The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

Wednesday 6 October 2010

Session 3

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LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE
23rd Meeting 2010, Session 3

CONVENER

*Duncan McNeil (Greenock and Inverclyde) (Lab)

DEPUTY CONVENER

*Bob Doris (Glasgow) (SNP)

COMMITTEE MEMBERS

*Patricia Ferguson (Glasgow Maryhill) (Lab)
David McLetchie (Edinburgh Pentlands) (Con)
*Alasdair Morgan (South of Scotland) (SNP)
*Mary Mulligan (Linlithgow) (Lab)
*Jim Tolson (Dunfermline West) (LD)
*John Wilson (Central Scotland) (SNP)

COMMITTEE SUBSTITUTES

Brian Adam (Aberdeen North) (SNP)
Malcolm Chisholm (Edinburgh North and Leith) (Lab)
Alex Johnstone (North East Scotland) (Con)
Alison McInnes (North East Scotland) (LD)

*attended

THE FOLLOWING ALSO ATTENDED:

Patrick Harvie (Glasgow) (Green)
Alex Neil (Minister for Housing and Communities)

THE FOLLOWING GAVE EVIDENCE:

John Swinney (Cabinet Secretary for Finance and Sustainable Growth)

CLERK TO THE COMMITTEE

Susan Duffy

LOCATION

Committee Room 5

Scottish Parliament

Local Government and Communities Committee

Wednesday 6 October 2010

[The Convener *opened the meeting at 10:00*]

Decisions on Taking Business in Private

The Convener (Duncan McNeil): Good morning and welcome to the 23rd meeting in 2010 of the Local Government and Communities Committee. I remind members and the public to turn off all mobile phones and BlackBerrys. Apologies have been received from David McLetchie; no substitute was available.

Item 1 is to consider whether to take business in private. Do members agree to take items 5 and 6 of today's meeting in private?

Members *indicated agreement.*

The Convener: I also ask members to agree to consider a detailed approach to proposed legislation in private at our next meeting.

Members *indicated agreement.*

Councillors' Code of Conduct

10:01

The Convener: Item 2 is consideration of a draft code of conduct. The committee will consider the revised code of conduct for councillors and the Executive note for the Ethical Standards in Public Life etc (Scotland) Act 2000 (SG 2010/180). The revised code is to be approved by resolution of the Parliament, so the committee's role is to consider it in the same way as an affirmative instrument. The committee will take evidence from the Cabinet Secretary for Finance and Sustainable Growth and his officials.

I welcome the cabinet secretary and his officials to the meeting, and ask him whether he wishes to make any introductory remarks.

The Cabinet Secretary for Finance and Sustainable Growth (John Swinney): Good morning. I am accompanied this morning by David Henderson and Laura Halliday of the local government team at the Scottish Government.

I will provide some background to the councillors' code of conduct and the revised code. The councillors' code of conduct plays a vital role in setting out clearly and openly the standards of conduct that must be applied to councillors. It is a key element of the ethical standards framework that was introduced by the Ethical Standards in Public Life etc (Scotland) Act 2000. The ethical standards framework also established the Standards Commission for Scotland, the office of the chief investigating officer and a model code of conduct for members of public bodies. Together, those elements work effectively to promote high standards in public life in Scotland.

The code was established in 2001 and came into effect on 1 May 2003. The code has been supplemented by statutory guidance issued by the Standards Commission, which assists councillors in their understanding of and compliance with the code. Read together, the code and its guidance provide councillors with a complete set of rules and responsibilities.

Since its introduction, the code has been considered to be drafted appropriately. It is vital that that continues to be the case. Therefore, when the Scottish planning system underwent major legislative reform during 2009, a review of the code was undertaken to assess the implications for the code. The review also provided an opportunity to review those areas of the code in need of clarification or reconsideration, drawing on the experience gained in its application.

The model code of conduct for members of public bodies is similar to the councillors' code of

conduct in that it is based on the same key principles. However, the Scottish planning system does not apply to members of devolved public bodies, so the model code was not considered for review at this time.

The review was carried out by a short-life working group, which consisted of representatives from throughout local government, as well as the Standards Commission and the office of the chief investigating officer. The group agreed a set of proposed changes to the code, incorporating some of the existing guidance within the body of the code. A revised code was then prepared by the Scottish Government, and the group agreed that the changes to the code were substantive enough to merit wider consultation, which subsequently took place on an extensive basis.

The majority of those who responded to the consultation had previous experience of using the code, with responses coming mainly from local authorities. A wide range of opinions was given on many issues, although views were generally pretty diverse, and most of the comments received were not supported by most of the respondents. There was a general welcome for the revised code. The majority of respondents were positive about the changes to the code. However, further changes were subsequently made in the light of the comments received.

I emphasise that the ethical basis of the revised code remains unchanged from that of the original. The main change has been to section 7, which deals with the planning system. The other changes have been to provide clarity, to address points of detail, to improve presentation and to incorporate areas of statutory guidance, with the aim of making the code easier to use.

It is vital that the code continues to give assurance to the public that their elected members are acting in accordance with high ethical standards. The revised code will ensure that the system of accountability that is in place for Scottish councillors remains effective and up to date.

I am happy to answer any questions.

Jim Tolson (Dunfermline West) (LD): Good morning, cabinet secretary. The document is a welcome addition to and improvement on the councillors' code of conduct.

Section 6.3 is on lobbying and access to councillors. It was of great concern to me that, after 2007, many councillors with whom I was closely involved—from various political parties—were not willing to engage with the public, objectors or even applicants on planning applications. I seek your clarification on the changes in section 6.3. Are they saying to councillors that, although it is okay to listen to applicants and objectors, councillors must not predetermine the outcome in any way or they will be withdrawn from any vote? Some of the advice that was provided by planning officers to various councillors, especially those who came in in 2007, has—inadvertently, I am sure—somewhat stifled public representation. I hope that the revised code will ensure that that does not happen.

John Swinney: I agree entirely with Mr Tolson. The circumstances that he recounts have been the driver behind the changes that are made in section 6.3, which make the point absolutely clear. Whether or not there was a lack of clarity, the scenario that Mr Tolson paints in which many elected members were encouraged to consider their position is entirely accurate. It is important that elected members are in a position to listen to the perspective of a developer or a local community.

Two key considerations apply to that dialogue. First, the elected member should not prejudge the application or express any preference in that dialogue. Secondly, it would be consistent with the principles of the code that an elected member should listen to the perspective of both sides of the argument to ensure that they gain a rounded perspective of the issues. I am happy to associate myself with Mr Tolson's perspective. I hope that the changes that have been made in section 6.3 provide the clarity that he has said is required.

Jim Tolson: I am grateful to the cabinet secretary for putting that clarification on the record. I hope that we can bring that point to the attention of our councillor colleagues throughout Scotland.

Alasdair Morgan (South of Scotland) (SNP): The code has been expanded considerably. I wonder whether any new or prospective councillor who picked it up and read through the section on the registration of financial interests might think, "I'm not going to bother with this." We have embarked on a process that has led us to a logical outcome, but I wonder whether it is an outcome that might put off many public-spirited people who might have wanted to become councillors. The code might strike them as so complicated that they are bound to fall foul of something in it.

John Swinney: There is a balance to be struck here. The material on financial interests that has been inserted is a product of dialogue with the interested parties in the local government community, involving elected members in a number of local authorities. In that sense, the thinking behind the requirement to provide that type of information has essentially come from within the local government community, which has recognised that those issues must be properly and fully explored. Although I appreciate that the sections on financial interests require a lot of

detail, I do not think that it is any more than a member of the Scottish Parliament would be required to give. The scrutiny of our personal financial positions and interests is recognised as an integral part of the scrutiny to which elected members are open. Although I would want nothing in the code of conduct to signal to individuals that there is not a role for public-spirited people to make a contribution to public life, it is important that a certain amount of information is openly available to members of the public where clarity is required.

John Wilson (Central Scotland) (SNP): Good morning, cabinet secretary. You said in your opening statement that there has been wide-ranging consultation on the document. Could you expand on what you mean by that? Some of my council colleagues have told me that they never saw the document and were unaware that there was a consultation. I am interested in how wide ranging the consultation was. You said that you had received a number of responses to the consultation. Can you give us that number?

