

COMMUNITIES COMMITTEE

Wednesday 1 December 2004

Session 2

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COMMUNITIES COMMITTEE

29th Meeting 2004, Session 2

CONVENER

*Karen Whitefield (Airdrie and Shotts) (Lab)

DEPUTY CONVENER

*Donald Gorrie (Central Scotland) (LD)

COMMITTEE MEMBERS

*Scott Barrie (Dunfermline West) (Lab)
*Cathie Craigie (Cumbernauld and Kilsyth) (Lab)
*Linda Fabiani (Central Scotland) (SNP)
*Christine Grahame (South of Scotland) (SNP)
*Patrick Harvie (Glasgow) (Green)
*Mr John Home Robertson (East Lothian) (Lab)
*Mary Scanlon (Highlands and Islands) (Con)

COMMITTEE SUBSTITUTES

Shiona Baird (North East Scotland) (Green)
Christine May (Central Fife) (Lab)
Mike Rumbles (West Aberdeenshire and Kincardine) (LD)
John Scott (Ayr) (Con)
Ms Sandra White (Glasgow) (SNP)

*attended

THE FOLLOWING ALSO ATTENDED:

Maureen Macmillan (Highlands and Islands) (Lab)

THE FOLLOWING GAVE EVIDENCE:

Lesley Baird (Tenant Participation Advisory Service Scotland)
Malcolm Chisholm (Minister for Communities)
Laura Dolan (Scottish Executive Development Department)
Councillor Frank Ellis (Convention of Scottish Local Authorities)
Dr Pippa Goldschmidt (Scottish Executive Development Department)
Grainia Long (Shelter Scotland)
Mike Neilson (Scottish Executive Development Department)
Liz Nicholson (Shelter Scotland)
Mark Turley (Convention of Scottish Local Authorities)

CLERK TO THE COMMITTEE

Steve Farrell

SENIOR ASSISTANT CLERK

Katy Orr

ASSISTANT CLERK

Jenny Goldsmith

LOCATION

Committee Room 2

Scottish Parliament

Communities Committee

Wednesday 1 December 2004

[THE CONVENER opened the meeting at 10:00]

Item in Private

The Convener (Karen Whitefield): Good morning. I welcome committee members and visitors to the Communities Committee's 29th meeting in 2004. I also welcome Maureen Macmillan, who has an interest in item 2 on our agenda. I will ask her to indicate her interest when we get to that item.

Agenda item 1 is consideration of whether to take item 3—consideration of our approach to the Charities and Trustee Investment (Scotland) Bill—in private. Do any members want to comment, or are we agreed?

Christine Grahame (South of Scotland) (SNP): I am ambivalent about that, because there is nothing about item 3 that means that it particularly needs to be held in private. However, I am content to go with the majority on the committee. It is neither here nor there; it is pretty neutral.

The Convener: The committee should always attempt to hold its discussions in public whenever possible. The reason for considering item 3 in private is that we will talk about the merits of taking oral evidence from particular witnesses and some potential witnesses whose written evidence we might consider to be sufficient could take our deliberations as a slight when none was intended. That is why we have decided to consider such matters in private in the past. However, we need to be vigilant about taking as much of our evidence and holding as many of our discussions as possible in public.

Christine Grahame: It is helpful to put that on the record.

The Convener: Thank you. Does the committee agree to take item 3 in private?

Members indicated agreement.

Subordinate Legislation

Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2004 (SSI 2004/489)

10:02

The Convener: Agenda item 2 is consideration of a Scottish statutory instrument—the Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2004—under the negative procedure. Members have been provided with copies of the order and the accompanying documentation.

I welcome to the committee our first panel of witnesses. Councillor Frank Ellis of Angus Council is the homelessness spokesperson for the Convention of Scottish Local Authorities, and Mark Turley is the director of housing for the City of Edinburgh Council and is also representing COSLA. We look forward to hearing their views on the order. I thank the witnesses for their helpful written submission, which will, I am sure, be the subject of much questioning.

Does COSLA agree with the principle of the order, namely that unsuitable temporary accommodation should be used only in exceptional circumstances for households with dependent children and pregnant women?

Councillor Frank Ellis (Convention of Scottish Local Authorities): We say an unequivocal yes to that. We have no problem at all with the principle. The process that we are going through is correct; our issue is with the timing.

The Convener: From your written submission, the timing seems to be central to the issue. The previous Minister for Communities announced in December last year that the Executive intended to introduce the order and have it take effect from this December. Why are we faced with the difficulty of local authorities expressing concerns about the timescale for implementation when the ministerial intention was made clear 12 months ago?

Councillor Ellis: There was a commitment from the minister; I have been informed that it was given through the tabloid press in response to comments from Shelter Scotland. Margaret Curran gave a commitment to have no families in bed and breakfast by Christmas 2004. That was a very amicable way to go forward. However, there was an issue of how we would go about that and the process that that would involve. We, in COSLA, like other interested bodies, thought that we would get involved in a proper dialogue on the issues. In some of the submissions that the committee has received for today's meeting, others have alleged that there has been dialogue. I can assure you,

minister, that that is not the case. The principle of the matter under discussion was agreed, but nothing was explained in any detail.

The Convener: Have there been on-going discussions between COSLA and the Executive over the past year on the issue, or have discussions taken place only in the last month?

Councillor Ellis: There have been only tentative discussions on the matter. We had a face-to-face discussion with the former minister, Margaret Curran, on the issue. At the time, the discussion was about the fact that the properties were not quite correct, if you understand my meaning. There was no mention of 6 December. That is a matter of great concern to us.

Members will be aware that my colleague, Mark Turley, has worked very hard for several years on the homelessness task force. He and COSLA have done sterling work. Without our involvement, I do not think that this very good bit of the homelessness strategy would have been a success. We felt that there was time to get into proper dialogue on the order, but there has been none.

The Convener: So there has been no dialogue?

Mark Turley (Convention of Scottish Local Authorities): Almost exactly a year ago at a meeting of the homelessness monitoring group, a senior civil servant criticised Shelter for what he perceived was a deal that had been done outwith the framework of the homelessness task force. Some heated words were exchanged at that meeting. That was the first I had heard that such a commitment had been given, because I do not read the tabloids. There was then no discussion of the matter at any homelessness monitoring group meeting until the end of October 2004. I am a COSLA representative on the body that is supposed to be advising the Executive on the implementation of its homelessness policy. There has been no discussion whatever of the subject within the homelessness monitoring group.

At the end of October we were given a paper: it was not a draft of the order, but it set out the Scottish Executive's thinking on how the order might look. We commented on that, and I am glad to say that most of our comments were taken on board. When we saw a draft of the order, which was not until November, we saw on the face of the order the date 6 December 2004. At that point we made it absolutely clear to the Executive that we thought that the date was totally unreasonable. I think that, in its own submission, the Executive acknowledges that some councils simply cannot comply with that.

The Convener: It is evident from the comments you have made this morning that you were not advised formally that the minister had made this

commitment, but that you found out about it informally. Was there any reason why COSLA, at the point of finding out that the commitment had been made, did not pursue the matter with the minister? I accept that there should have been an obligation on the Executive to pursue the matter with COSLA, but was there any reason why COSLA did not in turn raise its concerns with the minister or with the Executive, knowing that the commitment had been given?

Mark Turley: There was one meeting at which Councillor Ellis explained to the former minister COSLA's reservations about the way in which this business was being handled. Informally, I have raised the subject ad nauseam with my civil service counterparts. To be honest, COSLA's initial reaction was that we had a homelessness agenda, which is called the homelessness task force report. We did not understand the need, all of a sudden, to step outwith that agenda and legislate separately on one issue.

The task force explicitly considered bed-and-breakfast accommodation for families and decided that it would not set a national deadline; it recognised that councils would adapt at different rates, because the problem varies in council areas. In fact, councils have made significant progress, despite the increasing prevalence of homelessness. Fewer families are in bed and breakfasts, although homelessness is worsening. Our initial reaction was to ask why we need the order at all.

To be fair, COSLA has tried to be constructive. Instead of arguing about whether the order should be made, we have tried to make it workable. It is just about workable, except for the implementation date. Even the most willing council that has families in bed and breakfasts now cannot stop that by Christmas. No matter how willing we are—I believe that councils are willing and I will explain why, if the committee wishes—it is not practically possible to shift the situation between now and Christmas.

Patrick Harvie (Glasgow) (Green): I want to be clear about the points that you make. Did you say that COSLA first became aware of the 6 December date in November?

Mark Turley: Yes.

Patrick Harvie: If 6 December had been mentioned in the January consultation, would the intervening period have been long enough for councils to prepare for implementation?

Mark Turley: The consultation documentation referred to an implementation date of October, but that slipped and nothing was heard. The homelessness monitoring group did not even discuss that until late October.

Patrick Harvie: Is that despite the fact that the consultation was out?

Mark Turley: Yes. If councils had seen the order in January and had been clear that they were required to comply with it by December, that would have been extremely difficult—the requirement will always be difficult—but they could have been prepared. That is why I say that if we are given a few months, councils will be prepared.

Patrick Harvie: I am still a bit confused. If councils were aware of a possible implementation date of October, why is a later implementation date more difficult to achieve?

Mark Turley: A good many councils responded that the implementation date would be extremely difficult to achieve. Several councils asked whether extra resources would be made available and in what circumstances families would be allowed to stay in bed and breakfasts. The original thinking did not take account of situations in which, for example, no other temporary accommodation is available. Latterly, the order has been changed significantly, but the consultation earlier in the year did not answer many of those questions. Councils responded to the Executive and nothing more was heard until the end of October.

Councils are under tremendous pressure. We do not seek more duties. We are struggling to keep the lid on a difficult situation. The prevalence of homelessness is increasing. Every day, more people come through our doors. An increasing proportion of them have a right to temporary accommodation, but temporary accommodation is chocker; that is why people are put in B and Bs. Council staff are firefighting. Perhaps if they had less to do, they could have prepared in anticipation of what the Executive might or might not do, but they do not have the time.

As the COSLA representative on the homelessness monitoring group, I apologise if I have made a mistake and handled the matter badly. The issue is what we do in a partnership when things go wrong. I like to think that we would take a step back and work out the problem. If we had not done that in the past, we would not have had a task force report. It is sad that we cannot do that now.

Councillor Ellis: To add to that, minister, before you move on—

The Convener: I clarify that I am not a minister; I am just the committee's convener, but I thank you for your confidence in me. As yet, the First Minister does not have the same confidence.

Councillor Ellis: I have just had a premonition.

I echo what Mark Turley says: councils use bed-and-breakfast accommodation as a last resort. I want members to be aware that putting homeless

people into bed and breakfasts is an expensive option for councils. There is a balance to be struck. If a homeless person is dispersed from a rural community into a big urban area, away from support and the education that is required for their child, that could be more onerous to them. However, until the matter has been thought out properly, bed-and-breakfast accommodation is one of the options.

If we are to say that we will not use any more bed and breakfasts, we must invest to cover all the areas of concern. We have six days in which to do that or councils will be under legal challenge, and that creates great difficulties for us. Local authorities are endeavouring to resolve the matter, as they have stated in their responses, and they have been trying to do that of their own accord, despite the fact that they were unaware of any date by which they had to implement the order. They want to do that, but they have to do it through their housing strategies and homelessness strategies, which are given to the minister.

10:15

Christine Grahame: I want to try to follow the chronology of events. Councillor Ellis said that there was only one face-to-face meeting with the minister on the issue. Is that correct?

Councillor Ellis: When that particular issue was raised, I had a good working relationship with—

Christine Grahame: I just want the dates.

Councillor Ellis: The one date that I—

Christine Grahame: Was it on 26 May 2004? That is the date that is stated in the paper that we received from the Executive.

Councillor Ellis: It could have been.

Christine Grahame: You said that there were no formal meetings with COSLA after that and that you just saw things in the newspapers. Is that right?

Councillor Ellis: I was invited to Bute House for the Christmas thing, but there was nothing regarding the—

Christine Grahame: Mr Turley—I think—said that latterly you saw the redrafted order, but what was the first order that you saw? Did it not include the implementation date of 6 December?

Mark Turley: The homelessness monitoring group was given not an order but a paper that set out the likely content of the order, and there was a discussion about its substance. The fact that the implementation date was 6 December became apparent only when we saw the order, in which the date is printed.

Christine Grahame: I presume that at that time you were given just the background to the order, so you were not talking about an implementation date. Was that date not raised in the conversation? Surely it must have been, because it is fairly important.

Mark Turley: One of the problems is that the language has been quite loose. At various times, people have said that the minister is committed to legislating before Christmas, to implementing before Christmas, or to there being no homeless families in bed-and-breakfast accommodation by Christmas. I still do not know which, if any, of those three statements is true.

Christine Grahame: Surely there were warnings in the discussions that an implementation date in December was being talked about. All the options that you mentioned are for things to take place before Christmas, so we are talking about only three weeks.

Mark Turley: At the end of October, when the paper was offered for consultation, it was clear that the Executive needed to move quickly. The Executive talked about laying the order in Parliament before Christmas. I had not appreciated that that meant that we had to get people out of bed and breakfasts by Christmas—perhaps I should have appreciated that, but it was not apparent to me.

Christine Grahame: There was one other issue—I am trying to think what it was. No, I cannot read my handwriting. However, you have clarified a couple of points for me.

Mary Scanlon (Highlands and Islands) (Con): In your submission, you say:

“good joint working on homelessness has now been blown off course”.

I do not want to go back over what you said, but I hope that lessons have been learned, because no one benefits when we face the situation that we are in today. Your press release of 11 November suggests that

“Councils have explicitly made clear”

that the proposals

“cannot be delivered within existing resources”.

Although you responded generally on that point to the minister—I mean, to the convener—[*Laughter.*]

The Convener: I hope that the First Minister is watching.

Mary Scanlon: You have been adopted now—sorry about that.

Christine Grahame: The convener’s chance of promotion has been blighted for ever. She has been nominated by a Conservative.

Mary Scanlon: You discussed the general point in your response to the convener, but will you outline in more detail your concern about the problems that councils face with implementing the order, as a result of resource limitations?

Are there specific councils that have specific difficulties? Four councils have been mentioned—Highland Council, East Lothian Council, Argyll and Bute Council and East Dunbartonshire Council. Are they the only ones that have problems? Could you give us some more details about the general problems that all councils face?

Mark Turley: The Executive’s figure of four is based on the fact that four councils have said categorically that they cannot comply with the order by that date. Those councils regularly place families in bed-and-breakfast accommodation. The Executive has a longer list of 10 or 11 councils that regularly place significant numbers of families in bed-and-breakfast accommodation; those councils have said that they will have difficulty in complying by that date, but they used less acute language than the four councils that you mentioned.

For example, the City of Edinburgh Council places the second highest number of families in bed-and-breakfast accommodation. I am saying that not because I am proud of it, but because I want to point out that I know at first hand how much work goes in, day in and day out, to keeping people moving from bed-and-breakfast accommodation to other forms of accommodation. I know for a fact that a lot of councils are constantly trying to keep on top of the situation. The figure of four councils is a minimum. I think that the list is longer than that.

Mary Scanlon: How difficult would it be for Edinburgh to comply by that date?

