

MEETING OF THE PARLIAMENT

Wednesday 20 June 2001
(*Afternoon*)

Session 1

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Scottish Parliament

Wednesday 20 June 2001

(Afternoon)

[THE PRESIDING OFFICER *opened the meeting at 14:41*]

Time for Reflection

The Presiding Officer (Sir David Steel): In welcoming back Right Rev John Mone, Bishop of Paisley, to lead this week's time for reflection, I say to him that every party and every member in the chamber has found themselves on occasion applauding the statements of Cardinal Winning and on other occasions wholly disagreeing with them. He was a man of robust opinion on so many public issues, but he was someone who at all times enjoyed our respect.

This young Parliament has known what it is to lose a leader. On behalf of the Parliament, I convey to you and the Roman Catholic community in Scotland our heartfelt sympathies at your loss of such an outstanding leader. I invite you to lead us in time for reflection.

Right Rev John A Mone (Bishop of Paisley): Thank you, Sir David, for those kind words about Cardinal Winning. On behalf of the Scottish Bishops Conference, I want to say how grateful we are to have been afforded this opportunity by the Scottish Parliament to share time for reflection.

At the Seattle special Olympic games some time ago, there were nine contestants in the 100 yards race and all of them were either physically or mentally disabled. The gun went off and they all set out. That is, all except one little boy who, in his excitement, stumbled and tumbled over a couple of times and lay there crying. The other eight heard him crying. They slowed down and looked back. Then they all turned round and went back—all eight of them. One little girl with Down's syndrome bent down, kissed him and said, "This will make it better." Then all nine linked arms and walked together to the finishing line. Everyone in the stadium stood up and the cheering went on for several minutes. Why? Because deep down, we all know that what really matters is not so much winning for ourselves; what matters in this life is helping others to win, even if it means slowing down and changing course.

I know that Tom Winning would have loved that story. Apart from the pun on his name, which he always enjoyed, he really enjoyed helping the most vulnerable and disadvantaged in society to win. I know also that the Cardinal's inspiration—

and in a sense his manifesto—came from the first words of the Vatican Council document on the church in the modern world:

"The joy, the hope, the grief and anguish of the people of our time, especially of those who are poor or afflicted, are the joy and hope, the grief and anguish of the followers of Christ as well."

He wanted to bring the Catholic church into the modern world and make its message relevant to peoples' lives. Cardinal Winning worked himself to death doing just that. May he rest in peace, and receive the reward of his labours.

We pray now in the Lord's own prayer to the Father of us all, which makes children of us all. I invite you to say aloud or silently this prayer that the Lord taught us, according to your own tradition.

Our Father, who art in heaven, hallowed be thy name. Thy kingdom come. Thy will be done on earth as it is in heaven. Give us this day our daily bread, and forgive us our trespasses, as we forgive those who trespass against us. And lead us not into temptation, but deliver us from evil.

Amen.

The Deputy Presiding Officer (Mr George Reid): Before we start stage 3 consideration of the Mortgage Rights (Scotland) Bill, I am sure that members will join me in welcoming to the VIP gallery delegates from the 32nd annual conference of the British islands and Mediterranean region of the Commonwealth Parliamentary Association. With them is the Secretary of State for Scotland, the right hon Helen Liddell MP. [*Applause.*]

Parliamentary Bureau Motion

14:45

The Deputy Presiding Officer (Mr George Reid): I ask Euan Robson to move motion S1M-2025, in the name of Mr Tom McCabe, which is a timetabling motion for stage 3 of the Mortgage Rights (Scotland) Bill.

Motion moved,

That the Parliament agrees that, at Stage 3 of the Mortgage Rights (Scotland) Bill, debate on each part of the proceedings shall be brought to a conclusion by the time limits indicated (each time limit being calculated from when Stage 3 begins and excluding any periods when the meeting is suspended) –

Group 1 and Group 2 – no later than 1 hour

Group 3 and Group 4 – no later than 1 hour 55 minutes

Motion to pass the Bill – no later than 2 hours and 25 minutes—[*Euan Robson.*]

Motion agreed to.

Mortgage Rights (Scotland) Bill: Stage 3

14:46

The Deputy Presiding Officer (Mr George Reid): We now proceed to stage 3 consideration of the Mortgage Rights (Scotland) Bill. I will make the usual announcement about the procedures that will be followed. First, we will deal with amendments to the bill. We will then debate the motion to pass the bill. For the first part of the debate, members should have a copy of the bill—SP bill 19A—as amended at stage 2, the marshalled list, which contains all the amendments that I have selected for debate and the list of groupings that I have agreed.

Amendments will be debated according to the groupings, but disposed of in turn according to the order of the marshalled list. An amendment that has been moved may be withdrawn with the agreement of members present. It is, of course, possible for members not to move amendments, should they so wish.

The electronic voting system will be used for all divisions. I will allow an extended voting period of two minutes for the first division that occurs after the debate on a group of amendments.

That being clear, I call Cathie Craigie to speak to amendment 1, which stands in a group of its own.

Section 1—Application to suspend enforcement of standard security

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): Amendment 1 extends to a non-entitled spouse the right to apply to the courts under the bill when they live in the property with the debtor or proprietor. The bill allows a non-entitled spouse—a term that derives from the Matrimonial Homes (Family Protection) (Scotland) Act 1981 and refers to spouses who are not the owner of the property—to apply to the court under the bill when the property is their sole or main residence but not the residence of

“the debtor, or, as the case may be, the proprietor.”

The bill also refers to spouses who are not the owner of the property.

The 1981 act gives non-entitled spouses automatic occupancy rights to the matrimonial home. The Mortgage Rights (Scotland) Bill will protect non-entitled spouses when a couple has separated, for example, by giving non-entitled spouses the opportunity to apply to the courts in the same way that debtors can. That complements the 1981 act, which gives the court the power to order that the non-entitled spouse shall take on

the mortgage payments instead of the entitled spouse, who is the debtor. That was intended to prevent separated spouses from taking no action to avoid repossession while no longer being resident in the property.

Amendment 1 is linked to amendment 2, which we will discuss with group 2. As I would like to avoid repeating myself and debating the same issues twice, I have tried to keep my remarks about amendment 2 brief. Following debate in the Social Justice Committee at stage 2, I agreed to lodge amendments at stage 3 to allow partners who are not debtors to apply to the court under the bill. Amendment 2 will allow partners to apply to the court when the debtor remains in the property, as that reflects the occupancy rights that non-entitled partners in opposite-sex couples have under the 1981 act.

I was keen to avoid an imbalance in the bill. Amendment 2 allows a partner to apply if they are resident with the debtor. However, if no amendment is made to the current provisions, a non-entitled spouse could not do that. To ensure consistency in approach—and because it has merit in its own terms—I decided to lodge amendment 1. It seeks to allow the spouse of the debtor to apply to the court under the provisions of the bill, even if the property is the sole or main residence of the debtor—or the proprietor, if different.

Although, in most cases, it is likely that non-entitled spouses will wish to apply only when the debtor is not resident, there may be other cases where they would prefer to take the lead: for example, if the non-entitled spouse is the main breadwinner. It is only right to allow for that possibility and I believe that amendment 1 achieves that aim.

I move amendment 1.

The Deputy Presiding Officer: At this point, no members have indicated that they wish to speak, although it may be that the cards are not reading correctly. I have one or two members showing up on screen now.

Brian Adam (North-East Scotland) (SNP): I thank Cathie Craigie for her explanation of amendment 1. She rightly pointed out that as amendment 1 was associated with the second grouping, she did not intend it to stand alone. I would have preferred to deal with it in those terms, although I can see why it might stand on its own. However, someone else made that choice for us, although amendment 1 would not have arisen without amendments 2, 3, 5, 7, 8 and 9. I have concerns about the overall groupings, but I will deal with those as we move through each group of amendments. Amendment 1 should not be dealt with independently, as it does not stand on its

own.

The Deputy Presiding Officer: I call Mr Aitken. He is masquerading on my screen as Mr McLetchie, but so be it. [*Laughter.*]

Bill Aitken (Glasgow) (Con): I am the good-looking fellow.

The point that Brian Adam made was apposite. For amendment 1 to stand on its own does not lead to a well-structured debate. As we are debating an entirely worthwhile piece of legislation this afternoon, it is not my intention to delay the chamber. I will reserve my position until amendment 2 is debated, later on in the proceedings, when I wish to debate the matter at greater length.

The Deputy Presiding Officer: I am a little nervous that my screen is not quite up to speed. If other members wish to speak will they please raise their hands? As no other member wishes to speak, I call the minister.

The Deputy Minister for Social Justice (Ms Margaret Curran): I will pass no comment on Bill Aitken's comparison to Mr McLetchie.

I recognise the points that have been made about the groupings, but we must deal with the debate as it stands. The Executive supports amendment 1 and the work that Cathie Craigie has done in considering how to take forward the stage 3 amendments that relate to the partner of a debtor. We can discuss those issues in more depth when we get on to the detailed group 2 amendments.

In a number of cases, to allow the spouse to apply while residing in the property with the debtor would provide an additional benefit. That would include the situation in which the debtor was working away from home for an extended period and could not apply him or herself.

We support Cathie Craigie's amendment.

Cathie Craigie: I am sure that Bill Aitken and Brian Adam will understand that I have no influence over how the amendments are grouped. A big boy came along and did it and then ran away.

Amendment 1 will be of direct value in some circumstances and it will also ensure consistency, but I agree that the debate will be around amendment 2.

I ask the Parliament to support amendment 1.

The Deputy Presiding Officer: The question is, that amendment 1 be agreed to? Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Baillie, Jackie (Dumbarton) (Lab)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Canavan, Dennis (Falkirk West)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Finnie, Ross (West of Scotland) (LD)
 Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
 Gillon, Karen (Clydesdale) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Gorrie, Donald (Central Scotland) (LD)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (Edinburgh Pentlands) (Lab)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, Mr John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Jackson, Dr Sylvia (Stirling) (Lab)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Jenkins, Ian (Tweeddale, Etrick and Lauderdale) (LD)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lyon, George (Argyll and Bute) (LD)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 MacKay, Angus (Edinburgh South) (Lab)
 MacLean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McAllion, Mr John (Dundee East) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
 McMahan, Mr Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Radcliffe, Nora (Gordon) (LD)
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
 Scott, Tavish (Shetland) (LD)
 Sheridan, Tommy (Glasgow) (SSP)
 Simpson, Dr Richard (Ochil) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North-East Fife) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Thomson, Elaine (Aberdeen North) (Lab)
 Wallace, Mr Jim (Orkney) (LD)
 White, Ms Sandra (Glasgow) (SNP)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

AGAINST

Aitken, Bill (Glasgow) (Con)
 Davidson, Mr David (North-East Scotland) (Con)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Ewing, Mrs Margaret (Moray) (SNP)
 Gallie, Phil (South of Scotland) (Con)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Harding, Mr Keith (Mid Scotland and Fife) (Con)
 McIntosh, Mrs Lyndsay (Central Scotland) (Con)
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)
 Mundell, David (South of Scotland) (Con)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Tosh, Mr Murray (South of Scotland) (Con)
 Wallace, Ben (North-East Scotland) (Con)
 Welsh, Mr Andrew (Angus) (SNP)

ABSTENTIONS

Adam, Brian (North-East Scotland) (SNP)
 Campbell, Colin (West of Scotland) (SNP)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Elder, Dorothy-Grace (Glasgow) (SNP)
 Ewing, Dr Winnie (Highlands and Islands) (SNP)
 Gibson, Mr Kenneth (Glasgow) (SNP)
 Hyslop, Fiona (Lothians) (SNP)
 Lochhead, Richard (North-East Scotland) (SNP)
 MacAskill, Mr Kenny (Lothians) (SNP)
 MacDonald, Ms Margo (Lothians) (SNP)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 McGugan, Irene (North-East Scotland) (SNP)
 McLeod, Fiona (West of Scotland) (SNP)
 Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 Paterson, Mr Gil (Central Scotland) (SNP)
 Quinan, Mr Lloyd (West of Scotland) (SNP)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Sturgeon, Nicola (Glasgow) (SNP)
 Swinney, Mr John (North Tayside) (SNP)
 Ullrich, Kay (West of Scotland) (SNP)

The Deputy Presiding Officer: The result of the division is: For 68, Against 16, Abstentions 23.

Amendment 1 agreed to.

The Deputy Presiding Officer: Amendment 2 is grouped with amendments 3, 4, 5, 7, 8 and 9.

Cathie Craigie: This group of amendments provides partners—whether they are of the same or the opposite sex—with the right to apply to the court in certain circumstances. It also ensures that section 1(3A), which requires the consent of the debtor or proprietor and the non-entitled spouse before varying the period in which an application can be made, and the notices in the schedule are updated to take account of that change.

At stage 2, Robert Brown lodged a group of amendments that sought to provide non-entitled partners with the right to apply to the courts in the same manner as non-entitled spouses can under the current provisions. During our discussions at stage 2, I indicated that I accepted the general principle of extending rights to non-married partners, but noted that some issues would need to be considered in more depth before

amendments were lodged at stage 3.

The Matrimonial Homes (Family Protection) (Scotland) Act 1981 defines non-entitled partners as cohabiting couples of the opposite sex and allows for certain occupancy rights. The non-entitled partner has to apply to the court for those rights. If the couple splits up, a non-entitled partner who remains on the property without the debtor is unable to apply for such rights, because the couple is no longer cohabiting. There is no provision for occupancy rights for same-sex couples. That said, although some non-entitled partners may not have occupancy rights under statute, they may well occupy the property with the consent of the debtor.

Throughout the process, I have sought to ensure that the bill complements the existing legal framework. I have been clear that any change to the occupancy rights of non-entitled partners would be outwith the scope of the bill. My amendment therefore seeks to fit into the framework provided by the Matrimonial Homes (Family Protection) (Scotland) Act 1981. Amendment 2 seeks to extend the right to apply to partners who live in the property with the debtor, to reflect the fact that partners may occupy the property with the debtor's consent or may have rights under the 1981 act. I indicated at stage 2 that where a partner has responsibility for children, the situation justifies their having similar rights under the bill as non-entitled spouses.