John Swinney: The consultation paper was issued directly to all members of the Scottish Parliament and members of the European Parliament and the chief executives and leaders of all local authorities in Scotland. We could have issued it to every single councillor but, in the interests of efficiency, it was reasonable to circulate it to local authority chief executives and council leaders.

I do not have a figure in front of me for the number of responses that were received—sorry, I have in fact just seen that I do. Thirty-nine responses to the consultation were received in total. Of those, there were 24 from local authorities, five from private individuals, two from scrutiny bodies and one each from a member of the Scottish Parliament, a local authority society, a local authority planning organisation, a party-political group, a retail organisation, and a training and consultancy business. Two individuals did not give their permission for us to publish their responses. That is a fairly broad cross-section of sources.

John Wilson: Thank you for your detailed answer on the number of responses that were received and by whom. However, you indicated that only council leaders received the consultation. Why were opposition leaders in council groups not issued with the document? As I understand it, a number of the issues that are raised at council meetings in relation to the code of conduct and its application arise from the dissatisfaction of some opposition groups in local authorities with the way in which their issues are being dealt with at full council or committee.

John Swinney: The consultation document was issued to council leaders and council chief executives. Chief officers of local authorities have a duty to properly and fully inform members of the local authority about relevant issues and, in my experience, they do exactly that.

Fundamentally, this is not a new code of conduct; it is essentially a set of revisions to address the changes to the planning law that were made during the previous session of Parliament and which came into effect in 2009. The code's fundamental ethos has not been changed; we have put in place a series of updates to ensure that the planning considerations are more fully and properly taken into account. Some of the issues that Mr Wilson raises to do with the nature of the code of conduct and the experience of elected members within the functions of local authorities are not really affected by the changes. They are more to do with the meat and drink of the code of conduct, which has been consistent since it was first established in 2003.

10:15

John Wilson: I will move away from the consultation process and on to the "meat and drink", as the cabinet secretary has described it, of the financial interests of other persons. Section 5.10 refers to

"a close relative, close friend or close associate"

but section 5.11 states:

"This Code does not attempt the task of defining 'relative' or 'friend' or 'associate'. Not only is such a task fraught with difficulty but is also unlikely that such definitions would reflect the intention of this part of the Code."

Could you shed any light on why it was felt that you could not define those terms? If we are looking for clarity on the way forward, it might have been useful in some of these areas to get a definition of the association that may exist between an elected member and a family member, friend or associate.

John Swinney: Ultimately, these issues come down to the exercise of individual judgment by the members concerned. It would be difficult to define who is a close relative, because my view of what that would be might be different from that of another elected member. The key question is what judgment the elected member exercises in respect of any financial interest that may have an implication for or a bearing on the exercise of their duties. That is ultimately a personal judgment. If individuals get that judgment wrong, it can lead to issues of perception and issues of substance in relation to the nature of their dealings. To try to prescribe it in the code would be a difficult task, but the code puts in place a reminder and a word of caution to elected members to consider their

associations in relation to their financial interests and it leaves it to them to exercise their judgment wisely.

Mary Mulligan (Linlithgow) (Lab): Good morning, cabinet secretary. My question follows on from John Wilson's one about the availability of information to opposition members and their ability to comment on the code of conduct. I suspect that the subject of my question does not fall within the code of conduct, but let me ask it anyway. Where would councillors be able to make representations regarding the operations of the council and the procedures of meetings if they felt that how those were being handled was stifling debate and stifling their ability to fulfil their role as councillors and to represent their electorate fully? If that is not covered in the code of conduct—I cannot see it in the code—where would it be picked up?

John Swinney: I think that that issue would be picked up by the local authority's standing orders, which set out the rules by which the democratic processes of the authority are undertaken. In my view, it is not the place of a code of conduct to do that. A code of conduct is there to ensure that individuals carry out their work as councillors in an appropriate manner. There is a section in the code of conduct about conduct at meetings. I suspect that, on certain occasions, a refresher course or a refresher read might be required, so that element of the code of conduct will be relevant.

The general operation of the democratic machinery of an authority is vested in the standing orders of the council, which are rules that are arrived at by the council itself. I concede that not all the rules might suit if one is in a minority in the council—I readily concede the arithmetic of that—but my impression of council standing orders is that they, and the ways in which business is transacted, are of pretty long standing. Therefore, some of the requirements of the code on conduct at meetings will be relevant only in so far as individuals are not operating within the spirit of the standing orders.

Mary Mulligan: I thank the cabinet secretary for his response, and I think that he is correct that the issue should be dealt with elsewhere. I may take the opportunity to write to him about specific instances. However, the relevance to today's debate is that bad behaviour by councillors, particularly at meetings, is often brought about by a feeling of injustice because of how some procedures are handled. I may pursue that matter with the cabinet secretary in another way.

John Swinney: Let me add that the issues are tested by the Standards Commission reasonably frequently. The commission has the task of separating inappropriate conduct from political debate—if I can put it as generously as that—and that is a difficult judgment to arrive at.

The Convener: As there are no further questions, I invite the cabinet secretary to move motion S3M-7129.

Motion moved,

That the Local Government and Communities Committee recommends that the revised and updated Code of Conduct for Councillors for the Ethical Standards in Public Life etc. (Scotland) Act 2000 be approved.—[*John Swinney*.]

Motion agreed to.

The Convener: I thank the cabinet secretary and his colleagues for their presence this morning.

10:22

Meeting suspended.

10:24

On resuming—

Housing (Scotland) Bill: Stage 2

The Convener: We will now proceed with agenda item 4, which is day 3 of our consideration of the Housing (Scotland) Bill at stage 2. Good morning and welcome to Alex Neil, the Minister for Housing and Communities; Linda Leslie, bill team leader; Gillian Turner, principal legal officer; Ian Shanks, assistant Scottish parliamentary counsel; and Colin Affleck, policy officer in the private housing unit.

After section 131

The Convener: Amendment 100, in the name of the minister, is grouped with amendment 103.

The Minister for Housing and Communities (Alex Neil): Amendment 100 will allow police authorities and joint police boards to refuse to sell houses in their ownership so that they remain available for operational policing purposes.

Police authorities and joint police boards need to have a supply of housing stock that can be used by officers to enable them to police their communities. Police houses are a vital resource in rural and vulnerable communities; they provide a policing presence in the heart of those communities.

Any application by an existing tenant to buy a police house would be treated fairly and refused only when the house was required for operational purposes after the police authority or joint police board had considered the matters set out in the amendment. The test of "operational requirement" would be set on a case-by-case basis.

Amendment 103 will ensure that all new tenancies of police houses will not be Scottish secure tenancies. That will allow police authorities and boards to retain control of their housing stock as the tenancies will not entail the right to buy or succession rights. As I have said, police houses are a vital resource for rural and vulnerable communities.

I move amendment 100.

Mary Mulligan: I want to ask you for clarification, minister. You referred twice to rural and vulnerable communities. What do you mean by vulnerable? Does the amendment apply only in rural areas, or would it apply in vulnerable urban areas? Exactly how will it work?

Alex Neil: The background to the amendment is the situation in the Highlands and Islands, particularly remote rural areas in some island communities where, without a police house, it is difficult for new recruits or new officers who are relocated to those villages to find accommodation. Without accommodation, there is the potential for adverse impacts on policing in that area. That is what I mean by vulnerable. The amendments are designed for those communities rather than any other particular situation—they tend to be the areas where there are still tied houses in the police force.

Amendment 100 agreed to.

The Convener: Amendment 139, in the name of Jim Tolson, is in a group on its own.

Jim Tolson: The Liberal Democrats believe that, with the current right-to-buy exemptions for registered social landlords with charitable status due to end in September 2012, the only opportunity to provide any further protection for those 80,000 or so homes in the registered social landlord sector is through the bill.