Mark Turley: We have a target of trying to get families out of bed-and-breakfast accommodation within a couple of weeks. Most of the time, we manage to achieve that. Further—and not in response to this order—we have just taken the decision to add another 100 temporary furnished flats to the 500 that we already have. That is because, at the moment, we have 100 households—not all of them are families—in bed-and-breakfast accommodation.

The little diagram in our submission is trying to make the point—I am sorry to be simplistic about this—that councils use bed-and-breakfast accommodation not for the fun of it, but because they have a genuine supply problem. When that supply silts up, councils start using bed-and-breakfast accommodation.

Resources are part of the issue, because councils can do only two things. First, they can create more temporary accommodation in the form

of furnished flats. To do that, they have to identify suitable properties from among the ones that they own, take them out of mainstream letting—which means that they will no longer be available to people on the waiting list—and furnish them. That is done all the time and, as I said, we have about 500 such properties in Edinburgh. However, if the process is done in a rush, people end up being placed in temporary accommodation slap bang in the middle of settled communities. I expect that you have all had experience of that happening in your constituencies and know that it can cause chaos for the community and the homeless family. The use of a property as temporary accommodation and all the issues that go with that have to be handled sensitively, and I do not think that it is realistic to expect councils to do that within a couple of weeks. However, they could do it within a couple of months.

Councils' second option is to change their rehousing and letting policies so that a greater proportion of their lettings go to people who are homeless. The effect of that would be to increase the rate of throughput in all forms of temporary accommodation. That would, theoretically, reduce the pressure to use bed-and-breakfast accommodation. If councils want to change their letting policy, there is a process to go through, which includes a statutory requirement for consultation. Members will know better than me how sensitive that debate can be and what can happen when a council suggests that the percentage of its lettings that go to people who are homeless will have to rise from 25 per cent to 35 per cent. I think that councils should follow that course of action, but they need time to do it in a responsible way.

We are saying that, if the councils are given time, COSLA will do its best to ensure that they comply by April. If the councils do not comply by then, on their own heads be it, frankly. I cannot stand up, as a COSLA representative, and say that this order is good and reasonable and that everything in it must be done by Christmas. That is just nonsense.

Councillor Ellis: On your other point, when I heard about the implementation date, an issue occurred to me that I would have liked to be discussed in relation to consultation on this matter. A homeless person could decline not only the offer of bed-and-breakfast accommodation, but the offer of what would be termed suitable temporary or permanent accommodation. What would a council's position be if that were to happen? That would be a horrendous scenario for a council to be in. That is why I would have liked to go into more detail in the consultation.

The Convener: May I just clarify something? My understanding is that the order allows a local

authority to be under no obligation to place a homeless family in permanent accommodation and to remove the offer of such accommodation if the family expresses a desire to remain in temporary bed-and-breakfast accommodation until a more appropriate property becomes available. When the Homelessness etc (Scotland) Act 2003 was going through Parliament, I was responsible for amending the bill at stage 3 to allow that.

Councillor Ellis: My point is about homeless people who do not want to be in bed and breakfast or in temporary accommodation. In such a scenario, what is the council's position?

Mark Turley: I can answer that, if you wish. The technical answer is that, under the order, a council would not be allowed to force a homeless person to stay in bed and breakfast. The only circumstances in which a council could place a homeless person in bed and breakfast and ignore the 14-day rule would be if no other accommodation was available and the homeless person expressed a wish to stay in bed and breakfast. A council would be able to say to people who declined the offer of suitable temporary accommodation that it had discharged its duty to them.

Mary Scanlon: This is an important point. You are saying that four councils cannot comply, that a further 10 or 11 would have great difficulty in doing so but may be able to comply by April 2005, and that the remaining councils could comply. Is that a fair summary?

Councillor Ellis: That is what we are concerned about, based on the feedback from our colleagues. We are trying to keep them out of court. We think that the date you mentioned is the proper way forward.

Mary Scanlon: But if the 10 or 11 councils who might be able to comply by April cannot do so, can we assume that Highland Council, East Lothian Council, Argyll and Bute Council and East Dunbartonshire Council would be able to comply by then?

Councillor Ellis: We hope that they would be able to do so. However, we must engage with the Executive and Communities Scotland on the issue of funding to ensure that the councils can comply by April. That is why we are asking for that date for the order's commencement.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): COSLA has highlighted the implementation date as the most significant issue and has suggested an implementation date of April. In answer to a previous question, Mark Turley raised the issues of letting policies, consulting tenants and allowing people to participate. Can you say anything else in support of extending the implementation date to April that could explain to

committee members why a four-month extension would make such a difference to COSLA members?

Mark Turley: I honestly believe that the only two practical steps that a council can take to get out of the current situation are the two that I have described. However, a more symbolic point is involved. I do not know whether the committee knows this, but I resigned from the homelessness monitoring group because of the order. I assure the committee that I did not take that step lightly. I was one of the few people who had been on that group since 1999, when it all started.

The homelessness agenda is extremely ambitious. For example, members will know that the 2003 act has the aim, or aspiration, of doing away with priority need by 2012. However, there is a caveat to that. The act says that we will do away with priority need only if it can be demonstrated that councils can cope with the increased demand that that would bring in terms of the supply and quality of houses. All the way through the development of the policy, I stood up countless times in front of colleagues within COSLA and said to them that, although the policy looked scary, they should not panic because it would not happen until we could demonstrate that the conditions were right for delivering it and that people were comfortable with it. Some people said to me, "Which cloud are you living on?" I put my personal credibility on the line and said that I had been a member of the monitoring group for five years, that we were dealing with responsible people and that the Executive and the group would not want councils to feel that they had just been ignored and swept aside. Then the bed and breakfast order came along. I do not understand why it would be so difficult to require the order to be implemented in April rather than now.

I cannot go back to COSLA and say, "Sorry folks, I couldn't deliver a reasonable outcome on that, but you must still trust me on priority need." We met the minister yesterday and I still see no logical reason—apart from the administrative complications—why the implementation date cannot be put back. I cannot believe that there is no answer; the order could be withdrawn and remade with the date changed. There must be an answer. If the minister can treat local government in such a way over bed-and-breakfast accommodation, people in COSLA cannot be confident that they will not face exactly the same situation in 2012, when the minister says, "You have had 10 years to prepare for this. You knew it was coming. Tough luck if you're not ready; it will be implemented anyway." That is why I have resigned. I reassured people that such a situation would never happen, but it is happening.

10:30

Cathie Craigie: I accept what you say, but what difference would four months make? It is suggested that 10 councils are not ready now but could cope, although they might struggle to do so, and that four councils could not cope. Are councils simply resisting the order or could they introduce policy changes and measures in the four-month period to ensure that by the end of April no council could be challenged in court over the order?

Mark Turley: Between now and April it would be just about possible for councils to set up more furnished flats and/or change their letting policies to increase the proportion of homeless people who are housed. Such measures are technically possible and I detect no unwillingness in the four or 11 councils—whatever the number is—to use them. For whatever reason, my and their awareness of the speed at which the order was to be implemented has not been great. If we are at fault, I apologise. However, we are where we are. For councils to have until April to respond would be reasonable, but there is no way they can do so by December.

To be frank, the situation sets a terrible precedent for the future approach to homelessness policy; COSLA takes a serious view of that. After yesterday's meeting, COSLA's view is that the partnership on homelessness is in jeopardy. It is a tough matter and not an easy agenda for councils, as the committee well knows. It is sad, but that specific point is in danger of jeopardising the whole process.

Cathie Craigie: Councils must deliver the policy and work with the legislation that we put in place. Does COSLA think that the Executive has listened too much to campaigning voices, rather than to the voices of the people who have to deliver policy on the ground? That message seems to be coming through.

Mark Turley: We absolutely agree, but we are not falling out over that and will try to make the order work. However, something must be wrong when a minister has reached agreement on such a matter with a voluntary organisation, then afterwards tells COSLA about it. We have done our best to set that to one side and to try to develop a workable order. Indeed, with the exception of the implementation date, which is pretty critical, the order is workable.

Christine Grahame: You said that councils could use two measures, one of which was to change their letting policies, but consultation would be required if councils were to do that. Given that you could see the order coming, why was that matter not in hand? Why did COSLA not consider the situation and consult about letting policies to ensure that, whatever happened, that

change would have been made? How long would such a process take?

Mark Turley: I must disagree with you if you think that it would have been reasonable for councils to consult on an order that they had not seen—the proposed contents of which were still very uncertain—and to change policy on that basis.

Christine Grahame: Can I stop you there? You said that you knew before Christmas that the minister was going to do something—a December date was hovering around, although it was perhaps not 6 December.

Mark Turley: For what?

Christine Grahame: For the bed-and-breakfast accommodation.

Mark Turley: Do you mean for the production of the order, its enactment, its implementation or the achievement of its aims?

Christine Grahame: I just want to test you on the issue. If you thought that requirements were to be put on local authorities and you were in discussions on the matter, would not it have been a precautionary measure to go down the route that the order will impose? I am testing you to find out why that was not done—you may have a sound answer.

Mark Turley: I do not mean to be awkward, but the only black and white information that councils have received on the subject is what the homelessness task force report and the existing legislation say, which is that councils should, where possible, work through their homelessness strategies to reduce the use of bed-and-breakfast accommodation and eventually to eradicate its use for families. I can safely say that all councils have been beavering away at that for 18 months to two years. It was not at all clear what the content of the order or the precise implications of the so-called Christmas deadline would be. We have had plenty of other things to be getting on with without consulting on policies that may or may not be necessary.

Christine Grahame: How long will implementation take? As Cathie Craigie asked, why do you suggest April 2005? Is that how long it will take to implement the measures?

Mark Turley: That is the minimum time that will be required. If more furnished flats are required, we must identify the flats, talk to neighbours, kit out the flats and move people in, which will take at least two to three months. A policy change is a more formal requirement, but if we start now, we could just about get it sorted by April.

Christine Grahame: You say that moving people from bed-and-breakfast accommodation

into other accommodation is a sensitive matter. Does that mean that you will have trouble with the two-week limit on the use of unsuitable accommodation?

Mark Turley: Most councils that responded to the consultation said that 28 days would be a reasonable period. In our formal response, COSLA said that we can live with the two-week limit, but that we would prefer 28 days.

Scott Barrie (Dunfermline West) (Lab): I am sorry to jump about, but I want to go back to where we started and talk about the consultation process. You said that the Scottish Executive carried out a formal consultation in January. The explanatory memorandum with which the Executive provided us yesterday says that 22 of the 32 local authorities responded to the consultation, which means that about a third did not respond. However, of those that responded, the majority were firmly in support of the order. Might it be the case that some of the local authorities that did not respond to the formal consultation are those that now have the greatest difficulties with what is being asked of them? If so, would not it have been better if all local authorities had taken part in the consultation so that we knew the views of all, rather than of just two thirds of them?

Mark Turley: I have my doubts about the reliability of the consultation, partly because although the City of Edinburgh Council responded—I have the response here—it is not included on the list of respondents in the Executive's submission. Some councils responded twice, from social work and housing angles. One lesson that can be learned is that when we are deluged with consultation papers on a wide range of subjects, council responses to the fairly technical consultations are not always signed off at the highest level. If people who manage homelessness services daily are asked whether it would be a good idea if families did not have to go to bed-and-breakfast accommodation, they will say that it is. I am proud of them for saying that and I am glad that they will do so, but they will say it on the assumption that somebody else somewhere will fix the resources that will allow that to happen.

The consultation that took place earlier in the year was not very robust but—to be fair to the Executive—it recently contacted the 32 councils on the issue. The figures in the Executive submission about the four councils and the 10 or 11 councils are based on that survey. We can be at least reasonably confident that a significant number of councils will have problems with the order.

Mary Scanlon: I think that we all have problems with the order as it stands. Given that the order will

apply only to pregnant women and families with dependent children, would it be appropriate in the future to extend it?

Mark Turley: That is what fills us with fear. In the homelessness monitoring group, Shelter and other stakeholders have already begun to say that bed-and-breakfast accommodation is not suitable for a wider range of groups. Why is the order limited to families and pregnant women? Is it right that vulnerable single people—perhaps with mental health problems—are placed in B and Bs?

There are also issues relating to the definition of the accommodation that the order will catch. At the moment, it has been worded deliberately to exclude local authority accommodation and women's refuges, but there are questions about the consistency of that provision. If accommodation is not fit, does it matter whether it is publicly or privately owned? At the moment, the order is cast specifically not to catch women's refuges or local authority accommodation, but it could grow and grow.

During the four years of the task force's work, we explored this issue in detail. We are now revisiting the conclusions that the task force reached and are rewriting them. The task force was absolutely right to say that we should tackle the issue through homelessness strategies. B and B accommodation is only part—although a fairly acute part—of the homelessness problem. We will spend all our time trying to tackle a minuscule aspect of homelessness when a strategic solution to the problem is needed. That is what the task force's recommendations gave us. Now that we have started to tinker with those, there is a risk that what Mary Scanlon described will happen. If B and Bs are regarded as being unfit for pregnant women and families, people will ask whether they are fit for other groups. That will divert our attention from the strategic agenda to a romantic, pre-Christmas tabloid-led agenda.

Patrick Harvie: The point that I intended to ask about has been covered.

Donald Gorrie (Central Scotland) (LD): I want to be clear about the issue of 14 days as against 28 days. If by some magic that does not seem to exist in our ridiculous administrative system we managed to get the order to take effect in three months instead of now, should the order set a limit of 28 days rather than 14?

Mark Turley: No.

Donald Gorrie: One or two of the pieces of paper that we have received from councils majored on the issue of 28 days. Do you think that their concerns could be accommodated by a delay of three months or so?

Mark Turley: Throughout the process, Councillor Ellis and I have tried through COSLA to

hold together a group of councils that have different views on homelessness, as the member knows. All 32 councils will never have exactly the same view on the detail of homelessness policy. The longer that this divisive experience continues, the more difficult it is for Councillor Ellis and I to hold the councils together. If the order had been for implementation in April, it would have gone through COSLA without touching the sides. The problem is that with every day that passes more people are beginning to question the order. They are beginning to doubt the trust and the relationship that existed on the issue. However, if there were a speedy resolution to the difficulty, I am sure that COSLA would do its utmost to ensure that the rest of the order was implemented as drafted.

Maureen Macmillan (Highlands and Islands) (Lab): I ask you to consider the situation that exists in council areas such as the Highlands and Argyll and Bute, where there are very remote areas that need to be covered. You think that the problem could be sorted out by April, but I am not sure that it could. Let us take the example of a family in a remote area of Wester Ross that becomes homeless. There may be no council accommodation in the area, but there may be bed-and-breakfast accommodation. The family may prefer to stay in Wester Ross for much longer than 14 days, until the council is able to find or to build accommodation for them there. Will the legislation cover that eventuality?

Mark Turley: To be fair, it will. The order as drafted will allow people who expressly choose to stay in B and B for reasons such as you describe—rather than move to alternative accommodation that may be many miles away—to stay in temporary accommodation for more than 14 days. The 14-day limit as it is now drafted—not as originally drafted—would allow someone to expressly choose to stay in a place until permanent housing became available.

10:45

Maureen Macmillan: Are local authorities aware of that? I know from the discussions that I had with the Highland Council that it seems to be unclear whether that is the case.

Mark Turley: I am not surprised that people are unclear. That is what happens when legislation is rushed through. There is a communications issue.

