

Public Bill Committee
Tuesday 8 March 2011
(Morning)
[Hugh Bayley in the Chair]
Localism Bill

Written evidence to be reported to the House

10.30 am

Clause 127 ordered to stand part of the Bill.

Clause 128

Standards about tenancies etc

The Parliamentary Under-Secretary of State for Communities and Local Government (Andrew Stunell): I beg to move amendment 172, in clause 128, page 114, line 20, leave out ‘that Act’ and insert

‘the Housing and Regeneration Act 2008’.

It is good to start on what I hope will be the home straight, if I may make that small pun.

The amendment is straightforward. It clarifies that the Housing and Regeneration Act 2008 will include the new power under which the Secretary of State will direct the social housing regulator. The existing wording of the Bill was not precise enough. The amendment provides the minor but important clarification that the 2008 Act is the power behind the regulation.

Amendment 172 agreed to.

Question proposed, That the clause, as amended, stand part of the Bill.

Alison Seabeck (Plymouth, Moor View) (Lab): I am sure that you are looking forward to your last week as Chair of the Committee, Mr Bayley.

The clause is short, but it could have a significant impact on the way in which registered providers of social housing will operate. It gives yet another power to the Secretary of State, adding to his powers of direction the power to set a standard on tenure. The National Housing Federation, the representative body for housing associations, is unhappy with the clause as it stands and has set out in its notes to me the reasons why. I shall read them to the Committee as it will be helpful to have the Minister’s response to the federation’s concerns. It says:

“The clause creates a new power for the Secretary of State to direct the regulator about the contents of a standard covering tenure. This is not needed. The direction powers of the Secretary of State under the 2008 Housing & Regeneration Act already cover standards

governing quality of accommodation, rents and tenant involvement. In addition, the Secretary of State must be consulted by the regulator about the contents of all standards.

It goes on to say:

“the further extension of the Secretary of State’s direction powers threatens registered providers’ independence of government and will create a vehicle for ‘policy passporting’.”

It will be helpful to have the Minister’s reassurance that the fears of the NHF are without foundation, and if there is genuine concern, perhaps he will reconsider the matter.

Andrew Stunell: Clause 128 gives the Secretary of State the power to direct the social housing regulator on the content of the standard under the terms of tenancies, as the hon. Lady said. Such a power is central to the delivery of our proposals on tenure reform because it is through a revised tenancy standard that the detail of the additional freedoms on tenancies available to registered providers and the constraints on those freedoms will be determined. It is therefore right that the Government can give a direction on the content of the tenancy standard to the regulator. Ultimately, it will be for the regulator to set those standards.

Equally, it is right that what we propose to put in the direction should be subject to close scrutiny by members of the Committee and a full consultation process. Hon. Members will be well aware of the fact that we held a consultation and that the Government’s responses to that consultation are in section 8 of the consultation document, in which we set out the broad policy aims that we expect a direction to the regulator to deliver.

That is part of the ongoing process of our taking account of views expressed by members of the Committee, by other consultees and in feedback. We intend to consult formally on a draft direction to the regulator on the content of a revised tenancy standard in the spring—which is now, I guess. Having taken account of responses to that consultation, and subject to parliamentary approval of these provisions during the passage of the Bill, we will direct the regulator on the content of that revised tenancy standard. We propose to do that at the earliest possible opportunity following Royal Assent. Although the clause is short, it is therefore at the heart of the implementation of our proposals on tenure reform.

Question put and agreed to.

Clause 128, as amended, accordingly ordered to stand part of the Bill.

Clause 129

Relationship between schemes and strategies

Alison Seabeck: I beg to move amendment 261, in clause 129, page 114, line 33, at end insert

—
(d) the homelessness strategy of neighbouring local authorities.’.

