code of guidance, including refugees, should be moved into legislation. In accepting all the task force's recommendations, the Executive also accepted the wish to ensure that vulnerable refugees should be considered to have a priority need.

The difficulty is that the Scottish Parliament cannot legislate to affect the capacity or status of persons who are subject to immigration control, as that matter is reserved to Westminster under the Scotland Act 1998. For that reason, we are exploring with Whitehall colleagues the use of an order under section 104 of the 1998 act, which allows subordinate legislation to be made in the UK Parliament that contains provisions that are

"necessary or expedient in consequence of … any Act of the Scottish Parliament".

I am happy to give an undertaking to keep the committee informed of progress on that mechanism.

I make it clear that refugees are entitled to the same treatment under homelessness legislation as any other applicant and that, in the same way, they may be considered to be in priority need because of their vulnerability, either because they fall into one of the categories that are listed in section 25 of the Housing (Scotland) Act 1987 or for other special reasons, which might include the continuing psychological or physical effects of persecution or other harm that was suffered before they came to the UK.

Therefore, refugees have the same rights as other homelessness applicants. We have recognised the circumstances that might justify identifying refugees as being entitled to a priority assessment and the matter will be pursued through a section 104 order.

In the light of the assurances that I have given, that I will explore all the issues that relate to refugees and priority need and that we will do what we can to ensure that legislative effect is given to the homelessness task force's recommendation through an appropriate mechanism, I hope that Robert Brown will agree not to move amendment 24.

Amendment 6 agreed to.

Amendment 1 not moved.

Amendment 7 moved—[Des McNulty]—and agreed to.

The Convener: Amendment 24 has already been debated with amendment 6.

Robert Brown: In the light of the minister's assurance and subject to our receiving an indication of the time scale before stage 3, I will not move amendment 24.

Amendments 24 and 2 not moved.

Amendment 8 moved—[Des McNulty]—and agreed to.

Section 1, as amended, agreed to.

Section 2—Abolition of priority need test

The Convener: Amendment 9 is grouped with amendments 10 and 11.

Des McNulty: Amendments 9 to 11 aim to ensure that the bill phases out the priority need test not only for applicants who are homeless, but for those who are threatened with homelessness. The amendments therefore make additional legislative references.

I move amendment 9.

Amendment 9 agreed to.

Amendment 10 moved—[Des McNulty]—and agreed to.

Section 2, as amended, agreed to.

Section 3—Statement on abolition of priority need test

Amendment 11 moved—[Des McNulty]—and agreed to.

10:15

The Convener: Amendment 3 is in a group on its own.

Mr Kenneth Gibson (Glasgow) (SNP): Amendment 3 is fairly simple, straightforward and inclusive and I hope that the Executive will take it in that way. The amendment is based on comments that were made in Glasgow City Council's submission. The council raised the fact that rewording section 3 in the way that amendment 3 suggests would not really impact on the bill, but would make it more inclusive, so that local authorities that are not included in organisations such as the Convention of Scottish Local Authorities are covered.

I move amendment 3.

Robert Brown: I seek guidance from the minister on the issue. I have considerable sympathy with Kenny Gibson's suggestion, but the issue is slightly broader and might already be covered by the existing phrase "such other persons". Various landlord bodies such as the Scottish Federation of Housing Associations might be intimately affected by the changes and should also be consulted. It might be enough for the minister to say whether such bodies will be consulted and whether Glasgow's position outwith COSLA will be recognised. I seek assurance on the issue.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): The points that I intended to make were similar to Robert Brown's so I will not repeat them. I am interested to hear what the minister has to say. As I will not have the opportunity to speak after the minister has spoken, I ask the minister whether the duty to consult all local authorities and other major housing agencies is in the bill.

Des McNulty: I give the assurance that the Executive will continue to consult all local authorities individually as well as consulting COSLA. That has been the practice in the past and it is what we intend to do routinely in the future. The Executive has always recognised the particular homelessness issues that individual local authorities face and Glasgow City Council is a prime example of that. Indeed, Glasgow was well represented on the homelessness task force. Members of the task force and other stakeholders formed the Glasgow review team specifically to address Glasgow issues and to advance recommendations, which included the decommissioning of large and outdated hostels. We did that because, to tackle homelessness in Scotland effectively, we must consider what is happening in each local authority and take on board the individual views of local authorities, as well as the collective view expressed through representative associations such as COSLA.

In the legislation as currently drafted, and as Robert Brown indicated, the context of "such other persons" will include not just local authorities, but landlords and other agencies that have a legitimate interest. The Executive view is that local authorities are included in the legislative mechanism. It is normal practice for local authorities to be consulted individually as well as through representative bodies. We do not see that there is an argument for departing from the normal conventions that relate to such consultation, and which have applied in other bills such as the Local Government in Scotland Bill. There is no argument for changing the wording to make us do something that we normally do anyway and that we are well able to do legislatively.

Mr Gibson: Given the deputy minister's reassurances, and the fact that the issue is not highly contentious, I am more than happy to withdraw the amendment.

Amendment 3, by agreement, withdrawn.

Section 3, as amended, agreed to.

After Section 3

The Convener: Amendment 25 is grouped with amendments 33, 34, 27, 28, 30 and 31. Robert Brown will move amendment 25 and speak to amendments 30, 27, 28 and 31 and all other amendments in the group.

Robert Brown: Amendment 25 relates to housing support. There are a couple of points to make on the general idea, which is difficult to phrase in a way that is adequate for the committee's purposes. Amendment 25 also hits at the interface of the bill with the Housing (Scotland)

Act 2001 and the Housing (Scotland) Act 1987. I may well have missed bits and pieces because I have not got the interrelationship between the three quite correct.

Section 6(2) provides that a local authority has a duty to provide for intentionally homeless persons,

"such housing support services as it considers appropriate".

There are several points to make on that. First, such housing support services are available to enable the conversion of a tenancy to a Scottish secure tenancy, so the definition is limited. Secondly, the provision relates only to the relatively small category of intentionally homeless persons.

I suggest that the remit of housing support goes beyond intentionally homeless people. It does not apply to the entire category of homeless people, but neither does it apply only to intentionally homeless people. Most people would probably accept that. Therefore, we need to have the proper provision in place.

There was also an acceptance by the committee and the minister that the purpose of support services is not just to get a house, but to enable the tenancy to be sustained over a reasonable period and to enable any problems—mental health problems, drug addiction problems, difficulties with neighbours or whatever—to be dealt with in a way that avoids the revolving-door syndrome.