Linda Fabiani (Central Scotland) (SNP): I would like to pick up on a few issues. The first relates to Councillor Ellis's comment that councils use bed-and-breakfast accommodation as a last resort. Of course they do now, but that was not always the case. I remember a time when councils used such accommodation for homeless people

as a first resort—that was how they dealt with homelessness. A culture change is required to stop that happening. The culture change has happened somewhat; we now know that it is unacceptable to keep children in bed-and-breakfast accommodation, but I worry that if we keep putting off implementation dates, we are saying that it is not that important that children are not in bed-and-breakfast accommodation.

What we are hearing is sad, because the debate about whether or not such accommodation is acceptable is being overtaken by wrangles between the Scottish Executive and COSLA, which is not healthy for anyone. Given the lead-in and all the publicity about homelessness, I still do not understand why councils cannot comply by December, yet within three months—a very short period—they can be prepared. I am confused about that. If four councils are having problems, would COSLA's members find it acceptable for the minister to grant concessions on the particulars to those four councils, rather than not implement the order until further down the line?

Are councils using registered social landlords properly in terms of the homelessness legislation, and are registered social landlords co-operating properly with councils in terms of the homelessness legislation? I hope that you will tell me that there have been COSLA and Scottish Federation of Housing Association strategies for some time, because everybody in housing has known the potential impact of the legislation as it rolls out. Where are we with that?

My final wee question is, why is it only now that COSLA is kicking up about this?

Mark Turley: On RSLs, in my authority more people came through the door with a statutory right to housing because they were homeless than we had available council lettings. We let 3,200 council houses last year, but 3,800 people came through the door with a statutory right to housing. Even if we had given everybody with the statutory right a house, there would still have been 600 homeless people, and we would not have housed anybody else at all.

We are only just about coping with that situation because RSLs and the private rented sector are taking an increasing share of statutorily homeless people. To an extent, every council is developing much more positive relationships with RSLs, and a lot of RSLs are feeling the kickback from that. They are seeing their rent arrears increase, the number of empty homes increase and their management challenges increase, because they are increasingly housing the same type of people as are housed by councils. We have not achieved a steady state where everyone is doing the right things, but we can demonstrate that councils and RSLs have increasingly worked jointly to try to

solve the problem since the relatively recent legislation came into force.

I have tried to explain the specific actions that councils can take if they wish to comply with the legislation, which I will not go over again. They can be taken in four months, but not in two weeks.

If members feel that councils have been slow to respond to the proposed order, I am also guilty because I am the COSLA representative on the homelessness monitoring group. If anybody should have been aware of the order and prepared for it, I should have. I will not criticise other councils that have not prepared, given that the implications of the order hit me only in October. If I have let people down, I apologise for that, although when I read the Executive's submission to the committee, I did not regard it as a balanced description of the process that we have been through.

The question is, is the order so absolutely critical that it is worth jeopardising the partnership between COSLA and the Executive? A strong partnership would find a way through this problem and would not let the partnership be thrown into jeopardy over one specific item, such as the homelessness order.

I pick up on one question that was asked: should we have anticipated the legislation? The order is not yet legislation; it is currently only laid before Parliament. The homelessness task force recommendations, which we thought were the basis of our agenda, did not include provision for such legislation.

Linda Fabiani: Before you answer my other questions, I point out that there have been campaigns in the past two or three years to end the use of bed-and-breakfast accommodation. That point was raised in amendments to the Housing (Scotland) Bill, for example. There is a general awareness in the housing sector that the use of B and Bs for families with children must stop.

What about the concessions on the particular rather than the general issues? Would COSLA find it acceptable if concessions were made for the four councils that have said clearly that they cannot comply with the order?

Mark Turley: We would be happy to talk about any way of making the proposed legislation deliverable. There are not only four councils that say that they cannot comply, but 10 or 11. My guess is that it would be complicated to legislate differently for different councils, but we would be happy to talk about any options.

Linda Fabiani: Why do those councils have such problems when others seem to be proceeding in the spirit of the homelessness

legislation? Is the problem geographical in every case, as Maureen Macmillan suggested? Is the problem perhaps because of the fact that those councils are losing lots of houses under the right to buy and that there is no buoyant private market or registered social landlord to help out? What are the reasons and are they valid?

Mark Turley: Generally speaking, many of the councils on that list of 10 or 11 are in places such as Edinburgh and East Lothian where there is an acute housing shortage. Before the order was even dreamed of, those councils were facing serious challenges in trying to house homeless people.

Some of those from whom you will hear evidence later might say that there has been political resistance in some of those councils to increasing the proportion of lettings to homeless people. Members should consider that, because it is easy to say from a distance that East Lothian, for example, lets only a quarter of its houses—although I think that it is more than that, so let us say X per cent of its houses—to homeless people, and that if it increased the percentage, it would not have to use B and B.

The more the councils do that, the more impossible it becomes to house other people with other types of housing need. Ultimately, those other people would then present as homeless. It is not because councils are being bloody-minded or are against homeless people; they have genuine responsibilities in balancing to whom they let their houses and a house can be let only once. Members might hear suggestions that councils have been reluctant to take the measures; perhaps that is justified. All I can say is that now that there is awareness that the order will be implemented, councils will respond to it, but they need a reasonable period in which to do that.

Linda Fabiani: That is my problem. You say that councils now have awareness, but I find it difficult to understand why they did not have that awareness a couple of years ago. Why has COSLA only now reached crisis point?

Mark Turley: What happened a couple of years ago that we should have taken note of?

Linda Fabiani: There was a housing bill for a start, followed by homelessness legislation. I do not need to go into all the details because you know as well as I do that there was a groundswell of recognition that our entire housing structures in relation to homelessness were going to change.

Mark Turley: Yes, but the Homeless Persons (Unsuitable Accommodation) (Scotland) Order, 2004 was not part of that.

Linda Fabiani: I think that it could have been foreseen, but we will agree to differ on that.

Christine Grahame: I follow up on what you said earlier in connection with what my colleague has been saying about bringing in legislation and needing resources.

Has COSLA made any assessment of the level of additional funding that will be required to implement the order across the board? Secondly, have you made any assessment of what financial assistance might be required for the 10 or 11 authorities to implement the order on 6 December? If so, what are the figures?

Mark Turley: There are about 200 families in bed-and-breakfast accommodation throughout Scotland. A typical cost of kitting out a flat is £5,000, so for councils to create 200 units of furnished temporary accommodation as an alternative to bed-and-breakfast accommodation, we would be talking about £1 million—a relatively small amount of money. It would be great if the Executive was willing to help councils in that way, but that issue is secondary to the implementation date.

Christine Grahame: My second question related to the specific 10 or 11 councils, but you are saying that the £1 million applies throughout Scotland.

Mark Turley: There is a total of about 200 families in B and B throughout Scotland.

Christine Grahame: That takes care of those councils then—that is the price, as it were.

Mark Turley: That is the financial price. A more practical difficulty is in identifying flats that could be used.

Christine Grahame: If the money were forthcoming, could that problem be resolved?

Mark Turley: It could be resolved only if the implementation date were put back to April.

Christine Grahame: Are we still talking about that?

Mark Turley: The financial resources are not our primary concern; our primary concern is the practicalities of making the changes.

Christine Grahame: So even with a deferred implementation date, we are talking about £1 million?

Mark Turley: To be absolutely clear, our first request is that the implementation date be put back to April. If that and nothing else is done, we will do our best to deliver on the order by that time. It would be extremely helpful if the Executive were able to make available £1 million to the councils that are caught by the order, but even if it does not we will do our best to make the order work.

Mr John Home Robertson (East Lothian) (Lab): I suspect that one of the factors that are common to the local authorities that are in trouble is the combination of a severe shortage of

affordable rented housing and an increasing population. I happen to represent one of those authorities—East Lothian. I am afraid that you are confirming some of my worst fears about the implications of the order. Incidentally, on RSLs, East Lothian has had a cut in housing association grant, which will not help. On the specifics, you have talked about exemptions. Can I take it that everybody agrees that the order should exempt some types of accommodation, such as women's refuges?

Mark Turley: We agree with that exemption.

Mr Home Robertson: Should any other types of accommodation that may be used for temporary accommodation also be exempted?

Mark Turley: We are happy with the entirety of the order's drafting, with the exception of the implementation date.

Mr Home Robertson: I think that we have gathered that. Finally, are you content with the range of other reasons in which an exception could be made, or are there additional situations in which an exception should be made?

Mark Turley: We are happy with the order as drafted. However, I shall illustrate why we did not prepare for the order last Christmas. When the draft order was put to us in October, it did not allow B and Bs to be used if no alternative temporary accommodation was available. The single biggest reason why councils place people in B and Bs is because there is no alternative temporary accommodation. We do not do that for the fun of it, but that was not reflected in the draft order. Thankfully, it is now reflected in the order, and we can use B and Bs—albeit for up to 14 days—in those circumstances. That is a major change in the order, which came about only when we pointed out the weakness in the draft order in late October to early November. I do not know how we could have planned for something that contained so much uncertainty.

Mr Home Robertson: So are we dealing with a rushed and botched order?

Mark Turley: It is extremely unfortunate that an order has been laid that is outwith the original framework that we thought we had worked up in partnership with the Executive. We have got over that, and are trying to make the order workable, but it is undoubtedly being rushed. For the sake of a rushed order, the partnership that I thought was highly valued by the Scottish Executive is now in jeopardy.

The Convener: I thank both of you for attending the meeting and for your comments, which I am sure members have found helpful.

There will be a short suspension to allow for the changeover of witnesses. I ask members to remain in the room, as time is tight.

10:59

Meeting suspended.

11:02

On resuming—

The Convener: I welcome our second panel. Lesley Baird is the director of the Tenant Participation Advisory Service Scotland, Grainia Long is policy manager at Shelter Scotland and Liz Nicholson is director of Shelter Scotland. I am sure that, after the first panel's evidence, our witnesses will have a lot to say on the subject. I start by asking the same question that I asked COSLA. Would I be right to assume that TPAS Scotland and Shelter Scotland in particular agree with the principle of the order?

Grainia Long (Shelter Scotland): It is fair to say that people know what Shelter Scotland thinks about the matter, but we should state that the order is a product of compromise. An amendment at stage 2 of the Homelessness etc (Scotland) Bill—which I think was carried by the Scottish National Party—would have banned the use of bed and breakfasts in all circumstances. We had made it clear that we did not see any reason in this day and age for children to live in bed-and-breakfast accommodation. That was followed by Karen Whitefield's stage 3 amendment. Between then and now, there has been much discussion about how the Scottish Executive should use its powers to ban the use of bed-and-breakfast accommodation.

Clear flexibilities are now built into the order. The physical standard of the accommodation has not really been discussed this morning but, if local authorities provide accommodation of a basic but decent standard, they will pass the tests under the order. For example, if the most basic form of accommodation—self-contained accommodation—that a council provides is of house-in-multiple-occupation standards, in which the safety of children is enshrined, it will meet the provisions under the order. We need to remember that. The City of Edinburgh Council, for example, has spent a lot of money on developing with providers HMO contracts that will meet the regulatory standards. That authority has spent a lot of time examining the issue and developing such schemes. There are ways around the order. That is the first built-in flexibility.

The second built-in flexibility concerns the limit of 14 days. When the consultation took place earlier this year, only two councils said that children should be allowed to stay in bed-and-breakfast accommodation for up to 28 days. That contradicts what the Chartered Institute of Housing in Scotland said in its submission and what Mark Turley alluded to in his evidence. All the other

councils that responded suggested that there should be a limit of 14 days or less; the majority of local authorities suggested a limit of seven days or less. There is a lot of flexibility in the order, which sets a limit of 14 days. The final flexibility is that of allowing families to stay in a B and B, if they expressly desire to do so.

We have moved a long way from that first amendment, which was to ban the use of B-and-B accommodation in all circumstances.

The Convener: Does TPAS Scotland also support the general principles of the order?

Lesley Baird (Tenant Participation Advisory Service Scotland): We are delighted with the order. We agree that it is unsuitable for children to be kept in B-and-B accommodation.

Last week, I flew down from the Western Isles after speaking to homelessness staff and tenants in places such as Barra. If the option of staying in B and Bs were not available, families in Barra would have to pack up their sticks, get on the ferry and go to Stornoway. We work a lot in remote rural communities and we think that it is extremely important that, where there is no choice, families should be allowed to stay in B and Bs.

We are slightly concerned about the exemption for local authority and Women's Aid accommodation. Why should people be given accommodation that does not meet a standard that other accommodation has to meet? We hope that, in time, such accommodation will be brought up to a standard that makes it suitable for families.

The Convener: I want to return to the principles of the order and how we got to be where we are today. Shelter seems to be saying that the Homelessness etc (Scotland) Act 2003 made it inevitable that we would get to this point. However, although COSLA said in its response to the consultation that it accepted that B-and-B accommodation was not a suitable environment in which children and pregnant women should remain for more than 14 days, unless they requested to do so, it also said that it did not believe that the act would be implemented in that way or that the homelessness task force had made such a recommendation. What is your response to that?

Liz Nicholson (Shelter Scotland): It is quite misleading for COSLA to say that it did not know that the order would be implemented in December. During the Parliament's consideration of the Homelessness etc (Scotland) Bill, the Executive lodged an amendment on unsuitable accommodation and Des McNulty said that the order would be brought in as soon as possible. That was in March 2003, but the order had still not been brought in by December 2003.

Last Christmas, Shelter—in accordance with its role—was campaigning to have the order implemented as soon as possible. As Mark Turley said, it was at that time that the homelessness monitoring group—of which I am a member—had a rather heated debate about the minister's commitment to put the order in place before the following Christmas. In January 2004, the homelessness monitoring group made its annual report to the minister. That report made it quite clear that the order would come in in that year and that there would be consultation on it. As the COSLA representative on the homelessness monitoring group, Mark Turley signed up to that report; it was quite clear that the order was going to be introduced.

When the consultation took place, COSLA did not respond to it. However, local authorities and other agencies were being asked in the consultation whether it was possible to implement the order in October, not December. COSLA did not respond then, so why has it come forward at the 11th hour and said that there is a problem? We have known since March 2003 that the order was going to be introduced and we had a commitment from the minister in December last year that it would be in place before Christmas this year, so local authorities should have been gearing up for implementation. For them to say that they cannot implement it now makes us ask what they have been doing during that time.

COSLA also argues that the homelessness task force's recommendation was about including the removal of B-and-B accommodation in local authority homelessness strategies. However, that involves the proposals that COSLA is now making: the consideration of allocation policies and alternatives to B-and-B accommodation. Homelessness strategies were introduced in the Housing (Scotland) Act 2001. My point is that councils should have been gearing up for the order, as there was clear evidence that it would come into force in December 2004.

Christine Grahame: If we accept all that, we can say that it was disingenuous, to say the least, of COSLA to tell the committee that it was taken aback by the date—to paraphrase what the witnesses from COSLA said. However, COSLA still says that, even if implementation were to be pushed back to April, an additional £1 million is needed. Do you have any sympathy with that view? Do you have any figures of your own?

Liz Nicholson: We need additional resources for housing in general and Shelter will always lobby for that.

Christine Grahame: I understand that, but what about the specific point?