We have no major objections to the clause, so I will speak briefly to the amendment, which is pretty self-explanatory. It would deal with the relationship between tenancy strategies and

homelessness strategies by amending the Homelessness Act 2002 to add a requirement on local authorities to have regard to

“the homelessness strategy of neighbouring local authorities”

when formulating or modifying their homelessness strategies. That would be a sensible addition to the legislative framework to ensure that local authorities act in a co-operative manner and produce strategies that work together, rather than causing problems or tensions between local authorities, whose strategies might be in opposition to each another. For example, a local authority’s strategy might be simply to offload elsewhere anyone who presented as homeless. That would not be a responsible attitude, but we know that some authorities have considered and are considering taking it.

We want to avoid an unreasonable burden being placed on neighbouring local authorities, so to avoid such excesses, we hope that the amendment will be taken forward.

Andrew Stunell: Clause 129 will require local housing authorities, when formulating or modifying their homelessness strategies, to have regard to the allocation scheme, the tenancy strategy and, for London boroughs, the London housing strategy. The sort of objectives that local housing authorities set out in tenancy strategies will be for them to determine in the light of local needs and circumstances, but ensuring that the new flexibilities do not lead to increased homelessness is likely to be an important aspect.

The amendment would require that, when formulating its homelessness strategy, a local authority must have regard to the homelessness strategies of neighbouring authorities. The Government already encourage local authorities to work together to prevent and tackle homelessness, and many authorities already do so, either informally or through sub-regional partnerships, for example. Making such practice a legislative requirement would be bureaucratic and could give rise to practical problems. For instance, a local authority often has multiple neighbouring authorities—four or five in some London boroughs—and each might review its homelessness strategy at a different time. It seems impractical and unnecessary to legislate to force authorities to have regard to others when formulating the strategies.

The hon. Lady was concerned about offloading, but I am sure that responsible local authorities will work hard to avoid that. We have already debated their duty to have regard to the location of somebody who is placed in accommodation as a result of the authority accepting a homelessness duty. We all hope that best practice is always followed, but if there were a rogue local authority, as the hon. Lady suggested, it is not clear to me that the duty to co-operate with a neighbouring authority would prevent an authority deciding to leapfrog its neighbours. I do not think that her amendment would achieve the objective she set out, and it would be unduly bureaucratic.

Alison Seabeck: If there were a rogue authority or two, and it became evident that that was the case, particularly following the new duty that local authorities will have to put people immediately into the private rented sector, for example, what is the backstop for that? Who would pull those authorities in and say, “You are behaving unreasonably”? Who would be monitoring whether people were behaving in a rogue way, or would it simply come out by word of mouth?

Andrew Stunell: The hon. Lady tempts me into territory that is quite a long way from the clause and the amendment. Clearly, as we have previously debated, every local authority has a responsibility under existing legislation to take proper account and ensure that the accommodation offered is suitable. We had a debate about the factors that had to be taken into account. If an authority were acting contrary to its legal duties, it would be for the courts to rule on that.

Alison Seabeck: On the basis of the Minister's remarks, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 129 ordered to stand part of the Bill.

Clause 130

Flexible tenancies

Mr Nick Raynsford (Greenwich and Woolwich) (Lab): I beg to move amendment 254, in clause 130, page 116, line 33, after 'subject', insert

'to the discretion of the court not to make an order if it considers the order disproportionate, and subject'.

Clause 130 introduces the so-called flexible tenancies. I am sure we will have a full debate on the thinking behind the tenancies and their impact on the public as part of a clause stand part debate. I do not intend to anticipate that now, because the amendment has a different purpose. The Minister has not been very sympathetic to most of the amendments that I have moved so far. I hope he will take a different view with this amendment, primarily because it is designed to help him and his right hon. Friend the Secretary of State to avoid embarrassment and an appearance in court, which is something that Ministers are now beginning to be aware is one of the consequences of ill-thought-out legislation.