15:00

Amendment 2 also provides that partners who do not reside with the debtor—usually because the debtor has left—will have the right to apply to the courts if the partner and the debtor have lived together in a relationship for at least six months and have children under the age of 16 who remain in the property with the partner. The criteria proposed in amendment 2 will avoid others using the provision as a loophole and applying to the court when they do not have a genuine right to do so.

Amendments 3, 4 and 5 are technical and are consequential to amendment 2. They are designed to ensure that a proprietor or debtor cannot shorten the period of notice in a calling-up notice to disadvantage their partner. Where the lender has issued a calling-up notice or notice of default, the bill gives those entitled to apply two months to do so. One month of that application period can be dispensed with or the period shortened with the consent of the debtor or proprietor and the debtor or proprietor's non-entitled spouse. That provision recognises cases in which the debtor has had enough and wants to minimise the arrears that are building up. However, if a debtor or proprietor chooses to

shorten the period to minimise their arrears, we must ensure that other parties who may have a right to make an application under the bill are not prejudiced.

The bill was amended at stage 2 to ensure that, if the period is to be shortened, that may happen only with the consent of the debtor or proprietor and of their non-entitled spouse. Amendments 3, 4 and 5 extend the requirement to seek the consent of a partner who is eligible to apply under the provisions of the bill. Amendment 3 makes provision in cases where the lender has issued a notice of default and amendments 4 and 5 deal with circumstances in which a calling-up notice has been issued.

Amendments 7, 8 and 9 are also consequential to amendment 2. The bill currently provides that new notices, explaining people's rights under the bill, must be sent to the debtor and the occupier in every case in which the creditor calls up the security or in which the debtor is in default. The notice to the occupier currently has separate information for tenants or for the spouse of the debtor and advises that they may have rights under the Mortgage Rights (Scotland) Act 2001 and that they should seek legal advice. Amendments 7, 8 and 9 extend that information to the partner of the debtor, so that the issuing of notices is consistent with other provisions.

I move amendment 2.

Brian Adam: I thank Cathie Craigie for the opportunity to discuss with her and her advisers the background to this group of amendments. I would like to say at the outset that I see no problem whatever with amendment 4, which is a technical amendment. I accept that a number of the amendments are consequential to the principles of amendment 2.

I am still not wholly convinced of the validity of amendment 2 or that it will achieve everything that Cathie Craigie set out to achieve without making life even more difficult for the debtor. The Council of Mortgage Lenders raised a number of concerns, which it continues to hold. It is true that we debated the principle behind the group when we considered a number of amendments lodged by Robert Brown at stage 2. Unfortunately, we have seen today's group of amendments only in the past day or two, and it is always difficult to get things absolutely right in such a short time scale. It might have been better to have an opportunity for wider consultation on the detail of the amendments at an earlier stage, but I make no personal criticism of Cathie Craigie.

The technical points relate to the fact that the provisions may, now that third parties will be involved, impinge on the rights of the lender and the debtor. The rights of third parties are being

extended; they will have the right to intervene, which they did not have before. I recognise that major efforts have been made to dot the i's and cross the t's to ensure that we are not extending those rights in a way that would lead to significant delays for a large number of people who are trying to sort out their financial problems and want to draw matters to an end, but there are concerns about how the procedure, which people inevitably will use—that is why it is there—will be applied in practice.

The ministers should give us an assurance that when guidance is issued to sheriffs—as is normal practice—it will be discussed with the appropriate parties, in particular the Council of Mortgage Lenders, and will come before the appropriate committee. Such assurances would help a number of members on the SNP benches.

Can we also have a guarantee that there will be a review of how the bill works in practice? That should go to the Social Justice Committee.

The Council of Mortgage Lenders' concerns are wide-ranging. It is concerned that we may be offering greater rights to non-spouses than to spouses. The council may be right or wrong, but I am willing to hear the arguments from the promoter of the bill and the minister, if she is prepared to support the bill.

The process is different from the one for the Housing (Scotland) Bill. The Mortgage Rights (Scotland) Bill is not just about succession rights, with which the Housing (Scotland) Bill dealt; potentially, it will impinge on other matters, in particular, the contract between the lender and the debtor and the rights of third parties who have no direct responsibility for the debt.

The motivation behind the bill is right and, broadly, we sympathise with its aims, but there are some technical points on which I would like guidance from the minister and the promoter.

Bill Aitken: Amendment 4 is a technical amendment and amendments 3, 5, 7, 8 and 9 are consequential to amendment 2, so I intend to address my remarks chiefly to amendment 2, which clearly causes some concern.

I have talked before about defining the terms of a relationship that has all the characteristics of the relationship between a husband and wife, but in which the persons are of the same sex. As the minister will recall, when I raised the matter before, I found it difficult to see how that definition could be made. The intention of the bill is to deal with gay relationships. I have no particular difficulty with that, but I reiterate that I do not think that the definition has anything to commend it in terms of the law. I do not think that the definition will be recognised by the law.

My problem with amendment 2 is chiefly that certain rights will accrue to individuals who are to some extent at arm's length from the original difficulty. Brian Adam raised that point. Where there has been a breakdown in a relationship—conventional or otherwise—the person who finds themselves in difficulty due to the financial implications of being in serious mortgage arrears could attempt to cut their losses. If the amendment is passed, that person's aspirations could be thwarted. In some cases, there may be a moral justification for that, to satisfy the rights of the other party involved, but I am a little concerned that some relationships end acrimoniously and that an application could be made out of sheer spite or bloody-mindedness. I perhaps anticipate what the minister will say when I say that I accept that the sheriff would be entitled to take the circumstances into consideration in determining the matter, but I am a little concerned that there could be injustices and I would prefer that the amendment were not passed.

The other problem arises when a renunciation of occupancy rights has been signed at the inception of the loan, when the standard security was taken out. There is a clear difficulty if the matter is not resolved and it is not clear whether, if we allow amendment 2 to go through, the subsequent act would breach the Matrimonial Homes (Family Protection) (Scotland) Act 1981. I am grateful to Cathie Craigie for the opportunity to discuss that matter yesterday, when I raised my concerns with her. In the same constructive manner that she has adopted throughout the process, she attempted to get answers, but I am not entirely satisfied with them.

It would be regrettable if amendment 2 were to be included in the act. Even at this stage, the promoter of the bill should exercise a degree of caution. There might be advantages—and I mean this in the most constructive manner—in withdrawing the amendment. I will listen to what Cathie Craigie and the minister have to say.

Robert Brown (Glasgow) (LD): I thank Cathie Craigie for taking on board this aspect, which—as she rightly says—I raised at stage 2.

I am bound to say that the attitude taken to amendment 2 by the SNP and the Tories is somewhat niggardly. It does not seem to relate to reality. This is about a summary application; it is a speedy, summary procedure. The application will go to a hearing before a sheriff. We are not talking about proofs or long, drawn-out procedures. We are talking about a speedy procedure for getting decisions on the continued ability of people to live in their own homes. That is the central point that the chamber should recognise.

Amendment 2 aims to give people who have a certain connection with a household certain rights,

similar to those that owners have. One difficulty is that they are not the people charged with the contractual responsibility of paying the mortgage on the house. I know that issues arise out of that, but they are fairly small ones given the time scales that we are talking about.

The amendments try to recognise the social reality of modern life. Social norms were different when the Matrimonial Homes (Family Protection) (Scotland) Act 1981 was passed. Now, more people live in other relationships than are married. That means that the majority of people do not have a marriage certificate to show the court to identify the specific legal relationship that they are in. That causes difficulties in procedure and practice. All the amendments do is give people the right to apply to the court in limited circumstances. Applying to the court is one thing; getting orders of the court is something else.

When the matter comes before the court, it will have to consider the background. It will have to consider who paid the mortgage, the situation, the reason for the debtor not being involved in the process and so on. With sufficient shrieval and solicitor training and background advice for the people involved, there is no reason why the situation should not be considered adequately—the circumstances in which it may arise are relatively limited.

Although there may be a technical difficulty—I appreciate that we have had representations from the Council of Mortgage Lenders—I do not think that it should be overstated. The provision relates to a period of weeks. It does not alter the substantive position, which relates to people who are substantially in deficit on their mortgage payments. The amendments aim to introduce greater equity, without causing the problems that might have existed with the wording of my original amendment, which was significantly wider than the wording of these amendments.

I support the amendments and I hope that the chamber will accept the logic of their being passed.

15:15

Alasdair Morgan (Galloway and Upper Nithsdale) (SNP): Although I support the thinking behind the amendments, I am concerned about the first part of amendment 2 for two reasons.

First, the detail of amendment 2 came before us only yesterday. Because the Parliament is unicameral, if we agree to amendment 2 today, it will become law; it will not be chucked out because it is ultra vires or any such nonsense. As a result, this is our only chance to get it right. If there are any technical difficulties—as Robert Brown suggested—this is the only occasion on

which we can cure them. In a Parliament that prides itself on consultation, it is a bit rich to lodge complex amendments that will be decided on once and for all on the following day. Who on earth has been consulted on the content of these amendments?

Cathie Craigie: The amendments were lodged in good time—I am not sure whether it was done last Wednesday or Thursday. Furthermore, the issue was very fully discussed at stage 2. As a result, I do not want anybody to think that the issues were before either committee members or the Parliament for only a few days.

Alasdair Morgan: I was not trying to imply that the issue has not already been discussed in the Parliament, especially by its committees. However, I do not think that the detail of the specific amendments has been discussed, otherwise they would have been included in the bill long before now.

My second point relates to the specific wording of section 1(2)(c). We must give sheriffs clear instructions if they are to make decisions on such matters. A minister cannot simply write to sheriffs and say, “Here is my ministerial guidance”; it does not work like that. Sheriffs must interpret law and an appeal court might scrutinise parliamentary debates to understand what Parliament was thinking when it passed a particular piece of legislation. However, if the courts listen to the debate so far, they will have precious little to go on that will help them to interpret proposed section 1(2)(c). We have a duty to say what we mean by

“the characteristics of a relationship between husband and wife”.

I am not going to make music hall jokes about those characteristics, but I do not think that that phrase is well-defined enough to be passed into legislation and to give a sheriff the guidance that will allow him or her to make a judgment. We should do better than that if we are going to pass legislation.

Ms Curran: I must re-emphasise Cathie Craigie's point. There was substantial debate on the issues at stage 2, during which Robert Brown's significant contribution helped us to deal with those issues. Furthermore, at stage 2, we indicated the Executive's support for this group of amendments and recognised that Cathie Craigie had worked towards—and found—a suitable balance between the rights of debtors and the rights of debtors' partners and children.

I will pick up on a number of points that have been made in the debate. First, the CML was fully consulted throughout the bill's progress, and before the bill was introduced almost a year ago. In fact, that organisation made several helpful and constructive comments, some of which have been

taken on board. The bill has been under discussion for a considerable time.

Bill Aitken said that a plethora of third parties could delay a possession action. That is not so. The bill includes criteria that must be fulfilled before a third party can apply for such action. The bill seeks to balance the rights of debtors and creditors. Spouses and partners also have important rights and should have the right to apply as third parties under the provisions of the bill.

Furthermore, the CML was advised of the stage 3 amendments relating to the rights of partners to apply to the courts, and was told that those rights would not affect occupancy rights or debtors' obligations under standard security. The CML has also been advised that renunciations will not be affected. A spouse will have the right to apply to delay a possession action even if they have signed a renunciation of occupancy rights, because the provisions that are proposed in the group of amendments do not affect the occupancy rights of the spouse.

On judicial training, I am delighted that Brian Adam is now—having been so resistant to it during the passage of the Housing (Scotland) Bill—advocating guidance. I will clarify exactly how the system will work. We can provide the relevant sections of the parliamentary reports to the Judicial Studies Committee for Scotland, together with a statement of the thinking behind the legislation, which should be taken into account in the compilation of guidance or training for sheriffs. That is standard practice, which means that the Judicial Studies Committee for Scotland will be aware of the concerns that have been raised in the debate.

Brian Adam: Will the minister make that material available to the Social Justice Committee?

Ms Curran: I am sure that Brian Adam and other members are aware that Jackie Baillie and I try to include the Social Justice Committee in all our efforts. There are provisos attached to judicial issues that I would need to check, in terms of caveats, but I will always do my best to include and consult that committee as appropriate. However, given the fact that this is a judicial issue, I shall have to double check before I do that. I will get back to Brian Adam on that.

It is important that we bear it in mind that this aspect of the bill draws on the Matrimonial Homes (Family Protection) (Scotland) Act 1981, as has been said. As I am sure that members are aware, that act is being reviewed with other family law, and it is not open to us to amend that legislation today. Cathie Craigie has drawn on existing rights under the 1981 act, which provides for cohabiting partners. In the bill, Cathie Craigie has taken into

account the importance of protecting children when a relationship has ended, and we think that she has got the balance right.

It is worth noting that, in practice, partners—especially those who have responsibility for children—might well have made some provision to formalise a situation such as the group of amendments provides for. We expect the courts to take any such agreement into account when they consider the circumstances of cases. More generally, we expect the courts to consider the same issues in relation to partners who apply as they would for the current category of applicants in the bill. We also expect the courts, when they consider the circumstances of applicants, to consider debtors' circumstances as part of all the circumstances of cases. We understand that debtors would automatically be notified of proceedings under the rules of court.

Cathie Craigie: Presiding Officer, you will acknowledge that several points have been made; I hope that you will allow me time to respond to them.

The group of amendments seeks to provide partners with the right to apply to the courts under the provisions of the bill in the circumstances as laid out, and to ensure that a partner is informed of his or her rights under the bill through the notice to occupiers. The amendments do not provide partners with occupancy rights; rather, they complement existing legislation. At the same time, they provide a level of protection for partners and their children in cases of mortgage repossession.