It would seem incredible if we provided protection to help maintain some of the stock held by local authorities but opened the floodgates to potential applications in the registered social landlord sector. We have considered extending the period of exemption indefinitely, but we feel that that is impracticable. However, we wish to provide registered social landlords with some certainty of rental income, which will allow them to invest in their existing stock and build new stock where and when appropriate.

After carefully considering the options, we feel that it would be appropriate to give registered social landlords an additional 30-year exemption from the right to buy. That would take their protection to September 2042. Only with such a period could registered social landlords have some certainty of income to continue to invest in and deliver some of the best housing in the country.

I move amendment 139.

Alex Neil: The first part of amendment 139 would exempt all charitable RSLs from right to buy, including those registered after 18 July 2001—which, of course, include the six housing stock transfer housing associations. The Government does not support that part of the amendment as it would interfere with tenants' existing right-to-buy entitlements; all tenants of charitable RSLs who have an existing right to buy would lose that right. There has been no consultation with the RSLs and tenants who would be affected by the amendment, and I do not believe that it would be sensible to make such a significant change by amendment without further detailed investigation of the implications.

10:30

The second part of the amendment would suspend the right to buy for non-charitable RSLs for 40 years instead of the current 10-year period, which runs from 2002 to 2012. The Government does not support that part of the amendment because we believe that it would interfere with the existing right-to-buy entitlements of tenants.

There is already provision in the Housing (Scotland) Act 2001 to extend the 10-year suspension of right to buy if RSLs apply for it. If all RSLs apply for a further extension of the 10-year right-to-buy suspension, we can safeguard the same number of houses from sale between 2012 and 2022 as would be achieved by extending the 10-year period to 40 years. Applications would be assessed against criteria developed in consultation with stakeholders, and they would be in place 12 months before the current suspension expires. Applications for subsequent 10-year extensions can also be granted. All of that can be done without affecting existing tenants' rights.

We should bear it in mind that a blanket exemption might not be required—or indeed desired—by all RSLs. Our solution gives them flexibility to apply to opt in or out of right to buy, depending on local circumstances. The committee's stage 1 report supported our position, recognising the need for flexibility so that landlords can respond to local circumstances. Both parts of amendment 139 interfere with tenants' existing rights and the Government has consistently kept to its manifesto commitment that we would not do that. I ask Jim Tolson to withdraw amendment 139.

Jim Tolson: I have nothing to add in winding up, other than to say that I will press my amendment.

The Convener: The question is, that amendment 139 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Tolson, Jim (Dunfermline West) (LD)

Against

Doris, Bob (Glasgow) (SNP)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Morgan, Alasdair (South of Scotland) (SNP)
Mulligan, Mary (Linlithgow) (Lab)
Wilson, John (Central Scotland) (SNP)

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

Amendment 139 disagreed to.

The Convener: Amendment 143, in the name of Mary Mulligan, is in a group on its own.

Mary Mulligan: The intention behind amendment 143 is to ensure that, after a period—five years in this case—the Scottish ministers need to prepare a report detailing the effects of the right-to-buy legislation that is to be introduced through the bill. The Parliament has not been quite so good at reviewing the effects of legislation that it has passed. We have received conflicting views from witnesses as to the effect of what we are proposing in the bill on right to buy. As we have heard in debate, particularly last week, the many amendments on right to buy produce different views, not least among committee members, about their effects and how comfortable we might be with them. There could also be external influences that might alter the effects of the bill.

I will use as an example the effects of subsection (2)(c) of the new section that amendment 143 would introduce. We have heard how loss of receipts could impact on social landlords in maintaining and improving their stock. I suggest that we want to be aware of that at an early stage and that having a report within five years would provide the information.

My amendment does not judge the changes that we might make to right to buy; it merely brings to our attention the consequences of those changes and it leaves it to future MSPs to decide whether they wish merely to note those changes or to take action.

I move amendment 143.

Alex Neil: I thank Mary Mulligan for raising the need to report on the impact of the right-to-buy restrictions. I draw her and the committee's attention to the fact that the majority of the information that she requests is already published routinely by the Scottish Government, for example as part of the quarterly publication of "Housing statistics for Scotland", the Scottish house condition survey, local government finance statistics, homelessness statistics and information on local authority housing revenue accounts. Furthermore, the new local authority housing needs and demands statements will, as the name suggests, provide information on local area housing needs and demands. That all adds to the information that is available and I do not believe that it is necessary to legislate for the publication of it.

I understand that Mary Mulligan is interested in the analysis of the impact of the right to buy changes in the bill, as are we all. I am happy to undertake to produce a report on that and to work with committee members and stakeholders to discuss and agree the content of that report. I therefore invite Mary Mulligan to withdraw amendment 143.

Mary Mulligan: I thank the minister for his response. He helped to illuminate why I lodged the amendment by referring to the raft of statistics that are available. Many people take a great interest in those statistics, but some of us perhaps find them a little more difficult than others. My intention was to draw all that together and I hoped to provide understanding of the issue. However, I appreciate the minister's offer to have further discussions on producing a report, so I am happy to seek the committee's permission to withdraw amendment 143.

Amendment 143, by agreement, withdrawn.

Amendment 164 moved—[Patrick Harvie].

The Convener: The question is, that amendment 164 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

Against

Doris, Bob (Glasgow) (SNP)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Morgan, Alasdair (South of Scotland) (SNP)
Mulligan, Mary (Linlithgow) (Lab)
Wilson, John (Central Scotland) (SNP)

Abstentions

Tolson, Jim (Dunfermline West) (LD)

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

Amendment 164 disagreed to.

Patrick Harvie (Glasgow) (Green): Thanks all the same.

The Convener: Thank you.

Section 132 agreed to.

After section 132

The Convener: Amendment 172, in the name of Mary Mulligan, is grouped with amendments 173 and 178.

Mary Mulligan: There are two intentions behind amendment 172. The first is to place a duty on landlords to register with the relevant local authority. In subsequent amendments, I seek to introduce ways of ensuring that a landlord knows of their duty. A person takes on many obligations when they become a landlord and the duty to register should be taken seriously. The second intention behind the amendment is to enable local authorities to penalise a landlord financially for not registering within 12 months of their becoming a landlord. Twelve months is a reasonable period.

In lodging the amendment, I took into account the evidence that the committee received on whether enforcement of registration should be criminal or civil. Although I accept the minister's explanation as to why it should remain a criminal process, that prevents the local authority from having any income from that. From what we heard in evidence, there are concerns about the local authorities' ability to take enforcement measures. Amendment 172 would introduce a penalty for landlords who do not register within 12 months, but it would also provide an incentive to local authorities to enforce registration of landlords.

Amendment 173 would place a duty on a letting agent and the person who provides a mortgage for a lettable property to notify the landlord of their duty to register. Amendment 178 would place a duty on ministers to publicise the requirement for landlords to register. As I said, I want to ensure that all possible means are used to inform a landlord of their duty to register. Amendments 173 and 178 would do that by involving the relevant people with whom a landlord would come into contact and the Scottish ministers. The Scottish ministers are well practised in promoting legislation to those whom it will affect, so amendment 178 leaves open the methods that they should employ.

I hope that members, having followed the reasoning behind the amendments, and remembering the evidence that we heard at stage 1, will support them.

I move amendment 172.

Alex Neil: I understand that amendments 172, 173 and 178 aim to make changes to the duty to register under the system of landlord registration. They seek to amend part 8 of the Antisocial Behaviour etc (Scotland) Act 2004. Part 8, of course, deals with registration of landlords in the private rented sector. All the issues around the private rented sector would best be considered as a package in the context of the Private Rented Housing (Scotland) Bill, which was introduced on Monday and published yesterday morning.

The Private Rented Housing (Scotland) Bill provides a more effective package of improvements. It is right to give the whole package proper parliamentary scrutiny and the time for stage 1 debate. Many of the private sector provisions are technically complex. We are introducing a package of proposals to improve landlord registration and the licensing system for houses in multiple occupation. We are also taking powers to tackle overcrowding in vulnerable communities, as well as making changes to the tenancy regime.

The proposals are best seen in the round. Indeed, in its stage 1 report on the bill that is before us, the committee said that it

"would have preferred to consider changes to the existing legislation in their totality".