The issue was drawn to my attention by Andrew Arden QC, one of the country's foremost housing lawyers, and it arises from two significant judgments in the Supreme Court, to which I will refer in due course. First, a bit of background. Clause 130 creates flexible tenancies, which are in essence local authority tenancies that are secure for up to two years, but which subsequently are subject to mandatory possession hearings. The wording of proposed new section 107D of the Housing Act 1985, which will be inserted into the Act by this clause, reads as follows:

"Subject as follows, on or after the coming to an end of a flexible tenancy a court must make an order for possession of the dwelling-house let on the tenancy if it is satisfied that the following conditions are met."

I will not go into details, but "the following conditions" are procedural. If the procedures are satisfied, the wording of the legislation is such that the court has no discretion and must grant possession. I think I am right in saying that that is clearly the Government's policy objective.

10.45 am

Unfortunately that does not sit well with the Supreme Court judgments to which I have referred. The first of those was given on *Manchester city council v. Pinnock*. I will not go into detail, but I will read out the crucial part of the judgment. Paragraph 49 states that

“if our law is to be compatible with article 8”—

that is article 8 of the European convention on human rights—

“where a court is asked to make an order for possession of a person’s home at the suit of a local authority, the court must have the power to assess the proportionality of making the order, and, in making that assessment, to resolve any relevant dispute of fact.”

The subsequent judgment was on three cases that were heard together: *London borough of Hounslow v. Powell*, *Leeds city council v. Hall* and *Birmingham city council v. Frisby*. The Supreme Court’s conclusion was similar to its conclusion on *Pinnock*, but it was helpful in making it clear that the remit of the judgment did not apply only to a particular type of tenancy. The *Pinnock* judgment was specifically on a demoted tenancy, whereas the subsequent *Powell*, *Hall* and *Frisby* judgment was on introductory tenancies and other such circumstances. My reading of the second judgement is that it reinforces the first judgment, but it also makes it clear that it applies as a general principle to local authority possession actions in cases in which legislation provides for mandatory possession.

The Secretary of State has signed a statement that appears on the Bill’s front page:

“Secretary Eric Pickles has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Localism Bill are compatible with the Convention rights.”

If the Supreme Court judgment is to be considered, however, the court has to have the option of exercising discretion in deciding whether to grant possession. In other words, the Secretary of State has signed a declaration of compatibility with the convention, which can be right only if the court acts in a way contrary to that prescribed by the Bill. The Bill states that, in the circumstances set out, the court must grant possession.

I readily accept that the second judgment—the *Powell* judgment—was delivered after the Bill was published and the first judgment, the *Pinnock* judgment, was delivered only a month before the Bill appeared, so the Secretary of State may not have had much time to consider the implications of those judgments before making his statement on compatibility, but we have now had adequate time and opportunity to digest those implications. It is clear that the Supreme Court is adamant that the English courts must have discretion to consider the proportionality of a possession order brought by a local authority in the light of the article 8 obligations.

That is why my amendment is not only desirable but essential. If we do not agree to the amendment, we would essentially be agreeing to a Bill that makes a mockery of the Secretary of State’s declaration of compatibility on its front page. As I said at the outset, the amendment is designed to help get the Government off a hook that they have created themselves by asking the courts to act in a way that is inconsistent not only with the Supreme Court’s judgment, but with the Secretary of State’s statement on the Bill’s front page. I hope, therefore, that the

Minister will have no difficulty in accepting my amendment on this occasion. If he chooses not to do so, I must say that many people not only in this place or the other place, but in the Supreme Court will have quite a lot to say about that. I look forward therefore to hearing his response.

Andrew Stunell: The right hon. Gentleman comes bearing gifts, and one should be careful about that. Amendment 254 seeks to make it more difficult, if they decide not to extend the tenancy to a particular tenant, for local authorities to recover possession of a social property at the end of a flexible tenancy. The amendment does that by giving the court the discretion not to make a possession order if it considers the order disproportionate. That will have the effect of placing an obligation on the court to consider proportionality in all possession applications on the expiry of a flexible tenancy. If the amendment were accepted, that would be the case even if the tenant does not defend the application for possession. The amendment effectively changes the order for possession from being mandatory to being discretionary and would, of course, completely undermine the purpose of the clause, as I am sure the right hon. Gentleman fully intends.