That is the objective of the exercise on which we are all agreed—there is an echo of it in amendment 33, in the name of Lyndsay McIntosh, although it is phrased slightly differently. I am trying to give that objective legislative effect for the following reasons.

First, I want to ensure that homelessness provisions give specific attention to support at the point of assessment. As I said, I may have missed something in the various voluminous pieces of legislation, but I do not think that the single assessment idea is given legislative effect by the amalgam of the 2001 act, the 1987 act and the bill.

Secondly, once the assessment has been made, the applicant should be notified of what support is needed. There may be no need for support, but that should be communicated as part of the notification procedures.

Thirdly, there should be a duty on the local authority to ensure that such services and facilities as are necessary are provided. I have tried to widen the housing support services definition so that it not only includes those other aspects, but enables the objective of sustaining the tenancy to be achieved.

The minister may be able to satisfy me on several of those aspects. That is what I am after. The amendment reflects the evidence that we heard during stage 1 and throughout the deliberations on the Housing (Scotland) Act 2001. Housing support services are referred to in the 2001 act, but they are not tied into the assessment and the support provisions that exist under the homelessness arrangements.

I move amendment 25.

Mrs Lyndsay McIntosh (Central Scotland) (Con): Robert Brown has predicated much of the intention behind amendment 33. Homelessness is one of the most extreme forms of social exclusion and we have heard evidence about how difficult it can be for some people to maintain a tenancy. It is well recognised that the issue is not just securing accommodation; rather, the current homelessness legislation does not provide for assistance and support to maintain accommodation.

Amendment 33 introduces a requirement for local authorities, when carrying out a homelessness assessment, to consider a household's support needs as well as its accommodation needs. It has been the experience of many local authorities that tenancies break down very quickly if such support is not there, which wastes local authorities' time and resources and damages homeless persons' future prospects.

Support can be a key feature in sustaining a tenancy, and amendment 33 would better identify those who need help. Local authorities are best placed to identify problems because of their role in securing accommodation.

I suspect that the minister will say that housing officials are not best placed to offer support. I am not suggesting that they should; their duty would be to secure such support, not provide it.

Karen Whitefield (Airdrie and Shotts) (Lab): Amendment 34 clarifies existing wording, and I hope that the Executive will support it. It will ensure that local authorities are not the sole providers of accommodation.

I have discussed amendment 34 with representatives of the Scottish Council for Single Homeless, because it is important that we recognise the valuable contribution made by the voluntary sector in providing accommodation and support services to vulnerable groups. Amendment 34 attempts to ensure that that contribution is recognised and tightens the wording to show that local authorities are not solely responsible for providing accommodation.

Will the minister advise whether amendments 25 and 33 are necessary? Would they run the risk of placing an unnecessary burden on local authorities to assess everybody who qualifies under priority need although it will no longer be there?

The committee has often said that most homeless people are just like us and do not require the level of support needed by others, but a small number of people do require a high level of support, and we must ensure that they get that to allow them to maintain their tenancies. We must ensure that we do not overburden local authorities and make it impossible for them to do their jobs by giving them the resource burden of having to assess whether people need support when it is obvious that they do not.

Des McNulty: Support is central to our aims. It is an important element in preventing and resolving homelessness. Members should bear in mind the fact that the thrust of the bill is based on an intensive process of consultation and discussion with the homelessness task force and others.

We seek to do what it has been agreed is achievable. We need to phase in many of the provisions of the bill in a manageable time scale. We must be pragmatic about what we can achieve and put in place duties that are realistic and deliverable. Amendments 25 and 33 would deflect us from that by expanding significantly the number of people with whom local authorities would have to deal from around 2,000 to perhaps 17,000 to 20,000. That would not only require significantly more resources, but would mean that resources would be diverted away from those who need them the most, which goes against the principle of the bill.

10:30

The bill puts a focused duty on local authorities to provide specific forms of support to a defined group of people for a defined purpose. If we extended that to a more general duty, we would put in place something that, although correct in principle, would be unachievable in practice. The Executive, local authorities and others who were involved in the homelessness task force share that view.

The homelessness task force recognised the importance of providing support to help tenants to maintain tenancies. Through the guidance that has been issued to councils on the development of homelessness strategies, the Executive has emphasised the need to ensure that such support is offered when it will prevent the occurrence or re-occurrence of homelessness. However, an authority must make such decisions on the basis of a strategic assessment of need and available resources. To introduce a blanket duty with no termination point would have significant implications for the speed at which the other legislative changes in the bill can be delivered. A blanket duty would also limit or reduce the support that might be made available to those who have been defined as being in the greatest need.

Amendment 25 might lead to local authorities having a duty to provide support to enable applicants to sustain a tenancy even where there is no duty to provide a tenancy or no overriding vulnerability, which would not be appropriate. Amendment 33 is more closely defined, but it would increase to above the tolerable level the duty that is placed on authorities. It is better to pick up such needs through a strategic local approach such as the supporting people strategy, the prevention aspects of the homelessness strategy and other planning frameworks. Those approaches can be targeted to meet the needs in particular areas.

I hope to persuade Robert Brown that amendments 27, 28, 30 and 31 are unnecessary. On amendments 28 and 31, where an applicant is in accommodation to which section 7 of the 2001 act applies and receives support, the bill lays out that the support should be provided with a view to reaching a point at which the local authority can offer a short Scottish secure tenancy. It is not clear what other support might be offered if the aim is to ensure that the short SST is sustained, as amendment 28 suggests. When local authorities exercise their discretion to grant a short SST, they will want to be reasonably sure of success before doing so and the support that is provided will be to that end.

When a short SST is granted, the bill places a further duty on the council to provide support, again with a view to making the tenancy a success. I am not sure that the wording of amendment 31 adds anything to our intention, which is focused tightly on the SST. In that context, I urge Robert Brown not to move amendments 28 and 31, on the grounds that the bill provides adequately for the situation that he seeks to address.

Amendments 27 and 30 are also unnecessary. The definition of housing support services in the 2001 act includes

"any service which provides support, assistance, advice or counselling to an individual with particular needs with a view to enabling that individual to occupy, or to continue to occupy, as the person's sole or main residence, residential accommodation".

That broader definition, not the definition used to deliver the supporting people programme, is relevant to the bill. It includes support and advice and is linked directly to enabling occupation of accommodation. The existing definition is broad enough to cover the support proposed in the bill, and working from that established definition aids clarity. It would be difficult if we made a list of what might be included. A broad definition is a more effective method.

