

LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

Wednesday 3 February 2010

Session 3

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LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

4th Meeting 2010, Session 3

CONVENER

*Duncan McNeil (Greenock and Inverclyde) (Lab)

DEPUTY CONVENER

*Alasdair Allan (Western Isles) (SNP)

COMMITTEE MEMBERS

*Bob Doris (Glasgow) (SNP)

*Patricia Ferguson (Glasgow Maryhill) (Lab)

*David McLetchie (Edinburgh Pentlands) (Con)

*Mary Mulligan (Linlithgow) (Lab)

*Jim Tolson (Dunfermline West) (LD)

*John Wilson (Central Scotland) (SNP)

COMMITTEE SUBSTITUTES

Brian Adam (Aberdeen North) (SNP)

Margaret Curran (Glasgow Baillieston) (Lab)

Alison McInnes (North East Scotland) (LD)

Margaret Mitchell (Central Scotland) (Con)

*attended

THE FOLLOWING ALSO ATTENDED:

James Anderson (Scottish Government Housing and Regeneration Directorate)

CLERK TO THE COMMITTEE

Susan Duffy

SENIOR ASSISTANT CLERK

David McLaren

ASSISTANT CLERK

Ian Cowan

LOCATION

Committee Room 4

Scottish Parliament

Local Government and Communities Committee

Wednesday 3 February 2010

[THE CONVENER opened the meeting at 10:36]

Subordinate Legislation

Homeless Persons (Provision of Non-permanent Accommodation) (Scotland) Regulations 2010 (SSI 2010/2)

The Convener (Duncan McNeil): I welcome everyone to the fourth meeting in 2010 of the Local Government and Communities Committee. As usual, I ask members of the public and committee members to turn off all mobile phones and BlackBerrys.

Agenda item 1 is an evidence-taking session on the Homeless Persons (Provision of Non-permanent Accommodation) (Scotland) Regulations 2010. I welcome to the meeting a number of Scottish Government officials: Colin Brown, senior principal legal officer, and Stephanie Prowse, solicitor, from the local authorities and development division; and James Anderson, policy officer, from the housing and regeneration directorate. I invite questions from members.

Mary Mulligan (Linlithgow) (Lab): To ensure that I am clear about the points that I want to raise, can you give me an example of when someone with homeless rights might be directed to temporary rather than permanent accommodation?

James Anderson (Scottish Government Housing and Regeneration Directorate): Instead of setting out any mandatory change, the regulations simply give local authorities another option for discharging their duties in this respect. At the moment, any homeless applicant found to be unintentionally homeless and in priority need has to be offered a Scottish secure tenancy in the social rented sector, but the regulations will allow the private rented sector to be considered as an option where such a move is deemed suitable and sustainable for the household in question.

Mary Mulligan: The paper that was circulated to members seems to suggest that the option is for people who need additional support. What does that mean in practice?

James Anderson: It is not necessarily the case that there will be support issues to address or that

the measure is specifically directed at households that require support. The regulations allow for a housing support needs assessment to determine whether such support is required.

Mary Mulligan: At what stage would the temporary arrangement be deemed not to be useful anymore? Would the tenant then be eligible for permanent accommodation?

James Anderson: The tenancy would be a short assured tenancy, and the tenant would be afforded all the rights under its terms and conditions. If, for example, a landlord wished to terminate such a tenancy, two months' notice would have to be given. In fact, that would fit in quite neatly with the local authority's duty to provide homelessness prevention and assessment advice, because the tenant would have the chance to re-engage with the authority and look at other accommodation options.

Mary Mulligan: Would the local authority have the same liabilities in relation to providing them with permanent accommodation?

James Anderson: Yes.

Mary Mulligan: Do you envisage a timescale for this arrangement? Would it be a year or could it be five years? Are you not stipulating that?