Liz Nicholson: COSLA could use some of the solutions that it mentioned on allocation policies. In its response to the Executive's consultation, the Scottish Federation of Housing Associations said that housing associations could play a much bigger role in the provision of temporary accommodation. In addition, we are not using private rented leasing schemes anywhere near as much as they are used down south and there are other remedies that we could put in place. I will always argue for more resources. If COSLA says that it wants £1 million to invest in housing, I support that, but we must also ask what solutions local authorities should have been working on over the past 12 months.

Christine Grahame: I understand that, but I am keeping to the money issue and asking about financial resources rather than anything else. Does Ms Long have any comment to make about the figure that COSLA gave? It said that, even if implementation were deferred until April, it would still be looking for about £1 million to assist local authorities. Do you have any figures?

Grainia Long: On what has been happening in the past 12 months, it is worth—

Christine Grahame: I am sorry to interrupt. Have I misinterpreted the point? Perhaps the convener will correct me.

The Convener: I think that you have misunderstood the point that COSLA made, but if you want to follow it up, COSLA will perhaps get back to you.

Christine Grahame: Heaven forfend! I ask Ms Long simply to comment on additional financial resources.

Grainia Long: We should look at some of the solutions that are being used at the moment. Over the past 12 or 18 months, it has been clear that an end to the use of bed-and-breakfast accommodation was in sight. Even before then, a number of local authorities had some real successes. For example, two years ago, Fife Council was one of the local authorities with the highest number of families in bed-and-breakfast accommodation, but, through the local authority homelessness strategy and a partnership between the national health service, the voluntary sector and the local authority called Home4Good, the council has reduced the number of such families from 80 to eight in less than 12 months. That is a real success story. South Lanarkshire Council, which is also one of the local authorities with the highest number of families in B and B, is reducing the number through a private sector leasing scheme.

There are ways of reducing the use of B and B and the solutions need not be capital intensive. I do not have figures, but we can do it through a

combination of partnerships with the voluntary sector and with housing associations—using section 5 referrals—and through finding other ways of increasing the physical standard of accommodation. We need to remember that point, but local authorities are already reducing the use of B and B. For example, Highland Council said in its consultation response that October 2004 was an appropriate timescale, so I find it hard to understand why COSLA is now asking, "Where's this coming from?" Highland Council was explicit about the fact that it was ready for the order to be implemented in October.

11:15

Patrick Harvie: You were in the room during our previous evidence-taking session, so you will have heard the sincerity with which COSLA representatives said that children should not live in bed and breakfasts and that local authorities put children there not for fun, but as a last resort. Let us put aside disagreements about when people were aware of impending dates and of what might be in the order. Let us also put aside the issue of whether some councils have done more than others to prepare for the order. Are local authorities in a position to meet the terms of the order now, in a very small number of days? If not, should the committee not consider introducing a more appropriate timescale?

Liz Nicholson: That is not the right question. The right question is whether local authorities should have been prepared for the measure. If the order is changed because local authorities are not prepared for its implementation, what sort of message would the Parliament be sending to local authorities? The order should be implemented in early December, but we would be saying that, because four local authorities state that they cannot implement the order now, we are considering alternatives. Local authorities should be gearing up now for implementation of the radical legislation that is due to come into force over the next few years. They should not wait to say that they cannot do it until four or five days before the legislation is to be implemented. They could have done it if they had started their preparations in January.

Patrick Harvie: Are you arguing that, if we agreed to put back the timescale or to question the implementation date, that would set a precedent for future ambitious pieces of work?

Liz Nicholson: I think that it would.

Patrick Harvie: Would local authorities decide that they could let preparations slip, as adjustments would be made?

Liz Nicholson: Not all local authorities. As Grainia Long said, some local authorities have

done a fantastic job around bed and breakfast. I am not condemning local authorities. However, the issue should have been raised at consultation stage—not now, four or five days before implementation.

Donald Gorrie: Do you accept that, whatever their past misdeeds may be, if the order is implemented, some councils will not manage to deliver on 6 December?

Grainia Long: We should not overstate the number of local authorities that will have trouble implementing the order. The provisions are flexible and the majority of local authorities will be able to meet the 14-day deadline, although there may be some implementation issues that we need to face.

First and foremost, Shelter wants the order to work—and not just in the short term. The issue is not just whether the order is implemented in December or April—we want it to work in the medium and long term. The culture that has been mentioned is already present in many local authorities, but we want the order to start to work in all local authority areas. The key issue is whether the provisions will work and whether they will work not just in the short term, but in the medium and long term.

Donald Gorrie: I accept what you say. Do you think that the order will work better if it is implemented now, when—rightly or wrongly—some councils feel extremely aggrieved and, as you have said, are unable to deliver, or if there is a delay of three months or so and COSLA and the councils are on board? In that situation, would local authorities not have much more chance of being able to deliver the homelessness strategy and be much happier about doing so?

Grainia Long: I am sure that Liz Nicholson will have something to say on that issue. In the long term, the order will not work better if there is a delay in implementation, because of the signal that such a delay would send. At what point do we decide that legislation must kick in? Mark Turley was right to say that, on priority need, we must wait for local authorities to be ready. However, must we wait until the last local authority is ready, or do we wait until the majority of authorities are ready?

In our written evidence, we have described the situation of a family in East Lothian who have been in a bed and breakfast for 15 months, which seems an extraordinary amount of time. What do we say to that family? Do we say, “You have to wait another three months, because not all the 32 local authorities were ready”? We cannot wait for 32 local authorities to be ready for every piece of legislation. We are not waiting for all smokers to stop smoking before we introduce a smoking ban. Legislation has to drive change as well as

influence it. We need to be clear about the signals that we are sending local authorities. Ultimately, we want the regulations to work in the medium and long term.

Donald Gorrie: We can send in the police to stop somebody smoking, but we cannot send in somebody to a council to deliver a house that simply does not exist. Whatever COSLA’s past misdeeds, its evidence states that it will not be able to deliver the policy on 6 December. Do you seriously think that continuing to push for that date, causing such unhappiness in COSLA and damaging long-term relations, is worth while, as opposed to getting full co-operation with a delay of three months?

Liz Nicholson: It is not up to Shelter to decide the date of implementation. We had a commitment from the minister that the order would be in force by Christmas this year. That is why we are here today and that is why we are concerned that nothing was done until November, when COSLA said that it was not happy with the implementation date. We are concerned about the families whom we see day in, day out, living in squalid conditions, which damage their health and damage their education, because there is nowhere to study. Who is speaking out for those families? The local authorities are saying that they cannot deliver the policy. Are we asking the families to stay in B and Bs for another three months, because COSLA has not got its act together over the past 12 months? That is our concern. It is not up to us to decide whether the policy should be implemented; we have to fight for the families who are living in B and Bs now.

Donald Gorrie: You have to fight in an intelligent fashion, if I may say so. The councils have to deliver all the future policies that you are keen on. I would have thought that from your point of view—with an enlightened self-interest—to scunner them now was not a clever policy. However, you have had your say, so that is fine.

Cathie Craigie: I align myself with Donald Gorrie’s final comment. The Shelter witnesses asked what councils have been doing for the past year. I can tell them that North Lanarkshire Council has been trying to present the housing strategy and to implement the decisions and great improvements that we have made as a Parliament and an Executive in housing policy over the past few years. The councils have been working, but there must be partnership. We have always been able to work in partnership with the campaigning organisations and the people in the local authorities, who have the most difficult job of being at the coalface and having to deliver the policies.

Grainia Long talked about the success stories that we have seen throughout the country. Would the Shelter witnesses rather that our policies and

plans to tackle homelessness, particularly in relation to families in bed and breakfasts, were successful, or that we got off on the wrong foot and perhaps jeopardised that success? Could you support a delayed implementation date?

Grainia Long: I will come back to your question in a moment. You are right that we need to remember the success stories. If all local authorities had begun when most local authorities, such as North Lanarkshire Council, South Lanarkshire Council, Fife Council and the City of Edinburgh Council, did 12 months ago, we would not be where we are. I agree completely that we should not be having this discussion. The principle is right. Everybody agrees that families should not be spending long periods of time in bed-and-breakfast accommodation. Addressing that should not impact on the really radical homelessness agenda that we have to implement over the next 10 years; it should not knock it off course. However, we are where we are, as others have said. The issue is whether in the long term the order will impact across the board in banning the use of bed-and-breakfast accommodation. I would like to see that happen. It is for the Parliament to decide on the date for that.

We need to remember the success stories, which are local authorities that were on the ball when the Homelessness etc (Scotland) Bill was passed and were ready to start implementation almost immediately. As Mark Turley said, two months were all that they needed. Those councils now have very small numbers of families in bed and breakfasts for very short times.

Cathie Craigie: The point that I asked about is important. If the committee were minded to consider the matter further and to support the motion, how would Shelter feel about COSLA's proposition of extending the implementation date?

Liz Nicholson: Our concern is that doing that would set a precedent. I was a member of the homelessness task force from the start and I have worked in partnership with the other organisations that were represented on the task force. We have welcomed everything that has been proposed—all the recommendations—and the homelessness monitoring group's work.

It is not that we do not want to work in partnership. We know that that is the only way forward for implementing the radical agenda. However, we are concerned about waiting for all local authorities to get up to speed on a piece of legislation such as that on priority need. We cannot go at the slowest local authority's rate; we must go at the majority's rate. My concern is that we will be unable to implement the agenda if some local authorities resist change.

Cathie Craigie: You have still not answered my question whether Shelter could support COSLA's

proposition. Mark Turley, who gave evidence today, was also a member of the task force, which involved a great group of people that made recommendations that the Parliament has wanted to embrace. He said that, if partnership goes wrong, we take a step back. He also said that local authorities might worry that partnership was not real and that implementing other parts of homelessness legislation might be more difficult. Would it be better to improve relationships in partnership now, so that progress is smoother?

Liz Nicholson: Yes. It would be much better to have improved relationships. I was disappointed when Mark Turley resigned from the homelessness monitoring group, to which he made a huge contribution. I do not want COSLA to be off the group.

Mr Home Robertson: The unanimous view in the room, if not in Scotland, is that accommodating homeless families in bed and breakfasts is intolerable. Nobody wants that. An appalling case was referred to that has come to light in Dunbar, which is in my patch. As the local constituency MSP, I wish that somebody had contacted me a long time ago about it, because the situation was out of order.

We must come back to reality. You said that you cannot wait for the slowest council, but I say with respect that you must do that if the policy is undeliverable. My anxiety is that all sorts of people have priority needs. We are right to focus on homeless people as the top priority, but do you acknowledge that a pensioner in an upstairs flat who might have waited 10 years or more for ground-floor accommodation and a family with teenage boys and girls who must share a bedroom also have priority needs? Do you acknowledge that the authorities—there are several—that have a shortage of stock and a growing population must make the judgment of Solomon? They must pick between the people whom I described and homeless people. The only way of balancing that at present is by using some B and Bs, although nobody wants to do that. When councils have stock, they will be able to satisfy everybody's needs, but that is not the situation yet.

Grainia Long: You will not find Shelter disagreeing with that. We are fully aware that the system is seriously overstretched. There is no question but that the radical step that the 2001 act took of giving every homeless applicant the right to temporary accommodation overstretched a system that was already overstretched. Local authorities are between a rock and a hard place in trying to find housing for people. You will not find Shelter disagreeing with that, but we know families with children who have been in bed-and-breakfast accommodation for long periods of time and we would not be doing our job if we did not question,

challenge and campaign against that. We have been doing that for the past 18 months and that is why we are here.

11:30

Mr Home Robertson: Do you understand that the solution that has been laid out in the order and the timetable that has been set are simply not achievable in some cases?

Grainia Long: I am sorry to keep coming back to this point, but the timetable was not set two months ago. It was set in March 2003, when the Homelessness etc (Scotland) Act 2003 was passed and Des McNulty said, "We will do this in a short period of time." Everybody was aware of that. Anybody who worked in housing was aware that bed and breakfasts were going to be out of bounds for families with children for a specific period of time. Shelter called for that to happen almost immediately, but families had to wait for 18 months. The family mentioned as a case study on page 5 of our submission has been in a bed and breakfast for 15 months. Ironically, they have been in the same bed and breakfast for that whole period. The timescale was set in March 2003, as it should have been. We believe that we have already had to wait too long.

Patrick Harvie: Shelter's submission describes the order as a "modest ... step forward". When we discussed with COSLA the extension of the provision beyond pregnant women and families with children, Mark Turley described that as the organisation's fear. He also said that if the provision was pushed further it would jeopardise not only its ability to deliver but the relationship between the Executive, local authorities, the voluntary sector and campaigning groups such as Shelter. How do you respond to the articulation of that fear? Do you think that extending the provision is on the agenda?

Liz Nicholson: Shelter has always campaigned and lobbied to end the use of bed-and-breakfast accommodation for families. We have not lobbied to end the use of such accommodation for single people, although of course nobody should have to live in bed-and-breakfast conditions. Mark Turley said that Shelter suggested that at the monitoring group. In fact, our proposal did not include the extension of the provision to other groups, but there are other vulnerable groups in bed-and-breakfast accommodation, such as people with mental health problems. Perhaps we should consider whether such accommodation is suitable for those groups.

I am concerned about the fact that children live in those conditions. As we heard this morning, everybody accepts that we should not put children in bed-and-breakfast accommodation. The

homelessness monitoring group made a commitment to consider the matter in six months' time, so it will not be considered immediately, but there is concern from organisations such as the Scottish Council for Single Homeless that there are extremely vulnerable single people living in bed and breakfasts. Should they not be included in the restrictions that will be brought in by the order?

Patrick Harvie: What about the fear that that provokes in our COSLA colleagues about what that will do to partnership working?

Liz Nicholson: I cannot comment on that. If local authorities need more temporary accommodation for vulnerable single people, that is a question of resources. That might be a fear for COSLA, but I imagine that it will be more concerned about other things in the legislation that will cause difficulties in relation to housing stock.

Mary Scanlon: Patrick Harvie made the point that the order is limited to pregnant women and families with dependent children. In the Highlands many single women who have suffered domestic abuse are in hostels and many women with children who have suffered such abuse are in refuges. The hostels and refuges do a wonderful job, but the problem is that once people are in them, there is nowhere for them to move on to. Given that refuges are exempt, if we go ahead with the order and its timescale—of which you are in favour—how will that help women in the Highlands to get the accommodation that they need? We have reached a stage at which women are staying with abusive men because they know that if they leave home and go into a refuge they will not be able to get out. What will be the benefits of the order for such women in Inverness, where the housing situation is overheated?

Grainia Long: It comes back to considering all the solutions and looking innovatively at what we do with existing housing stock. One of the key issues for the Highlands is housing association involvement through section 5 referrals. For example, if more innovation was introduced into the relationships between local authorities and housing associations, we could plug the gap. I do not want to go into too much detail, because I am not going to suggest that I am an expert on the Highlands and its housing stock, but we have set out in our evidence what we think some of the solutions are. That is not to suggest by any stretch of the imagination that we do not need new homes; we need many new homes. We need a new-build programme for social housing across the board. I agree that Highland is one of the areas that needs that.