It is useful to clarify that although local authorities remain responsible for ensuring that

services are provided to people eligible for housing under section 7 of the Housing (Scotland) Act 2001, they should not be obliged to provide all those themselves. For that reason, the Executive is happy to support amendment 34.

Robert Brown: Amendment 34 is helpful and I will give it my support. I am disappointed with the minister's replies on some of the other amendments, and I am not sure that I accept his comments about Karen Whitefield's remarks about the assessment burden on local authorities. If we do not get the bill right, the burdens on local authorities due to unresolved homelessness problems will be much greater than any administrative issue that arises during the drafting process. It is not so much a question of diverting resources; it is more a question of ensuring that they are used properly.

With regard to housing support services, I accept the minister's comments on amendments 27 and 30, so I will not press them. To include housing support services in sections 5 and 6 of the bill is to restrict them. Early sections of the bill define housing support services quite widely, but section 6 narrows the definition to refer to such housing support services as are considered appropriate to enable the

"conversion of the tenancy to a Scottish secure tenancy".

The minister has been contradictory in the way in which the provisions have been presented and for that reason I will press amendments 28 and 31.

Lyndsay McIntosh's amendment 33 and amendment 25 refer to whether support for homeless people should be extended beyond the intentionality issue. The matter is complex and I am not satisfied by the minister's explanation. However, I accept that there are distinct issues about how such measures are phrased and put together. I accept also that it would be possible to address some of the issues by way of guidance. I am not sure whether that is an avenue that the minister would go down.

Does the different phraseology for different bills and for different purposes come together at the assessment point to ensure a seamless operation? I am not convinced that it does. For that reason, I propose not to press amendment 25, but to ask the minister to reconsider the issue before stage 3. If the minister's decision is unsatisfactory, I reserve the right to come back to the issues at stage 3.

Amendment 25, by agreement, withdrawn.

Amendment 33 moved—[Mrs Lyndsay McIntosh].

The Convener: The question is, that amendment 33 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Fabiani, Linda (Central Scotland) (SNP)
Gibson, Mr Kenneth (Glasgow) (SNP)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)

AGAINST

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

ABSTENTIONS

Brown, Robert (Glasgow) (LD)

The Convener: The result of the division is: For 3, Against 3, Abstentions 1. I have a casting vote and will vote, as George Reid did, for the status quo.

Amendment 33 disagreed to.

Section 4 agreed to.

Section 5—Accommodation for intentionally homeless persons with priority need

The Convener: Amendment 19 is grouped with amendments 12, 20 and 21.

Mr Gibson: Amendment 19 concerns intentionality and is designed to change the word "duty" to "power" in section 5(1). I want to take members back to some of the reasons why I feel that that is necessary. Paragraph 55 of our stage 1 report quotes the homelessness task force as saying:

"The duty placed on local authorities to investigate intentionality should be replaced by a power to do so; this will reduce the burden on local authorities and still give them all the discretion they need."

All members of the committee are in favour of the broad thrust of the measures on intentionality, but concerns were raised in evidence that having a duty rather than a power might allow certain individuals to misuse the system. For example, we were advised in written evidence that someone who owned a house could sell that house and say that they were homeless. The idea behind changing the duty to a power is to close loopholes, while allowing those who are vulnerable to benefit from the bill. We must give local authorities discretion on the issue.

I move amendment 19.

Des McNulty: Amendments 19 to 21 would drive a coach and horses through the principles of the bill as agreed at stage 1. The Executive is clear, and the bill makes it plain, that people who are homeless should be supported and should not be left to sleep on the streets. The 2001 act ensured that the minimum to which anyone who is found to be homeless should be entitled is temporary accommodation, advice and

assistance. The amendments would reverse that position and leave to local authorities' discretion the issue of what should be provided.

The applicants in the category that would be affected are homeless and have a priority need for housing because they are vulnerable. Although they have been found to be intentionally homeless and some of them have a history of anti-social behaviour, it would not be right to ignore their homelessness and vulnerability and to leave it to the local authorities' discretion whether to provide assistance. That would be the effect of amendments 19 to 21 and I ask members to resist all three of them.

Executive amendment 12 is technical and will ensure that there is no inconsistency between the definition of homelessness in section 24 of the 1987 act and the discharge of the duties that are established under the bill. Amendment 12 clarifies that a duty to provide a short SST is owed under proposed new section 31(2B)(a) of the 1987 act. Proposed new section 31(2B)(b) of that act relates to hostel or other short-term accommodation that is not secured under a short SST, but to which section 7 of the 2001 act applies. It would be inconsistent for persons who are not entitled to a short SST to claim that they are homeless if an SST is not granted.

The Convener: If Kenny Gibson's amendments 19 to 21 had been judged to attack the bill's general principles, we would not have been able to debate them because they would have been deemed to be incompetent.

Mr Gibson: So there.

Robert Brown: I am strongly opposed to amendments 19 to 21. We should not abandon support, even for difficult homeless people. We must manage our way round such issues, rather than take away rights, which might result in people having to sleep on the streets. I hope that the committee will reject amendments 19 to 21 for the reasons that the minister gave.

Karen Whitefield: I am not as strongly opposed to Kenny Gibson's amendments as Robert Brown is. The amendments are a genuine attempt to reflect the committee's concerns about anti-social behaviour in communities and the reality of problematic tenants that communities face. However, we must get the balance right and ensure that we do not leave homeless people with fewer rights than they have at present. I hope that members will reflect on what the minister said. I appreciate the intention behind amendments 19 to 21, but I do not think that it is appropriate to include them in the bill.

Mr Gibson: To be honest, I lodged amendment 19 as a probing amendment and I do not intend to press it. There has been a little bit of gilding the lily in relation to this amendment, and I do not think that local authorities would interpret the legislation in such a negative way. I am glad that the minister has been assured that the amendment does not impinge on the principles of the bill. However, given the committee's obvious concerns and the message that amendment 19 may send out, I would be happy to withdraw it.

Amendment 19, by agreement, withdrawn.

Amendment 12 moved—[Des McNulty]—and agreed to.

Amendments 20 and 21 not moved.

Amendment 34 moved—[Karen Whitefield]—and agreed to.

Amendment 27 not moved.

Amendment 28 moved—[Robert Brown].

10:45

The Convener: The question is, that amendment 28 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Brown, Robert (Glasgow) (LD)
Gibson, Mr Kenneth (Glasgow) (SNP)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)

AGAINST

Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Fabiani, Linda (Central Scotland) (SNP)
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 28 disagreed to.