The amendment reintroduces grounds for possession by the back door, when our flexible tenancy proposals are fundamentally about moving away from fault-based grounds for possession to a clearer and more straightforward deal between landlords and tenants. It is important that proper protection is in place for tenants where a landlord decides not to renew a flexible tenancy, and we expect that landlords will discuss housing options with tenants well in advance of the fixed term of their tenancy coming to an end. In many cases, we would expect the tenancy to be renewed when that was done.

I want to draw attention to one of the right hon. Gentleman's remarks, which I am sure was made inadvertently, when he said that a tenancy could be given for up to two years. That is absolutely not the proposition. The proposition is that the shortest period of a flexible tenancy that could be offered is two years, and he will see from the Government's response that we have accepted the view of consultees that that should be an exceptional minimum period for special circumstances. We would normally expect the shortest period of tenancy to be five years, and that will come up again in the stand part debate.

Where a landlord decides that a tenancy should not be extended, however, the tenant will be given the opportunity to challenge that decision as well as sufficient time to find alternative accommodation following advice and support from their landlord. Local authority landlords are required to serve a notice on the tenant six months before the end of the flexible tenancy when they are minded not to reissue it at the end of the fixed term. In addition to that, the landlord, having had to give the early warning, is then required to serve a second notice two months before seeking possession. Taken together, those are important protections for tenants to set alongside the new freedoms that we are giving to landlords.

The right hon. Gentleman referred to the Supreme Court judgments—the Pinnock case and the Powell, Hall and Frisby cases—which established that local authority landlords seeking to recover a property to which they have an unqualified right of possession, which certainly will include expired flexible tenancies, will need to consider the tenant's rights under article 8 of the European convention on human rights in those cases where the tenant raises a defence based on the proportionality of the landlord's decision. The right hon. Gentleman did not, however, provide all of the Court's judgments in those cases, because if he had, it would have emphasised the strong presumption that if landlords have followed proper procedures—for

example, giving tenants a right to review decisions—it will normally be proportionate to make a possession order. It is right that landlords should, in light of their tenancy policy, be able to make policy decisions about renewing tenancies without routinely having the basis for such decisions challenged in the courts. Landlords, rather than the courts, are best placed to make decisions about the best use of the housing stock in light of the local community's needs.

The right hon. Gentleman came bearing a gift, and I would love to be sympathetic at least once during the passage of the Bill, but it would not be right on this amendment.

Mr Raynsford: The Minister's defence is that the Supreme Court made it clear that the exercise of discretion, in light of article 8, would not apply across the board, which is, of course, true. He made the point—and again, this was in the judgment, which I am glad that he has read—that the court's exercise of discretion would depend on the individual tenant seeking to refer to article 8. He claimed that it will, to quote his word, “normally” be proportionate for the court to grant possession in cases of flexible tenures that have come to the end of their fixed period—and I accept that the wording is, as the Minister has said, a minimum of two years, and the Government are now saying that they hope that five years would be the norm. However, at the end of that period when that tenancy has elapsed, if the court seeks possession, it will still be the case that if the tenant says, “This exercise of a mandatory possession order is disproportionate in the circumstances,” the court will have the discretion to decide whether it is proportionate to grant it. That is my point, which the Minister has simply not addressed.

Andrew Stunell: The right hon. Gentleman correctly sets out the position in law. That will still be the position in law without his amendment, which is why I am resisting it.

Mr Raynsford: The Minister cannot get away from the fact that, as currently drafted, the provisions of proposed new section 107D to the Housing Act 1985 are in contravention of the Supreme Court's decision. One cannot have a situation where the legislation states that

“a court must make an order for possession”

when the Supreme Court has made clear what happens when such circumstances occur. Those circumstances might not happen often and they might not be the norm, but in such cases, the court must have discretion not to do what the legislation says it should. I cannot see how that is compatible with the wording of the statute that we have been asked to agree on, which states that the court must make a possession order. I certainly cannot see how the Secretary of State can sustain his statement of compatibility unless there is an amendment.