The amendments also seek to provide partners—where they can apply under the provisions of the bill—with similar protection to that which is currently provided to a non-entitled spouse, from a debtor's agreeing without their consent to shorten the time period for application. The amendments will ensure that the applications of all parties who might have a right to make an application under the provisions of the bill are not prejudiced. In all cases, the court will consider all the circumstances, including the views of debtors and creditors. The right to apply does not change occupancy rights or a debtor's obligation to a mortgage. *[Interruption.]* I apologise to members. There is a difficulty with my speaking console. I shall try to speak directly into the microphone.

Dorothy-Grace Elder (Glasgow) (SNP): Will the member take an intervention?

Cathie Craigie: I am just trying to make a point.

Dorothy-Grace Elder: Will Cathie Craigie define what she means by partnership? Does she mean a relationship that has a sexual component or does she mean another kind of relationship?

Cathie Craigie: We have heard enough about

that. I will put on record exactly who would be able to apply under the provision. Bill Aitken and Brian Adam have raised the issue, and I have made myself a wee grid to make it simple.

How will spouses be affected by amendment 2? They will be able to apply to the courts if they live with the debtor. They will also be able to apply if they remain in the debtor's property, but have split up with the debtor, and they will be able to apply whether or not they have children. A cohabiting couple with no children will be able to apply if they live with the debtor, but they will not be able to apply if they do not live with the debtor, but remain in the debtor's property after they have split up. That is because they would not, in those circumstances, be a cohabiting couple. Same-sex couples with no children will be able to apply if they live with the debtor, but they will not be able to apply if they do not live with the debtor, but remain in the debtor's property after they have split up. Cohabiting couples and same-sex couples will have to prove that they have been living with the debtor for six months.

Cohabiting couples with no children will be able to apply to the courts if they live with the debtor. Same-sex couples with no children will be able to apply if they have split up with the debtor, but remain in the debtor's property. They must demonstrate that they have lived with the debtor for at least six months and that they still have joint responsibility for the children. I hope that members will feel that those provisions take account of every possible circumstance.

Brian Adam said that the CML raised a point about the loophole. That point has been raised extremely late and I do not think that there are any loopholes that people who are not entitled to apply to the courts and who do not deserve protection from the legislation will be able to use.

Brian Adam: It is true to say that the point has been raised late, but that is a consequence of the fact that the detailed amendment, although timeous, was not available in time for us to consult on it properly. I ask the minister to encourage the Executive to review at an early stage the bill that is likely to be passed today to determine how the idea works in practice. If the CML's concerns are not appropriate, there will not be a problem. However, its concerns might be valid and I have heard from one source that debtors might have to pay an additional year's interest on a debt because of the delay in the payment of legal aid and other devices.

Cathie Craigie: Interventions are supposed to be brief.

I have a great deal of respect for the CML and I have worked closely with the organisation during the consultation process. However, I am

disappointed that that organisation gave a response only to this aspect of the bill, because that has not allowed members—who are obviously concerned about this matter—enough time to become convinced of the fact that the CML has got it wrong. Alasdair Morgan might be confused because members got a copy of the briefing paper only yesterday. I am sure that when they have had time to reflect on them fully, members will agree that the concerns that were raised by the CML are misguided.

Although I have a great deal of respect for the CML, I feel that it has got matters wrong in this circumstance. The bill will not allow a plethora of third parties to apply to the courts. I have stated clearly the protection that the bill will give to groups of people who will be entitled to benefit from the bill, as enacted.

I hope that members appreciate the length of time that was spent discussing the matter at stage 2. The Social Justice Committee—with perhaps one dissenter—agreed that the proposal should be implemented to ensure that everybody was treated the same way, regardless of whether they were married couples, same-sex couples or cohabiting couples.

Alasdair Morgan again mentioned the issue of the definition of the characteristics of a husband and a wife. That definition is included in the Housing (Scotland) Bill and the Adults with Incapacity (Scotland) Act 2000 and I do not recall there being a big discussion about that definition when that act was being dealt with. The definition is established and has been accepted by the Scottish Parliament.

The Deputy Presiding Officer: I will allow a last-minute contribution from Dorothy-Grace Elder. I ask her to be brief, because I have to go back to Margaret Curran and Cathie Craigie after her.

Dorothy-Grace Elder: I want to ensure absolute clarity and I would like either the minister or Cathie Craigie to respond. I respect the amount of work that Cathie Craigie has done but, in the definition of partnership, will her move protect a couple—two people living in a house—who have not come together on the basis of sexuality in their relationship? For instance, will it protect two elderly sisters who have lived together for years or a couple of old soldiers or former workmates? There are many different relationships that cause people to live together for decades. Does the word “partner” relate to sexuality in a cohabiting relationship or does it apply to people who have lived in a long-term and established partnership, whom I hope we are also trying to protect? If the definition does not apply to them, I ask the Executive to reconsider the provisions.

15:30

The Deputy Presiding Officer: I assure members that calling Dorothy-Grace Elder is in order. We have time.

Ms Curran: Cathie Craigie has outlined all the definitions of partnership. We discussed the matter, as Cathie Craigie said, at stage 2. The amendment clearly puts caveats into the bill in that it recognises established partnerships and relationships.

I remind members that the bill is about maximising rights, which is why we disagreed with the CML's point. The bill is about making sure that people's housing rights are protected. I strongly welcome the moves by Cathie Craigie and Robert Brown to maximise those rights.

I did not pick up every class of person in the long list that Dorothy-Grace Elder gave. My understanding is that rights will be protected. I will go back and check the *Official Report*. Dorothy-Grace Elder talked about soldiers, for example. I will need to check the position in relation to such people.

Cathie Craigie: On the definition, husband and wife implies a partnership of a sexual nature. The amendments are concerned with that type of partnership.

The Deputy Presiding Officer: The question is, that amendment 2 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Baillie, Jackie (Dumbarton) (Lab)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Canavan, Dennis (Falkirk West)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Elder, Dorothy-Grace (Glasgow) (SNP)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Finnie, Ross (West of Scotland) (LD)
 Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
 Gillon, Karen (Clydesdale) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Gorrie, Donald (Central Scotland) (LD)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (Edinburgh Pentlands) (Lab)
 Harper, Robin (Lothians) (Green)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, Mr John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Jackson, Dr Sylvia (Stirling) (Lab)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)

Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lyon, George (Argyll and Bute) (LD)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 MacKay, Angus (Edinburgh South) (Lab)
 MacLean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McAllion, Mr John (Dundee East) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
 McLeod, Fiona (West of Scotland) (SNP)
 McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Radcliffe, Nora (Gordon) (LD)
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
 Scott, Tavish (Shetland) (LD)
 Sheridan, Tommy (Glasgow) (SSP)
 Simpson, Dr Richard (Ochil) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North-East Fife) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Thomson, Elaine (Aberdeen North) (Lab)
 Wallace, Mr Jim (Orkney) (LD)
 Watson, Mike (Glasgow Cathcart) (Lab)
 White, Ms Sandra (Glasgow) (SNP)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

AGAINST

Aitken, Bill (Glasgow) (Con)
 Davidson, Mr David (North-East Scotland) (Con)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Ferguson, Alex (South of Scotland) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Harding, Mr Keith (Mid Scotland and Fife) (Con)
 Johnstone, Alex (North-East Scotland) (Con)
 Matheson, Michael (Central Scotland) (SNP)
 McIntosh, Mrs Lyndsay (Central Scotland) (Con)
 McLetchie, David (Lothians) (Con)
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)
 Mundell, David (South of Scotland) (Con)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Tosh, Mr Murray (South of Scotland) (Con)
 Wallace, Ben (North-East Scotland) (Con)
 Welsh, Mr Andrew (Angus) (SNP)
 Young, John (West of Scotland) (Con)

ABSTENTIONS

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

Campbell, Colin (West of Scotland) (SNP)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Ewing, Dr Winnie (Highlands and Islands) (SNP)
 Gibson, Mr Kenneth (Glasgow) (SNP)
 Hyslop, Fiona (Lothians) (SNP)
 Lochhead, Richard (North-East Scotland) (SNP)
 MacAskill, Mr Kenny (Lothians) (SNP)
 MacDonald, Ms Margo (Lothians) (SNP)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 McGugan, Irene (North-East Scotland) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 Paterson, Mr Gil (Central Scotland) (SNP)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Sturgeon, Nicola (Glasgow) (SNP)
 Swinney, Mr John (North Tayside) (SNP)
 Ullrich, Kay (West of Scotland) (SNP)

The Deputy Presiding Officer: The result of the division is: For 72, Against 20, Abstentions 19.

Amendment 2 agreed to.

Amendment 3 moved—[Cathie Craigie].

The Deputy Presiding Officer: The question is, that amendment 3 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Aitken, Bill (Glasgow) (Con)
 Baillie, Jackie (Dumbarton) (Lab)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Canavan, Dennis (Falkirk West)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Davidson, Mr David (North-East Scotland) (Con)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Eadie, Helen (Dunfermline East) (Lab)
 Elder, Dorothy-Grace (Glasgow) (SNP)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Fergusson, Alex (South of Scotland) (Con)
 Finnie, Ross (West of Scotland) (LD)
 Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
 Gallie, Phil (South of Scotland) (Con)
 Gillon, Karen (Clydesdale) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Gorrie, Donald (Central Scotland) (LD)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (Edinburgh Pentlands) (Lab)
 Harding, Mr Keith (Mid Scotland and Fife) (Con)
 Harper, Robin (Lothians) (Green)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, Mr John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Jackson, Dr Sylvia (Stirling) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
 Johnstone, Alex (North-East Scotland) (Con)
 Kerr, Mr Andy (East Kilbride) (Lab)

Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lyon, George (Argyll and Bute) (LD)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 MacKay, Angus (Edinburgh South) (Lab)
 MacLean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McAllion, Mr John (Dundee East) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
 McGrigor, Mr Jamie (Highlands and Islands) (Con)
 McIntosh, Mrs Lyndsay (Central Scotland) (Con)
 McLeod, Fiona (West of Scotland) (SNP)
 McLetchie, David (Lothians) (Con)
 McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)
 Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Mundell, David (South of Scotland) (Con)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Radcliffe, Nora (Gordon) (LD)
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland) (LD)
 Sheridan, Tommy (Glasgow) (SSP)
 Simpson, Dr Richard (Ochil) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North-East Fife) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Thomson, Elaine (Aberdeen North) (Lab)
 Tosh, Mr Murray (South of Scotland) (Con)
 Wallace, Ben (North-East Scotland) (Con)
 Wallace, Mr Jim (Orkney) (LD)
 Watson, Mike (Glasgow Cathcart) (Lab)
 White, Ms Sandra (Glasgow) (SNP)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)
 Young, John (West of Scotland) (Con)

AGAINST

Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 Welsh, Mr Andrew (Angus) (SNP)

ABSTENTIONS

Adam, Brian (North-East Scotland) (SNP)
 Campbell, Colin (West of Scotland) (SNP)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Ewing, Dr Winnie (Highlands and Islands) (SNP)
 Gibson, Mr Kenneth (Glasgow) (SNP)
 Hyslop, Fiona (Lothians) (SNP)
 Lochhead, Richard (North-East Scotland) (SNP)
 MacAskill, Mr Kenny (Lothians) (SNP)
 MacDonald, Ms Margo (Lothians) (SNP)

Marwick, Tricia (Mid Scotland and Fife) (SNP)
 McGugan, Irene (North-East Scotland) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 Paterson, Mr Gil (Central Scotland) (SNP)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Sturgeon, Nicola (Glasgow) (SNP)
 Swinney, Mr John (North Tayside) (SNP)
 Ullrich, Kay (West of Scotland) (SNP)

The Deputy Presiding Officer: The result of the division is: For 90, Against 3, Abstentions 18.

Amendment 3 agreed to.

Amendment 4 moved—[Cathie Craigie]—and agreed to.

Amendment 5 moved—[Cathie Craigie].

The Deputy Presiding Officer: The question is, that amendment 5 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Aitken, Bill (Glasgow) (Con)
 Baillie, Jackie (Dumbarton) (Lab)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Canavan, Dennis (Falkirk West)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Davidson, Mr David (North-East Scotland) (Con)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Fergusson, Alex (South of Scotland) (Con)
 Finnie, Ross (West of Scotland) (LD)
 Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
 Gallie, Phil (South of Scotland) (Con)
 Gillon, Karen (Clydesdale) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Gorrie, Donald (Central Scotland) (LD)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (Edinburgh Pentlands) (Lab)
 Harding, Mr Keith (Mid Scotland and Fife) (Con)
 Harper, Robin (Lothians) (Green)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, Mr John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Jackson, Dr Sylvia (Stirling) (Lab)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
 Johnstone, Alex (North-East Scotland) (Con)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lyon, George (Argyll and Bute) (LD)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 MacKay, Angus (Edinburgh South) (Lab)
 MacLean, Kate (Dundee West) (Lab)

Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McAllion, Mr John (Dundee East) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
 McGrigor, Mr Jamie (Highlands and Islands) (Con)
 McIntosh, Mrs Lyndsay (Central Scotland) (Con)
 McLeod, Fiona (West of Scotland) (SNP)
 McLetchie, David (Lothians) (Con)
 McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)
 Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Mundell, David (South of Scotland) (Con)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Radcliffe, Nora (Gordon) (LD)
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland) (LD)
 Sheridan, Tommy (Glasgow) (SSP)
 Simpson, Dr Richard (Ochil) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North-East Fife) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Thomson, Elaine (Aberdeen North) (Lab)
 Tosh, Mr Murray (South of Scotland) (Con)
 Wallace, Ben (North-East Scotland) (Con)
 Wallace, Mr Jim (Orkney) (LD)
 Watson, Mike (Glasgow Cathcart) (Lab)
 White, Ms Sandra (Glasgow) (SNP)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)
 Young, John (West of Scotland) (Con)

AGAINST

Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 Welsh, Mr Andrew (Angus) (SNP)

ABSTENTIONS

Adam, Brian (North-East Scotland) (SNP)
 Campbell, Colin (West of Scotland) (SNP)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Elder, Dorothy-Grace (Glasgow) (SNP)
 Ewing, Dr Winnie (Highlands and Islands) (SNP)
 Gibson, Mr Kenneth (Glasgow) (SNP)
 Hamilton, Mr Duncan (Highlands and Islands) (SNP)
 Hyslop, Fiona (Lothians) (SNP)
 Lochhead, Richard (North-East Scotland) (SNP)
 MacAskill, Mr Kenny (Lothians) (SNP)
 MacDonald, Ms Margo (Lothians) (SNP)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 McGugan, Irene (North-East Scotland) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 Paterson, Mr Gil (Central Scotland) (SNP)
 Stevenson, Stewart (Banff and Buchan) (SNP)

Sturgeon, Nicola (Glasgow) (SNP)
 Swinney, Mr John (North Tayside) (SNP)
 Ullrich, Kay (West of Scotland) (SNP)

The Deputy Presiding Officer: The result of the division is: For 90, Against 3, Abstentions 20.