The Convener: Amendment 13 is grouped with amendments 29 and 15.

Des McNulty: Discussion of the committee's stage 1 report raised concern about a landlord's power to respond quickly to a tenant who is not meeting the conditions of his tenancy and support. Amendment 15 reapplies section 36 of the 2001 act to the short SST that will be offered to intentionally homeless households under the bill. Repossession proceedings under section 36 of the 2001 act do not require proof of grounds. Repossession must be granted by the court as long as the correct procedures have been followed.

Amendment 14, which we will debate shortly, will ensure that tenants with a proven history of anti-social behaviour will not be granted a short SST under the bill. Therefore, the reintroduction of section 36 is aimed at providing a more effective

remedy where problems manifest themselves during a tenancy and brings the process into line with current arrangements for probationary tenancies under the 2001 act.

Where repossession takes place, at the local authority's discretion, the household may be granted a further short SST. However, the bill ensures that the tenant is at least entitled to section 7 accommodation and such support as the local authority considers appropriate.

Amendment 13 is a technical amendment, which is consequential on amendment 15. It will ensure that where repossession action is taken under section 36 of the 2001 act, a further short SST need not be offered until one year has passed. That is in line with what the bill provides where repossession action is taken under section 16(2)(a) of the 2001 act.

I move amendment 13.

Robert Brown: I am trying to deal with the same issue that the deputy minister talked about. During stage 1, the committee received evidence about the problems that emerge during the 12-month tenancy when there are anti-social problems or when, for various reasons, the support that is provided does not do the trick. Amendment 29, in my name, seeks to provide a mechanism for a speedy management transfer in such situations.

Again, I am not sure that I follow all the implications of the minister's amendments, which are fairly complex. It would be helpful if, in summing up, the minister could spell out what the exact procedure would be when a problem arose. As I understand it, if amendment 29 were agreed to, there would have to be seven days' notice and then a general 28 days' notice of eviction if a landlord wanted to get a tenant moved somewhere else, because that applies generally. Amendment 29 would provide a short mechanism, without any huge procedure, to allow things to move along quite quickly and either to get the tenant moved or to introduce different support services in those rather problematic areas.

If that is broadly what amendment 15 will do, I am more than happy not to move amendment 29. I am not entirely sure that I follow all the ramifications of the issue. I am sorry to express ignorance on the matter, but it is complex.

Linda Fabiani (Central Scotland) (SNP): Like Robert Brown, I would like further explanation of the effect of amendment 15.

Des McNulty: Section 36 of the 2001 act, which applies to general housing procedures, allows landlords or local authorities to cease tenancies after 12 months on a no-fault or no-consequence basis. Our view is that applying that section to homeless people will give more powers to landlords to deal with unsuccessful tenancies than they would have had under the bill as drafted.

The issue over which we differ from Robert Brown is that we intend to bring the position with regard to homeless people into line with that which applies to other tenants, whereas amendment 29 would arguably reduce tenants' rights significantly. Amendment 29 would move away from the normal procedures that apply to handling tenancies in such situations and allow landlords to remove tenants from tenancies outwith the general framework for repossession. Tenants would receive only seven days' notice and would have very little defence against removal.

Amendment 29 does not offer a definition of the term "urgent necessity", nor does it give ministers a power to define it. If the committee agreed to the amendment, it would be difficult to establish the situations that it would cover because it provides no mechanism for doing so. The amendment would allow for alternative accommodation to be provided, but that would form a new tenancy, which would mean that the tenant would have to start at the beginning of a short SST irrespective of how long a tenancy they had successfully completed. Robert Brown's proposal raises fairly serious rights issues.

Members asked about the practical effect of amendment 15. The 2001 act allows for repossession on conduct or management grounds. That applies to the new tenancies in the proposed new paragraph 5A of schedule 6 to the 2001 act. Section 36 of the 2001 act allows for repossession without grounds; that, too, will apply to the short SST if amendment 15 is agreed to. Amendment 14, which we will debate shortly, will ensure that those with a proven history of anti-social behaviour have no automatic right to access directly the short SST in the first place.

We have put in place a range of safeguards that pick up the concerns that the committee highlighted at stage 1, but we have tried to do so within a framework that will not disadvantage homeless people relative to other tenants. That is the procedure that we have followed and the thinking that lies behind it.

Amendment 13 agreed to.

The Convener: Amendment 14 is grouped with amendment 4.

Des McNulty: Amendment 14 reflects the Executive's belief that the policy strands on homelessness and anti-social behaviour should not undermine each other. The amendment reflects concerns that were expressed at stage 1 that the bill did not get the balance right. The amendment defines clearly those homeless people who have a proven history of anti-social

behaviour, either through the existence of an anti-social behaviour order or because the applicant was previously evicted for anti-social behaviour. In those circumstances, amendment 14 will ensure that the applicant is not entitled to access a short SST and the associated support.

Instead, the local authority will be under a duty to provide only accommodation to which section 7 of the 2001 act applies and such support as is considered appropriate.

It is clear from discussions with COSLA that councils recognise the benefits of providing accommodation and support together. However, tenants must be clear about the limitations of the council's duty towards them and be aware that, to be granted a tenancy, initially in the form of a short SST and, in due course, an SST, they need to take responsibility for their behaviour.

I move amendment 14.

Mr Gibson: Amendment 4 reflects the views that the committee expressed in paragraphs 61 to 64 of its stage 1 report and the evidence that we received. The point is not that people who have been evicted for reasons relating to anti-social behaviour should not be rehoused, but that only those who refuse to alter their behaviour or accept support should not be rehoused. We take the view that even the most difficult cases can be reformed. Amendment 4 would give people the opportunity to reform by making it clear that, if they alter their behaviour, they can rejoin the main stream and that, if they do not, they will not continue to be offered housing.

I am concerned that amendment 14 does not mention those who have accepted support and are trying to alter their behaviour—for example, someone who had a chaotic lifestyle due to alcohol or drug addiction but who no longer has those problems. The minister's amendment seems to exclude such people; perhaps he can explain his thinking and reassure me that that is not the case.

Des McNulty: The exclusion is for only a year. Our view is that amendment 4 would mean that an applicant with a history of anti-social behaviour would be entitled to a tenancy but would not be required to take responsibility for improving their behaviour because the support element would have been withdrawn and the local authority would not be under a duty to provide it. COSLA's concern would be that accommodation and support are closely linked and are provided as a package. The effect of amendment 4 would be to break that linkage, which we do not think would be sensible.