Mary Scanlon: I raised the Highlands because Highland Council is one of the councils that said that it simply cannot cope. If it is forced to implement the order by 6 December, that will raise

issues. I do not disagree with the order, but I am concerned about the implementation date. I respect what you are saying but, at the end of the day, it is local authorities that will have to implement the order. I wonder what will happen if we go ahead and councils are not adequately prepared. I worry for women who have been in hostels for more than a year and for families who have been in refuges for 11 months—I saw one such family last week. What hope is there for them?

Grainia Long: I have two points. First, as I said earlier, Highland Council said in the consultation that it could have met the implementation date of October. The second point is bigger and more important. Even if we waited until April, the issue in the Highlands is the lack of stock. Even if we had all the money in the world, we could not build 60,000 new homes in the Highlands by April.

Mr Home Robertson: That is right.

Grainia Long: As we and Patrick Harvie have said, the order is modest. It will do certain things in certain circumstances. It will not solve the problem of the lack of housing stock and it will not solve homelessness, but it will solve a particular issue for a particular group of people. We should not see it as more than it is. However, 250 children live in bed and breakfast, and we can deal with them.

Mary Scanlon: I am sorry, but the order is about pregnant women and families with dependent children. I put it to you that in the Highlands those families and single women who have suffered from abuse are already in a crisis situation. Highland Council has said that, without adequate planning, it cannot implement the order. In the past it said, "We are where we are," which is by the board. How will implementation impact on an already vulnerable group of people who are in crisis?

Liz Nicholson: Are you saying that they are in a women's refuge?

Mary Scanlon: They want to move on. They want to get their own homes.

Liz Nicholson: The order does not apply to that situation at all.

Mary Scanlon: I appreciate that. That is my point. We are looking at different priority groups.

Liz Nicholson: You are raising the lack of housing in the Highlands, which is another issue.

Grainia Long: We agree that the order will not build new homes.

Christine Grahame: I do not know whether my question will be contentious. Are the witnesses content with the definition of "unsuitable accommodation" in the order, and with the categories of physical proximity and safety?

Grainia Long: Yes.

Christine Grahame: I did not think that it was contentious.

Donald Gorrie: Are the witnesses content with the exceptions? Mary Scanlon referred to women's refuges. Is it right that they are excluded? Should other types of accommodation be excluded or included?

Liz Nicholson: We are content with the order as it is. We should revisit women's refuges. When the monitoring group discussed the order, we were concerned not to close down refuges in our enthusiasm to move families with children out of unsuitable accommodation, because that would have been counterproductive. We need to ensure that refuges meet the criteria for what we regard as suitable accommodation, but I am happy with the order as it stands.

Cathie Craigie: We spoke about this earlier, but I want to hear Shelter's views on the maximum length of time that families could be required to stay in bed-and-breakfast accommodation. The COSLA representatives said that they would have preferred a slightly longer period but that they could live with the 14-day period. Shelter's written submission gives the example of Mr and Mrs C in Glasgow—I cannot find the page just now. Will you expand on your views on the 14-day period?

Grainia Long: I am at a bit of a loss at the Chartered Institute of Housing's response, and I am not sure how much emphasis Mark Turley put on the matter. The people to whom I have spoken about the 14-day limit and the vast majority of local authorities suggested a limit of 14 or seven days, so a 14-day limit seems a good compromise. Many responses suggested a limit of seven days or fewer and some suggested a limit of three or five days, but we must be pragmatic and work with what local authorities can do, so 14 days is the compromise. I am happy with that, although in an ideal world I would hope that nobody would remain in bed-and-breakfast accommodation for as many as 14 days.

Liz Nicholson: Only four councils suggested a maximum period of 28 days when they responded to the Executive's consultation.

Scott Barrie: It has already been clearly stated that the Executive's guidance on homelessness strategies, which was published in March 2002, encouraged the elimination of bed-and-breakfast provision for families. You have mentioned authorities such as Fife, which have worked hard during the intervening period to try to achieve that. Are there other ways in which local authorities can make more effective use of their existing stock or implement additional strategies to ensure adequate compliance with the order?

Liz Nicholson: Mark Turley talked about how allocation policies could be considered. Some authorities should consider the percentage of allocations that they make to homeless people. Other schemes operate, such as homeless at home schemes, in which people who are assessed as homeless agree with the council that it is convenient for them to stay with friends or relatives until suitable accommodation is available—obviously that does not happen if the homeless applicant is at risk. There are also schemes in the private rented sector, and more use could be made of housing associations. Some of those solutions are currently underused by some—not all—authorities.

Scott Barrie: John Home Robertson asked the previous witnesses about specific difficulties in East Lothian—he might want to put the same question to you. However, will you comment on the response that he received earlier?

Liz Nicholson: East Lothian allocates quite a low percentage of housing to homeless people, so that area should be examined in the first instance.

Grainia Long: I will raise two other issues. First, many local authorities have done a good job on the prevention of homelessness through their homelessness strategies. Secondly, the length of time that it takes to assess homelessness applications has still not been reduced in some local authorities. If assessments took less time there would be less need for people to stay in temporary or bed-and-breakfast accommodation. I refer to local authorities in which there is not the pressure on stock, which is probably the biggest reason for the use of temporary accommodation.

Linda Fabiani: I have a question for Lesley Baird, who has been waiting patiently. Mark Turley said that, if implementation of the order was postponed until April, councils might have the opportunity to change their letting policies, given that such matters have to be consulted on. Do you, as director of TPAS, believe that three months is a long enough period over which to change a council's letting policy completely?

11:45

Lesley Baird: That is a huge issue. The legislation rightly says that tenants must be given time to understand such changes. Lack of understanding is an issue, as is the culture in which people think that homeless mothers or fathers with children are tenants who have been made homeless through their own fault, whether through antisocial behaviour or through drug dealing. As well as a consultation on changes to the allocations policy, there would have to be a huge exercise to demystify homelessness and take away some of the stigma. Three months

would not be sufficient for that; a much longer lead-in period would be required. If the process was carried out in three months, I suspect that the answer would be, "No, we do not want the policy to be changed; we are quite happy with the way things are now."

Linda Fabiani: I want to ask the Shelter representatives about registered social landlords and councils. Are registered social landlords and housing associations doing enough and taking their responsibilities on homelessness—which are non-statutory—seriously enough? Is there enough co-operation between councils and housing associations and between the SFHA and COSLA? Although such co-operation may not have happened in the past, what is the situation now? Could there be more co-operation in the future to help to implement the order?

On the subject of co-operation, I have another question. I realise that Shelter comes from the completely different standpoint of a campaigning organisation, but some councils seem to have a genuine case that they will find it difficult to comply with the order by 6 December. There is also the argument that the measure has been thrown on the councils as a date, rather than a policy. If the minister is flexible and allows concessions for some authorities for particular reasons, will Shelter stay off those councils' backs to let them try to comply and reach the point that the other councils are at? That would be in the spirit of co-operation, given that most, but not all, councils will achieve compliance. As long as decent timescales are set, will you co-operate with the authorities, for example by not rushing for the first available court case to make your point as campaigners?

Liz Nicholson: If only we had sufficient resources to chase up every homeless family that is in bed-and-breakfast accommodation and find out how long they have been there, that would be wonderful. We have no intention of chasing round looking for families who have been in bed and breakfast for more than 14 days. Nevertheless—

Linda Fabiani: There is always a nevertheless with you.

Liz Nicholson: We work with families who are in bed-and-breakfast accommodation. If a family has been in such accommodation for some time, we would begin by talking to the local authority and trying to advocate on behalf of the family to get them moved. In all cases with which we deal, only when informal discussions have broken down and we have not had any success would we ever move to judicial review or whatever. Come 1 April 2005—or some other date, depending on what concessions are made—rather than take local authorities to court, Shelter would prefer to work with them to consider good practice and produce solutions and recommendations about how they can improve the bed-and-breakfast situation.

Linda Fabiani: So your organisation would accept that some councils may have particular difficulties and that the minister could discuss that and perhaps allow them leeway with compliance.

Liz Nicholson: If that was the minister's decision, we would go along with it because we want the measures to work.

Grainia Long: Shelter set up the changing homelessness in practice project more than a year ago. The point of the project is to work with and support local authorities in implementing the homelessness agenda. That is different and far removed from Linda Fabiani's suggestion that all we do is run round the country looking for legal challenges.

Linda Fabiani: I was being slightly facetious.

Grainia Long: I know.

As I said, we want the order to work and we are developing with local authorities practice briefings and so on to allow us to work with them to implement the order in the best way possible. I agree that the best approach is to work with local authorities, the voluntary sector, the SFHA and other housing associations to ensure that the order works. In the main, that is how we will approach it.

Linda Fabiani: I did not get an answer to my final wee question. Is enough being done to co-ordinate homelessness work?

Liz Nicholson: I suspect that there is no uniform approach across the country. However, three years on from the Housing (Scotland) Act 2001 and its section 5 referrals, we should be considering those in more detail and assessing how successful they have been.

Christine Grahame: Is it the case that you cannot give an undertaking that, if the order comes into force, no court action would arise? You do not have title to raise such court action, which would have to be raised by a person who had the right to do so under the order. Therefore, no matter what you say, if the order were to come into force and a homeless individual was unable to get suitable accommodation from a local authority, it would be the homeless person who would have to take the local authority to court for being in breach of the order.

Liz Nicholson: Well, yes.

Christine Grahame: I just want to clarify that such action would not be in your hands.

Liz Nicholson: But we will not advise people in the first instance that that is their option.

Christine Grahame: Yes, but I just want to ensure clarity. You do not have title to take such action.

Liz Nicholson: No.

Mr Home Robertson: Linda Fabiani has proposed an ingenious fudge that might get everybody out of the hole. However, the fact is that, if the order becomes law on 6 December, from then on every local authority will get legal advice that they must comply. That would mean that for some local authorities, such as East Lothian Council, every allocation up to Easter would have to go to homeless people if those authorities are to get somewhere near complying with the order's requirements. I emphasise to Lesley Baird specifically that that would mean that all the people about whom I spoke earlier, such as pensioners in upstairs accommodation and families with teenage boys and girls in shared bedrooms, would have to wait until the waiting list was activated again—and goodness knows when that would be. When are we going to think about that?

Lesley Baird: I think that the allocations policies will be reviewed. The homelessness aspect could not be considered in isolation anyway. It would be crazy to consider one aspect of an allocations policy without considering all the other people to whom it applied as they often have a lot of knowledge about the policy and would soon rumble that only the homelessness aspect was being considered. A load of other priority areas must be considered as well as homelessness.

Maureen Macmillan: To return to the rural dimension, I heard what Lesley Baird said about somebody becoming homeless in Barra and not wanting to move to Stornoway. How long should any flexibility or derogation last? If a person continued to say that they would rather stay in bed and breakfast in their own rural community, would they be able to do that for a month, for two or three months or for a year? At what point should a council be obliged to make more effort to supply accommodation in a particular place?

Lesley Baird: I had an interesting conversation yesterday with the homelessness officer for the Western Isles. She is concerned about the balance involved in, for example, putting a lot of money into providing temporary accommodation in Barra, where the turnover and the population are tiny. The way forward is to work with the housing associations and other local providers on Barra, and use local solutions for local problems. Being from the Highlands, Maureen Macmillan will be aware that what happens in island communities is different from what happens in a town or a city. However, that does not make island communities any less special.

The Western Isles Council in particular is working hard on considering local resources. Again, the way forward is to consult tenants on homelessness and homelessness strategies and

on how comfortable they would feel about temporary accommodation, which might be occupied only once every five years, being built on Barra, for example. The issue is about putting in checks and balances.

The Convener: There are no further questions from the committee. I am glad that members remembered towards the end that we had a TPAS representative with us today. I am grateful to all the panel members for coming along.

I suspend the meeting for five minutes for a changeover of panels and to allow members to do anything that they may require to do.

11:54

Meeting suspended.

12:00

On resuming—

The Convener: I welcome to the committee Malcolm Chisholm, the Minister for Communities, and a number of his officials. We are grateful to them for taking the time to come along. Would you like to make a few points before we begin asking you questions?

The Minister for Communities (Malcolm Chisholm): I am sure that asking questions is the best way to deal with the matter under discussion, but I would like to say something briefly.

The order is the culmination of many years' policy in this area, as the committee knows. The power to make regulations was agreed by the Parliament in 2003, Margaret Curran gave notice of the proposal that we are discussing a year ago and there was formal consultation over a period of months earlier this year. We have listened to the viewpoints of individual local authorities, although there was no collective response from COSLA, as members have heard.

Councils already have a statutory duty to find permanent accommodation for the priority groups that we are talking about today. Therefore, the order is quite separate from the broader debate about the impact of the new rights for homeless people. I am well aware of the challenges around the wider homelessness agenda, and we will be publishing some research about that. I am absolutely committed to working in partnership with COSLA and other partners on that challenging task. However, I emphasise that the order is separate from that work. Today, we are dealing with a group of people who have had priority need and a right to permanent accommodation for a long time.

It is important to keep the situation in perspective. I understand that people have

concerns about the longer-term homelessness agenda, which is challenging—and we intend to meet those challenges—but we should bear in mind the fact that we are talking today about around 151 families at the latest count, and we do not know how many of those 151 families would not have been in bed-and-breakfast accommodation for longer than two weeks anyway. In Edinburgh, 13 families were in bed-and-breakfast accommodation at the time of the count and the average length of time for which families stay in bed-and-breakfast accommodation in Edinburgh is five days. Therefore, not all of the 151 families would have been in bed-and-breakfast accommodation for longer than two weeks.

Because this has escaped the notice of some people, I repeat that, if families want to stay in the bed-and-breakfast establishment, they can do so. We are not saying that people have to move out if they do not want to.

I am sure that members will ask me questions about the four councils that it appears will have particular difficulties, but it is important to put that in perspective as well. Each of those councils could deal with all the people who are in bed-and-breakfast accommodation with one week's or, at the most, two weeks' allocations from their lettings.

We need to keep the issue in perspective and separate it from the wider challenges, which I acknowledge, although I am prepared to face them.

The Convener: Will you provide the committee with details of the consultation that you mentioned and any specific changes to the order that resulted from it?

Malcolm Chisholm: I have before me the consultation paper, which was issued in January. It said that the order would be laid before the summer recess and would come into force by October 2004. One of the obvious changes that was made in response to local authorities was to shift back the date of implementation by two months.

Another change that was made is that exceptions were allowed. The element relating to 14 days is, of course, an exception. Various people argued that there should be no time limit at all and others argued that seven days was long enough. We changed the limit to 14 days.

I think that the committee discussed the exemption for women's refuges. Obviously, we want to deal with that matter in the longer run, but we would create a serious difficulty if we did not exempt refuges at this stage.

I think that, at the meeting in October, COSLA indicated that all its concerns had been taken on

board. The issue that COSLA presented today in relation to implementation of the order was raised with us for the first time only at the beginning of November. All the substantive concerns of local authorities and COSLA were addressed in October.

The Convener: The witnesses from COSLA told the committee that at no point was COSLA formally advised of the order's implementation date, so it had no opportunity to raise concerns and begin discussions with the Executive before October. How do you respond to that?

Malcolm Chisholm: I am not sure what the witnesses mean by "formally advised". Even I realised a year ago, when I was Minister for Health and Community Care and my head was full of nothing but health matters, that the Minister for Communities had said that the order would be made before the following Christmas, so I would be surprised if COSLA had not picked that up too.