Amendment 5 agreed to.

Section 2—Disposal of application

The Deputy Presiding Officer: We move to the third group of amendments. Amendment 10 is grouped with amendment 11.

Robert Brown: I want to remind members of the underlying purpose of the bill, as it is important to look to the objectives that we are trying to achieve. We are trying to put into law something that does not exist at the moment: a right for those who are threatened with eviction as a result of mortgage arrears to put their concerns to the court, and to allow the court discretion, under certain circumstances, to refuse or continue the repossession arrangements.

Accordingly, the social objective of the bill is to reduce the number of people who become unnecessarily homeless. With amendments 10 and 11, I am trying to reflect in the bill the implications of the evidence that we heard, particularly from the Edinburgh in-court advice project, at stage 1. Liz Cameron, on behalf of that project, gave the committee compelling evidence. She was asked about the intervention that was offered by her project in cases of rent evictions. Such situations are similar to mortgage evictions to an extent, but they will differ among different courts. In the case of rent evictions, the court has power to continue or refuse evictions.

Liz Cameron indicated that, in the short term, her project helped people to present their case to the sheriff in such a way as to make it more likely that they would be able to stay in their houses and make regular payments over a period. I asked her what her percentage success rate was in that regard, and she replied:

“this is a gut feeling: I would say that it is about 90 per cent. Some people come to us for what I would call long-term help and work with us for a while. We have figures from the CAB, which tends to work with people long term, and there has not been a single eviction among the 700 cases that it has dealt with.”—[*Official Report, Social Inclusion, Housing and Voluntary Sector Committee*, 20 September 2000; c 1398.]

That applies to the separate category of rent evictions, but I think that the same principle applies, and is borne out by evidence relating to the similar provisions under the English legislation—a similarly high success rate has been shown to be possible in England.

The essence is to get people to do something about their problems. They may be in

unemployment or have fallen on hard times; they may have fallen ill; they may have been away from home; there may be some domestic difficulty. Whatever the background reason, the point is to get people to deal with it. People often develop an ostrich syndrome, and do not deal with their problem. If we can get people to court or get them to do something about their problems, advice is available on tap to help them, through the Edinburgh in-court advice project, the equivalent Glasgow project—and through other courts—and various other ways.

The key is legal and financial advice to enable people to get their affairs on to a long-term basis. The implication of the evidence that the committee heard is that, if the proper advice is available, in the majority—even the vast majority—of cases, people can get things back on track, resume their payments and hold on to their house. The social and personal cost of people being put out of their houses is done away with.

In amendment 10, I am trying to include in the bill a specific power for the court to use, when it comes to consider applications, to continue proceedings in order to enable the debtor to obtain legal or financial advice. There is a more limited power for continuation, which applies in only some instances. Amendment 10 seeks specifically to broaden the right to continue proceedings and to direct the court's attention to the significance of legal or financial advice. I hope that the chamber will be prepared to take on board that important provision.

In the interim—during a continuation of proceedings lasting a month, six weeks or whatever—the court would have the power to impose conditions, to ensure that the position did not deteriorate. If the court thought it appropriate, people would have to continue to make payments or to do something to ensure that things kept ticking over.

Amendment 11 is similar in nature. I draw members' attention to section 2(2)(b), which gives guidance to the court on the circumstances in which it should consider making orders to refuse repossessions or to continue a case. The court is to have regard to

“the applicant's ability to fulfil within a reasonable period the obligations under the standard security in respect of which the debtor is in default”.

Imagine a situation in which a wife has been left with a house after her husband has gone off. She may be able, with the assistance of the Department of Social Security, to pay the interest on the mortgage, but not to pay off the capital. Under section 2(2)(b), she would have to catch up on the full payments, capital and interest, before the court could approve the application. My modest amendment attempts to soften that

provision. It recognises that, where a debtor's spouse cannot make full payments, it may be equitable for them to make partial payments, without prejudicing the creditor, because of the equity that is in the house. I proposed such an amendment at stage 2, but unfortunately I was unable to persuade Cathie Craigie to take it on board.

Neither amendment 10 or amendment 11 opposes the main thrust of the bill. They are modest additions that would improve the bill's success rate and assist in meeting the social objectives that Cathie Craigie and all members seek to achieve.

I move amendment 10.

Brian Adam: I am delighted to support both the amendments in the name of Robert Brown. The intention of the bill is to prevent people becoming homeless as a result of falling into arrears with their payments. When individuals start to fail to make payments, they often find it difficult to dig themselves out of the hole that they have created. They ignore letters from the lender. Only when the situation has become critical do they start to consider whether they can retrieve it.

The provisions that Robert Brown described would help individuals to deal with their problems. It takes a little time to resolve such situations. Amendment 10 is worth while because it will help to maximise the number of people who benefit from the bill. The same applies to amendment 11. The fact that someone is not able immediately to repay the capital as well as the interest on their mortgage should not preclude the sheriff from agreeing to a revised arrangement. I hope that on this occasion Cathie Craigie and the Executive will agree to support the amendments, which will not destroy the bill but strengthen it. The object of the exercise is to minimise the number of people who become homeless.

Bill Aitken: When people are in a hole, sometimes the most merciful thing to do is to persuade them to stop digging. There is a danger that amendments 10 and 11 will prevent that happening.

As Robert Brown said, people may find themselves in the position of having their homes recovered by the heritable creditor for two reasons: irresponsibility or misfortune. Through such means as personal health insurance, people may reduce the impact on their ability to pay their mortgage of illness that prevents them from working and earning.

15:45

Neither amendment 10 nor amendment 11 is likely to have much impact on those who fall into

the category of financial mismanagement. We are not talking about a substantial number of cases. Indeed, it is clear from the evidence that the committee took that the conventional mortgage providers bend over backwards to prevent repossession.

Amendments 10 and 11 fail to recognise the fact that, by the time individuals are at the door of the sheriff court, practically everything possible has been done to persuade the mortgage lender not to repossess and every possible effort has been made to come to an accommodation.

I do not consider that there are merits in amendments 10 and 11, although I recognise the good intentions therein. The amendments add nothing to the bill, and we shall vote against them.

Cathie Craigie: Amendments 10 and 11 have different effects, so I will deal with each in turn.

We discussed the proposals in amendment 10 at stage 2. The amendment proposes that the court should take account of whether the debtor has had the opportunity to obtain legal or financial advice before the court hearing, and allows the court to consider whether the court process should be continued until the debtor obtains that advice.

I understand Robert Brown's thinking behind amendment 10, and I fully support the principle that, through the bill, we should make every effort to encourage the debtor to secure legal and debt advice. Such efforts should help those who may be in a panic about their situation to find out about their rights and to get support from people who are experienced in dealing with similar situations. Robert Brown and I agree that securing legal and debt advice at an early stage is crucial and should help people in that vulnerable group to find a way through their mortgage difficulties and, ultimately, to get back on their feet.

However, I believe that the bill provides for such efforts to be made, as it points debtors to the information and advice that they require. In addition, I am clear that the rules of court already provide for the proposal that Robert Brown makes in amendment 10. The bill encourages the debtor and occupiers who receive a notice to seek advice on debt management, and points them to the citizens advice bureau and other advice agencies. Members will recall that the bill was amended during stage 2 to include a secondary power for Scottish ministers to amend the notes and forms in the bill by order, primarily to include the telephone number of the national debt line when that service becomes available. Other debt advice agencies could be included in those notes and forms as time goes on. Those provisions should encourage debtors to act earlier and to secure advice on their debts when they have time to make a difference.

It is important that our emphasis is on

signposting and encouraging people to seek advice at an earlier stage, as early advice can make a real difference to the debtor and their family by helping them get the situation under control before the debt starts to get out of hand. However, when, for some reason, the debtor did not manage to secure legal or financial advice at an early stage, the court is able, under the rules of court, to continue the proceedings to allow the debtor to obtain legal or financial advice. Current practice is for the court to make that decision, and I am clear that amendment 10 would not result in a difference from that practice.

We must avoid the situation in which some debtors use that procedure simply to buy more time. For example, a debtor may state to the court that they have been unable to obtain advice, simply in order to drag out the proceedings. It is not in the interests of the debtor to keep the situation going on and on—there must be a time to draw the line.

The bill offers sufficient flexibility for the court to ensure that the debtor obtains financial or legal advice—that is the crux of the matter. The bill does not require the provision that is suggested in amendment 10, and I encourage Robert Brown to withdraw that amendment.

I will move on to amendment 11, as I understand that we must watch the clock this afternoon. I fully understand the sentiments behind amendment 11, which would make primarily a drafting change that would have no real effect on the bill's provisions. When the court examines an "applicant's ability" to fulfil his or her obligations, it will, in effect, be considering the

"extent to which the applicant may be able"

to fulfil those obligations. I believe that the intended effect of amendment 11 is already fully contained in the bill, so I ask Robert Brown not to move amendment 11.

Ms Curran: Before I comment directly on amendments 10 and 11, I wish to say that I am well aware of Robert Brown's commitment to ensuring that advice and information is provided for all people. I recognise the many efforts that he has made to ensure that such rights are maximised, and any comments that I make about the impact that his amendments would have in no way undermine his attempts in that field. Our only debate is about how the aim should be achieved.

The committee process, which has substantially influenced Robert Brown's thinking, has been significant in shaping the bill. The evidence from other aspects of the committee's work has led to informed discussion at various levels. I thank Robert Brown, the groups who gave evidence and the others who have contributed much to our thinking on the issue. We looked at the evidence

and paid great attention to the details. Again, the debate is about how it is done and the impact that it would have.

As Cathie Craigie said, the proposals in amendment 10 were discussed in some depth at stage 2. Cathie Craigie has outlined how the bill's provisions complement the court's ability to continue cases under the rules of court. In introducing the bill, we need to think of the balance that needs to be struck. We must also bear in mind the interests of lenders as well as debtors. If we do not do that, there may be untold impacts that none of us would want.

The normal expectation must be that debtors should obtain legal or financial advice in the two-month period that is available for applications to be made. If, for instance, their circumstances change, debtors must also have some time to seek further advice before the case goes to court. It would be inappropriate if debtors were simply to sit on their hands. I recognise that only a small minority would do that, but nonetheless we cannot encourage debtors to expect the courts automatically to grant a stay of execution simply to allow debtors to get further advice.

Of course, there are genuine reasons why it has often not been possible for debtors to seek advice during the two-month period. However, as Cathie Craigie explained, the courts already have the power to sist proceedings while advice is being obtained. The key to getting advice that can make a difference is to get it early. We must encourage people to get advice early. To allow debtors to delay seeking advice would not create the impact that Robert Brown is seeking. As has been outlined, a number of efforts have been made in the bill's notices to ensure that debtors are assisted in obtaining advice at the earliest opportunity. We think that amendment 10 could have an impact that is the opposite of what is intended.

Amendment 11 would bring about a drafting change that would have no real effect. However, the underlying debate is important, because we have given an undertaking to provide the Judicial Studies Committee with a statement on the purposes of the bill and the *Official Report* of the bill's stages. That will assist the Judicial Studies committee in preparing the guidance and training for sheriffs on the bill's provisions. As Cathie Craigie noted, it is important that the courts could, where the circumstances warranted it, allow the debtor to pay the interest only for a period. That should be for only a relatively short period. Again, the debate goes back to the need to balance the interests of lenders and debtors. I do not see the purpose in amendment 11 and agree with Cathie Craigie that Robert Brown should not move it.

The Deputy Presiding Officer: I have received

further late requests to speak. For reasons of time, I shall not take them. If members want to speak, they should do so before the minister gets up.

Robert Brown: I am grateful to colleagues for the quality of the debate on the issue. I am also grateful for what the minister said about advice, which is an issue that was well thrashed out during the stage 1 and stage 2 debates. That issue lies behind today's debate.

I will make some brief comments in reply. Margaret Curran said, rightly, that it was a question of striking the balance. That is the theme that goes throughout the issue. However, perhaps I should have made the point earlier that amendments 10 and 11 are not the same as the amendments that I lodged at stage 2. The amendments have been changed slightly and put into a different format. Amendment 10 would provide the court with a power to continue the proceedings so that advice could be obtained. The court would not be obliged to consider whether to continue the proceedings. That is a change to the previous arrangement.

It is important to get advice early. One or two members have made the point that people should not put their heads in the sand. The problem is that people do, indeed, stick their heads in the sand and get into situations that they would not get into in an ideal world. To pick up on Bill Aitken's point, perhaps people do not take out insurance when they ought to. We have to deal with the consequences of decisions that may be silly, unfortunate or financially incautious, but which are nevertheless understandable in the situations that frequently recur. I do not accept the absolute distinction that Bill Aitken made between irresponsibility and misfortune. There is a gradation in such things; there are many shades of grey, rather than the black-and-white distinction that Bill Aitken suggests. People are under financial pressure—sometimes as a result of being encouraged, when perhaps they should not have been, by the Government to buy houses. Perhaps Mr Aitken should bear that in mind when he comments on such matters.

I will press amendments 10 and 11. Amendment 10 is about advice and it goes beyond the issue of the powers that exist at the moment to draw the attention of the sheriff and solicitors to that important issue. I cannot believe that a continuation of two or three weeks for legal, financial or housing advice will make a great difference when there will already have been a two-month call-up; four, six or eight weeks to get the case to court; and a period of arrears before that. An extra two or three weeks is relatively trivial in the overall scheme of things.