Amendment 14 will have the effect of ensuring that those with a history of anti-social behaviour are given accommodation and the appropriate support but not necessarily a tenancy. There is some concern among local authorities and other providers about what the accommodation and support will consist of. I assure members that we will not move to implement the relevant sections of the bill until we have assessed, in discussion with local authorities and others, the various types of accommodation and support packages that might be appropriate.

We have attempted to deal with the issues that were raised by the committee in a way that seemed fair and sensible. I believe that amendment 14 offers a pathway forward and that the drafting of amendment 4 means that the support element would be separated from the tenancy element, which would be undesirable.

The Convener: The question is, that amendment 14 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

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

AGAINST

McIntosh, Mrs Lyndsay (Central Scotland) (Con)

ABSTENTIONS

Fabiani, Linda (Central Scotland) (SNP)
Gibson, Mr Kenneth (Glasgow) (SNP)

The Convener: The result of the division is: For 4, Against 1, Abstentions 2.

Amendment 14 agreed to.

Section 5, as amended, agreed to.

Section 6—Intentionally homeless persons: short Scottish secure tenancies

Amendment 29 not moved.

Amendment 4 moved—[Mr Kenneth Gibson].

The Convener: The question is, that amendment 4 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Fabiani, Linda (Central Scotland) (SNP)
Gibson, Mr Kenneth (Glasgow) (SNP)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)

AGAINST

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

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

Amendment 4 disagreed to.

Amendment 30 not moved.

Amendment 31 moved—[Robert Brown].

The Convener: The question is, that amendment 31 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Brown, Robert (Glasgow) (LD)
Gibson, Mr Kenneth (Glasgow) (SNP)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)

AGAINST

Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Fabiani, Linda (Central Scotland) (SNP)
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 31 disagreed to.

Amendment 15 moved—[Des McNulty]—and agreed to.

Section 6, as amended, agreed to.

After section 6

11:00

The Convener: Amendment 32 is in a group on its own.

Robert Brown: I return to the issue of refugees, in a slightly different context. There has been some difficulty with the way in which local connection works out. People are put into certain places by the decisions of NASS, rather than by choice. Amendment 32, which does not impinge on reserved powers, seeks to make it clear that the arrival of a refugee in Glasgow under the NASS arrangements does not indicate that the refugee chose to live in Glasgow, and that the refugee should not be dealt with by the local authority as if they had chosen to live in Glasgow.

Following discussions with the minister, I am conscious that there are cross-border issues between local authorities in England and local authorities in Scotland. Nevertheless, it should be possible, within the limited domain of what we are doing in Scotland, to agree to amendment 32. I hope that ministerial discussions will continue on the broader issue of intra-United Kingdom transfers and the local connection. The issue may not be overwhelmingly major—it probably applies to only a few people—but it is important. I hope that the minister will respond positively.

I move amendment 32.

Des McNulty: Local connection in Scotland is already considered in the bill, and the Executive has powers to modify its operation. In that context, I do not think that there is a requirement in the Scottish context to make further provision relating to the disapplication of local connection in decisions between local authorities. We are examining the issue anyway and there is no particular reason to highlight refugees in that context.

In the context of cross-border traffic, the bill cannot legislate to affect the ways in which English and Welsh local authorities operate local connection, so it cannot change the situation, for example, whereby a London authority returns a refugee to Glasgow on the grounds of local connection as a consequence of their NASS accommodation.

With regard to those seeking employment, there are existing powers under the Housing (Scotland) Act 1987 to use subordinate legislation to specify circumstances under which residence in a district is not of a person's choice for the purposes of local connection. If there is an issue to be addressed, that mechanism may be the more appropriate one to use.

In that context, I urge Robert Brown to withdraw amendment 32. If he does not, I urge the committee to reject it.

Robert Brown: I forgot to mention employment, which is the other aspect of amendment 32. However, the issue is the same: people arrive in particular localities not by choice, and they should not be penalised by being shoved about between different local authorities within Scotland for that reason. I accept that there are powers to deal with the matter by subordinate legislation, but the fact remains that it has not been dealt with by subordinate legislation and there seems no reason that we should not take the legislative opportunity that is available to us today to deal with it. In those circumstances, I will press amendment 32.

The Convener: The question is, that amendment 32 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Brown, Robert (Glasgow) (LD)
Fabiani, Linda (Central Scotland) (SNP)
Gibson, Mr Kenneth (Glasgow) (SNP)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)

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 32 agreed to.

Section 7—Power to modify section 33 of the 1987 Act

The Convener: Amendment 16 is grouped with amendment 17.

Des McNulty: Amendments 16 and 17 are technical amendments to clarify the way in which ministers' powers to modify the provisions on local connection in the Housing (Scotland) Act 1987 can be exercised. Amendment 16 clarifies that modification will centre around the application of the provisions; that is, the powers will be exercised in such a way as to affect the specific way in which the provisions apply as regards certain local authorities, or how they apply in certain circumstances.

The Subordinate Legislation Committee's recommendations at stage 1 form the basis for the provisions of amendment 17. That committee expressed concerns that the appropriate subordinate power should be used.

I move amendment 16.

Amendment 16 agreed to.

Amendment 17 moved—[Des McNulty]—and agreed to.

Section 7, as amended, agreed to.

Section 8—Homeless persons with dependent children

The Convener: I welcome Jackie Baillie to the meeting. Amendment 35, which is in her name, is grouped with amendment 5.

Jackie Baillie (Dumbarton) (Lab): I thank the convener and the committee for affording me the opportunity to move amendment 35. I must confess that it feels slightly strange to be here; nevertheless, it is most enjoyable.

The Convener: That will not get you an opportunity to make a longer contribution, Jackie.

Jackie Baillie: I am aware that all members of the committee are concerned about the appropriate use of bed-and-breakfast accommodation. Before we get down to the debate, I will explain the policy intention that underlines amendment 35. In essence, I seek to amend the 1987 act in order to prohibit the use of bed-and-breakfast accommodation for families with dependent children, especially families who are between assessment and the granting of permanent housing.

I stress that I make an exception for emergency situations because I want to give local authorities the flexibility to respond to them. It would be entirely appropriate to provide bed-and-breakfast accommodation in the event of a household fire, for example. In addition, amendment 35 would allow the Executive to define bed-and-breakfast accommodation through subordinate legislation.