The Convener: COSLA says it was aware that the minister had made that commitment from reading the papers, but that no formal discussions took place.

Malcolm Chisholm: The matter was in the consultation paper and I have been told that the matter was aired at a meeting in May. Obviously COSLA takes a different view. One of the officials who attended the meeting might want to comment.

Mike Neilson (Scottish Executive Development Department): The issue came up at a discussion with the former Minister for Communities in May, when COSLA expressed a view that it did not regard legislation as necessarily the right approach but recognised that a commitment had been given with which it would have to work. Subsequently, in September and October, there were extensive informal consultations with all local authorities on some of the detailed arrangements.

It is important to distinguish between some of the detailed issues that were discussed in September and October—for example, around whether the definitions would inadvertently catch women's refuges or other accommodation that we did not want the definitions to catch, which were technical issues that involved redrafting the order—and the basic thrust of the order, which was clear from when the Homelessness etc (Scotland) Act 2003 was passed. Certainly from the beginning of the year, the timing of when the use of bed and breakfasts would become unsuitable was clear, and it was clear that local authorities would need to take measures to meet the obligation that COSLA discussed today—those relate to allocations policy, the greater use of RSLs and how stock is managed. The technical discussions around the precise wording of the order did not really affect such issues.

The Convener: Does the fact that all but four of the 32 local authorities think that they will be able to comply with the order if it comes into force on 6 December suggest that local authorities were aware of the timescale to which they were working in addressing the use of bed-and-breakfast accommodation for families and pregnant women?

Malcolm Chisholm: I commend the vast majority of local authorities, which have worked hard on that agenda and have made great progress. One of the previous witnesses mentioned the situation in Fife and I mentioned the situation in Edinburgh, but it is invidious to mention individual local authorities, because a large number of authorities have made progress and should be commended for that. Obviously authorities knew about the matter. I mentioned the legislation and what Margaret Curran said, but of course the recommendation that bed-and-breakfast accommodation should not be used for families was made by the homelessness task force.

Patrick Harvie: In their oral evidence this morning, the COSLA representatives used the phrase "no dialogue"; they told us that there had been no dialogue about the issue between COSLA and the Executive. If there was only one meeting, you must accept that that does not constitute on-going dialogue. Does the Executive recognise that description as accurate? Was there dialogue between the Executive and COSLA?

Malcolm Chisholm: There was dialogue. We want to make it more routine—which is why I was pleased to chair the first of a series of regular meetings with COSLA on housing, homelessness and regeneration—but that is not to say that there were not particular meetings. The meeting in May has been mentioned, but over and above that, there was a public consultation process, and COSLA's views were sought formally in that way, although, as I indicated, it did not respond to the consultation. I am not saying that the dialogue could not be improved—we are trying to regularise the meetings and to have them more frequently—but it would not be fair to say that, over the past year, there has not been dialogue with COSLA.

I read COSLA's submission to the committee, and what leapt out of the page at me was the fact that COSLA has a grievance about the original commitment. For me, the heart of the matter is the fact that, from the beginning, COSLA had a fundamental problem with the commitment that Margaret Curran made. I regard it as my duty to fulfil that commitment, and I think that the majority of people in Scotland recognise that it is the right thing to do. I have talked about it almost as a moral duty; if the commitment was made that the order would be implemented before Christmas, I place a high priority on fulfilling it.

Christine Grahame: When the COSLA representatives gave evidence, they said that they did not see the order until something like October. I take it from what you say that that is a bit of a red herring and that technical matters, such as exempting women's refuges, should not have impacted on COSLA's and local authorities' preparation for the order.

Malcolm Chisholm: The basic action could have been taken irrespective of the specific exemptions. The fact that a large number—in fact, the majority—of local authorities have taken the required action, whether by using RSLs more, changing their allocations policies or ensuring that there is more temporary accommodation of a suitable standard, shows that action could have been taken irrespective of the order's small print.

Christine Grahame: Are you saying that it had no substantive impact?

Malcolm Chisholm: I do not think that it did.

Maureen Macmillan: I will talk to you about the problems that rural local authorities face. As you know, Highland Council was one of the councils that indicated that it might have difficulty in implementing the order. The reason why it might have difficulty is that often the location of the available houses does not match up with the location of the people. At present, there are, I think, about 19 families and 30 children in bed-and-breakfast accommodation—those are the latest figures that I have from Highland Council. I dare say that they could be absorbed within a week, but only if they all lived in or around Inverness, which is obviously not the case. Highland Council is keen to have total confirmation of flexibility on the 14-day rule for families who are in bed and breakfasts in remote areas and who would prefer to stay where they are, where there is no suitable accommodation, rather than move away from their home areas. What exactly will the council's duties be in those circumstances?

Malcolm Chisholm: I have looked at Highland Council's strategy, and the target that the council has been aiming for is no more than five days.

The point about flexibility has been covered, in the sense that the families can stay longer if they want to. There is no issue with flexibility from the families' point of view. If they want to stay longer, the flexibility to do so exists without condition.

I will say two other things about rural areas. One is that, although it might be thought that homeless families are scattered all over the place in rural areas, in Argyll and Bute for example, they appear to be concentrated in Oban. Argyll and Bute appears to have problems of great distances, but the majority of the families are in Oban and so are not subject to rural circumstances. Given that the issue of money has been raised, the second is

that we should remember that rural authorities—certainly Highland Council and Argyll and Bute Council—will benefit considerably from the extra money that will come from the change in the discount system for council tax on second homes. If the issue is about extra resources, next year money will come to rural authorities through that route, if councils wish. In that sense, rural authorities have advantages, although I acknowledge the difficulties that they might have with distances.

The final point to remember is that people will not have to move out of a bed and breakfast if they decide that that is precisely where they want to be.

12:15

Maureen Macmillan: In such cases, will councils have a duty to continue to engage with people who are in bed and breakfasts to ensure that they still want to stay there?

Malcolm Chisholm: Of course.

Maureen Macmillan: Are you aware that Highland Council has raised the issue of independent advisers for homeless families?

Dr Pippa Goldschmidt (Scottish Executive Development Department): That simply reflects the fact that the council needs to ensure that families have access to independent housing advice, which is nothing new. The measure is intended to ensure that families are kept in touch with the council and that they are content with their accommodation. We have been in discussion with officials from Highland Council to explain how the system works and we are happy to continue to work with the council on that issue.

Linda Fabiani: The minister mentioned that some families might want to stay in bed-and-breakfast accommodation. The situation could arise in rural or urban areas. For example, a family in bed-and-breakfast accommodation in East Kilbride might be offered a house in Hamilton or down in Clydesdale, but might not want to accept it because the children go to school in East Kilbride. A similar situation could arise in the Highlands and Islands. In such situations, would it be deemed that the family wanted to stay? Will the reasons why families want to stay in bed-and-breakfast accommodation be monitored? At some point, will the minister decide whether the reasons are relevant? Will he decide whether local authorities are doing families a disservice because of the offers that they make?

Malcolm Chisholm: The independent advisers will help families to make an informed decision. The obligation on local authorities is to offer suitable accommodation within their areas; they

are not allowed to offer accommodation outside it. That provision is in the order. The duty will be discharged when accommodation is provided within the area.

You are tempting me down a different path and others might want to do the same. You ask how I will strengthen the order and ensure that particular offers are made within local authority areas. Others have asked whether the measures will be extended to cover people other than those with families, but we do not intend to go down that route at the moment.

We have made a strong commitment to families that suitable accommodation will be offered within their local authority area and we will monitor that. All sorts of issues might be raised further down the line, but we do not intend to make matters harder for local authorities. We think that it is reasonable that councils should offer a range of options, including suitable temporary accommodation, within the local authority area. If they do that, their obligation will have been discharged.

Linda Fabiani: With respect minister, I understand what you are saying, but there are quite a lot of issues. If a person lives in Argyll and Bute, there is a big difference between their being offered something in Oban—where they were born and raised and where their children go to school—and something on the island of Bute, just because there happen to be empty houses there.

Malcolm Chisholm: That issue can be considered further down the line. In a sense, I am glad to be attacked from that perspective; I thought that members would say that I am being far too hard on local authorities, but you are suggesting that I am not being hard enough.

Linda Fabiani: I am not attacking you, minister. I just want to ensure that you are aware of the issues and that they will be monitored.

Malcolm Chisholm: At present, I think that we have got the matter right. In future, someone might want to suggest that people must be made offers of accommodation on Bute or—to get a little absurd—in a particular street, but at the moment we do not want to make it too difficult or to ask local authorities to do the impossible.

Linda Fabiani: But will you monitor what they do?

Malcolm Chisholm: Absolutely. We will monitor what local authorities do and we will monitor how the policy is being implemented. We want local authorities to have something achievable, rather than something that is impossible.

Linda Fabiani: Gosh, I've got you rattled now.

Mr Home Robertson: The minister knows that I have some serious local difficulties in this regard,

to which I will come in a second. First, I will continue the point on implementation that Linda Fabiani started. How do you plan to monitor implementation of the order? What sort of timescale do you have in mind?

Malcolm Chisholm: Laura Dolan will talk about monitoring.

Laura Dolan (Scottish Executive Development Department): As members know, we publish six-monthly statistics on homelessness. We have been considering what changes we would need to make to how we gather our statistics to get meaningful information as the order is implemented. You might know that local authorities return a particular form known as the HL1. We have been discussing with local authorities the changes that would need to be made to the HL1 form to provide the necessary information to monitor the order's implementation.

We have had some extremely fruitful discussions with local authorities, and we would like to carry on with those, especially with the authorities that are having the most difficulty. We intend to carry on with that work in addition to making the formal arrangements around statistics.

Mr Home Robertson: I was present at one such discussion last week. Will the monitoring regime that you are talking about tie in with the Executive's wider, on-going review of the effectiveness of the Homelessness etc (Scotland) Act 2003?

Malcolm Chisholm: As I indicated in my opening remarks, I view all that as part of the same picture. I find it useful to separate the monitoring regime, which I think is fairly limited and discrete, from the wider agenda—and there is a very big agenda around implementation of the 2003 act. The two things are connected in so far as they form part of the same picture but, for practical purposes, it is easier if they are separated out.

Mr Home Robertson: If the order is not annulled—which it will not be—it will be self-enforcing: it will be up to individual members of households who have been in bed and breakfasts for too long to go to court and ensure that their right to housing under the order is delivered. Are you planning any further action from the centre to enforce that?

Malcolm Chisholm: To repeat my earlier point, we will be monitoring the situation closely. It is correct that it is the Executive's role to monitor, rather than to enforce. If it comes to it, enforcement will be a matter for the courts.

Mr Home Robertson: I will raise a couple of local points, if I may. I invite the minister to consider the knock-on effect of the proposed

timetable. I am thinking of the situation in East Lothian. You will have heard me refer to the predicament of people who are stuck on the waiting list for housing and who might be there for a very long time—10 years or more. There are people with medical issues; there are pensioners in upstairs accommodation; there are families with teenage boys and girls sharing bedrooms. Do you acknowledge that implementing the order in East Lothian within the proposed timetable will mean that people who are biding their time on the waiting list will have to wait quite a lot longer?

Malcolm Chisholm: We have a big programme to expand the availability of affordable housing, which will kick in fairly quickly. As you know, Communities Scotland criticised East Lothian Council in a report last year because it was out of line with respect to the percentage of allocations that it made to homeless families. Indeed, the council was awarded a D for homelessness, which is the lowest grading that may be given. East Lothian Council can modify the position without depriving people in all the other categories of rights; it just needs to change the balance between allocations to homeless people and allocations to others.

Following the meeting that I had with John Home Robertson last week, my officials met officials from East Lothian Council yesterday, and the issue was discussed. Over the years, as an MP and an MSP, I have encountered a similar problem of people who are on waiting lists because of the chronic shortage of affordable rented housing in Edinburgh. I hope that the policies that are now in place will address that. I know that you were an MP for longer than me, but I very much understand your point. However, I repeat that homeless families are a priority-need category, and have been throughout my years as an MP and as an MSP. It is nothing new that families have those rights. We should remember that.

Mr Home Robertson: But the problem is getting worse because of the supply difficulty. Do you acknowledge that, in the case of East Lothian, only a third of a very small supply of relets is going to homeless people? As the director of housing in East Lothian reported to your officials yesterday, to comply with the order within the timetable, every single allocation between now and Easter will have to go to homeless people. The other categories of priority need that I have mentioned will not have a single house allocated to them until after Easter, and after that it will be slow.

Malcolm Chisholm: I was not at the officials' meeting yesterday, so I cannot comment on that. There are allocations to local authority houses, but there are also allocations to RSLs, which are not used to the extent that they ought to be by all local

authorities. There are quite a few voids in RSLs in East Lothian, as well as in other local authorities. There is also other temporary accommodation. There is a range of options—it does not all have to be through one course of action.

Mr Home Robertson: I am keen on that, but I draw to your attention the fact that Communities Scotland has cut the housing association grant for East Lothian, which does not help.

I put it to you that we are all, quite rightly, willing an end to B and Bs for families, but we are not providing local authorities with the means to do that. That is what is wrong with the process today.

Malcolm Chisholm: We are willing the means. People will always say—and Shelter has said—that we need to do more and to provide more resources. That cannot really be argued against in principle, but acknowledging it is not to say that nothing is being done. There have been specific resources for homelessness—I think that there was £127 million in the previous spending review period, increasing to £152 million in the new one. That funding is specifically for homelessness, but in a sense that is not the major budget, because we also have the significant increase in the budgets for new affordable housing. That will not produce results tomorrow, but it will produce results. The other significant change that will benefit East Lothian—apart from the second-home discount that I mentioned, because there are quite a few second homes in East Lothian, desirable place that it is—is the new providential regime, which has been introduced fairly recently—

Mr Home Robertson: Prudential?

Malcolm Chisholm: Prudential. Did I say providential? It is both providential and prudential. That new regime will benefit East Lothian as well.

Mr Home Robertson: East Lothian is taking a lead on that.

Laura Dolan: It would be helpful to mention one particular point about the homelessness legislation. Somebody who is living in unreasonable circumstances might well be regarded as being eligible for assistance under the homelessness legislation. The type of person who you are talking about, who is perhaps infirm, and who is living in a top flat and has mobility difficulties, might be regarded as homeless and eligible for assistance.

Mr Home Robertson: So demand is a lot higher than the figures that we have been talking about.

Laura Dolan: Yes.

Mr Home Robertson: That is good news.

Donald Gorrie: COSLA founded its evidence strongly on the fact that it thought that the homelessness task force was the way ahead that

it had signed on for. The task force's recommendations specifically avoided setting a national deadline. Is there some substance in COSLA's feeling that the Executive has deserted what was developing into an agreed line between all the housing representatives about the way forward?

Malcolm Chisholm: With respect, that was not the Executive but the Parliament. I always pay close attention to what the Parliament says—including what the Communities Committee says, as it is an important part of the Parliament. An amendment to the Homelessness etc (Scotland) Bill was lodged, which brought this situation about. As has been said, when that amendment was agreed to by the Parliament, various people thought that the provision would be used soon; indeed, many people wanted it to be used sooner than now. The bill was, of course, very much influenced by the homelessness task force but, ultimately, it is for the Parliament to decide such things, and we are acting entirely in accordance with the will of Parliament.