I do not accept that amendment 11 does not make a real change to the wording, although I am

reassured by the minister's comments on the intentions of the bill, which I am sure that sheriffs will take account of. I would prefer the bill to be worded in the way that I have suggested. I hope that the chamber will accept amendment 11 as well as amendment 10.

The Deputy Presiding Officer: The question is, that amendment 10 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Adam, Brian (North-East Scotland) (SNP)
 Brown, Robert (Glasgow) (LD)
 Campbell, Colin (West of Scotland) (SNP)
 Canavan, Dennis (Falkirk West)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Elder, Dorothy-Grace (Glasgow) (SNP)
 Ewing, Dr Winnie (Highlands and Islands) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Ewing, Mrs Margaret (Moray) (SNP)
 Gibson, Mr Kenneth (Glasgow) (SNP)
 Gorrie, Donald (Central Scotland) (LD)
 Grahame, Christine (South of Scotland) (SNP)
 Hamilton, Mr Duncan (Highlands and Islands) (SNP)
 Harper, Robin (Lothians) (Green)
 Hyslop, Fiona (Lothians) (SNP)
 Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
 Lochhead, Richard (North-East Scotland) (SNP)
 MacAskill, Mr Kenny (Lothians) (SNP)
 MacDonald, Ms Margo (Lothians) (SNP)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 McGugan, Irene (North-East Scotland) (SNP)
 McLeod, Fiona (West of Scotland) (SNP)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Neil, Alex (Central Scotland) (SNP)
 Paterson, Mr Gil (Central Scotland) (SNP)
 Quinan, Mr Lloyd (West of Scotland) (SNP)
 Radcliffe, Nora (Gordon) (LD)
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)
 Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
 Russell, Michael (South of Scotland) (SNP)
 Scott, Tavish (Shetland) (LD)
 Sheridan, Tommy (Glasgow) (SSP)
 Smith, Iain (North-East Fife) (LD)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Sturgeon, Nicola (Glasgow) (SNP)
 Swinney, Mr John (North Tayside) (SNP)
 Ullrich, Kay (West of Scotland) (SNP)
 Welsh, Mr Andrew (Angus) (SNP)
 White, Ms Sandra (Glasgow) (SNP)

AGAINST

Aitken, Bill (Glasgow) (Con)
 Baillie, Jackie (Dumbarton) (Lab)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Davidson, Mr David (North-East Scotland) (Con)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)

Douglas-Hamilton, Lord James (Lothians) (Con)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Finnie, Ross (West of Scotland) (LD)
 Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
 Gallie, Phil (South of Scotland) (Con)
 Gillon, Karen (Clydesdale) (Lab)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (Edinburgh Pentlands) (Lab)
 Harding, Mr Keith (Mid Scotland and Fife) (Con)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, Mr John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Jackson, Dr Sylvia (Stirling) (Lab)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Johnstone, Alex (North-East Scotland) (Con)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lyon, George (Argyll and Bute) (LD)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 MacKay, Angus (Edinburgh South) (Lab)
 MacLean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McAllion, Mr John (Dundee East) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
 McGrigor, Mr Jamie (Highlands and Islands) (Con)
 McIntosh, Mrs Lyndsay (Central Scotland) (Con)
 McLetchie, David (Lothians) (Con)
 McMahan, Mr Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)
 Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Simpson, Dr Richard (Ochil) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Stephen, Nicol (Aberdeen South) (LD)
 Thomson, Elaine (Aberdeen North) (Lab)
 Tosh, Mr Murray (South of Scotland) (Con)
 Wallace, Ben (North-East Scotland) (Con)
 Wallace, Mr Jim (Orkney) (LD)
 Watson, Mike (Glasgow Cathcart) (Lab)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)
 Young, John (West of Scotland) (Con)

The Deputy Presiding Officer: The result of the division is: For 41, Against 73, Abstentions 0.

Amendment 10 disagreed to.

Amendment 11 moved—[Robert Brown].

The Deputy Presiding Officer: The question is,

that amendment 11 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Adam, Brian (North-East Scotland) (SNP)
 Brown, Robert (Glasgow) (LD)
 Campbell, Colin (West of Scotland) (SNP)
 Canavan, Dennis (Falkirk West)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Elder, Dorothy-Grace (Glasgow) (SNP)
 Ewing, Dr Winnie (Highlands and Islands) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Ewing, Mrs Margaret (Moray) (SNP)
 Gorrie, Donald (Central Scotland) (LD)
 Grahame, Christine (South of Scotland) (SNP)
 Hamilton, Mr Duncan (Highlands and Islands) (SNP)
 Harper, Robin (Lothians) (Green)
 Hyslop, Fiona (Lothians) (SNP)
 Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
 Lochhead, Richard (North-East Scotland) (SNP)
 MacAskill, Mr Kenny (Lothians) (SNP)
 MacDonald, Ms Margo (Lothians) (SNP)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 McGugan, Irene (North-East Scotland) (SNP)
 McLeod, Fiona (West of Scotland) (SNP)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Neil, Alex (Central Scotland) (SNP)
 Paterson, Mr Gil (Central Scotland) (SNP)
 Quinan, Mr Lloyd (West of Scotland) (SNP)
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)
 Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
 Russell, Michael (South of Scotland) (SNP)
 Sheridan, Tommy (Glasgow) (SSP)
 Smith, Iain (North-East Fife) (LD)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Sturgeon, Nicola (Glasgow) (SNP)
 Swinney, Mr John (North Tayside) (SNP)
 Ullrich, Kay (West of Scotland) (SNP)
 Welsh, Mr Andrew (Angus) (SNP)
 White, Ms Sandra (Glasgow) (SNP)

AGAINST

Aitken, Bill (Glasgow) (Con)
 Baillie, Jackie (Dumbarton) (Lab)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Davidson, Mr David (North-East Scotland) (Con)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Finnie, Ross (West of Scotland) (LD)
 Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
 Gallie, Phil (South of Scotland) (Con)
 Gibson, Mr Kenneth (Glasgow) (SNP)
 Gillon, Karen (Clydesdale) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (Edinburgh Pentlands) (Lab)

Harding, Mr Keith (Mid Scotland and Fife) (Con)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, Mr John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Jackson, Dr Sylvia (Stirling) (Lab)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Johnstone, Alex (North-East Scotland) (Con)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lyon, George (Argyll and Bute) (LD)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 MacKay, Angus (Edinburgh South) (Lab)
 MacLean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McAllion, Mr John (Dundee East) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
 McGrigor, Mr Jamie (Highlands and Islands) (Con)
 McIntosh, Mrs Lyndsay (Central Scotland) (Con)
 McLetchie, David (Lothians) (Con)
 McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)
 Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Radcliffe, Nora (Gordon) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland) (LD)
 Simpson, Dr Richard (Ochil) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Stephen, Nicol (Aberdeen South) (LD)
 Thomson, Elaine (Aberdeen North) (Lab)
 Tosh, Mr Murray (South of Scotland) (Con)
 Wallace, Ben (North-East Scotland) (Con)
 Wallace, Mr Jim (Orkney) (LD)
 Watson, Mike (Glasgow Cathcart) (Lab)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)
 Young, John (West of Scotland) (Con)

The Deputy Presiding Officer: The result of the division is: For 38, Against 77, Abstentions 0.

Amendment 11 disagreed to.

16:00

After section 2

The Deputy Presiding Officer: Amendment 6 is in a group on its own.

Cathie Craigie: Amendment 6 seeks to make a technical change to the bill for a good reason. The

Keeper of the Registers of Scotland raised a concern that there was a small risk of a sale by a creditor, either accidentally or fraudulently, while a section 2 order was in force, resulting in a claim on the keeper's indemnity. The keeper's indemnity is a kind of compensation system. Broadly speaking, compensation sometimes is paid out when the keeper has to change the register because it is inaccurate.

An example of exceptional circumstances leading to an accidental sale when a section 2 order was in force would be a breakdown in communication within a lending organisation. By accident, the repossession arm of a lender might believe that it has the legal right to sell a property on which the lender had sought an order for possession because the litigation section had not notified the repossession section that the court had granted an order under section 2.

That property could be included in a group of properties to be sold at auction by the lender, and the debtor, who would be the existing borrower, would be unaware of the intended sale. The lender would finalise the details of the sale, and because the keeper would be unaware that a section 2 order was in force, as it would not be recorded, the title would be registered in the name of the person who purchased the property at auction. In such circumstances, a claim could be made against the keeper's indemnity if efforts to unravel the mess failed.

In addition, not all creditors that lend on properties are high street banks and building societies. The Keeper of the Registers of Scotland was concerned that there was scope for two parties to engineer the situation and make a fraudulent claim for compensation. Clearly, we have to prevent that.

Amendment 6 seeks to avoid the risk of a fraudulent or accidental sale that impacts on the keeper's indemnity by ensuring that a copy of the section 2 order—and a notice—is sent to the keeper by the clerk of the court for recording in the Register of Inhibitions and Adjudications. A search of that register is always done on behalf of a prospective purchaser before settling the purchase and by the keeper as part of the registration process, to ensure that there is no restriction on the seller's right to sell.

Amendment 6 also gives Scottish ministers powers to prescribe the form of notice that is to be sent with a section 2 order. I envisage that notice detailing the parties in the repossession action and the original standard security, a summary of the decision taken by the court and a description of the property sufficient to allow anyone searching the register to identify the property under restriction.

The content of the notice will have to be discussed with the Keeper of the Registers and the Scottish Court Service in more detail before the provisions in my bill are brought into force. Prescribing the notice by statutory instrument will give ministers the flexibility to change the format of the notice and the information in it over time if required.

I am sure that members will agree that amendment 6 is beneficial and I ask them to support it.

I move amendment 6.

Brian Adam: The Council of Mortgage Lenders also raised concerns about section 2, and was particularly concerned that the provisions within it may be underfunded. I do not know if I agree with that view, but I do not doubt that the matter will be reviewed. I am sure that the Executive will monitor it carefully. I am pleased that an item on the budget line will deal with it. In that case, I am happy to support amendment 6.

Ms Curran: We agree with the points that Cathie Craigie made and fully support amendment 6. As Cathie said, the amendment will make a technical adjustment. I was told that any time that I used the word “technical” in debate on the Housing (Scotland) Bill, it had a tendency to encourage sleep. I hope that that will not happen today. Cathie Craigie and the Executive sought to ensure that the change did not result in costs for the lender or the debtor in repossession actions.

In considering the possible solutions that the keeper proposed, several alternatives were considered. Placing the burden on the debtor to register an order—the first alternative that was considered—was unacceptable because of the registration cost that that would present to someone who was experiencing financial difficulties.

Requiring the lender to register the order was another solution that was explored. Cathie Craigie consulted the CML on that and took on board its concern that that would add unnecessarily to the paperwork and procedures that were required in possession cases simply to preclude a very small risk.

We have some sympathy with that concern and believe that placing a requirement on the clerk of court to send a copy of the section 2 order for registration along with a notice is the most sensible option. Such a procedure is not without precedent, as the clerk undertakes a similar role in relation to bankruptcy proceedings.

Amendment 6 agreed to.

Schedule

NOTICES TO DEBTORS, PROPRIETORS AND OCCUPIERS

*Amendments 7 to 9 moved—[Cathie Craigie]—
and agreed to.*

Mortgage Rights (Scotland) Bill

The Deputy Presiding Officer (Mr George Reid): The next item of business is a debate on motion S1M-2007, in the name of Cathie Craigie, which seeks agreement that the Mortgage Rights (Scotland) Bill be passed.

16:07

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): It has been a pleasure and a privilege for me to have introduced the Mortgage Rights (Scotland) Bill, which, when enacted, will benefit many thousands of people and households in all parts of Scotland. Throughout the stages of the bill, I have been heartened by the Parliament and by what is perhaps a reflection of the strength of feeling and support inside and outside Parliament for the proposals in my bill.

I thank all those who assisted me in preparing and introducing the bill and carrying it through the parliamentary process, and those who supported the measures, many of whom are present this afternoon and without whom the bill would not have reached this stage.

I also acknowledge the work of the clerks to and the members of the Social Justice Committee. Their questions and comments helped me to shape the bill to prevent unintended and unhelpful consequences. I appreciate the effort and time that all members put into that. That has ensured that the bill that we seek to enact will meet the objectives with which it set out.

Repossession is a dreadful experience for the people concerned, who may have to move out of the area where they live, leave their friends and family, move their children to a new school and change all the bits and pieces of everyday life. It is well known that moving house is stressful. Imagine how stressful it is to be forced to move because of repossession, particularly if that leads to homelessness and the indignity that that can involve. The social costs that result from the stress and upheaval also have financial costs for individuals and any public agencies involved.

I have long held the view, which I have often repeated, that people and their families could have been spared the indignity of repossession had the courts been able to take all their circumstances into account. It does not make sense to allow those debtors and their families to become another homelessness statistic.

My bill amends the provisions of the Conveyancing and Feudal Reform (Scotland) Act 1970, which created the standard security, known to most of us as the mortgage—members will remember the debates about whether we could

call it a mortgage or a standard security. The bill gives the court power to consider the particular circumstances of the debtor and allows the court to consider whether the repossession should be stopped to give the debtor time to get back on track by paying off his or her arrears. If that is not possible, the court can decide to give the debtor time to find suitable alternative accommodation. That is the way forward.

The bill allows the debtor's tenants time to make arrangements to find other accommodation by providing that they are notified of court proceedings. I am not sure how many members in the chamber have had practical experience of that, but I have constituents who have known nothing about a repossession until the sheriff officers turn up and chap at the door. By passing the Mortgage Rights (Scotland) Bill today, Parliament will ensure that those people have a right to be notified of the court proceedings.

The bill gives advice to people who, having been served with a notice to quit, need to obtain legal advice. Robert Brown raised that important point earlier in the debate. I hope to work with the Executive to ensure that proper legal advice and debt management is available to everyone in advice centres. If people are able to get good, sound advice at an early stage, they can avoid the problems of having to go through the courts.