I recognise that members of the committee have expressed concern about the standard of bed-and-breakfast accommodation and the length of time that families have to wait for permanent accommodation. Members have also expressed concern about the wider problem of housing supply, which is particularly acute in some areas. I believe that members of the committee, practitioners and the Executive share the view that it is inappropriate to use bed-and-breakfast accommodation when children are involved.

The clear intention that underlines amendment 35 is to end the use of unsuitable accommodation and I recognise the efforts that the Executive is making to make progress on the issue of bed-and-breakfast accommodation. For example, the Housing (Scotland) Act 2001 sets out clearly that local authorities should have regard to

"the best interests of the dependent children."

The code of guidance on homelessness also gives clear guidance on the use of bed-and-breakfast accommodation. It sets out that it is essential that local authorities explore alternatives to bed-and-breakfast hotels or other similar establishments and use them only as a last resort. Substantial resources have been put in to lessen the use of bed-and-breakfast accommodation by enabling local authorities to create alternative, more appropriate provision. That all adds up to a substantial package, and a substantial commitment, from the Executive.

Following the enactment of the Housing (Scotland) Act 2001 and the implementation of key changes in September 2001, we expected the situation to improve, albeit gradually. Executive statistics from 30 September 2001 to 31 December 2001 show a welcome drop from 138 to 81 in the number of children in bed-and-breakfast accommodation. Since then, however, the figures up until June 2002 show that the number has more than doubled to 164. Although that statistical analysis does not give an indication of the length of stay in bed-and-breakfast accommodation, case studies indicate that the figures remain too high in some instances.

I will illustrate that point with a case study that relates to the period from September 2001. A family with a history of repeat homelessness was placed in bed-and-breakfast accommodation in September 2001. In May 2002, the family was still in that accommodation, awaiting a written decision. Following representations, the family

was given a positive decision on its homelessness application but remained in bed-and-breakfast accommodation until August when they moved to a permanent tenancy, 11 months after they were placed in bed-and-breakfast accommodation. Given my outline of the Executive's actions, that should not have happened.

It is important to stress for the record that I do not hold the view that housing officers or local authorities are intent on abusing the system in some way. I think that they attempt to do their very best for families who present as homeless and who are deemed under existing legislation to be in priority need and therefore entitled to permanent accommodation. Nevertheless, the number of such families has doubled and I ask the minister whether he could offer an insight on the reasons that underlie that increase.

I understand that, in December 2002, the minister responsible for housing in England, Barbara Roche, announced her intention to outlaw the use of bed-and-breakfast accommodation for families, except in emergency situations. The consultation on that proposal will start this month.

A consensus about what needs to be done is emerging throughout the United Kingdom. I suspect that the debate will be about the best way of achieving those common goals. I hope that the committee and the Executive will give positive consideration to amendment 35.

I move amendment 35.

Mr Gibson: I share many of the concerns that Jackie Baillie raised. As she said, steps are being taken in England to address the issue and the bill gives us an opportunity to lead from the front in Scotland. Given that the number of children in bed-and-breakfast accommodation is increasing, it is time that we examined the practice and took steps to abolish it.

I have allowed for a three-year lead time in amendment 5 because that period represents a reasonable time frame for local authorities and the Executive to address the issue. It would allow the Executive to put in place the resources that would ensure that the option of bed-and-breakfast accommodation for children is eliminated. The same time scale is used in section 3(1) in relation to advancing the abolition of priority need. Therefore, I have chosen the period of three years not only because it would give local authorities a reasonable lead time, but because it would be concurrent with other developments in the bill.

I have nothing else to add to what Jackie Baillie said, as she covered the issue comprehensively. I hope that the committee and the minister will be able to support amendment 5.

Robert Brown: I would like to support the general thrust of amendment 35. However, the fact that the phraseology concerns the bill's interrelation with the 1987 act and the 2001 act means that it is difficult to work out exactly what is being said. My only concern is whether amendment 35 would provide for the immediate emergency situation. If it would cover such situations, I would be sympathetic to it.

I lodged an amendment to the Housing (Scotland) Bill that sought to ensure that the needs of children would be considered in the specific context of homelessness. That was the right thing to do, and I was pleased that such a provision found its way into the subordinate legislation. Amendment 35 represents a practical move in the direction in which we sought to move with the Housing (Scotland) Act 2001. I hope that the minister will view amendment 35 positively.

Cathie Craigie: To allow further consideration of the issue, I ask Jackie Baillie to withdraw amendment 35 and I invite Kenny Gibson not to move amendment 5. The bill seeks to implement the recommendations of the task force, which did not recommend the proposals in this group of amendments.

I understand that local authorities must prepare homelessness strategies for their areas and will have to address the issue of families with children who are in bed-and-breakfast accommodation. Jackie Baillie cited the case of a family that was in bed-and-breakfast accommodation for 11 months, which none of us would find acceptable. I would like to know more details about that case. For example, which local authority was involved?

My request for amendment 35 to be withdrawn and for amendment 5 not to be moved is based on local experience. At times, I have argued with the local authority that certain constituents should be able to remain in bed-and-breakfast accommodation until suitable alternative accommodation becomes available in their area. I have done that so that my constituents were able to stay in their local community—the community of Cumbernauld and Kilsyth—and their children were able to stay at the school in the area to which they belonged, with the children whom they had come to know and the staff who had worked with them.

My constituents requested to stay in bed-and-breakfast accommodation so that they could stay close to their families. I do not want to pass legislation that would prevent me from arguing on behalf of constituents who are homeless through no fault of their own and who request to stay in bed-and-breakfast accommodation until temporary accommodation becomes available in the area in which they want to live and bring up their families.

We have moved forward but, until we get further information on each local authority's strategy and can consider the issue in more detail, I think that

we have gone far enough. I hope that the debate will continue.

I do not have a breakdown of the figures, but it would be interesting to examine in more detail the number of affected families and why they have been in bed-and-breakfast accommodation for a long time. I do not think that Kenny Gibson mentioned that, in Scotland, we want to lead from the front. We have an opportunity to gather enough sound and concrete evidence so that we can make deliverable changes.

I recognise that I am not speaking from the viewpoint of a local authority that has major problems, such as the councils in Glasgow and Edinburgh. However, I can certainly speak from the experience of dealing with homeless families in my area, which is part of a larger authority area. If permanent accommodation is available elsewhere in that larger area, people have to move away from their local area, where they have family connections.

11:15

Karen Whitefield: I, too, ask members to reconsider amendments 5 and 35. Although we all agree that we do not want any child to have to live in bed-and-breakfast accommodation, there are occasions when such accommodation is appropriate.