12:30

Donald Gorrie: I accept that, but COSLA feels unhappy about the issue. Setting aside the fact that both COSLA and the Executive feel that the other side has failed to communicate in various respects, do you think that it is important to keep COSLA on board for future housing developments under this important and radical homelessness policy? Would it be worth conceding a delay of four months, such as COSLA wishes? If you do not accept that, are there any ways in which you can reassure COSLA? It genuinely seems to have great concerns about the implications of this situation for future policy.

Malcolm Chisholm: I reassured COSLA yesterday afternoon and will reassure it again today. Ultimately, I will be judged by my actions, and I am absolutely committed to working with COSLA on the homelessness agenda and on other agendas. I hope that the fact that we had the first of our regular meetings on these matters yesterday is a sign that that is how we intend to proceed. I have already referred to the wider homelessness agenda up to 2012, which we can deliver only in partnership with COSLA. I am absolutely committed to that, and I do not see how proceeding with this order contradicts that.

We could go over the past year and people could say that it would have been good if things had been done slightly differently; however, we have been over all that and are at the end of a chapter with this order. We will go on to many more chapters that will be a great deal more challenging. I am absolutely committed to doing that in partnership; however, that does not mean

that I am going to tear up a commitment that was made and that I think can be delivered.

Donald Gorrie: It is a matter of a slight delay rather than a tearing up—a tearing up is not a fair expression of the issue.

Malcolm Chisholm: COSLA is talking about a delay; however, as its submission makes clear, it was not happy about the commitment that Margaret Curran gave a year ago. That is at the root of the issue. However, that is water under the bridge. I think that the commitment can be delivered.

Let us also consider the point that Shelter makes about the signal that this debate is sending out. Local authorities have known about the order throughout this year and before, and action has been taken in many cases. I commend the vast majority of local authorities for what they have done, and I believe that the order will be a big spur to the one or two local authorities that are in difficulty. We will work closely with them. The fact that we have had two meetings with East Lothian Council in the past week indicates that, and we are willing to meet any other local authority. We are keen to work with them to ensure that the objective is delivered.

Cathie Craigie: I know that the minister will work closely with local authorities, not only on the homelessness part of his brief, but on other areas.

In the evidence that we heard this morning, Mark Turley spoke about the signals that are being sent out to local government. He feels that the signal that is being picked up in local government circles is that this is an example of how involved local authorities will be when we start talking about aspects of the Homelessness etc (Scotland) Act 2003 in future.

Mark Turley also said—albeit he used different words, perhaps—that delaying the implementation date would make it possible for all councils to comply, and the fact that the Executive could not delay the date struck him as being just an administrative complication. How difficult would it be for the Executive to delay the implementation date?

Malcolm Chisholm: Procedurally, it would be highly irregular but, at the end of the day, that is not the point. The point is that the commitment has been given and that the vast majority of local authorities are more or less there, and we will work with the four local authorities that are faced with a particular challenge. On the point about reassuring COSLA, I highlight the commitment that I gave COSLA yesterday: if any other issues come up—some might come up in questioning now, with regard to giving an extra right here or there—I will discuss them with COSLA before any progress is made. I have given a clear

commitment to COSLA that all major issues will be discussed with it and that I will act in partnership with it.

People can read what they like into the order in front of us, but my commitment to working on issues in partnership with COSLA from the beginning is absolute. I gave that commitment yesterday, and I hope that people in local government will hear and accept that, whatever happens today.

Cathie Craigie: So the signal that you want to send out to COSLA is one of partnership and consultation.

Malcolm Chisholm: Yes.

The Convener: I call Christine Grahame.

Christine Grahame: Oh! I beg your pardon. What was I going to ask? I am sorry—I was drifting a little.

I subscribe to what John Home Robertson said about a ripple effect: when homeless people with children who are living in bed and breakfasts are targeted—which I support, as that approach is quite right—the ripples will extend to other people who are very vulnerable, including people with mental illnesses and young people. Given the stramash that happened with COSLA over the consultation, can the minister give us some idea whether he intends to introduce orders to deal with the other vulnerable groups? If so, what timescale will he follow, so that COSLA can take note?

Malcolm Chisholm: I do not have any plans to do that. The issue that Christine Grahame describes arose with COSLA yesterday. If some group or newspaper called for rights for a certain new group of people, I would, as I said, discuss that with COSLA.

Christine Grahame: Do you agree that, given the very limited and diminishing stock of available accommodation, other vulnerable groups will inevitably be done a disservice by the policy in some manner and that they will inevitably fall further down the list? Somebody mentioned the judgment of Solomon—I think that it was John Home Robertson—and I have sympathy with that view. Although I fully support the order, I nevertheless have concerns that other vulnerable groups will be left even more vulnerable. I would like to hear you say something about those people.

Malcolm Chisholm: I thought that, in your first question, you were suggesting that more groups of people would be covered by the order on bed and breakfasts.

Christine Grahame: No. I was talking about further orders.

Malcolm Chisholm: Not about bed and breakfasts in particular.

Christine Grahame: That is correct. This is about ensuring that we are not displacing people and that we are not moving one group of people out and another group of people in.

Malcolm Chisholm: To some extent, we are making a choice here. We have said that we feel most strongly about families—about cases in which children are involved—in relation to—

Christine Grahame: I do too, but—

Malcolm Chisholm: We are making decisions; we are making choices. We are not saying that other groups of people, including single people, cannot be put in bed and breakfasts for longer than 14 days. I would argue that we are being realistic. It is not an ideal world. Further down the line, we will no doubt want to do something about the situation. However, we have to make choices and prioritise. Giving families in bed and breakfasts priority was in fact done by the homelessness task force, although it did not have a timetable. The decision to introduce an order was made by the Parliament, and the timing for that was announced by Margaret Curran a year ago. We have made those choices.

Christine Grahame: I agree with that.

Malcolm Chisholm: That is not to say that, in an ideal world, the order would not cover more groups; however, we are not going to introduce an order that promises what cannot be delivered. We have to build up the supply of affordable housing. We know what we have to aim towards for 2012, and the new rights for groups, in terms of the abolition of priority, will be enforced then. The order is about a discrete group of people—families that already have priority need—and that is the perspective from which I am presenting it.

Christine Grahame: If I may ask—

The Convener: Very briefly.

Christine Grahame: I take it that, in the foreseeable future, you are not going to introduce specific provisions for other vulnerable groups. It is like moving the deckchairs: you are moving one lot of vulnerable people out of bed and breakfasts to allow another lot to be moved in and, in the meantime, you are not going to introduce provisions for those vulnerable people in the foreseeable future.

Malcolm Chisholm: I have no plans to do so.

Christine Grahame: That is what I wanted to know.

Mary Scanlon: My question follows on from that point and is about the impact of the order on the availability of temporary accommodation as a whole. I know only about the Highland Council area, where there has been a significant cut in the supporting people budget. As a former Minister for

Health and Community Care, you will be aware that the document "The same as you?" specifies that all learning disability patients in long-stay hospitals have to be in their own accommodation by the end of next year. In the Highland region there are about 40 such patients. We are talking about the homelessness agenda, but the councils face many agendas and many competing priorities. As a resident of Inverness, but also out of concern for Argyll and Bute and the Highland region, I would like to know how the order and the cuts in the supporting people budget will impact on the resettling of people who are currently in Newcraigs hospital. Further, how will they impact on women who are currently in refuges and hostels, about whom I spoke earlier?

Malcolm Chisholm: Two things have happened to the supporting people money. First, there has been a cash reduction in the overall amounts over one year; however, as I keep saying, it is double the amount that it was two years ago—it is recent extra money that everybody is very grateful to have in the system. Secondly, that money did not enter the system through a needs-based formula, and the disparities between how much is spent on supporting people in different parts of Scotland are a big problem.

An important point is that the new formula brought a specific focus on homelessness. Indeed, I have been at meetings about supporting people at which some people have criticised the giving of prominence to homelessness in the new supporting people formula—30 per cent of the weighting is based on homelessness. That will help the homeless in general. The formula also recognises the problem of unmet need. Edinburgh, for example, has experienced a cash reduction in the supporting people budget; however, without that weighting in favour of homelessness, Edinburgh would have been in a worse situation, given the level of homelessness in Edinburgh.

A weighting is given to homelessness, the formula deals with the problem of unmet need, and there are still significant resources. Of course, the reduction affects some local authorities more than others, but I do not think that supporting people is a bad story from a homelessness point of view.

Mary Scanlon: Given the fact that time is getting on, I ask only one thing of the minister. Will he give a commitment to discuss with Highland Council the problems that it faces in providing a budget to resettle the learning disability patients, in accordance with "The same as you?", in 40 homes in Inverness, as well as the problems that it faces in addressing and complying with the order?

Malcolm Chisholm: I am happy to talk to Highland Council about a range of issues. On that issue, I would be treading partly into my old territory, but I am never reluctant to do that.

Donald Gorrie: I draw your attention to paragraph 36 of your paper. There are two issues that I would like to ask about. First, you say that the present position does not give

"a fully robust picture about housing need"

in each area. Is the research happening now? When will it come out? Will it be helpful on the subject that we are discussing today?

Secondly, you state:

"The Executive is also considering future guidance on housing need assessment".

Is there a timescale for that? Might that be helpful to councils as they wrestle with these difficult problems?

12:45

Malcolm Chisholm: I recently read two pieces of research, but they related to the longer-term homelessness agenda, so I do not think that they are specifically relevant to what we are discussing today. The larger of those pieces of research was to do with different routes towards the abolition of priority need. Views have been sought from local authorities. On the back of the research, a pro forma is to be sent out to local authorities. That is part of the detailed work that needs to be done on the 2012 standard.

The other piece of research is more to do with local connections and homelessness and the possibility of people being sent back to the local authority where they were resident previously. In addition to those bits of research, I think that a third piece of research, on intentionality in homelessness, has recently been commissioned. The two pieces of research that I read recently will be published in January. There will be a wide consultation on them next year and they will inform the statement on homelessness legislation that will be made around the end of this year.

I might need to ask somebody else to deal with the question on the future guidance on housing needs. Does Mike Neilson know about that?

Mike Neilson: Yes. Quite a lot of guidance on housing needs assessment is available. We need to discuss with local authorities the matter of getting greater consistency in the way in which housing needs assessments are made locally so that we can get a better overall picture. The existence of different approaches can make that difficult. We would like to work with local authorities on guidance that has a more consistent approach to housing needs.

Donald Gorrie: Thank you. That was helpful.

Linda Fabiani: I clearly remember when we first discussed the Homelessness etc (Scotland) Bill in the Social Justice Committee. We asked on many

occasions about the impact of the legislation and kept being assured by the minister at the time and by Executive officials that they had no evidence to suggest that there would be any increase in the number of homelessness applications because of the new legislation. We now know that that was a bit of a missed call.

I am making a plea to the Executive to set in place some sort of system whereby we can see the impact that all the homelessness legislation, including the order before us today, is having on mainstream waiting lists. That would properly inform any debate that we have on the matter in the future.

Malcolm Chisholm: I absolutely agree with that. We have been discussing monitoring the order before us; we need to have better intelligence about what is happening in general and about projections. That is what the research, the pro forma and the other things that I have mentioned are designed to do. We know that we have a big challenge before us, but we must start with a realistic assessment of the consequences of the legislation and of what needs to be done to ensure that it is implemented.

The Convener: I thank the minister for attending the committee and ask him to remain at the table as we proceed to a debate on the motion before us. I invite Mr John Home Robertson to speak to and move motion S2M-2086.

Mr Home Robertson: Colleagues will not be surprised to hear that I am extremely reluctant to move the motion. First, I am well aware that bed and breakfast is not tolerable accommodation for any family. Secondly, I am a loyal supporter of the Labour-led Executive and I am profoundly unhappy about moving a motion against the Executive. Nonetheless, I feel that, following the evidence that I have heard today, I have no option but to move the motion. As MSPs, we have an overriding duty to scrutinise legislation, and I cannot turn a blind eye to the fact that the timing of the order is unworkable for some local authorities. The consequences of the order could be unfair to a number of tenants—a point that I made clear in my questions.

Some councils are not getting enough houses to relet to meet the need for affordable rented housing. That is the situation in East Lothian. The council has just 420 houses to relet each year, although there are nearly 8,000 people stuck on the council's waiting list. There are 204 urgent cases on that list, and that figure is increasing. People are joining the priority list faster than houses are becoming available to let. That is a housing crisis, and it is not going to be solved by passing regulations; it is going to be solved by making more houses available to let in pressured areas such as East Lothian.

I fear that the timing of the order takes no account of the genuine needs of people on the council waiting lists. I have talked about pensioners in upstairs flats who may have been on the transfer list for 10 years or more. I have talked about families with teenage boys and girls sharing a bedroom; people with medical points; and people in overcrowded housing. They have a right to some hope of getting a suitable house, but I fear that they are being neglected in this debate.

The order would compel East Lothian Council to allocate virtually every relet between now and Easter to homeless people. It would condemn people who are on the waiting list to remaining in overcrowded or unsuitable housing indefinitely, while they watch more and more families going homeless—to use that phrase—under a system that can be used to jump the queue. That would legitimately make some of those tenants very angry.

The solution to the problem is to allow councils to increase their stock of houses to enable them to meet local requirements for people with priority needs as well as for homeless people. We are getting there, thanks to the good work of the Executive and councils. As the minister said, East Lothian Council is undertaking a major prudential borrowing initiative following a visit by Margaret Curran last year. That will provide 2,750 more houses over 10 years, and the council is working to increase its stock by buying back former council houses—although I have to say that it seems barmy that a council has to spend £100,000 or more on buying a house that it was forced to sell for £20,000 or less some years ago. I leave it to Mary Scanlon to try to justify that.

Mary Scanlon: It is your motion.

Mr Home Robertson: When councils have enough houses, they will be able to meet the needs. We are moving in that direction. However, East Lothian Council and some other councils do not have the stock that they need. It seems irresponsible to legislate for an objective without providing the means to meet that objective. East Lothian Council housing officers have to make the judgment of Solomon every day. They allocate about 10 houses to homeless people and about 20 houses to people on the urgent waiting list each month. That means that some homeless families are in bed-and-breakfast accommodation for far longer than anybody would want them to be. However, under the present circumstances, that is the least bad solution for the time being.

The order would pull down the shutters on the waiting list. It would condemn pensioners to staying in upstairs flats and families to staying in overcrowded homes, perhaps indefinitely. I have been an active supporter of Shelter for years and I am as angry as everybody else about

homelessness. Nevertheless, I have to conclude that although the order is well intentioned, its timing is ill considered. It can work only if councils have the time and the resources to meet all urgent housing needs. The timetable with which we have been presented is unworkable—certainly, in East Lothian—so I reluctantly suggest that the committee takes account of the evidence and refers the order back to the Executive. The Executive should take it away and come back next week with a timetable that really can be implemented throughout Scotland.

I move,

That the Communities Committee recommends that nothing further be done under the Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2004 (SSI 2004/489) as the committee is not reassured that local authorities are in a position to comply with the order without causing unfair consequences for other applicants with priority needs for housing.