All the way through the passage of the bill, I have argued that debtors need a chance to draw a line under their problems. They need to be able to come to an arrangement with their creditors. As I said earlier, my bill will give them that chance. It is not a debtors charter; it is an opportunity for people to get advice and to get their lives back to normal.

My bill might not be the first member's bill to be passed by the Parliament, but I am proud to be its promoter. I am proud to represent Cumbernauld and Kilsyth in the first democratically elected Scottish Parliament. I am proud to be the first woman MSP to introduce a bill into the Parliament. *[Applause.]* I am also proud to be a member of a Parliament where the genders are so well balanced that we are 50:50.

I move,

That the Parliament agrees that the Mortgage Rights (Scotland) Bill be passed.

16:13

The Minister for Social Justice (Jackie Baillie): I congratulate Cathie Craigie on having her member's bill reach this stage. The Executive has been pleased to support a bill that will assist those in mortgage arrears who might otherwise become homeless when their homes are repossessed.

As members are aware, one of the Executive's key priorities is to tackle homelessness. Last week, the Scottish Parliament passed the Housing (Scotland) Bill to provide a package of new and enhanced rights to people who are homeless or threatened with homelessness. The Mortgage Rights (Scotland) Bill provides further protection to people who are in mortgage difficulties. I hope that the Parliament will give the bill its support.

As Cathie Craigie noted earlier, repossession is a personal tragedy for the individuals and families that are involved. It also has a cost that goes far beyond people losing their homes or the resources that local authorities might use to rehouse a family. The experience in England, which has had similar legislation for many years, indicates that 45 per cent of debtors in default could get back on their feet and stay in their homes. That is no mean achievement. In Scotland, that would mean 1,350 fewer people having their homes possessed by lenders, 540 fewer applications to local authorities under the homelessness legislation and 405 fewer applications being classed as being in priority need.

We all acknowledge that the provisions of the bill will not help everyone in mortgage difficulties. Some people are unable to cope with the responsibility that home ownership brings; for others, irregular employment patterns may make sustaining a mortgage difficult. However, that does not detract from the importance of what we are debating today. For those who can be helped in this way, the bill will make a real difference. It will give people the breathing space they need to sort themselves out. It can stop the steamroller and give the courts the opportunity to consider all the circumstances that might apply. If it looks unlikely that a debtor can get back on track, the court can give them enough time to secure alternative accommodation.

I am especially pleased that the bill requires the court to consider both the applicant's circumstances and the actions of the lender. That should afford a much more balanced approach than the current position. Currently, it is often the case that all the lender has to do is to turn up, say that the debtor is in arrears and get possession—a rather one-sided approach. Where the applicant is not the debtor, it is even more important that the case is made, because it will still be the debtor who is liable for the accruing arrears.

For the purposes of rule 9.11 of the standing orders, I wish to advise the Parliament that Her Majesty, having been informed of the purport of the Mortgage Rights (Scotland) Bill, has consented to place her prerogative and interests, so far as they are affected by the bill, at the disposal of the Parliament for the purposes of the bill.

The bill amends the Conveyancing and Feudal Reform (Scotland) Act 1970, which is a fairly technical piece of legislation. Throughout the passage of the bill, Cathie Craigie has been willing to give careful consideration to all the comments and suggestions that have been made. I acknowledge the care that she has taken. The Parliament should congratulate her, as I do, on being the first woman to steer a member's bill through the Parliament. The Executive and I are delighted to support the motion.

16:17

Fiona Hyslop (Lothians) (SNP): I, too, congratulate Cathie Craigie on the Mortgage Rights (Scotland) Bill. I appreciate the time and effort involved in preparing it and the constructive dialogue with many parties that she carried out during that process. Her reference to the Keeper of the Register of Inhibitions and Adjudications, when we were discussing amendment 6, indicates the technicalities involved and the more obscure organisations with which she has had dialogue.

There are times in the Parliament when we debate issues that make us ask, "What difference will this make to people's lives?" Passing the bill will be one of those moments when we can say that we will make a difference, just as the Abolition of Poindings and Warrant Sales Act 2001 will have a positive impact on people's lives. In England, for every 100 orders for possession that are granted, 60 are suspended; in three quarters of those cases, the debtors resume payment. That means that 45 out of 100 people are able to stay in their homes. If the same thing happens in Scotland, we can say that the Parliament has made a difference to people's lives. I congratulate Cathie Craigie on introducing the bill.

The issue has been a bit of a relay race. I remember trying to amend the Abolition of Feudal Tenure etc (Scotland) Bill to introduce suspended repossession orders, way back in the summer of 1999. Robert Brown, in the Family Homes and Homelessness (Scotland) Bill, also wanted to address that issue. However, it is Cathie Craigie who completed that valuable work by lodging this member's bill.

It has been pointed out that Scots law refers to standard securities; technically, we should be talking about the Standard Security Rights (Scotland) Bill. I hope that the fact that we are not in evidence of a creeping anglicisation that will appear in other bills in future. I am sure that the Parliament will protect Scots law in future.

Some issues that have been raised are recurrent themes. We must pay tribute to Robert Brown's dogged pursuance of advice issues—they will be raised time and time again when we

discuss debt issues in future.

We have to look at the practice and the practicalities of the impact that the bill will have and we may have to change things in future. However, there is good will behind all aspects of the bill and it will receive support, as it will help many people.

We sometimes have to reflect on definitions. It is up to the Parliament to consider the status of definitions in primary legislation. A member's bill may not be the best way to address that issue, but I am sure that it will come back time and again.

Again I congratulate Cathie Craigie. The bill will make a difference. More important, it tackles an issue to which the Parliament must return again and again. All of us wanted to do something about debt and homelessness when we were elected, so I am pleased that we will be able to do so today.

16:21

Bill Aitken (Glasgow) (Con): I add my congratulations and those of the Conservative party to Cathie Craigie on the forthcoming successful passage of the Mortgage Rights (Scotland) Bill, because it is a good piece of legislation. Any piece of legislation that impacts on homelessness and on people losing their homes has got to be good and, as Margaret Curran said, the bill resolves an inconsistency and inequity between Scots law and English law. In England, a county court judge has powers that are denied to Scottish sheriffs, so that change to Scots law is a beneficial aspect of the bill.

However, one discordant and disturbing piece of evidence arose in our consideration of the bill. It is quite clear that in their day-to-day business mortgage lenders, whether banks or building societies, do not want to repossess homes. Indeed, they bend over backwards to avoid doing so. After all, they are in the business of lending money, not repossessing homes.

As Cathie Craigie will confirm, it became apparent from some of the evidence that the Social Justice Committee heard that many of those who find themselves in difficulty are not the victims of over-reactive building societies, but have fallen into the clutches of the secondary lenders. It is apparent that those loans are sometimes granted at quite farcical interest rates, giving only temporary relief to those who find themselves in financial difficulties.

If the problem is as widespread as it appears to be, action against those loan sharks, who are parasites and a disgrace to the financial services industry, is long overdue. I am not sure which road forward should be taken in that respect, whether it should be by way of the social justice remit or the

legal affairs remit. However, some action should be taken, as those people are preying on a vulnerable section of society or on people who are particularly vulnerable at a certain stage in their lives. Attention to the problem is definitely due.

Again I congratulate Cathie Craigie. I noted her remark about how balanced the Labour group is, according to her perspective. Many of us have thought that it is distinctly unbalanced, but that is a debate that we can perhaps continue until another day. In conclusion, the bill is a good piece of legislation and a job well done. We all look forward to the passage of the bill.

16:23

Robert Brown (Glasgow) (LD): I add my congratulations to Cathie Craigie on seeing the bill through. I bet that, when she was elected as the member for Cumbernauld and Kilsyth, the first thing on her mind was not the idea of becoming an expert on the Conveyancing and Feudal Reform (Scotland) Act 1970, far less the Heritable Securities (Scotland) Act 1894. In fact, I venture that she had not even heard of the first one; I confess that I know of it only from my dim and distant legal past.

The consideration of the bill has been a job well done. The Social Justice Committee has given close scrutiny to the bill and I have been impressed by the interest that the Parliament has taken in its passage. I echo other members by saying that I came into the Parliament to try to make things a little better in Scotland than they were when the Parliament was set up. Scotland will be all the better for the passage of the bill. It is also worth saying that the bill would not have been passed without the Scottish Parliament—certainly not within a reasonable time scale once the issue was flagged up.

The bill was raised by a back-bench member. Although it has had Executive backing, it is appropriate that it should be dealt with on its merits by the chamber today. That is why the Liberal Democrats at least had a free vote on the amendments. There is a difference between Executive legislation and that which originates in members' bills.

A house is probably the biggest purchase that people make. As the balance has shifted in recent years towards owner occupation, that is the case for far more families than it was 20 or 30 years ago. There are genuine issues about the extent to which people are encouraged to buy at the limit of affordability and take on commitments that they find difficult to maintain with their job and income constraints and family situations. There is a much more fluid social existence than there once was.

I do not know if this is the same for other people,

but about twice a week I get almost unrefusable offers through the door from financial institutions to take on board my credit accounts. They offer me superb financial deals and a carriage clock or a mobile phone as a gift for doing so. I echo what Bill Aitken said: the pressures that people are under to take on credit and to land themselves in financial situations with which they cannot ultimately cope are too great.

There are two problems, notwithstanding the perfectly reasonable view taken by most mortgage lenders. As Bill Aitken rightly said, there are people who are perhaps too keen to make finance available to people to whom they should not make it available. There are also elements of institutional rigidity. At stage 1, I remember an exchange that I had with a representative of the Law Society on how lawyers who act for mortgage companies approach requests for more time or to enter into arrangements. I expressed the view that in my limited experience of that field sometimes people who are difficult to get hold of do not respond, return telephone calls or come back on questions. That is probably not through a lack of good will, but there is sometimes an institutional disregard of individual situations. The bill will provide a long-stop against such situations.

The bill will stop the unnecessary eviction of people from their homes and all the implications of eviction, such as homelessness, family break-ups, alcohol problems and problems relating to children, and replace that with something more civilised and more humane. This is a win-win situation for the Parliament, the Scottish Government and the people who are involved. I am very pleased to have been involved in the passage of the Mortgage Rights (Scotland) Bill.

16:28

Cathie Craigie: I thank everyone who has contributed to the debate and for their warm words. I am embarrassed by the congratulations.

It has been great to be involved with the Mortgage Rights (Scotland) Bill. The Scottish Parliament is all about bringing power closer to Scotland, talking and putting party interests to the side most of the time. The Social Justice Committee was able to do that when it discussed the bill.

Fiona Hyslop said that we should protect Scots law, but I am not sure that everyone knows that people have a standard security and not a mortgage in the roof over their heads. There was an argument in the early days of the bill about what the bill should be called. The legal profession strongly advised that the bill should be called the Standard Security Rights (Scotland) Bill. I dug my heels in and disagreed. Who in the street knows

what a standard security is? That is why there is a Mortgage Rights (Scotland) Bill. We should speak the language of the people and that is the language that the people use.

We all know that, as Bill Aitken said, there are many unscrupulous lenders. Robert Brown touched on the issue too. The great majority of high street lenders bend over backwards to assist people. Nevertheless, within those organisations there is the institutional rigidity that Robert Brown mentioned. Some people who borrow from high street lenders still find themselves affected by repossession. Although the high street lenders are better than the unscrupulous lenders, they should look at themselves as well.

A document that was published recently might interest Bill Aitken and other members. At the beginning of this week or the end of last week, the Financial Services Authority published a consultation document that considers mortgage lenders and the people involved in the mortgage industry. We should all take an interest and respond to the consultation, because many improvements could be made.

I will finish by saying thanks to everyone who has assisted me in this process. Once the bill is enacted it will help over time to save thousands of people the indignity of repossession and homelessness. I thank everyone for their support in putting the bill through.

Parliamentary Bureau Motion

Motion moved,

That the Parliament agrees the following designation of Lead Committee—

The Justice 2 Committee to consider the Gaming Act (Variation of Fees) (No 2) (Scotland) Order 2001 (SSI 2001/230)—[*Euan Robson.*]

Motion without Notice

The Deputy Minister for Parliament (Euan Robson): I seek the chamber's permission to move a motion without notice.

The Presiding Officer (Sir David Steel): I am minded to accept a motion without notice to bring forward decision time. Are we all agreed?

Members indicated agreement.

Motion moved,

That the Parliament agrees under Rule 11.2.4 of the Standing Orders that Decision Time on Wednesday 20 June 2001 shall begin at 4.32 pm.—[*Euan Robson.*]

Motion agreed to.

The Presiding Officer: Before we move to decision time, I remind members that a question and answer session on the Holyrood project will be held in the chamber by the Holyrood progress group at 6 o'clock tonight. All members are welcome to attend.

Decision Time

16:32

The Presiding Officer (Sir David Steel): There are two questions to be put as a result of today's business.

The first question is, that motion S1M-2007, in the name of Cathie Craigie, which seeks agreement that the Mortgage Rights (Scotland) Bill be passed, be agreed to.

Motion agreed to.

That the Parliament agrees that the Mortgage Rights (Scotland) Bill be passed.

The Presiding Officer: The second question is, that motion S1M-2029, in the name of Tom McCabe, on the designation of lead committee, be agreed to.

Motion agreed to.

That the Parliament agrees the following designation of Lead Committee—

The Justice 2 Committee to consider the Gaming Act (Variation of Fees) (No 2) (Scotland) Order 2001 (SSI 2001/230).

National Carers Week

The Presiding Officer (Sir David Steel): The final item of business is a members' business debate on motion S1M-1976, in the name of Karen Whitefield, on national carers week, from 11 to 17 June.

Motion debated,

That the Parliament pledges its support to National Carers' Week from 11 to 17 June 2001; acknowledges the huge contribution which carers make to society as the mainstay of care in the community; welcomes the publication of the report from the Scottish Carers' Legislation Working Group and the ongoing consultation by the Scottish Executive on proposals for carers' legislation; notes with concern the findings in the Carers' National Association Scotland research document *You can take him home now* on carers' experience of hospital discharge, and urges the Scottish Executive to consider the findings of that document during the formulation of its next Programme for Government and to work with health boards and organisations throughout Scotland to implement the recommendations made in the report and the research document.