I have responded to that by introducing a consolidated package in the Private Rented Housing (Scotland) Bill. I have also refrained from lodging stage 2 amendments to the bill on private rented housing matters to allow the Parliament time to consider the complete package in the new bill.

The Scottish Government consulted on the issues earlier this year and developed its proposals comprehensively over the summer. I am pleased to say that we have now brought them forward via our Private Rented Housing (Scotland) Bill with the benefit of being able to consider stakeholders' views.

I understand that Mary Mulligan was not able to see the Private Rented Housing (Scotland) Bill while drafting her amendments, as it was not published until yesterday. Perhaps when she has had further opportunity to consider the new bill she will understand why the provisions in it are more technically correct and comprehensive than those that she proposes.

I will now turn to the specifics of the amendments in the group, which do not contain beneficial proposals.

Amendment 172 seeks to place a duty on landlords to register and to allow local authorities to charge a higher fee if landlords do not register within 12 months. It is already an offence for a landlord to operate without being registered. Local authorities can already charge late application fees and impose rent penalty orders. They are using that power most effectively and have issued 1,576 late application fees and 1,289 rent penalty orders to date. Therefore, I cannot support amendment 172. However, Mary Mulligan will be interested to hear that I intend to examine the fee structure as part of my review of landlord registration, which is now under way.

Amendment 173 aims to place a duty on letting agents and mortgage lenders to tell their landlord clients of the need to register. However, no penalty would be attached to that duty, so I cannot see how it could be enforced or what it would achieve. Accordingly, I cannot support it.

Amendment 178 sets out to place a duty on ministers to publicise the need to register. As the Scottish Government and local authorities already make available information on the requirement for landlords to register, I see no benefit to including that as a statement of law within the bill.

We are carrying out a review of the system. The Government's betterrentingscotland.com website contains information on landlord registration. We will, of course, consider how to publicise the changes that the Private Rented Housing (Scotland) Bill will make—for example, we will want to raise awareness of the need to supply a mandatory information pack to tenants.

For those reasons, I am afraid I cannot support the amendments. Therefore, I invite Mary Mulligan to withdraw amendment 172 and not move amendments 173 and 178.

Mary Mulligan: I welcome the bill that was published yesterday. It will take on the points that we have already considered. However, I was not able to see the minister's proposed amendments in that bill and, when the committee took evidence on the bill that is in front of it, people who operate in the private rented sector raised points with which we need to deal in a timely fashion. It concerns me somewhat that we might have to take that evidence again for a different bill. That would be unhelpful.

10:45

As the old saying goes, a bird in the hand is worth two in the bush. We have the bill that is before us. The minister is right to point out that the stage 1 report said that members would have preferred a more comprehensive bill, but that was not to be and we can deal only with what is before us. As the minister has introduced the bill that is before us and the committee has taken evidence on it, it is legitimate to respond to that evidence and lodge these amendments. If the only reason not to support the amendments is that the minister wants to introduce the measures in a comprehensive package at a later stage, I do not think that that is sufficient.

I appreciate the points that the minister made with regard to amendment 172 so I will seek leave to withdraw it, but if the only criticism of amendments 173 and 178 is that there is not a penalty, I have no reason not to move them and will say only that a penalty could be introduced at a later stage. Further, on amendment 178, although the minister might say that the Scottish Government is already publicising the landlord registration system, my concern is that that effort is not going far enough, given the number of landlords who are not registering.

Amendment 172, by agreement, withdrawn.

Amendment 173 moved—[Mary Mulligan].

The Convener: The question is, that amendment 173 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Ferguson, Patricia (Glasgow Maryhill) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Mulligan, Mary (Linlithgow) (Lab)

Against

Doris, Bob (Glasgow) (SNP)
Morgan, Alasdair (South of Scotland) (SNP)
Tolson, Jim (Dunfermline West) (LD)
Wilson, John (Central Scotland) (SNP)

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

Amendment 173 disagreed to.

The Convener: Amendment 167, in the name of Mary Mulligan, is grouped with amendments 168 and 169.

Mary Mulligan: Amendment 167 would provide for every landlord who registers with the relevant local authority to be given a registration number and amendment 168 would place a duty on a landlord to exhibit that number when advertising a property. If the landlord is not registered, he or she will not have a registration number, so it will not be included in the advertisement. It will therefore be clear to reputable advertisers such as letting agents or newspapers such as *The Scotsman* or *The Herald*, which regularly take adverts for private lets, that the landlord is not registered.

Amendment 169 allows for the private rented housing panel to obtain and share the landlord registration number with the relevant local authority.

The measures that I propose are a simple way of raising the awareness of landlord registration and could prove to be extremely effective.

I move amendment 167.

Alex Neil: Mary Mulligan will be glad to hear that I entirely agree with the ethos behind her amendments. However, I cannot support them in this bill as I believe that I can offer the same provision as part of a more effective package of improvements in the Private Rented Housing (Scotland) Bill. I think that such changes to the landlord registration scheme, and the rest of the Private Rented Housing (Scotland) Bill, deserve further parliamentary scrutiny and should be afforded time for stage 1 debate.

The three amendments in the group aim to increase the information about unregistered landlords that is available to local authorities. Amendment 168 covers registration numbers in advertisements. Section 6 of the Private Rented Housing (Scotland) Bill offers a more precise provision, in that it relates to written advertisements by a registered person who owns a house. It takes account of when an applicant for registration advertises a house before they receive a registration number, which is within the law. It exempts notice boards at houses, because those are usually reused. The form that is taken by section 6 also reflects responses to our consultation questions on the proposal.

Similarly, I believe that section 11 of the Private Rented Housing (Scotland) Bill provides a more effective and consultative approach than that which is in amendment 169. Furthermore, amendment 169 would not achieve what it sets out to do since it would require the private rented housing panel to pass on information only about landlords who were already registered. Again, I think that the committee should take a little more time to legislate for the most effective provision.

I therefore invite Mary Mulligan to withdraw amendment 167 and to not move amendments 168 and 169.

Mary Mulligan: I apologise to the committee because this is going to get repetitive. I sincerely believe that we have an obligation to deal with the bill that is in front of us. I accept that the amendments could be improved. I also think that it is open to the minister to suggest improvements at stage 3 rather than delay the proposals by dealing with them in another bill.

The Convener: The question is, that amendment 167 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Ferguson, Patricia (Glasgow Maryhill) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Mulligan, Mary (Linlithgow) (Lab)

Against

Doris, Bob (Glasgow) (SNP)
Morgan, Alasdair (South of Scotland) (SNP)
Tolson, Jim (Dunfermline West) (LD)
Wilson, John (Central Scotland) (SNP)

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

Amendment 167 disagreed to.

The Convener: Amendment 174, in the name of Mary Mulligan, is grouped with amendment 175.

Mary Mulligan: Amendment 174 adds to section 85(2) of the Antisocial Behaviour etc (Scotland) Act 2004 further considerations—sexual offences and firearms offences—that should be taken into account when whether an individual is a fit and proper person to be registered as a landlord is considered. These are clearly serious offences that should be considered. I do not think that the amendment exhausts all the offences that should be considered—I would be happy to consider further representations on the matter.

Amendment 175 allows the local authority to require a criminal record certificate, to ensure that it has all the necessary information when it decides whether an applicant for landlord registration is a fit and proper person.

I move amendment 174.

Alex Neil: Amendments 174 and 175 seek to amend the Antisocial Behaviour etc (Scotland) Act 2004 to add sexual and firearms offences to the fit-and-proper person test and to give local authorities a power to obtain a criminal record certificate.

As with the previous group, I agree with the ethos behind the amendments but cannot support them. I believe that I can offer the same provisions as part of the more effective package of improvements in the Private Rented Housing (Scotland) Bill.

My earlier comments on the Government's approach again apply. The Government has undertaken a thorough consultation on private rented housing issues to give a more robust and comprehensive package of changes to the private rented sector.