James Anderson: We are stipulating that the short assured tenancy has to be for a minimum of 12 months before the local authority's duty can be discharged. However, hopefully, if all is going well with it, the tenancy can be renewed for as long as the arrangement is suitable for both landlord and tenant.

Mary Mulligan: This is my final question, convener. I understand that the City of Edinburgh Council has been using private sector tenancies—short assured tenancies—as a way to respond to housing demand. Is that an example of what the regulations will allow? What have your findings been about that?

James Anderson: We have certainly looked at what the City of Edinburgh Council has been doing. It is one of a range of activities that have been going on, not just in Edinburgh but in other council areas, to help local authorities to access the private rented sector. Another good example is the rent deposit guarantee schemes that have been in place throughout the country for quite some time. The Government has been assisting those schemes in the past few years and it actively funds Crisis, which is the voluntary organisation that helps to co-ordinate the activities of rent deposit guarantee schemes.

We are also looking at developing a repository of examples of good practice in relation to rent deposit guarantee schemes and access to the private sector. The "Scottish Government Review

of the Private Rented Sector”, which was published in March last year, provides such examples. We will be looking to put examples into the accompanying guidance on the regulations.

Mary Mulligan: If the convener will indulge me, I will ask one final quick question. Will you check whether the private landlords who are involved are registered?

James Anderson: Yes, we will ask local authorities to do that. In line with practice that has been developed over the years for rent deposit guarantee schemes, we will ask local authorities in discharging their duties to look at the standard and quality of the accommodation.

Jim Tolson (Dunfermline West) (LD): I want to get a handle on the scale of this legislative change. Do you have an indication of how many people might be affected and who might be moving into temporary private accommodation? Are we likely to see a surge in houses in multiple occupation in the private sector, for example? What capacity is there in the private sector to meet these needs? Will we require a lot of new builds in the private sector?

James Anderson: It is worth noting that the situation will probably be different in different local authority areas, depending on the private rented sector in those areas. Our view is that we should allow local authorities to assess the availability of private rented accommodation in their area and develop their own homelessness strategies to best access the available tenancies in their area. As I said earlier, we are not making a mandatory change for local authorities but allowing them to use another option in the private sector that is restricted at the moment. We hope that that will help them to achieve the 2012 target.

John Wilson (Central Scotland) (SNP): The regulatory impact assessment indicates that you will go for the short assured tenancy where applicable. You also say that there is a greater onus on local authorities or the housing provider who is dealing with the homelessness application to carry out greater scrutiny of the affordability and desirability of that type of tenancy.

What is there to prevent a local authority from discharging its obligation under the Homelessness etc (Scotland) Act 2003 by recommending to someone that they take up a short assured tenancy for 12 months, even though, beyond that 12-month period, under the short assured tenancy legislation, the landlord might decide that they are out of the house? Fourteen months later, say, the person will be out of the house and basically forced back into the cycle of homelessness.

Another issue with short assured tenancies, particularly with a private landlord, is the affordability test. In the south side of Glasgow, for

example, the average monthly rent is £450 for a private tenancy. When someone has a tenancy negotiated on their behalf by the local authority and goes into the accommodation, if they are unemployed, the rent will be covered by benefit. However, through the benefits system, they will be encouraged to take up employment and might find, within the 12-month period, that the rent that is required to maintain the tenancy is more than they can afford. The short assured tenancy guarantee applies only if people can afford the rent, which assumes in many respects that they are on benefit. What happens if someone gets a job within the 12-month period? Do they go back to the local authority and say that they cannot afford the rent because they have to work for the minimum wage? Will they automatically go back on the homelessness register?

The issue is to do with how local authorities discharge their responsibility under homelessness legislation. They should not be allowed to use the regulations as a short-term measure to reduce the number of homeless people who are registered with them while, in effect, putting people into greater financial difficulty or worse housing conditions.