16:34

Karen Whitefield (Airdrie and Shotts) (Lab): I welcome the opportunity, following national carers week, to highlight the valuable role played by carers.

Throughout Scotland, carers are providing practical and emotional support to friends and family who are unable to care for themselves. They represent an army of unpaid and often unrecognised health workers without whom our modern health service could not function properly and without whom care in the community would be no more than a meaningless title.

In the main, carers seek little other than the most basic forms of recognition and support. They offer their time and energy for the love of those for whom they care rather than for any financial gain. It is incumbent upon the Parliament to ensure that they are supported in their commitment to those for whom they care.

Scottish Executive statistics suggest that there are around 626,000 carers in Scotland, more than 95,000 of whom care for more than 50 hours a week. They must be seen in the context of a holistic care-in-the-community service. They do not merely complement NHS and local authority services; they are an essential part of them.

I welcome the significant shift in policy and legislation in support of carers over the past few years. The Carers (Recognition and Services) Act 1995 and the national and Scottish carers strategies illustrate the extent to which carers' needs have been recognised. I also welcome the

Scottish Executive's consultation on proposals for new legislation to help carers. The process, which ends on 6 July, will ensure that the voices of carers and the cared-for are clearly heard and that their positive and negative experiences are used to shape future legislation and service provision. The Scottish Executive's commitment to designate £10 million a year for local authority carers services and to invest £500,000 in voluntary sector initiatives to support carers begins to put some meat on the legislative bones.

We all know that true care in the community is not a cheap option, but it is the best option. Wherever possible, caring for friends and relatives in the community must be preferable to institutional and residential solutions. That is why we must be prepared to resource our carers properly and to ensure that they have access to assessment, information and support services.

The recently published report by Carers National Association Scotland and Crossroads, called *"You Can Take Him Home Now"*, highlights some of the current system's successes and failures. The document states that although 66 per cent of those questioned said that they had been consulted about hospital discharge plans, 43 per cent felt that those arranging discharge did not take their concerns into consideration or give any credence to their ideas or suggestions. More positively, 58 per cent of carers in the survey had been assessed, which is far preferable to the UK figure of 50 per cent.

Some carers' comments in the document are positive, particularly one who said that their experience had been good, because they had been kept informed of what was happening and had received a lot of help from the community rehab team. That should be compared with the experience of a person who was discharged at night and not allowed to use a wheelchair. There were no porters in the hospital. A 72-year-old had to leave their daughter sitting on the stairs while they found their own way to a car to fetch it nearer to the hospital. That happened in Glasgow.

Although we have a long way to go, we have clearly made considerable progress. That is being fully translated into policy. CNA Scotland commissioned *"You Can Take Him Home Now"* because it wanted to make a positive contribution to the debate. The report provides some constructive suggestions about how services could be improved. Although I do not intend to detail each suggestion today, I recommend the document to all members as it represents a constructive set of responses to carers' difficulties.

However, it is fair to say that the recommendations made by carers tend to centre on the need for improved communication among all agencies, carers and those who are being

cared for and the need for more responsive services for carers. Picking out a few of the policy recommendations in the document, I highlight to the minister the need to ensure that the interests and needs of carers register fully in the emerging delayed discharge learning network.

I highlight also the recommendation to characterise individual carers as key partners in the provision of care, according them an appropriate level of authority in discharge arrangements. The report also identifies the problems that are faced by carers and those for whom they care in getting to and from hospital, which are brought to life in a couple of harrowing quotations in the document.

I shall not speak today about young carers, as tomorrow's members' business will concentrate on that subject. That debate has been secured by Donald Gorrie. Today, I merely put on record my continuing commitment to ensuring that young carers' needs are properly assessed. The first step towards relieving young carers of their onerous caring responsibilities is to ascertain the level of care they provide. Only then can a proper programme of support be provided to give them some relief and respite.

Following national carers week, it is appropriate that we congratulate those who give their time to care for someone else. More often than not, carers do not seek accolades or financial gain. They do the job because—as the word carer suggests—they care for someone. They seek a system that works for them rather than against them; a system that recognises and responds to their needs; above all, a system that listens to carers. Such a system should not be beyond our abilities and I firmly believe that we are heading in the right direction.

The Scottish Parliament and the Scottish ministers are truly committed to supporting carers and will continue to provide the resources and legislative framework that are needed to deliver on that commitment. The problems and needs of Scottish carers have never been given greater recognition than they are being given by the Parliament. We must ensure that the good will that exists and increased resources are translated into meaningful and responsive support services for our carers. I hope and believe that, in carrying out that task, the Parliament can speak with one voice.

16:42

Mrs Margaret Ewing (Moray) (SNP): I congratulate Karen Whitefield on bringing this important issue before the Parliament and enabling members to participate in this debate. Like her, I found "You Can Take Him Home Now"

fascinating and harrowing. It reminded me of earlier days, when the phrase was, "Does he/she take sugar?" The philosophy is the same, and it is that which we must remove from our approach to those who give their time and effort to care for people.

I add my congratulations to the vast army of workers in the Carers National Association Scotland and the voluntary arm of Crossroads, who have done much to keep us all on our toes in the Scottish Parliament and—as the minister knows—in another Parliament where he and I worked previously and debated the subject. All members will have knowledge of carers, either in our role as elected representatives to whom people bring their problems or as members of families or communities in which caring is significant. I suspect that the experience for most of us is a combination of those roles, as all of us need help from carers at various stages in our lives.

Carers defy definition, as they come in all shapes and sizes and from all classes and age groups. As Karen Whitefield said, Donald Gorrie will speak in another debate tomorrow about young carers, in which I know my colleague, Irene McGugan, wishes to speak. I remember, from my experience as a teacher, youngsters who were carers at home and who had little time for their own academic development.

We applaud carers, but they deserve our action. As Karen Whitefield said, we should remind ourselves how much money they save society. Without carers, full-time residential or nursing care would be an absolute requirement. Without straying too far into that sphere, I point out that we know that that is not a happy situation.

Because I know that many members wish to speak in this debate, I will be brief, but I have a few points to make to the minister.

The provision of respite is critical to our carers, as they are doing a full-time job. They need breaks from the often harrowing circumstances in which they work. There should be an allocation of regular respite provision and the flexibility to allow carers to choose and plan ahead. This matter lies in the hands of the Scottish Parliament as it would be dealt with as part of the allocation of funds to our local authorities. We should consider carers' contributions to respite care, bearing in mind that many of them have limited resources.

I know that benefits are a reserved matter, but dealing with the various issues relating to benefits is one of carers' most complex tasks. Attendance allowance, disability living allowance, carers allowance, pension rights, the carers premium, invalid care allowance and so on are all inextricably linked, which can be confusing to

people who are already exhausted by their work.

One of Scotland's failures is that we have not retained central advice centres with guaranteed home visits to carers, which can assist them through the complexities of their situation. That should be taken into consideration.

Support for voluntary organisations, who do much to support carers or those who are being cared for, is important. There are additional pressures on our voluntary organisations as the statutory authorities cannot afford much of the work that they would like to do.

I hope that those brief points will be taken on board by the Executive.

16:47

Mr David Davidson (North-East Scotland) (Con): I congratulate Karen Whitefield on securing this worthwhile debate.

I was one of the young carers who have been mentioned, although I did not think of myself as that. When I was in my teens and my father occasionally went away from home on business, I coped because of the strength of the community in which I lived with my parents. The local nuns were invaluable and people such as my neighbours and the local health care professional rallied around. One of the problems with which we must deal today is that our society is selfish and inward looking. We look after ourselves rather than look out for our neighbours. When I was a boy, people looked out for their neighbours and I still see that happening in country districts and small communities. The Scottish Parliament needs to pay some attention to that issue because, as Margaret Ewing rightly said, a huge load is being carried on behalf of society by carers of all kinds. Some struggle to hold down a job, others might have young children or other relatives and neighbours who are poorly and need support. Such people are the unsung heroes of our society.

I cannot say much more than Margaret Ewing did about the technical support that carers require, but as a former community pharmacist—I know that the minister was expecting me to mention that—I used to see carers regularly, as did my staff. If a carer required a domiciliary visit from one of my pharmacists to help them manage someone's medicine, we would do that. Busy doctors do not have the time to do that, but we were able to. Going to the homes of carers brought home the reality of their duty.

Recently, I spoke to a respite group in Aberdeen with which I am happy to be associated. I said that it is important not to organise respite by menu, as people have differing requirements, and that it is essential to organise time in which carers can go

out and shop and have a little bit of life for themselves. That gives people strength to carry on and cope. People become isolated from their own lives and their own people.

I believe strongly—I know that others in my party think the same—that people are best cared for in their community, close to their friends and close to the places they know, even if that means only a view over a church tower, down to the beach or into the park. It is vital that people—particularly older people, whose friends are not so mobile—keep in touch with their friends and that they have the opportunity to be visited by their friends.

Caring is a 24-hour job in many cases. We owe it to carers to set up systems that give them the support and help they need—and a little bit of life for themselves. Those who are being cared for often feel a great burden because they are restricting the lifestyle of their family. Caring signifies strongly that love and care are still vital parts of our society. They are the motivations that drive people. I do not wish to hear people say, "I do it because of duty." That is nonsense. People do it because they care and want to do it.

When I consider our society, I hope that our young people will realise as they develop that, in time, not only will they need help, but their parents might not be the hale and hearty people who today give them a fiver when they need one and run them to the football club, but may in turn want a little bit back. I have five children, so I suppose I have covered myself reasonably well. I tell them to consider always that parents and older members of the family provide for their future and that when they are in their future they should not forget that their parents and older family members will have a need for them.

I stress the requirement for the Executive to examine the hospital discharge system closely. I call on the minister to do his best in that respect. It is important that I do not get constituents telling me, "I run a respite home, but I don't get the right fees and I will have to close the door." Respite care homes are a vital support for our carers. I ask the minister to examine how local authorities deal with the support of respite care homes to ensure that carers do not lack support for just a few pounds. They save our health service and community care services a fortune that is not quantifiable.

The Deputy Presiding Officer (Patricia Ferguson): Several members wish to speak. It would be helpful if members would keep their speeches to four minutes.

16:52

Donald Gorrie (Central Scotland) (LD): As other members have said, there is to be a debate

on young carers tomorrow. I want in this debate to indicate my commitment and that of other Liberal Democrats to caring and to congratulate Karen Whitefield on securing the debate.

One of the refreshing aspects of the Parliament is that although one occasionally gets depressed about things, we also get debates such as this in which there is really strong personal commitment and personal knowledge of the issues.

Probably the most harrowing morning that I have spent in the two years in which the Parliament has existed was in a town in central Scotland when the Princess Royal Trust for Carers organised for me to spend a whole morning listening to carers with a full range of commitments. Almost every combination was covered. I realised the commitment and pressure that some such people carry. I have enormous admiration for them.

Such an experience puts in context the odd problem that we MSPs have with particularly difficult constituents, or with trying to be in three places at once—or even occasional difficulty with our party whips. Carers have real problems, not the sort of problems that we face. They cope with those problems amazingly well. However, they have a lot of difficulties that society could put right and deal with much better.

Others have mentioned respite care. One of the people who spoke to me had a child who, at the age of 11, got a debilitating disease. The parents had continued faithfully to look after that child and had asked for a bit of respite care. They were offered some respite care—six years later. From when the child was 11 until when they were 17, they got no respite care at all. That is not the condition of a civilised society.

Greater funds must be made available, either centrally or locally, for respite care. More effort and funding should be made available for teaching and encouraging medical, social work and educational people to understand the needs of carers and to deal with them better. Part of the job of those people is to recognise the stress borne by the carers and to do something about it.

The minister could look into the fact—although it is probably not for his department—that Citizens Advice Scotland has offices in hospitals in one or two places, which manage a lot of very good advice. That could be replicated elsewhere. There could also be advice centres for carers and for people who are wrestling with the benefits system. Although the benefits system is a UK issue, helping people to wrestle successfully with it is the sort of thing that we could do. I think that we could offer far better advice services.

I think that this is an excellent subject and I hope that we can get the Executive to put allocating the modest amounts of money that would be involved

very high up its list priorities for the future.

16:56

Janis Hughes (Glasgow Rutherglen) (Lab): I echo other members' thanks to Karen Whitefield for securing this debate, which is timely, given that last week was national carers week. It is vital that we continue to recognise the work of carers, because, at some time or another, caring will affect every one of us. I am glad that we are highlighting the issue today. The work of carers in our communities is crucial in providing a decent quality of life for those who need it most. It is important that those in government, at local and national level, do everything that they can to provide support for carers.

The Scottish household survey tells us that 12 per cent of Scottish households contain one or more people in need of regular help or care because they are sick, disabled or elderly. Providing care for those people often falls on relatives, friends or voluntary organisations. However, who cares for the carers?

There are almost 6 million carers in the United Kingdom. They range from children looking after a disabled parent or other siblings—we will hear more about them in tomorrow's members' business debate—to elderly people looking after partners or friends. It is often a 24-hour-a-day, seven-days-a-week occupation, with little respite. As politicians, we are all aware of regulations such as the working time directive, which helps to ensure that employers do not expect their staff to work excessive hours. No such regulations exist for carers, who often have no choice but to be at the home of the person being cared for all day, every day.

More needs to be done by those in government to help, and I am pleased that the minister is listening to this debate and will respond to the comments that have been made. I hope that the current consultation exercise will strengthen the law to help carers, particularly in relation to respite. Having spoken to carers in my constituency, I know that that is a key issue.

Last year, the Executive announced that it would provide resources to fund thousands of additional hours of respite care. That was a step in the right direction, but we should also consider providing more information and training for carers—Margaret Ewing touched on that in her speech. Professional assistance would benefit carers and those in need of care, as it would provide better standards of care.