The committee may wish to consider whether those and the other proposed changes to the landlord registration scheme would benefit from further parliamentary scrutiny and should be afforded time for stage 1 debate. For example, in the case of amendment 175, I believe that we have been able to draft section 2 of the Private Rented Housing (Scotland) Bill to offer a more precise provision. Section 2 allows local authorities to set time limits for private landlords to comply with the requirement to produce a criminal record certificate and sets out the sanctions for landlords who do not comply. I therefore invite Mary Mulligan to withdraw amendment 174 and not move amendment 175.

The Convener: I call Mary Mulligan to wind up.

Mary Mulligan: I have nothing to add, convener, except to say that I will press amendment 174.

The Convener: The question is, that amendment 174 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Patricia Ferguson (Glasgow Maryhill) (Lab)
Duncan McNeil (Greenock and Inverclyde) (Lab)
Mary Mulligan (Linlithgow) (Lab)

Against

Bob Doris (Glasgow) (SNP)
Alasdair Morgan (South of Scotland) (SNP)
Jim Tolson (Dunfermline West) (LD)
John Wilson (Central Scotland) (SNP)

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

Amendment 174 disagreed to.

Amendment 175 moved—[Mary Mulligan].

The Convener: The question is, that amendment 175 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Patricia Ferguson (Glasgow Maryhill) (Lab)
Duncan McNeil (Greenock and Inverclyde) (Lab)
Mary Mulligan (Linlithgow) (Lab)

Against

Bob Doris (Glasgow) (SNP)
Alasdair Morgan (South of Scotland) (SNP)
Jim Tolson (Dunfermline West) (LD)
John Wilson (Central Scotland) (SNP)

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

Amendment 175 disagreed to.

Sections 133 and 134 agreed to.

After section 134

Amendment 168 moved—[Mary Mulligan].

The Convener: The question is, that amendment 168 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Patricia Ferguson (Glasgow Maryhill) (Lab)
Duncan McNeil (Greenock and Inverclyde) (Lab)
Mary Mulligan (Linlithgow) (Lab)

Against

Bob Doris (Glasgow) (SNP)
Alasdair Morgan (South of Scotland) (SNP)
Jim Tolson (Dunfermline West) (LD)
John Wilson (Central Scotland) (SNP)

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

Amendment 168 disagreed to.

Section 135—Penalty for acting as unregistered landlord etc

The Convener: Amendment 176, in the name of Mary Mulligan, is grouped with amendment 177.

Mary Mulligan: Amendment 176 seeks to allow the courts to disqualify a person in breach of registration for a period of up to five years. A similar provision exists in legislation for a person in breach of HMO regulations. The amendment includes an appeal procedure and an application for any change in circumstances.

Amendment 177 seeks to allow local authorities to check the registration of landlords in their area at least once every 12 months, to ensure that registers are as up to date and relevant as possible using all means, including cross-checking

council tax records and the land register. The measure will be a further method of making registration worth while for the responsible majority and will impress on all relevant parties that we are serious about enforcing registration.

I move amendment 176.

Alex Neil: Again, I cannot support the amendments as I believe that the Private Rented Housing (Scotland) Bill offers a more effective and technically correct route that was reached after consultation and extensive consideration of stakeholders' views.

All the arguments that I set out in relation to the other private sector amendments stand. I believe that the Private Rented Housing (Scotland) Bill is the best way of achieving our shared objectives; indeed, the approach set out in section 8 of that bill is more effective than that in amendment 176, as it requires the court to notify local authorities that a landlord has been disqualified.

Amendment 177 seeks to place a duty on local authorities to carry out an annual programme of enforcement. As with the previously debated amendment 178, I see no need to include this amendment in the bill as the activity is already carried out. In fact, the amendment may not help matters as the programme of enforcement action that it describes raises a number of concerns about costs and practicalities. We are working with local authorities to replicate good practice in landlord registration enforcement, we are carrying out a review of the system, and the Private Rented Housing (Scotland) Bill provides a range of powers to help authorities carry out enforcement duties, including putting guidance to them on a statutory footing.

For those reasons, I cannot support the amendments and invite Mary Mulligan to withdraw amendment 176 and not to move amendment 177.

Mary Mulligan: I acknowledge the minister's point about whether enforcement actions need to be laid down in legislation rather than set out in guidance. As with moves to advertise the need for landlords to register, annual reviews have clearly not been working well in some local authority areas, although other local authorities have taken on their responsibilities in that regard. For that reason, I think that legislation is now necessary and will therefore press my amendments.

11:00

The Convener: The question is, that amendment 176 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Patricia Ferguson (Glasgow Maryhill) (Lab)
Duncan McNeil (Greenock and Inverclyde) (Lab)
Mary Mulligan (Linlithgow) (Lab)

Against

Bob Doris (Glasgow) (SNP)
Alasdair Morgan (South of Scotland) (SNP)
Jim Tolson (Dunfermline West) (LD)
John Wilson (Central Scotland) (SNP)

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

Amendment 176 disagreed to.

Section 135 agreed to.

After section 135

Amendment 177 moved—[Mary Mulligan].

The Convener: The question is, that amendment 177 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Patricia Ferguson (Glasgow Maryhill) (Lab)
Duncan McNeil (Greenock and Inverclyde) (Lab)
Mary Mulligan (Linlithgow) (Lab)

Against

Bob Doris (Glasgow) (SNP)
Alasdair Morgan (South of Scotland) (SNP)
Jim Tolson (Dunfermline West) (LD)
John Wilson (Central Scotland) (SNP)

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

Amendment 177 disagreed to.

Section 136 agreed to.

After section 136

Amendment 178 moved—[Mary Mulligan].

The Convener: The question is, that amendment 178 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Patricia Ferguson (Glasgow Maryhill) (Lab)
Duncan McNeil (Greenock and Inverclyde) (Lab)
Mary Mulligan (Linlithgow) (Lab)

Against

Bob Doris (Glasgow) (SNP)
Alasdair Morgan (South of Scotland) (SNP)
Jim Tolson (Dunfermline West) (LD)
John Wilson (Central Scotland) (SNP)

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

Amendment 178 disagreed to.

Sections 137 and 138 agreed to.

After section 138

Amendment 169 moved—[Mary Mulligan].

The Convener: The question is, that amendment 169 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Patricia Ferguson (Glasgow Maryhill) (Lab)
Duncan McNeil (Greenock and Inverclyde) (Lab)
Mary Mulligan (Linlithgow) (Lab)

Against

Bob Doris (Glasgow) (SNP)
Alasdair Morgan (South of Scotland) (SNP)
Jim Tolson (Dunfermline West) (LD)
John Wilson (Central Scotland) (SNP)

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

Amendment 169 disagreed to.

Sections 139 to 141 agreed to.

Section 142—Protection of unauthorised tenants

The Convener: Amendment 101, in the name of the minister, is in a group on its own.

Alex Neil: I hope that we can reach consensus on this amendment.

Although the protection of unauthorised tenants in repossession cases was raised as an issue in the repossessions group's report in June 2009, the group was not able to reach a conclusion on what is a complex legal matter. Such tenants are at risk in repossession cases through no fault of their own and I believe that they should be protected to ensure that they have adequate time to find alternative accommodation. As a result, the Scottish Government carried out a consultation last autumn but, as there was no clear consensus on the way forward, we reconvened the repossessions group in March to look at the issue in more detail.

Amendment 101 seeks to take forward the repossessions group's recommendation for strengthening protection for unauthorised tenants in repossession cases and will bring the protection offered through the Tamroui v Clydesdale Bank case on to a statutory footing. The effect of the Tamroui case, the lender, after obtaining a repossession decree against a borrower—in this case, the landlord—must raise further proceedings to evict any assured tenant under the Housing (Scotland) Act 1988, giving the tenant a reasonable amount of time to find alternative accommodation.

As the Tamroui decision was made in the sheriff court, it is not binding on other courts. As I say, the amendment will bring the protection provided by that decision on to a statutory footing, providing clarity to lenders, borrowers and tenants.

I move amendment 101.

Mary Mulligan: Given that the amendment deals with people in private lets, why has the provision that it proposes not been included in the Private Rented Housing (Scotland) Bill? Perhaps the minister is not quite as consistent as he would like us to believe.