10:45

James Anderson: The affordability test will be one of the key issues when local authorities and applicants decide whether to move to a private rented sector tenancy. We do not intend to be too prescriptive with local authorities on the detail of the affordability test. However, we have set up a reference group to consider the guidance that will accompany the regulations, which will provide direction for local authorities. I mentioned rent deposit guarantee schemes. There are examples of good practice in relation to affordability.

We will consider including in the guidance the point that the affordability test has two stages. One relates to the immediate affordability given the financial position of the applicant or their household and the other relates to longer-term affordability and whether the accommodation is likely to remain affordable if the applicant or others in the household take up employment or training opportunities. It is key that the affordability test takes into account any possible disincentives that might arise to people taking up training and work opportunities.

John Wilson: How does the minister intend to gather information for post-implementation review? I understand that several bodies must be provided with information annually anyway, but how does the minister envisage reviewing how the regulations have worked in practice? What alarm bells, if any, will sound if local authorities use the regulations as a method of either dumping their

homelessness figures or circumventing homelessness legislation, which could put tenants in a worse financial situation and families in a worse overall situation?

With regard to homelessness and families, we must also be concerned with stability for households. We should be trying to get the children into environments in which they will receive education, health and other services that assist the maintenance of a stable family unit. How will the minister monitor the situation following implementation?

James Anderson: All the homelessness activity in local authorities is recorded in the HL1 data collection system, and that will continue to be the case for any duty that is discharged into the private rented sector. The reference working group that is considering the accompanying guidance will, hopefully, take an early view on any data that are brought forward. We will suggest to the reference working group that, after the first two quarters of 2010-11, we will want to be able to analyse the data and review how the implementation is going at that stage.

In addition, I should say that we already record information on the sustainability of tenancies for applicants who can go to the private rented sector at the moment. Our statistics show that the tenancy failure rate in the private rented sector is only slightly higher than it is in the public rented sector. That must take into account the fact that families are not placed in the private rented sector at the moment.

Bob Doris (Glasgow) (SNP): I do not necessarily share some of Mr Wilson's concerns about the possibility that local authorities might dump their obligations to meet the homelessness target, but I share his concerns about affordability. Some of my constituents who are on benefits have had to go to the private rented sector of their own volition because they would otherwise be homeless. However, housing benefit does not always cover the rents that can be charged in the private rented sector. My concern is that, in using the private rented sector, councils might dispose of their homelessness obligations in a way that is valid but nevertheless results in vulnerable tenants who are on benefits having to subsidise the private landlord because their housing benefit does not cover the private rent. Has any consideration been given to that? Have any safeguards been put in place?

James Anderson: The main safeguard will be the affordability test that must be applied when local authorities consider using the private rented sector. We will be looking to develop the ways in which that test is used. Earlier, I mentioned the two-stage process within the affordability test. It

will consider a longer period of time for tenancy sustainability.

The other safeguard is the fact that local authorities must ensure that all applicants who are considering the private rented sector are given advice and information prior to making their decision so that they can make an informed choice. That advice and information can come from some of the organisations that are mentioned in the regulations, such as Citizens Advice Scotland, Shelter Scotland and the law centres.

If any difficulty arises later in the tenancy, the applicants will always have the opportunity to seek help from the local authority through its homelessness prevention activities. Prospective tenants will always be advised that they can re-engage with local authorities should there be any difficulties further down the line.

Bob Doris: Would it be reasonable for homeless people who find that housing benefit does not cover their rent in the private rented sector to refuse an offer from a local authority that was trying to discharge its obligation by sending them to the private rented sector? If they refused that offer, would the local authority have discharged its obligation to house them?

James Anderson: Absolutely not. Any move to discharge that duty has to be with the full, informed and written consent of the applicant. The guidance will make it absolutely clear that no one should be placed in the private rented sector against their wishes. That would be totally against the spirit of what we are trying to do.

Patricia Ferguson (Glasgow Maryhill) (Lab): On my first point, please forgive me if I have picked you up incorrectly or not heard properly what you said. Is the intention for the new system to apply to families as well as to single individuals?