I am not suggesting that my amendment is necessarily the right one. I am happy to consider alternative wordings, but we cannot put ourselves in the position where we are asked to agree a wording that is clearly incompatible with judgments in the Supreme Court. The Supreme Court has made it quite clear that even if there is a mandatory possession order, in such cases the court must have the discretion to decide whether to grant an order in light of article 8 of the European convention on human rights.

Unless the Minister can come forward with an alternative wording that recognises the implications of article 8 and the court's right to review possession in light of the Powell and Pinnock judgments, he is asking us to do something preposterous—to agree to legislation that is manifestly not in accord with the statement made by the Secretary of State on the Bill's front page about the European convention on human rights. No amount of special pleading or

saying, “It’s only going to be occasionally that such circumstances will arise” can possibly justify his position. It is a nonsense. If the Minister does not like my wording, fine, but if legislation is to have any meaning and not make a mockery of the process, he has an obligation to come forward with his own amendment.

11 am

Question put, That the amendment be made.

The Committee divided: Ayes 9, Noes 15.

Division No. 31]

AYES

Alexander, Heidi

Dakin, Nic

Dromey, Jack

Elliott, Julie

Keeley, Barbara

McDonagh, Siobhain

Mearns, Ian

Raynsford, rh Mr Nick

Seabeck, Alison

NOES

Barwell, Gavin

Bruce, Fiona

Cairns, Alun

Clark, rh Greg

Gilbert, Stephen

Howell, John

Lewis, Brandon

Morris, James

Neill, Robert

Ollerenshaw, Eric

Smith, Henry

Stewart, Iain

Stunell, Andrew

Ward, Mr David

Wiggin, Bill

Question accordingly negatived.

Question proposed, That the clause stand part of the Bill.

Alison Seabeck: It is less than a year since we were told that the Conservative party had “no policy to change the current or future security of tenure of tenants in social housing”.

That was a promise made before the election but we are here faced with the reality of the Government’s current prospectus for social housing. In looking to remove security of tenure, this part of the Bill is probably one of the most emotive. These changes will affect many families and individuals who are in the greatest need—people for whom a safe, secure and affordable home is the key to a successful and settled life. Why should that group deserve any less security in their homes than the wealthier home owner?

The clause gives local authorities the ability to offer a flexible tenancy for a fixed term of as little as two years. It sets out the circumstances in which a new tenancy becomes a flexible tenancy. We have been sitting as a Committee for well over a month and it would be useful now to revisit some of the evidence that we heard at the outset from the experts—the people whom the Government invited to speak because they valued their testimony. These are people to whom we should listen before voting on this clause.

David Orr, the chief executive of the National Housing Federation, said:

“One of my anxieties about this conversation is that a discussion about flexible tenure is in danger of closing off something that we know works very well for some people, providing exactly the kind of security that they need to feel confident about their role in the world.”—*[Official Report, Localism Public Bill Committee, 25 January 2011; c. 62, Q104.]*

Alison Inman, the independent chair of the National Federation of ALMOs, said:

“For most of the people that we house in council-owned properties, security of tenure is absolutely key to work, education—everything.”—*[Official Report, Localism Public Bill Committee, 25 January 2011; c. 102, Q173.]*

Campbell Robb, the chief executive of Shelter, when asked about flexible tenure, said:

“One of our most significant concerns will be that this just creates a disincentive for people to do well in communities because of the pressure they will be under and the changes they face. In particular, having a random two years to get people back on their feet and to change their lives around—with the movement away from schools, communities and support networks, while constantly putting a whole range of other things that exist in communities under threat—would be a real challenge for many people with whom we work. It would be a huge social change for them.”—[*Official Report, Localism Public Bill Committee, 25 January 2011; c. 61, Q103.*]

My hon. Friend the Member for Mitcham and Morden spoke with real passion in the debate on clause 121 about people who set an example, who hold communities together on estates and who get ahead. We had a submission this week from a young woman called Jessica Sim setting out her concerns about the abolition of security of tenure. She was divorced, had difficulty paying her mortgage and was luckily offered social housing. She writes:

“To get an affordable secure home was a great incentive to pursue my career. I also spent a great deal of time and money improving my council home and garden (all in a shockingly derelict state on arrival) and getting involved in my community association to improve the area, knowing that we could stay.”