Alex Neil: The amendment is the result of discussion. As we know, it is a leftover from the Home Owner and Debtor Protection (Scotland) Act 2010, in which we had hoped to deal with the matter. As we know, consensus could not be reached. We took longer and agreed with the committee to deal with the issue in this bill.

Amendment 101 agreed to.

Section 142, as amended, agreed to.

After section 142

The Convener: Amendment 102, in the name of the minister, is grouped with amendment 166.

Alex Neil: Amendments 102 and 166 seek to strengthen the protection for tenants in the social rented sector who are facing eviction for rent arrears. The report of the repossessions group for home owners, published in June 2009, expressed concern that the eviction of tenants in the social rented sector not be considered less significant than the eviction of home owners. We have consulted widely on a range of options to strengthen protection for tenants and have worked closely with Shelter and other key stakeholders to develop the amendments.

Amendment 102 seeks to respond to the strong support in our evictions consultation for giving landlords discretion to retain tenants in their existing tenancies where agreement has been reached about the payment of rent arrears after a court has granted a decree for eviction. The amendment is intended to provide additional support for tenants who, by virtue of their circumstances, are unable or unaware of the need to take legal advice at an early stage to prevent a decree from being granted.

Setting a latest date by which the eviction decree must be implemented ensures that the decree cannot be held over a tenant's head indefinitely. The amendment will also remove the costs that are currently incurred by the landlord in setting up a new tenancy, where agreement on the payment of rent arrears has been reached at a late stage.

I turn to amendment 166. Pre-action requirements will provide tenants in the social

rented sector who are facing eviction for rent arrears with broadly the same protection as home owners under the Home Owner and Debtor Protection (Scotland) Act 2010. The purpose of pre-action requirements is to ensure that landlords apply consistent good practice before taking tenants to court for eviction for rent arrears, to ensure that eviction is truly a last resort. The committee may wish to note that pre-action requirements will have no bearing on cases in which a landlord is seeking to evict on the grounds of antisocial behaviour only—for example, cases involving convicted drug dealers.

Where an eviction is being sought on the grounds of antisocial behaviour and there are also rent arrears, the landlord will have to comply with the new provisions on rent arrears that the bill introduces. However, as those do no more than match what some landlords already do, they should not be seen as adding substantially to the burden of evicting someone in those circumstances.

Currently around 20,000 social housing cases per year are referred to court for eviction action. In 2008-09, eviction decrees were granted in only 40 per cent of those cases. Eviction was carried out in only 17 per cent of the 2,000 cases that were referred to court. That suggests that more could be done to avoid many cases being taken to court in the first place.

Pre-action requirements will ensure that landlords have taken all necessary steps to avoid evicting a tenant for rent arrears and will provide a robust safeguard for children, young people and families who are facing problems with their tenancy. The amendments have the potential to avoid the impact that eviction action has on tenants, especially households with children.

The committee will be aware that the social and financial costs of eviction are considerable. Shelter estimates that in 2007-08 £11 million was spent on evicting families with children. The figure includes costs to the housing provider, costs to homelessness services and legal costs. The Scottish Council for Single Homeless estimates that the average cost to the local authority for a single person being made homeless through eviction is around £23,000, including the cost of temporary accommodation, uncollected rent and court costs.

The purpose of amendments 102 and 166 is to reduce the variation in the way in which eviction cases are dealt with by landlords and to provide added protection for tenants by ensuring that eviction for rent arrears is a last resort. I ask the committee to support them.

I move amendment 102.

Bob Doris (Glasgow) (SNP): I want to thank you, minister. I am pleased that the pre-action requirements are specifically for dealing with rent arrears and are not linked to antisocial behaviour because there was a concern that that could delay eviction proceedings in difficult cases. I ask that if the amendments are agreed to and the bill is successful at stage 3, some form of monitoring exercise be carried out to see how the arrangements bed in.

I will give an example of what I am talking about. Proposed new section 14A(5), which amendment 166 seeks to insert into the Housing (Scotland) Act 2001, says:

> "The landlord must make reasonable efforts to agree with the tenant a reasonable plan for future payments to the landlord".

It goes into a variety of things that plans should include proposals to address. There could be a situation in which a landlord, at the same time as going through that process, was moving to evict the person for antisocial reasons. The two processes could run in tandem, and I would not like to think that an antisocial tenant would be able to hide behind the pre-action requirements on rent in order to avoid eviction. I am confident and hopeful that that will not be the case, but I would like reassurance that a monitoring exercise will take place once the bill has been passed, just to ensure that the proposal has no unintended consequences.

Alex Neil: I reassure Bob Doris that we have drafted the provisions extremely carefully to ensure that people who are being convicted for antisocial behaviour cannot hide behind the pre-action protocol for rent arrears.

Amendment 102 agreed to.

Amendments 103 and 166 moved—[Alex Neil]—and agreed to.

Before section 143

The Convener: Amendment 170, in the name of Mary Mulligan, is in a group on its own.

Mary Mulligan: Amendment 170 would allow social landlords to consider a local connection when they allocate tenancies. The Parliament has good reason to be proud of the housing legislation that it has passed since 1999. Its homelessness legislation, in particular, has been groundbreaking and internationally recognised.

However, we have all heard—whether from local authorities, housing associations or tenants—the local concerns that the focus on homeless applicants has left others feeling ignored. Their housing needs have not been addressed. There have been complaints from social landlords that they are powerless to

respond to tenants in that situation because the regulator would come down heavily if they did not fulfil their duties in regard to homeless applicants.

Amendment 170 would give social landlords the backing that they need to allow them to consider local connection alongside categories such as overcrowding and poor housing condition. It includes reference to a period of three years; I must be honest with the committee and admit that that is a fairly arbitrary figure. My intention was merely to ensure that a local connection provision would not be abused. If members or the minister wanted to suggest an alternative period for which they could give a reason, I would be happy to consider it.

The answer to rising demand for social rented housing is to build more houses, but that takes time and until all the demand is satisfied, the allocation system will be crucial to addressing housing need. My amendment merely seeks to redress the balance.

I move amendment 170.

Alasdair Morgan: I could have raised this point by way of an intervention, but perhaps Mary Mulligan will address it in her summing up. Although amendment 170 goes into great detail to define what "local connection" means and what "relative" means, it strikes me that what is crucial is the definition of "area", because that could mean different things to different people, including different social landlords. How will we address that issue?

11:15

Jim Tolson: It seems to me that under existing law it is legitimate for landlords to consider the time for which someone has been in housing need. For example, where there are two applications with equal weighting but one applicant has been in housing need for longer than the other, it is acceptable to recognise that in deciding which should take priority. The effect of amendment 170 would be to place a duty on landlords to consider local considerations on their own and give them an equal weighting to serious housing need factors such as homelessness and overcrowding. I thought that in recent years we had by and large moved away from a system of looking at a timescale and that we looked at need—those most in need come first for the limited number of houses that are available. I am afraid that, unfortunately, I cannot support Mary Mulligan's amendment 170, because I believe that it would take us in the wrong direction. I note that Shelter Scotland and the Chartered Institute of Housing in Scotland do not agree with it either.

Alex Neil: I understand and have sympathy with the intentions behind amendment 170 and I understand the importance of considering the needs of local people when allocating social housing. I am concerned, however, about the impact that the amendment would have on landlords' ability to meet the 2012 homelessness target—a target that is shared by all parties in the Parliament.

Current legislation provides for a needs-based approach to housing allocation that is designed to ensure that the most vulnerable members of society are protected. Amendment 170 would require landlords to give preference to local people even where they have no other priority-based housing need.

Landlords already have discretion to take local connection into account when allocating houses. That is right and proper. For example, Moray Council awards rural connection points to people with a local connection who want to remain in specific towns or villages in their area. That example is included in the Scottish Government's social housing allocations guide, which is currently out for consultation. The guide aims to clarify the flexibility available to landlords in allocating social housing.

I would not want to see that discretion replaced with a legal requirement that, in effect, gives local connection the same weight as housing need, as Jim Tolson said. Indeed, if Mary Mulligan's amendment 170 was accepted in its current form, subsection (2)(1A)(c) of the section that it would insert could give priority to people whose relatives have been in an area for a matter of days.