James Anderson: Yes, if accommodation in the private rented sector was assessed, with a family's agreement, as a suitable and sustainable option, it would be available to them in the same way as to single people.

Patricia Ferguson: In my experience, most people who find themselves to be homeless ultimately want a home of their own—not necessarily a home that they have purchased but perhaps one that they have through a registered social landlord. In their journey through the housing system, they usually acquire points and go further up the list. How would taking a tenancy in the private rented sector affect their ability to do that? I presume that they would not be under the purview of the local authority or the RSL.

James Anderson: Such people would no longer be assessed as homeless once they had taken up a tenancy, but they would still have full rights to

access the allocation waiting lists of local authorities and RSLs, as does anyone in any tenure. Our aim is to allow households to move into tenancies in the private sector that are suitable and sustainable for them in the same way that tenancies in the public sector can be suitable and sustainable. People would still have full access to the waiting lists and allocations procedures in local authorities and RSLs—I hope that that answers your question.

Patricia Ferguson: You mentioned that, if a tenancy was not working out, the tenant could engage with the homelessness prevention service. My experience is that the service does not kick in until the person has a date on which either they are going to be evicted or they have to move on. That is not a situation that we would want people who were previously homeless to be in again. How will local authorities be persuaded and/or funded to provide homelessness prevention services in a more proactive way?

James Anderson: There is certainly more of an accent on homelessness prevention in local authorities in the run-up to 2012. We have recently produced guidance that we expect local authorities to take up and to use to allow their homelessness prevention activities to kick in at an earlier stage. Under the regulations, I hope that, with the advice and information that are provided to them at the outset, any prospective tenant will be aware that services exist to assist them in their tenancy and, perhaps, with debt management and counselling, and that those services are available at as early a stage as is suitable for them.

John Wilson: I have just two quick final questions. The first has been covered in part by Patricia Ferguson's question, which is on the financial onus on local authorities to increase the advice that is given to homeless individuals and families. I am talking not about financial management advice or money and welfare advice but about housing officers and departments discharging their duties under the homelessness legislation. How will funding be made available to local authorities to increase the level of advice that is given?

Secondly, when someone presents as unintentionally homeless, they are looking for a roof over their head as quickly as possible. If they cannot get a council house or a house from a registered social landlord and the next option that is presented to them is a house in poor letting condition—which still happens—the only option left for them is to go into a sector that may not be suitable for them, either financially or for other reasons. How do we avoid those circumstances arising, and how do we ensure that people do not just grab at what they perceive to be their last

chance and go for something that is not adequate, suitable or affordable?

11:00

James Anderson: As I have said, two key factors that must be considered are the affordability test and the housing support needs assessment. We would expect those assessments to be carried out to inform any prospective tenant as to how suitable to their needs and sustainable a tenancy may be, especially in the longer term, and to ensure that any support needs that they have are assessed and that the appropriate support is put in place.

I stress that we must ensure at the outset that any prospective tenant is more than adequately informed about the sector that they are accessing and what the terms and conditions are. We will look at providing guidance to local authorities—this picks up on an earlier point—so that they are using the experience and knowledge that we have gained through the rent deposit schemes and they are using landlords who have a good reputation and provide a good level of accommodation.

On your first point, it is certainly our view that more and more local authorities are placing a greater accent on their homelessness prevention activities at the moment and that they are providing a good level of advice and information to homeless households at the outset.

The Convener: Thank you for your attendance and your question-and-answer service—it was much appreciated.

James Anderson: Thank you, convener.

The Convener: Item 2 is formal consideration of the regulations. No motion to annul the regulations has been lodged, and the Subordinate Legislation Committee has not made any comment on the instrument. Do members agree that they do not wish to make any recommendation to the Parliament in relation to the regulations?

Members indicated agreement.

The Convener: We now move to item 3, which members will remember we have agreed to take in private.

11:02

Meeting continued in private until 12:01.

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