One of my difficulties with the amendments is that, although I accept that amendment 35 would allow for the provision of bed-and-breakfast accommodation in an emergency situation, such accommodation would not be considered appropriate after assessment. That gives me a problem because, like Cathie Craigie, I have had constituents for whom suitable bed-and-breakfast accommodation was the right choice, if the alternative was being moved to another part of North Lanarkshire. That would have disrupted the children even further and taken them away from the environment that they recognised and their schools, friends and support groups.

If we consider the figures for Scotland, the local authorities that regularly use bed-and-breakfast accommodation are, to a great extent, rural authorities. It is not my job to defend South Lanarkshire Council, Highland Council or Argyll and Bute Council but, as well as considering the figures, we must consider the picture behind those figures. Are we saying that South Lanarkshire Council is wrong to keep a family from Biggar in suitable bed-and-breakfast accommodation in Biggar rather than send them to East Kilbride or Hamilton where they have no family connections or might have problems with employment? It would be wrong to tie a local authority's hands in that way. That is my main concern. None of us wants children to live in bed-and-breakfast accommodation, but it might be the right choice for some families. We need to see the narrative behind the stories about such families.

Cathie Craigie made another important point about the homelessness strategies that each local authority will have to implement as a result of the Housing (Scotland) Act 2001, which will take effect over the next two years and should phase out the use of bed-and-breakfast accommodation. I do not want to tie local authorities' hands and prevent them from using bed-and-breakfast accommodation at all or make it difficult for local authorities to use such accommodation when it might be the appropriate option.

I have argued with local authorities about the use of bed-and-breakfast accommodation and I know that they worry about their statistics and how bad they are going to look. We should consider the circumstances of each family and what is best for them. That is especially true when they are in a state of chaos for whatever reason, whether through a fire or through a problem with alcohol or drug misuse in the family.

Des McNulty: Let me make it clear that the issue is not intent, but the mechanics of achieving a goal. The Executive is quite clear that bed-and-breakfast accommodation is unsuitable for homeless families with children. That is why we have funded those local authorities with the highest number of families in B-and-B accommodation to provide more suitable alternatives. That is also why, through guidance on the development of homelessness strategies, we have required councils to ensure the delivery of the homelessness task force's recommendation that the use of B-and-B accommodation for families with children should be eliminated.

We want to work towards achieving that goal in partnership with the authorities. The authorities are central to the delivery not only of that objective, but of the whole series of objectives that are set out in the recommendations of the homelessness task force, and that is the purpose of the bill. We have embarked on a path in partnership with the authorities, which are reviewing the use of temporary accommodation. They have been asked to ensure that adequate accommodation—accommodation appropriate for families with children—will be provided. That process will be kept under review and Communities Scotland will have a role in monitoring the delivery of the strategies of each council. The process in place is that recommended by the homelessness task force, which was agreed and signed up to by all the parties.

Jackie Baillie is right to say that the statistics are not yet falling. That is because of pressure on

temporary accommodation and particular issues in specific local authorities. We are talking about five or six local authority areas in which bed-and-breakfast accommodation is used. In each case, however, there are indications that progress is being made towards phasing out bed-and-breakfast accommodation and replacing it with more suitable arrangements. The Executive is anxious to work in partnership with the local authorities in moving down that track.

I am concerned that, as the authorities develop alternative solutions, we should not tie their hands so that they are unable to make the best provision based on family circumstances or options that are immediately available. If the amendments were agreed to, local authorities would lose a valuable temporary management tool that is geared to meeting the needs of those children and families. Authorities are already moving at a significant pace to severely curtail the use of B-and-B accommodation in general, and specifically to prevent its use for families; therefore, there is an issue of good faith and our trusting that the authorities are progressing down that route. Agreeing to the amendments would lead to a situation in which, under certain circumstances, people would end up with a less favourable solution and authorities would not be able to provide what was required in an instance of last resort. That is something to which we should pay attention.

At present, there are circumstances in which B-and-B accommodation might be the best available short-term option—I emphasise the phrase "short-term". We would not, for example, want to prevent a local authority from using B-and-B accommodation if the alternative might leave the family at risk of domestic violence or lead to their being placed in a hostel that housed primarily young, single people. There is also an issue in rural areas, where the existing temporary accommodation may be a considerable distance from where the family normally resides. In that instance, bed-and-breakfast accommodation might, in the short term, be the least disruptive provision that can be made for a family, as it would allow continuity of schooling and other matters of that kind. We would not want unnecessarily to tear people away from their established networks of family, school and friends during a time and in circumstances that might be traumatic—for example, if their house had burnt down.

Although amendments 35 and 5 would provide some flexibility, in that they would continue to allow the use of bed-and-breakfast accommodation for those who have presented as homeless before their assessment, the amendments would prevent the use of such accommodation after the assessment was made. That could create a perverse incentive to delay assessment and would, once the assessment was made, certainly lead to a loss of flexibility as to which forms of temporary accommodation would provide the best solution. There are significant problems with the amendments: they are too rigid in their application and they would prevent local authorities from using their discretion according to the merits of each case.

Clearly, our preferred route for resolving this issue is the homelessness strategies. Those strategies must ensure that the needs of children are considered during the formulation and implementation of policies to alleviate and prevent homelessness. We have plans for managing the withdrawal from B-and-B accommodation in the homelessness strategies. We expect that the use of B-and-B accommodation for families will fall dramatically over the next two years.

Although the amendments highlight an issue, there is an argument for saying that the legislative mechanism that they propose is not the best means of resolving that issue. The feeling among local authorities, which has emerged in the context of the task force's discussions, is that what we have in place will deliver the end to which it is geared. The Executive is of the view that we should give the authorities a chance to deliver on that.

Jackie Baillie: I am quite disappointed with parts of the minister's response, but let me first deal with the points that were raised by committee members.

There is a question about whether amendment 35 or another mechanism is the right way forward. People have raised issues about how the suitability of bed-and-breakfast accommodation should be balanced against location, but all people—both academics and practitioners—agree that bed-and-breakfast accommodation is expensive, of a poor standard and has a negative impact on children. That is regrettable, and although that may not be true in all cases, that is the majority view on the provision that is available across Scotland.

I am always interested in the mechanics of how we achieve things, so I want to deal with the perceived technical problems of amendment 35. If the Executive was content with the clearly outlined policy intent, with which the committee did not have much disagreement, then I am sure that given the Executive's resources, it could fix any technical difficulties. I recognise, however, that the Executive was not content with the amendment for other reasons—technical arguments do not hold much water.