Any changes to reasonable preference categories would need to be considered fully as part of a wider debate with tenants and landlords so that we fully understand the implications, given the already significant demand for housing. I do not believe that it is appropriate to change those categories through a stage 2 amendment that has not been informed by such a debate. As part of the allocations policy review, we are already committed to reviewing the reasonable preference categories and we are happy to work with Mary Mulligan in doing that.

I invite Mary Mulligan to withdraw amendment 170.

Mary Mulligan: I will start by answering Alasdair Morgan's question. I deliberately did not define what is meant by "area" in amendment 170, because I recognise that there might be differences between areas. However, if Alasdair Morgan thinks that it is better to define it, I will take that on board.

I am glad that Jim Tolson has read the briefing from CIHS, although he seemed to argue against his own reasoning in saying that although there is an ability to take waiting time into account, there

should not be. However, I appreciate the sentiments that he expressed.

I was pleased to hear the minister say that there is already discretion to take account of local connection. I suppose that my concern is that that discretion does not seem to be recognised by all social landlords when they are carrying out their duties. It is important to have the minister reiterate that that discretion exists.

I am aware that the minister is currently undertaking an allocations policy review, which I welcome. It is probably preferable to have that wider review of the allocations policy, rather than focus on one specific element of it. Given the minister's response, I seek the committee's permission to withdraw amendment 170.

Amendment 170, by agreement, withdrawn.

Section 143 agreed to.

After section 143

The Convener: Amendment 171, in the name of Jim Tolson, is in a group on its own.

Jim Tolson: Amendment 171 is a redrafted version of amendment 145, which was previously before the committee but which we did not get round to last week due to timescale issues.

With more than 200,000 people on Scotland's social housing waiting list, one of the biggest and most cost-effective methods of expanding the available stock is to allow the easy identification of information on vacant houses. That information is available on the council tax register. Sharing that information with the housing department will allow many of the 50,000 or so empty homes in Scotland to be targeted for rented homes.

Councils in England and Wales already have an explicit provision on the matter, as a result of which empty homes officers in England and Wales can identify empty homes and help to bring them back into use using council tax data. There is no such provision in Scotland. I do not often freely admit that legislation in England is somewhat better than legislation in Scotland, but in this area we need to do a catch-up to tidy things up. The Liberal Democrats believe that the amendment will greatly strengthen the position and help with both the general waiting list and housing applications from the homeless.

I move amendment 171.

Alex Neil: I thank Jim Tolson for moving his amendment. As he said, it gives local authorities the power to use information from their council tax records to contact owners of vacant dwellings with the aim of bringing them back into use.

One of the key objectives of the Scottish Government and Convention of Scottish Local Authorities 2012 steering group on homelessness is to increase access to existing housing stock in both the private and social rented sectors. Although there is no reliable estimate of how effective the power will prove to be, it might well give local authorities a useful tool to enable them to identify vacant dwellings that can be returned to the letting pool.

The prevention and alleviation of homelessness remains a key priority for the Scottish Government and we are keen to assist our local authority partners in their efforts to address homelessness wherever we can. Accordingly, I welcome amendment 171 and urge the committee to support it.

Jim Tolson: I welcome the minister's comments and acknowledge the assistance of Shelter Scotland.

Amendment 171 agreed to.

The Convener: Amendment 179, in the name of Mary Mulligan, is in a group on its own.

Mary Mulligan: Amendment 179 places a duty on private landlords to provide a tenancy information pack at the beginning of a tenancy to ensure that, from the start, the rights and responsibilities of the tenant and the landlord are clearly laid out. In that way, there can be no surprises and no exploitation of one party by the other.

I move amendment 179.

Alex Neil: Amendment 179 seeks to amend the Housing (Scotland) Act 1988 to place a duty on private landlords to provide prescribed information to tenants. Again, I believe that the Private Rented Housing (Scotland) Bill offers a better version of what the amendment is trying to achieve, particularly as there are problems with its drafting. Section 29 of the Private Rented Housing (Scotland) Bill offers a greater level of detail than Mary Mulligan's amendment 179 and describes more effectively the documents that may be provided, the time limits for providing them, and how joint landlords will comply.

Furthermore, amendment 179 goes too far in the arrangements that it covers. It includes not just assured tenancies but every lease and occupancy arrangement, no matter the duration. For example, it would include hostels for the homeless and halls of residence. I do not think that it would be appropriate to include such arrangements, and the committee may want to take a little longer to consider the implications of doing so. I therefore invite Mary Mulligan to seek to withdraw amendment 179.

Mary Mulligan: I look forward to the Private Rented Housing (Scotland) Bill coming before the committee. It has a lot to live up to, given what the minister has said this morning. I will press amendment 179.

The Convener: The question is, that amendment 179 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Ferguson, Patricia (Glasgow Maryhill) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Mulligan, Mary (Linlithgow) (Lab)

Against

Doris, Bob (Glasgow) (SNP)
Morgan, Alasdair (South of Scotland) (SNP)
Tolson, Jim (Dunfermline West) (LD)
Wilson, John (Central Scotland) (SNP)

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

Amendment 179 disagreed to.

The Convener: Amendment 180, in the name of Mary Mulligan, is in a group on its own.

Mary Mulligan: Amendment 180 seeks to ensure that all those people who are homeless or threatened with homelessness and whom the local authority believes need housing support will have their needs fully assessed and housing support services provided.

The amendment seeks to ensure that applicants are provided with the support that they need, and the assessment will be undertaken for all homelessness applicants who are deemed to be homeless or potentially homeless, but only when the local authority has reason to believe that the applicant may be in need of housing support. In practice, we expect local authorities to undertake an initial light-touch assessment of support needs as part of the homelessness assessment that applies to all homeless people anyway. That is in line with what the official code of guidance on homelessness recommends already.

Only households that appear from the homelessness assessment to be in need of housing support services would require a full assessment of housing support needs. The duty would apply to all homeless or potentially homeless people, including those who are deemed not to be in priority need, as the local authority still has a duty to provide assistance and temporary accommodation to them; those who are deemed to be intentionally homeless, in respect of whom the local authority has the same duty and responsibility; and those who are potentially being referred to another authority, as the first authority to take the application retains a duty to the applicant until any referral is agreed.

Amendment 180 also imposes a duty to provide housing support services when an assessment has concluded that they are needed. That duty would apply similarly to those who are assessed as not being in priority need or intentionally homeless. In the case of applicants who are being referred to another authority, the first authority would retain the duty to provide housing support, if needed, until any referral took place. The duty would then be taken on by the receiving authority.

I will leave my comments at that. I know that concerns have been raised by others, including COSLA, in relation to my amendment and I am happy to respond to any concerns that committee members have about that.

I move amendment 180.

Jim Tolson: My point is on the need for a cost benefit analysis. I believe that many local authorities and other providers provide that support to people who are homeless or in other situations. The support is crucial, in many cases, to their securing and maintaining a tenancy in the long term, and I am sympathetic to our ensuring that that happens elsewhere. However, can Mary Mulligan give the committee any idea of the costs that may be involved? I worry that those would impact significantly on local authorities' financial position.

Alex Neil: I agree with the intentions behind the amendment, although I have concerns that it may divert resources from other vulnerable groups with equally compelling housing support needs, such as older people and people with disabilities. If the amendment is agreed to, that issue will have to be addressed carefully at the point of implementation.

There is unanimous agreement among stakeholders about the importance of good housing support. It is a key component in preventing homelessness and in meeting the 2012 target. I have discussed the proposal with stakeholders in my housing bill sounding board, and there was no consensus on whether a legislative route is the best way forward. Similarly, there was no consensus in the 2012 steering group about whether the legislative route is the best way forward.

11:30

I believe that the best outcomes for homeless households will be achieved if we concentrate our efforts to ensure that all parties are working together to improve the delivery of good quality housing support services and to identify and fill gaps in current provision. To that end, the Scottish Government is actively working with stakeholders,

primarily through the 2012 steering group, to ensure that that happens. We are firmly committed to improving housing support services, where required, through meaningful partnership working.