Malcolm Chisholm: I have listened carefully to John Home Robertson. He does not seem to be arguing for a delay. He seems to be making a far more fundamental objection to the implementation of the order in the foreseeable future. He is confusing a long-term programme to increase the supply of affordable housing with the limited problem that I described in my evidence. I would be opposed to what he is saying. He is not suggesting that the order should be delayed by three months, as some witnesses have suggested, but that there is a more fundamental problem with it. I do not agree with his analysis or with his description of the extent of the effects of the order. I repeat that we are talking about—at the last count—150 families, yet he is saying that nobody else will be allocated houses, and so on.

I was not at the meeting yesterday, so I have not been able to consider the idea that there would be no other allocations over the next four months in East Lothian. I find that difficult to believe. East Lothian Council needs to change the balance between allocations to homeless people and allocations to others, which is precisely what Communities Scotland, in its report last year, said that it should do. I do not think that the order means the wholesale change that John Home Robertson suggests.

At the risk of repeating what I have said over the past hour, I think that it is important that we stick to the commitment that was given a year ago. I applaud the great efforts that have been made by the vast majority of local authorities in Scotland and I repeat my commitment to work with the four—at most—authorities that will find compliance with the order especially challenging. The objective can be met and it is important that we underpin our commitment by passing the order.

Linda Fabiani: I started out by feeling some sympathy for COSLA's position and for what John

Home Robertson was saying. However, from what we have learned today and from what we have just heard from him, it seems that the issues are getting mixed up. We are here to discuss the implementation of a specific order relating to families in bed-and-breakfast accommodation, whereas John Home Robertson's motion addresses housing in general and the shortage of affordable housing. That is a far bigger issue. If we were to wait for the minister to come back with a timetable for solving all the problems in East Lothian and in the areas of the other councils that feel that they have an issue, it would be many years before we banned the use of bed-and-breakfast accommodation for families.

Some of the facts are being fudged. I have huge sympathy for pensioners who live in upstairs flats, but a family in bed-and-breakfast accommodation would not be offered the same property that a pensioner in an upstairs flat would be offered. There are issues to do with the availability of houses of different types and sizes. The problem that John Home Robertson is raising seems to be an issue that East Lothian Council has with homelessness legislation in general rather than with this order. At 31 March 2004, there were 18 families in bed-and-breakfast accommodation in East Lothian. He is talking about homelessness lets under homelessness legislation, not specifically about the implementation of the order that we are dealing with today.

I do not think that it was fair of John Home Robertson to have a go at poor old Mary Scanlon about the right to buy. That was out of order. Let us face it: you guys extended the right to buy to housing associations not that long ago. Rightly or wrongly, I get the impression that there is an awful spat going on here between COSLA and the Scottish Executive, which has much more to do with what we have heard about today than with the order itself.

Patrick Harvie: I came at this from a slightly different position. I came into the meeting minded not to support John Home Robertson's motion although willing to listen to the arguments. Having listened to them, I am confirmed in that position.

I agree with much of what John Home Robertson says about the right to buy. The committee will have to take on that issue at some point if we are to take it seriously. Nevertheless, that is not the issue that we are dealing with at the moment. If the problem facing the four local authorities in question is as significant as he maintains, a few months' delay will not solve it. If implementation of the order is as achievable as the minister maintains, it is achievable in the proposed timescale.

John Home Robertson's comments focused on fairness. Families are living in bed-and-breakfast

accommodation, which we all agree is an intolerable situation, in areas of local authorities that should be able to meet their need. It is unfair to ask those families to wait by delaying the order. It is also unfair to treat, as he did, the need of families who live in unsuitable accommodation or who have teenaged children sharing a bedroom as more important than that of families who live in bed-and-breakfast accommodation, often for very long periods, as we heard today. I will vote against the motion.

13:00

Scott Barrie: I, too, will speak against the motion. We have heard about several issues, particularly in relation to the four councils that have been banded about and in relation to East Lothian Council, which has been named. If the order is delayed, we will not address the fundamental problem. COSLA suggests that we are arguing about December versus April next year. If the problems are as great as we have been told that they are, I am not sure whether a few months' delay will be long enough for resolution.

The order did not come out of the ether. Irrespective of the deficiencies that some local authorities believe that the consultation process had, they knew that something like the order would be produced. The Executive began a consultation a considerable time ago. Various committees, including this one, have often complained about there being inadequate time for consultation. That charge cannot be levelled at the Executive this time.

We must be careful. If we agreed to John Home Robertson's motion and waited until all local authorities were in a position to implement the order fully with ease, we could wait a considerable time. That would send the poor signal that somehow or other Parliament's will in this and future legislation can be subverted by saying, "We haven't had enough time—can we have a bit longer?" That would get us into the argument about how long a piece of string is and could create more delay.

I do not suggest that what we decide to do now will solve the problem for authorities that face difficulty, but we must be mindful that the matter had been thought about and that people knew that it was coming. We must vote against the motion and support the minister.

Christine Grahame: John Home Robertson's arguments are interesting and have merit. Most relate to the general background to the housing crisis, which will exist notwithstanding any deferral of the order, as others have said.

I listened carefully to the evidence. The only line that COSLA could take was that it was caught on

the hop and did not know that councils had to be ready for implementation on 6 December. Having heard the other evidence, I am not persuaded that COSLA did not know in 2004 as well as in prior years that the order would be coming in their direction, so I am not convinced that it was caught on the hop. If that was the case, it was COSLA's fault. It was interesting that we were offered apologies, which should not count when we are talking about people in bed and breakfasts—that is not good enough.

COSLA's second point was that councils could not prepare for anything because they did not know the specifics. I am not persuaded by that either, because I listened carefully to Mr Neilson's evidence on the details of the order. That was rather technical stuff that had no impact on the substantive argument that the order would require to be implemented in December.

I still have concerns about the general impact on waiting lists and on other vulnerable people. I take some reassurance from the minister saying that he will monitor developments. I would expect us to be kept apprised of the situation. We should not simply put this difficult legislation through; we need also to undertake post-legislative scrutiny of its impact and ramifications—the ripples on the pond. For that reason, although I have some sympathy with what John Home Robertson is saying, I cannot support his motion.

Donald Gorrie: I will approach the question from the point of view of partnership. Like some other members, I have some experience of partnerships, which has included accepting that the other partner feels that an issue is very important and that, even if we do not agree with them, we make some concessions in their direction.

If we are to make good progress on housing, it will involve partnership between the Executive and councils. The councils, rightly or wrongly, feel extremely bruised on this issue. I think that the councils are open to criticism for not responding early enough—they are not whiter than white. However, we are where we are, and councils feel that they cannot deliver. They have made a straightforward offer, saying that they could deliver by April. It is not a question of endless delays, rejecting the legislation or anything of that sort. Councils have made a definite statement to say that they could deliver if there was a four-month delay.

From the point of view of the Executive and the Parliament, it would be sensible to promote partnership with the councils by accepting that there should be a delay on this matter. A strong message could be sent to the councils to say that this should not create a precedent, allowing them to delay everything in sight. However, on this

occasion, for whatever reason, the situation has become a bit of a shipwreck and we should allow for a short, specified delay. In the light of that, I invite the minister to consider withdrawing the order and replacing it with an order that is identical apart from having a different date. If that is not possible, I will support John Home Robertson.

I think that the committee should instruct the Parliament to consider seriously its standing orders. The fact that statutory instruments such as the order that is before us may not be amended is ludicrous and idiotic, and we have to sort that out. That is something that we inherited from Westminster.

Cathie Craigie: I, too, have sympathy with the case that was put forward by COSLA this morning. Mark Turley was very active with the Social Justice Committee, our predecessor committee, when we were considering the Housing (Scotland) Bill and the Homelessness etc (Scotland) Bill. Mark's opinions and evidence helped to shape some of the decisions and recommendations that that committee made. I think that we should take his opinions on housing very seriously. Most people round this table would agree with that.

The fact is that councils throughout Scotland have been able to reduce the number of families who are put into bed and breakfasts. A significant number of councils, including North Lanarkshire Council, in my area, do not use bed-and-breakfast accommodation for families at all. Such councils have had to develop their policies in order to do that. They have had to consider alternative types of acceptable accommodation for homeless people with families in partnership with registered social landlords and, I am sure, with the Executive.

The right to buy has been raised as a reason for homelessness. I do not agree that it is a cause at all. Over the years, local authorities had to develop their policies to deal with the demands that were placed on them and I wish that colleagues would recognise that Labour members of this committee and its predecessor committees have done a great deal to modernise the right-to-buy system. There will be huge changes in how the right to buy affects housing supply and demand in future. It has been suggested that there is a housing crisis. There might be crises in small pockets in some areas, but if we compare the housing situation in 2004 with the situation five or 10 years ago, we must acknowledge that housing has come a long way.

We must signal to local authorities that the Scottish Executive and the committee want to work in partnership with them in developing housing policy. I think that all members who spoke today expressed that message, which was reinforced by the minister. If we agree that the order should go ahead, it will not mean that dates

will be set in future without the involvement of COSLA—COSLA must be not just consulted but involved. The minister's response to questions this morning confirmed that. For that reason, I will not support John Home Robertson's motion for annulment. I support the minister's position and I look forward to the committee working closely with the Executive over the coming months as we participate in the consultation process and the development of homelessness policy.

Mary Scanlon: As a general principle, there is no point in the Parliament passing legislation that it expects local authorities to implement if the authorities are simply not able to implement the legislation. We need the good will and co-operation of local authorities if the Parliament and its legislation are to be successful, so it is crucial that we have a good working relationship with authorities. I have never known COSLA use such strong language as it uses in its submission and we have witnessed the opposite of a good working relationship. That is unfortunate and I hope that lessons have been learned, because the Parliament rather than the councils will be blamed if the order's provisions cannot be implemented. It is not good politics to be in a situation in which someone says, "You didn't talk to me, so I won't play with you any more," and it certainly does not enhance the Parliament's reputation.

We all share the aspiration of getting people out of temporary accommodation. However, there is no point in supporting the order if it will not work. Two of the local authorities that have been mentioned are in the Highlands and Islands, which is the area that I represent. For that reason, I will support John Home Robertson's motion.

The Convener: I do not want to repeat anything that members have said. We have heard much interesting evidence. I was struck by COSLA's concerns and in particular by Mark Turley's comment, when he said that he believed that the homelessness policy in Scotland had been developed in consultation but added the caveat that the policy could not be implemented until it was deliverable. My experience in the Parliament leads me to agree that the Executive and the Communities Committee have always tried to engage with all agencies that are involved in the field. Therefore the position that we are in today should have come as no surprise to anyone. It should certainly have come as no surprise to local authorities and COSLA, which were given every opportunity during the progress of the Homelessness etc (Scotland) Bill to engage with the Parliament and put forward their concerns. As an individual member of the Parliament I constantly sought their assurances that what we were seeking to do would be deliverable, so I am concerned that anyone should be surprised by the situation. I am grateful to the minister for restating

his assurance that he will continue the dialogue with COSLA. We do not want to find ourselves in this position again.

My final point concerns Mary Scanlon and John Home Robertson's suggestion that if only the four local authorities in question were given an additional four months, they would be able to comply with the order. For four months, homeless people will be given priority in those four local authority areas, but at the end of that period all the other people, who have equal needs, will again be considered for homes. We are talking about families who have no home and who are in bed-and-breakfast accommodation. The elderly pensioner who is in a house that is inappropriate for their needs still has a house whereas, unfortunately, homeless families in bed-and-breakfast accommodation this Christmas do not have a home. As a Parliament, we have to take our responsibilities on the issue seriously.

I ask John Home Robertson to wind up and to indicate whether he wants to press or seek leave to withdraw the motion.

13:15

Mr Home Robertson: I thank the convener, committee colleagues, the minister and his team for giving careful consideration to the motion. As everyone will have gathered, the issue is of immense importance to my constituency. It is not an issue that I have discovered recently. East Lothian is a pressured area with an increasing population and a diminishing stock of houses. I described the situation in my constituency as a crisis: it is a crisis and one that is to be found in other parts of Scotland. I make no apologies whatsoever for taking the opportunity to highlight the situation.

Patrick Harvie made the point that people who live in completely unsatisfactory, overcrowded and unhealthy accommodation or who have medical points are no more or less important than people who are homeless. My submission is that all those people have urgent housing needs—a point that I am sure that he will acknowledge. I take the point that the convener made that the extreme situation of homelessness is the worst situation of all. All of us want to get these people out of bed-and-breakfast accommodation.

I hope that I have conveyed the fact that, as far as my constituency is concerned—and, I suspect a number of other areas, too—the speed of implementation of the order means that a significant number of people will be stuck for much longer than should be the case in completely unsatisfactory, overcrowded and unhealthy accommodation. We should be concerned about that.

I say to Linda Fabiani that I would hate to create the impression that I am opposed to the principle of the order—on the contrary, I am strongly in favour of it. My anxiety is that it cannot be implemented within the timescale concerned. I return to the point that Donald Gorrie made, which is that if only we could amend the timetable, we would be doing the minister and a lot of other people a favour.

I know that East Lothian Council is out in the market today, buying back ex-council houses in order to provide temporary accommodation for homeless people in its area. If the council were to be given a bit more time, it would be able to build up its stock and fulfil its obligations under the order. As things stand, it cannot and the council is going to end up in court. It would be a mistake for that to happen, so I have a duty to press the motion.

The Convener: The question is, that motion S2M-2086, in the name of Mr John Home Robertson, be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Gorrie, Donald (Central Scotland) (LD)
Home Robertson, Mr John (East Lothian) (Lab)
Scanlon, Mary (Highlands and Islands) (Con)

AGAINST

Barrie, Scott (Dunfermline West) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Fabiani, Linda (Central Scotland) (SNP)
Grahame, Christine (South of Scotland) (SNP)
Harvie, Patrick (Glasgow) (Green)
Whitefield, Karen (Airdrie and Shotts) (Lab)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Motion disagreed to.

The Convener: Before I ask the committee to agree that it is content with the order and that it will make no recommendation to the Parliament on it, I have a suggestion. I think that we should reflect some of the extensive evidence that we have taken today in our report to the Parliament. In particular, we should reflect our desire to see a good working relationship between the Scottish Executive and COSLA, as that is fundamental to the development of housing policy. We should also reflect our desire to ensure that the partnership approach that is taken is in no way jeopardised as a result of what has taken place.

Christine Grahame: Given what the minister said, could we also include in the report the fact that we look forward to the monitoring of the order and, in particular, the monitoring of the impact that the order has on the length of time that other vulnerable people have to wait on housing lists?

We should reflect the issues that John Home Robertson raised.

Cathie Craigie: The Executive says in its submission that it intends to report back on research that it has commissioned on the subject. Perhaps we could check the status of that research and refer to it in our report.

Mr Home Robertson: In relation to that point, Laura Dolan said that a number of people about whom I am concerned—people in overcrowded housing, those with medical points and so forth—could be included in the homelessness category. What she said was helpful and I would like to see it being taken forward. Perhaps that could form part of the monitoring exercise.

Christine Grahame: Could the clerks e-mail members a copy of the draft report for our agreement?

The Convener: Yes. They will have no difficulty in doing so. I hope that we will be able to agree the report very quickly. It is suggested that in our report to Parliament we comment but make no recommendation on the order. Is that agreed?

Members *indicated agreement.*

13:21

Meeting continued in private until 13:31.

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