I recognise that the Executive has made real efforts but, frankly, there has been little evidence of the gradual improvement that we expected.

Perhaps another way in is needed to tackle the problem and bring focus to it. Although amendment 35 represents one possible route, I had hoped that the minister would agree to reconsider the issue and perhaps suggest an additional focus that might accelerate the changes that we all want. If the minister were to do so, I would be content to withdraw amendment 35, subject to such a consideration taking place before stage 3.

The Convener: The member must indicate whether she intends to press or withdraw amendment 35.

Jackie Baillie: On that basis, I seek leave to withdraw amendment 35.

The Convener: Does the committee agree to amendment 35 being withdrawn?

Mr Gibson: I press amendment 35.

The Convener: The question is, that amendment 35 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Brown, Robert (Glasgow) (LD)
Fabiani, Linda (Central Scotland) (SNP)
Gibson, Mr Kenneth (Glasgow) (SNP)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)

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 35 agreed to.

Amendment 5 moved—[Mr Kenneth Gibson].

The Convener: The question is, that amendment 5 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Fabiani, Linda (Central Scotland) (SNP)
Gibson, Mr Kenneth (Glasgow) (SNP)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)

AGAINST

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

ABSTENTIONS

Brown, Robert (Glasgow) (LD)

The Convener: The result of the division is: For 3, Against 3, Abstentions 1.

I will use my casting vote against amendment 5.

Amendment 5 disagreed to.

Section 8, as amended, agreed to.

Section 9—Persons at risk of domestic abuse

11:30

The Convener: Amendment 22 is in a group on its own.

Linda Fabiani: The reasoning behind the amendment is to ensure that local authorities take a broad view of what is meant by violence in relation to a person being unable to occupy his or her accommodation. The amendment ensures that different types of violence that an applicant may have experienced are considered, not just physical violence. Other types of violence, such as sexual or emotional abuse, are often underlying reasons for homelessness or potential homelessness.

The amendment seeks to amend a section of the Housing (Scotland) Act 1987 and to make the bill consistent. The bill seeks to reword section 33 of the 1987 act to concur with the Protection from Abuse (Scotland) Act 2001, as passed by this Parliament. The amendment seeks that section 24(3) of the 1987 act also be amended, so that in circumstances in which a person who has accommodation is homeless, abuse is taken along with violence within the meaning of the Protection of Abuse (Scotland) Act 2001.

I move amendment 22.

Des McNulty: Amendment 22 is a helpful proposal, and I am grateful to Linda Fabiani for lodging it. The bill updates the 1987 act in several places to use the term "abuse" rather than "violence" because "abuse" has a wider definition, established under the Protection from Abuse (Scotland) Act 2001.

However, I ask Linda Fabiani to withdraw her amendment. While the Executive accepts it in principle, we wish to lodge an amendment at stage 3 that will achieve the purpose of amendment 22, but will clarify the terms used. The amendment as currently drafted leaves in references to "violence" and "threats of violence", which are unnecessary as both "violence" and "threatening conduct" are included in the definition in the 2001 act.

Linda Fabiani: Gosh, I am taken aback. However, I am happy to withdraw the amendment on that basis.

Amendment 22, by agreement, withdrawn.

The Convener: Amendment 23 is in a group on its own.

Linda Fabiani: Amendment 23 is a probing amendment, although I reserve the right to come back at stage 3 because we may have a problem.

When considering legislation, we have often had discussions about whether what we are doing complies with the European convention on human rights. In this instance, it is about the right of someone to appeal against a decision taken against them in regard to homelessness. The point is whether a council that is reviewing its own decision is impartial under the terms of the ECHR. In the recent English case of Adan v Newham London Borough Council, it was held that the lack of a right to appeal to an independent hearing—i.e. a court—was held to be in breach of article 6 of the ECHR. It is for that reason that I lodged amendment 23, which would give an ultimate right of appeal to the sheriff court.

I move amendment 23.

Des McNulty: The procedures to be adopted in allowing internal review of local authority decisions were well debated during the passage of the 2001 act. Full consideration was given to whether or how an independent element should be incorporated. It was always accepted that the reviews should be fair, transparent and should not cause unnecessary delays. Amendment 23 does not replace internal review with the right of appeal to a sheriff; it adds appeal to the sheriff court after the internal review process. The amendment adds a further layer and a multiplication of bureaucracy to procedures, which we believe will cause further inherent delays.

The internal review elements of the 2001 act have been in place for less than a year, and we have no evidence to suggest that they are not working. We have always been clear that, in updating the code of guidance, we would take account of the experience of internal review in its operation and strengthen the guidance as necessary.

As Linda Fabiani has pointed out, judicial review remains an option for applicants unhappy with local authority decisions. In that context, I do not see that the amendment, which would add further delays and extra expense, can be justified.

The Convener: Can I ask Linda Fabiani to wind up and whether she wants to press the amendment? *[Interruption.]*

Linda Fabiani: Can you repeat that, convener?

The Convener: Could you wind up, instead of winding me up? Will you indicate whether you want to press or withdraw the amendment?

Linda Fabiani: I am not going to press the amendment at the moment, although I am certainly not convinced by the deputy minister's response. I do not feel that the central point has been addressed, which is the potential for a breach of the ECHR, especially in the light of the court case south of the border. I will not press the amendment, but I reserve the right to lodge it at stage 3.

Amendment 23, by agreement, withdrawn.

Section 9 agreed to.

Section 10—Notice to local authorities

The Convener: Amendment 18 is in a group on its own.

Des McNulty: The Executive is lodging amendment 18 at the behest of the Subordinate Legislation Committee, which took the view that the current drafting of section 10 was not sufficiently clear to ensure that a local authority never has to notify itself of repossession proceedings.

The intention of the amendment is to cut down on red tape. It should be noted that an increased focus on joint working through development by local authorities of homelessness strategies should ensure that local authority departments act in a coherent manner and take a strategic approach to avoiding raising actions for repossession where they could lead to avoidable homelessness.

Amendment 18 moved—[Des McNulty]—and agreed to.

Section 10, as amended, agreed to.

Schedule agreed to.

Sections 11, 12 and 13 agreed to.

Long title agreed to.

The Convener: That ends stage 2 consideration of the bill. I thank the deputy minister for attending. We will now move into private session.

11:37

Meeting continued in private until 11:53.

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