Although amendment 180 does not carry broad consensus, it is sufficiently flexible for me to be content to support it. However, I will consult widely about its implementation if the committee and Parliament accept it. Jim Tolson has also raised the valid issue of cost.

Mary Mulligan: I thank the member and the minister for their comments.

Research has been carried out in relation to the cost benefit analysis. Housing support is seen as being cost effective, and overall assessment of support for homeless households in England concluded that the total savings were more than 50 per cent greater than the total costs.

It should not cost so much as to be prohibitive. In its stage 1 evidence, Shelter estimated the total maximum cost of providing housing support to all homeless households at up to £40 million. However, the additional cost will be much less than that because many of those households are already receiving that support, so we are probably talking about 25 per cent of the Shelter figure, which is approximately £10 million. That should also be taken in the context of making a 50 per cent saving. The cost benefit analysis shows that the amendment would mean a financial benefit as well as helping with the circumstances of those homeless people.

That is really the point of amendment 180. We are trying to ensure that people who are homeless, or are threatened with homelessness, are given the necessary support to ensure that they do not get caught up in the revolving door of representation and the trauma that that causes to individuals and families alike. The minister's recognition of the proposal as being a way forward is helpful, and I welcome his support. I would be keen to take on board anything that the minister can do to improve the amendment.

Amendment 180 agreed to.

The Convener: Amendment 181, in the name of Patricia Ferguson, is in a group on its own.

Patricia Ferguson (Glasgow Maryhill) (Lab): At the moment, many of those who take up tenancies with a social landlord find themselves automatically in arrears because their landlord asks for their rental payments to be made in advance while their housing benefit, which many people who apply for tenancies in those circumstances are on, is paid in arrears. So, from the beginning of their tenancy, and through no fault of their own, they are automatically in arrears. That is not a sensible position to put people in when we are trying to develop a culture of rental payments. It also inflates the overall level of arrears in our official statistics.

I am aware that the minister considered the issue in response to earlier communication with the committee, and that the social rented sector takes the view that it would be inconvenient and costly to make a change. I sympathise with the views of the housing associations and other landlords, and I can understand why it would be costly and inconvenient. However, we also have a responsibility to consider the needs and situations of the individuals that we are talking about. I would be particularly interested to hear whether the minister can indicate whether there is any on-going dialogue about the issue and other connected issues in the light of the comments made to him by the committee at stage 1.

I move amendment 181.

Alex Neil: Patricia Ferguson has identified a genuine problem that flows from the way in which housing benefit is paid. However, we do not believe that amendment 181 is the way to address that problem.

We have consulted the Chartered Institute of Housing in Scotland, the Scottish Federation of Housing Associations and COSLA on the possibility of the Government's introducing a provision on the lines of amendment 181. The Scottish Federation of Housing Associations and the Chartered Institute of Housing in Scotland in particular expressed concerns about the impact that such a requirement would have on the cash flow of many housing associations. They feared that such a provision would have a significant impact on the ability of associations to deliver services and maintain properties, which would, in turn, have an adverse impact on tenants. I believe that those concerns are well founded and relevant to the amendment. In particular, I am concerned that the amendment would impose a restriction on landlords that would not be in their interests or the interests of their tenants.

At present, there is nothing in legislation that prevents landlords from seeking payment of rent in arrears if they consider that to be appropriate. In some cases, it will be in the interests of both the tenant and the landlord to have rent paid in advance, whereas in other cases, it will be better to permit payment in arrears. That is useful flexibility that allows landlords to respond to individual tenants' circumstances, and we should retain that flexibility in the interests of tenants and landlords.

I also draw attention to Government amendment 166, which has already been agreed to. That amendment introduces pre-action requirements for rent arrears eviction cases. Furthermore,

amendment 102 gives landlords discretion to allow tenants to keep their existing tenancy even after a decree for eviction on the ground of rent arrears. That will strengthen protection for tenants who may be facing possible eviction for rent arrears, including those who have made a claim for housing benefit. In short, those amendments introduce further protections for tenants with rent arrears who may be facing eviction.

In view of that and the problems that amendment 181 would cause for tenants and landlords, I invite Patricia Ferguson to seek to withdraw it. I assure members that I will again raise the specific issue in our on-going discussions about housing benefit and reform with the Department for Work and Pensions, as the source of the problem is the way in which housing benefit is paid. I undertake to raise the matter again officially with United Kingdom ministers and to report back to the committee.

Patricia Ferguson: I am grateful to the minister for his remarks. It is interesting that he said that it is sometimes in the interests of the tenant and the landlord that payments should be made in the way that they are. I can think of few circumstances in which having to pay rent in advance would be to the tenant's benefit, particularly for tenants who are on housing benefit. However, the minister is correct to say that amendments 102 and 166, which we have agreed to, will give additional protection. Given that he has given us an assurance about future discussions on the payment of housing benefit more generally, I am happy to seek to withdraw amendment 181. Obviously, however, we will watch developments with great interest.

Amendment 181, by agreement, withdrawn.

Sections 144 and 145 agreed to.

Section 146—Orders

The Convener: Amendment 104, in the name of the minister, is in a group on its own.

Alex Neil: Both the Subordinate Legislation Committee and the Local Government and Communities Committee have expressed concerns about the extent of the order-making power in section 146 of the bill, as it applies to commencement orders made under section 151. Amendment 104 addresses those concerns by restricting the types of provision that can be made as part of a section 151 commencement order to less significant transitional, transitory or savings provisions. That strikes a fair balance in the bill regarding the level of parliamentary scrutiny for ancillary powers. We will, of course, inform the Subordinate Legislation Committee if the change is made so that it can report to the Parliament before stage 3.

I move amendment 104.

Amendment 104 agreed to.

Amendment 105 moved—[Alex Neil]—and agreed to.

Section 146, as amended, agreed to.

Section 147 agreed to.

Schedule 2—Modifications of enactments

Amendments 106, 146 and 107 to 111 moved—[Alex Neil]—and agreed to.

The Convener: Amendment 112, in the minister's name, is in a group on its own.

Alex Neil: The Public Services Reform (Scotland) Act 2010 was passed after the Housing (Scotland) Bill was introduced to Parliament. The bill gives the Scottish Housing Regulator the remit to monitor, assess and report on the performance of local authority landlords and local authority homelessness services, as well as registered social landlords. The 2010 act streamlines scrutiny by requiring regulators to work together and to share information. It also promotes user involvement in scrutiny.

Amendment 112 places duties on the housing regulator to undertake joint inspections with other appropriate scrutiny bodies of children's services or other services that ministers can determine at their request; to co-operate with other scrutiny bodies; and to involve users in the exercise of its functions. Those duties apply to all other scrutiny bodies that have an interest in services that local authorities provide and it is right that they should also apply to the Scottish Housing Regulator.

I move amendment 112.

Amendment 112 agreed to.

Schedule 2, as amended, agreed to.

Section 148 agreed to.

Section 149—Connected bodies

Amendments 147 to 152 and 113 moved—[Alex Neil]—and agreed to.

Section 149, as amended, agreed to.

Section 150—Interpretation

Amendments 114 to 121 moved—[Alex Neil]—and agreed to.

Section 150, as amended, agreed to.

Section 151—Commencement

The Convener: Amendment 165 is in the name of Patrick Harvie, who is not here. Does any other member wish to move the amendment?

Jim Tolson: In Patrick Harvie's absence, I move amendment 165.

The Convener: The question is, that amendment 165 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

Against

Doris, Bob (Glasgow) (SNP)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Morgan, Alasdair (South of Scotland) (SNP)
Mulligan, Mary (Linlithgow) (Lab)
Wilson, John (Central Scotland) (SNP)

Abstentions

Tolson, Jim (Dunfermline West) (LD)

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

Amendment 165 disagreed to.

Section 151 agreed to.

Section 152 agreed to.

Long title agreed to.

The Convener: That ends stage 2 consideration of the bill. Thank you, minister.

As previously agreed, we will take agenda items 5 and 6 in private.

11:45

Meeting continued in private until 12:18.

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