She goes on:

“What if the people who are kicked out lose their job or get fed up being hardly better off working? Back on housing benefit, back in the queue, the bill will be enormous. Families have a better chance if they have a secure place to live. Moving people on does not solve a shortage of housing.”

I think her comments are extremely apt and absolutely to the point. The clause will bring an end to mixed communities on estates and bring an end to aspiration. It will sideline estates as nothing more than transitional areas, hallmarked not by long-standing communities, many of which stretch back across generations, but by alienation and deprivation.

We might have hoped, after the consultation and evidence from witnesses, and after we have asked again and again for the Government to consider this, that we might have seen Government amendments to the clause. Many housing professionals are deeply uncomfortable with the idea of asking someone to leave their home because their circumstances have changed in a positive way. Did the Minister consider the approach whereby, if a person's circumstances changed positively, other elements of the tenancy could be reviewed—perhaps rent level, because that would fit in with the wider policy around “affordable” rents, or assistance into intermediate ownership? I am sure the Committee would be interested to hear the thinking behind that.

Housing associations are working frantically to try to work out the implications of the policy for them. There are still questions about human rights legislation and the implications for flexible tenancy policy. Under current legislation, landlords are not allowed to end tenancies on the basis of time, and we have heard a very well argued case from my right hon. Friend the Member for Greenwich and Woolwich. The Minister could not give an assurance that the measures would not result in a legal challenge in the courts.

New flexible tenancies set at 80% of market rate are seen as likely to increase instability and insecurity. They will increase pressure on the housing benefit bill and drive families out of certain areas. Good evidence published by Mark Lupton for Family Mosaic supports that argument and further supports the concerns raised by my hon. Friend the Member for Mitcham and Morden about incentives. Instead we have Ministers pressing ahead with the coalition's plans to scrap security of tenure, a policy on which nobody voted in May 2010. Indeed, we might have expected something rather different from this Minister. It is not very long—sorry, I am going to do this again—since he put his name to an early-day motion calling for:

“the urgent need to boost the economy by a massive programme of public investment to improve existing council homes and estates and build a new generation of first-class council housing to provide secure tenancies and low rents”.

I do not understand how that sits with the policy that he is now putting forward. I find it difficult to square that circle.

But times and positions change, and we now have a Liberal Democrat Minister supporting the clause to end security of tenure for social housing tenants. We do not claim that a reform agenda should not be considered. We claim that the Government are taking the wrong course—a damaging course. The consequences will not improve the social or economic condition of people who depend on social housing, nor develop any sense of community.

If the Minister wanted flexibility in tenure while offering protections to tenants—I am sure he talked about that in previous speeches in the House when he was not a Minister and was signing early-day motions—why did he not revisit the 2006 Law Commission report on a single form of tenancy? It was a far more considered piece of work than the policies for which the Government are now legislating, and it was widely supported. A number of colleagues pressed the previous Labour Government to add that to their housing legislation, but the legislation was deemed not to be the right vehicle. The Bill, however, with its clear focus on tenure and tenancy change, could well have adopted the proposals.

We want this and the next clause deleted because the measure simply proposes another tenancy agreement in addition to those already in existence. The proposal will add confusion and consequent management problems for social landlords, and it does nothing to address the anomalies highlighted in the Law Commission report. And that is before we come to the impact on tenants and the potential problems that they will face of possibly having to move home within two years if their income increases. I will return to that issue later.