When I trained and worked as a nurse, I was taught how to care for people who needed care: I was taught how to feed, how to toilet and how to provide all the basic elements of care. However,

who provides such training to carers? We cannot always assume that people who are put in the position of having to be a carer will have those skills. We need to be sure that we are providing carers with proper training and expertise, so that they can perform the duties that they desperately wish to perform for their loved ones to the best of their ability.

We also need to consider the financial aspect. Statistics show that, in less affluent areas, more people need regular help from carers. According to the Scottish household survey, 17 per cent of people in disadvantaged council estates need regular care, compared to an overall figure of 12 per cent. Such statistics show that financial assistance for carers is a key issue that the Executive ought to investigate.

I hope that, in formulating its policy on carers, the Scottish Executive will take note of the concerns that have been raised in this debate. I am pleased that various groups are involved in the consultation. I know that carers groups in Rutherglen and Cambuslang are pleased that the consultation exercise is taking place. I hope that it will lead to the provision of even greater support to those in our society who need help most.

17:00

Christine Grahame (South of Scotland) (SNP): I want to make a rather personal contribution. My mother died relatively recently—when I saw the submission by the Carers National Association, I thought that it should have been entitled “You can take her home now”.

In November last year my mother underwent a serious operation. Six of the CNA's nine findings tallied with the experience of my father and my family. At the age of 79, my mother was discharged within five days of a major operation, to be cared for by my father, aged 86. He jokingly called himself the oldest carer in Scotland, but he probably was not. David Davidson spoke about support networks. In my mother's case, the family had to rally round, as there was no one else to help.

A major cause of concern is patients being discharged too early. My mother certainly was, which led to her being readmitted to hospital within seven days with breathing difficulties. That also happened a second time. I am not saying that all her treatment was bad, but early discharge is a problem that the survey highlights.

The survey also states:

“40% per cent of carers said the person they cared for was not given enough support on returning home”.

My father had none. All he had was his family. Two of his children were in Edinburgh—my brother

and I—and the others were scattered throughout Scotland. Apart from the general practitioner, there was no one else to help. When the family asked whether my mother would be bathed by the district nurse, we were told that district nurses did not do that any more. My father and other members of the family ended up doing it. That is the sort of care that was provided. I merely provide an example of what is happening. In our family, this went on for only a short time, but for many people it is a long-term problem. At the age of 86, my father had to climb stairs to take meals to my mother, because there was no one else to do it until the family arrived.

I want to highlight the situation of unpaid and elderly carers, such as my father, who are probably not included in the statistics and have realised that they are carers only since people started to carry out surveys into this question. They thought that they were just looking after people whom they loved.

My colleague Margaret Ewing and other members have highlighted two of the policy recommendations that have been made. It is proposed that we monitor the implementation of the joint future group's recommendations on free short-term care and assess benefits to older people with carers. Many people provide free personal care at the point of delivery, just as my father did. We should make invalid care allowance a proper wage. I am not talking about my father's situation, but about that of long-term carers. They should be paid properly for the work that they do, which saves the state millions of pounds.

My second point relates to respite care facilities. My father's respite was his family. However, when I asked the Executive in a written question about respite facilities for people caring for sufferers from conditions such as Alzheimer's, I was given the usual answer: that the relevant information is not held centrally. I do not blame the coalition Executive for that, but it is time that there was an audit so that we can find out what respite facilities are available. That would enable us to ensure that we develop and provide funding for them, in recognition of the work that carers do.

17:04

Mary Scanlon (Highlands and Islands) (Con): One of the most telling phrases that Karen Whitefield used was “heading in the right direction”. I agree that we are heading in the right direction but, as other members have said, we still have a long way to go.

Many of the points that I wanted to make have already been made, but I draw the minister's attention to the issue of technology. It seems odd that, in this day and age, Raigmore hospital in

Inverness should be involved in a scheme called the electronic communication initiative—ECI. That is a pilot study in which the hospital notifies general practitioners about the needs of their patients when discharged from hospital. I find it incredible that, in 2001, with access to the world wide web, we are still running pilot studies on acute hospitals talking to GPs.

Nevertheless, I welcome that pilot study and I hope that it will be rolled out across Scotland quickly, because many GPs in the Highlands have informed me that they and their staff spend a long time on the telephone trying to find out why a patient was discharged, what their needs are and what drugs and help they are supposed to have. Meanwhile, the carer is sitting in the surgery, wondering what they are supposed to do. We are heading in the right direction but we recognise that we have a long way to go.

Margaret Ewing mentioned social security benefits. Recently, a carer's daughter was taken into hospital; the carer told me that not only had her daughter lost her independent living fund—I am not too familiar with such benefits—but that, when she was discharged, she was unable to get that benefit back because she was not purchasing enough care. In addition, she was not allowed to attend her day care centre because of her medication. That was a learning curve for me. I discovered that the energies that should have been spent on caring were spent on bureaucracy and administration.

Such situations also arise for elderly people. If an elderly patient is in hospital for a certain period of time but then goes home, they lose benefits and have to go through that bureaucratic system again. They also go to the end of the queue for home care assessments and benefits, which were all in place before they went into hospital.

Malcolm Chisholm, the Deputy Minister for Health and Community Care, is chair of the care development group and, on the theme of heading in the right direction, I look forward not just to the group's definition of personal care but to the minister's commitment to the recommendation of both Sir Stewart Sutherland and the Health and Community Care Committee that there should be a single budget, a single point of entry and a single management system for people who leave hospital and who are cared for.

Most members talked about carers, but I would also like to speak about respite care. The idea seems to be that when respite care is set up, everything is all right. However, many carers worry about whether the respite care is appropriate or up to standard. Respite care must be appropriate.

The debate brought to my mind a recent case from Kingussie that Fergus Ewing will know well. A

carer's husband is in hospital and, therefore, in care. However, the carer spends most of her day visiting him. She has a 40-mile journey each way, with a further bus journey. That journey leaves the carer more concerned and traumatised.

The carers strategy, which the Executive produced in November 1999, promised that an national health service helpline would be set up in spring 2000 to provide information and access to social services and support for carers. I ask the minister to confirm that that helpline has been set up. I hope that it has; perhaps I have missed it.

I commend Karen Whitefield for her commitment to carers and for helping to raise awareness of caring and carers' needs. I hope that we can continue to head in the right direction.

17:09

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): Karen Whitefield is to be congratulated for introducing for debate an issue of such major concern to us all. I have found the debate interesting and, at times, moving. I am thinking of the contributions from David Davidson and Christine Grahame, who described their own experiences.

Mary Scanlon and I are not ashamed to say that we have worked together on many issues, including that of carers. In Badenoch and Strathspey, there is no place in which those who suffer from dementia, for example, can be cared for. That means that carers must travel long distances to Inverness or Nairn and those journeys take up a large part of carers' lives. They do not grudge the travelling, but the practical difficulties of travelling anywhere by public transport from Badenoch and Strathspey are very difficult indeed. I know that the minister will be sympathetic to such points, which is why it is useful to have debates of this nature.

One of the few advantages that I may have over other members in the chamber is that I fought a number of losing election campaigns that gave me a great deal of time to acquaint myself with my constituents to be. One of them now cares for her mother, who lives in a remote part of Lochaber. From one of my unsuccessful campaigns, I knew the lady to be an active member of the community—she was a schoolteacher. I went to visit that lady in her home, but she had gone from a life in which every day was full of work and social activity balanced in the busy life of a schoolteacher, to a life in which, because she is looking after her mother who has dementia, she has only about an hour a week when she is out of her house. Carers who look after elderly people with dementia are particularly isolated. They do not have the conversation and they have to deal

with the sadness as well. I hope the minister will take that point on board.

In a letter on behalf of another constituent, I ascertained from the minister's predecessor that the £10 million a year contribution to which Karen Whitefield made reference in her opening remarks has been earmarked. In a letter of December 1999, Iain Gray said to me that, if that money proved to be insufficient, the issue would be reconsidered. There is no doubt that the provision of services to carers is a priority area. Other areas, such as the escalating costs of certain buildings, cannot be so described.

Domiciliary care is another area that has not been mentioned. One of the few decisions that the Highland Council could perhaps be criticised for was its decision to withdraw, to a certain extent, the provision of domiciliary care and basic care for housework and shopping in Inverness. That caused great hardship. Some people came to people like me and Mary Scanlon to complain. Others had advocates who consulted us. However, I worry about the larger number of people who did not complain and did not have advocates because they were too proud or did not want to make a fuss. I would like to see a statutory obligation—as I understand it, no such obligation exists at the moment—to provide domiciliary care.

Since we are talking about respite care, we must also mention people with special needs. There is an establishment in my constituency called Badaguish that provides excellent care for children with special needs and gives them access to virtually all types of outdoor activity. For example, a young child who was blind first heard the sound of running water by putting her ear to the burn in Badaguish.

Badaguish is situated within the future Cairngorm national park. The aims of the national park are wide enough to allow the provision of respite care to allow people with special needs to have the same opportunities as other people who do not have a disability. I hope that the Deputy Minister for Health and Community Care will see his remit as encroaching on to that of Allan Wilson.

On Saturday, I shall participate in an event called the Caledonian challenge, which hopes to raise quite a lot of money through the 1,280 people who will participate. The charity is called the Scottish Community Foundation and I believe that this year's target is £1 million. I know that the Scottish Community Foundation is interested to hear from members who feel that they have a worthy constituency charity or community project that the foundation could help from the £1 million that it is hoped will be raised. I am sure that David Fox-Pitt, the terrific fellow who is the organiser of the event, would be delighted to hear of any applications that members feel are worthy of

support.

17:15

The Deputy Minister for Health and Community Care (Malcolm Chisholm): I congratulate Karen Whitefield on securing this important debate. I welcome the opportunity to acknowledge the immense contribution that carers make to society and to making care in the community a reality.

At the beginning of her speech Karen Whitefield mentioned various initiatives such as the strategy on carers; the £10 million that has been given to local authorities, which we are monitoring; and the £0.5 million for voluntary sector initiatives to support carers. She also referred to the current consultation on new legislation for carers and Janis Hughes spoke about that in detail in her speech. I am glad that carers were centrally involved in the formulation of that consultation document. I look forward to reading the responses in the near future.

Margaret and Fergus Ewing referred to the need for extra respite care. I remind members of the extra 22,000 weeks that were announced in October, for which a sum building to £11 million in year 3 has been allocated.

Mary Scanlon asked about the NHS helpline. I can assure her that it was extended in April 2000 to provide information for carers on local and national sources of advice and support. Donald Gorrie also referred to information and made an interesting suggestion on a possible role for the CABx. I am not aware of such a role in relation to carers but I know that, in Mr Gorrie's former Westminster constituency, there are welfare rights people in certain general practitioners' surgeries. I would like to acknowledge Karen Whitefield's role in helping to bring about an initiative in Airdrie involving the CAB and Macmillan nurses.

The main issue that I would like to refer to is the report entitled "You Can Take Him Home Now". Karen Whitefield gave a very balanced account of that report. It is clear from the survey that some carers feel that they and their relatives are not receiving a level of service that meets their needs and that improvements could be made in hospital discharge arrangements. In particular, the survey suggests that many carers feel that their relatives were discharged before they were ready and had to be readmitted shortly thereafter. Christine Grahame highlighted that point.

The reasons for readmission are many and complex. Inevitably, there will be occasions when readmission will happen, especially when the patients concerned are older people. However, what the NHS must do is to work with social care agencies to minimise inappropriate discharge and

provide optimum home care as necessary. I know that much work has already been carried out by the health and social care sectors to improve the experience for patients and carers.

To take last winter as an example, disruption to successful service delivery and to patients was minimised by the implementation of robust planning arrangements. The spread of rapid response teams across Scotland enabled people who would previously have been admitted to hospital to be cared for in their homes. The rapid response team approach also provided support after discharge for patients in their homes for an agreed period to assist in their recovery and allow them to regain their confidence.

These teams of professionals, working together with patients and carers, provide assessment, intensive rehabilitation and home care packages; they facilitate the smoothest and timeliest possible discharge; and they ensure patient and carer choice. The Executive is committed to the expansion of rapid response teams throughout Scotland.

Of course the issues for carers and patients are wider than discharge arrangements. Properly planned continuing support is paramount. Joint planning based on individually assessed needs is the only safe and sensible way to proceed and is the best way to arrive at a successful and sustainable transfer from hospital care. That is why "Our National Health: A plan for action, a plan for change" unequivocally underlines our commitment to improving and integrating planning and decision making so that patient care, in and out of hospital, is organised and provided on a seamless basis. There will be a step change in that process from next April, with health boards and local authorities coming together to jointly resource and manage all services for older people. I am sure that Mary Scanlon will welcome that.

Clearly, money is an important issue. We have invested £24 million this year and next, which will rise to £48 million in 2003-04, to develop key services such as rapid response teams, more intensive home care services, more short breaks and the shopping and domiciliary maintenance services to which Fergus Ewing referred. Those measures will make a difference, as will the totally free home care for four weeks following discharge, which we announced recently and for which £2.4 million has been allocated.

Additional work is being taken forward by the chief medical officer's group on the health care of older people. It is looking at all stages of the older patient's journey of care through the NHS, from home into hospital, intensive care if necessary, discharge and back home again. The objective is to identify problem areas and seek solutions, so that older people can have the smoothest possible

journey through the system. At its meeting next month, the group will be examining delayed discharges. The Carers National Association Scotland is represented on the expert group, and has already provided it with a copy of the supplementary report for Scotland. I am sure that the group will find that to be a helpful contribution, as will the emerging delayed discharge learning network.

Carers undoubtedly help to hold the complex web of health and social care together. It is fitting that this week we have two debates on care. I look forward to the debate tomorrow on young carers, and I concur with Karen Whitefield's remarks on it. As an acknowledgement of the importance that we attach to carers, the First Minister held a reception last week at Edinburgh Castle, at which I was pleased to meet a large number of carers. I was also privileged to meet a number of remarkable carers last night at Douglas House in Edinburgh, which is a residential and respite facility for children with severe disabilities.

I will consider the policy recommendations in the report "You Can Take Him Home Now" to ensure that the concerns of carers are comprehensively considered as we develop and implement our policy initiatives.

Meeting closed at 17:22.

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