A great deal of work has been carried out over the years on tenure reform. In 1997, the Chartered Institute of Housing commissioned an independent adviser to produce a report with proposals for a single form of tenancy, and intended for general consultation throughout the housing world. In June 1998, the report “One for All: A Single Tenancy for Social Housing?” was published as a discussion paper. Its proposals were developed following consultation by the author with 11 leading lenders to housing organisations, 21 housing associations, 20 local authorities of different sizes in different parts—urban and rural—of England, Scotland and Wales, and 29 tenants organisations, including the Tenants and Residents Organisations of England, which represents tenants throughout the UK.

The context of the original study has relevance for today—continuing Government emphasis on plurality and partnership in the social housing sector, and multi-agency and partnership

approaches to delivering housing and housing services to make the best use of stock and to improve performance. In that respect, I suggest there is probably little disagreement in the Committee.

Throughout the social housing sector, there are many differences between landlords' and tenants' rights and obligations, not only between local authorities and housing associations, but within the housing association sector and even within individual housing associations. Those variations are caused by the different legal regimes under which local authorities and housing associations operate, and they have an adverse effect on the mobility and development of mobility schemes, the development of common housing registers and other initiatives aimed at breaking down barriers across the social housing sector.

Why did the Government opt for this particular flexible tenure option, with all its destabilising qualities, when the basis for a scheme with much broader support was sitting on the shelf—a scheme which ran across the rented sector, was landlord-neutral and might have replaced the complex existing letting arrangements? Many organisations have said that some flexibility in the system would be beneficial, but they all agree that the emphasis must be on offering tenants positive, supported choices to improve their housing options, rather than forcing change on them simply because their circumstances have changed over a short period. The proposals made by the Law Commission would also have helped to do away with the stigma attached to being a social tenant, by introducing two forms of tenure under which people would, in effect, become renter-occupiers, whether in the private or social sector. Lenders also felt that the clarity offered by that proposal was good for them.

Uncertainty surrounds the impact of the measures in the clause, because of its potential impact on revenue streams. There is likely to be greater churn and variation in the system. Why is this option worth considering? If the Minister does not feel able to rethink this and subsequent clauses, perhaps the other place, with all its expertise in such matters, will want to explore whether the Law Commission proposal would achieve a degree of flexibility, without some of the unintended consequences and unfairnesses inherent in the Bill. Its option would facilitate moves to increase stable communities by mixing tenure, income groups and levels of housing need in the same neighbourhoods. It would also assist in blurring tenure demarcations and our place in the social hierarchy, as reflected by the housing spectrum that stretches from outright home ownership, long leases, existing tenancy and landlord types, to those in temporary accommodation. Indeed, it might also facilitate stock transfer by enabling tenants to retain the same tenancy agreement.

There are arguments why the clause is the wrong one to deliver tenure reform. It is important to tackle the myth that the Government's proposals are the only show in town, and to point out that careful and considered work has already been done on which reform might have been built, and which would have benefited from further exploration to see whether there was a less destabilising option than the one that we currently face.

We are told that people will be offered a flexible tenancy at the higher affordable—a bit of a misnomer—rent, after what one has to assume will be a pretty detailed examination of their personal circumstances, the need for which was set out in the debate on an earlier clause. After a minimum of only 18 months, perhaps having got their child into a local school, people's circumstances will have to be re-examined. In the interests of transparency and fairness, that examination will have to be assiduously carried out by the landlord. If people's income has risen over a certain level, they might be asked to leave their house.

What does that do for aspiration? Why would anyone risk losing their home, particularly in an area of high demand and with their child settled in a school, by taking a promotion? We will see people covering up what they are actually earning. We will see a single parent perhaps hiding the fact that they have a new partner living with them. What pressure is that going to put on housing managers who have to undertake the investigative work? Two years—I know that it is the minimum—is far too short a period. During the debate on clause 124, the Minister described three years in temporary accommodation as not giving families any security, so why is a two-year tenancy acceptable in any way, shape or form?

11.15 am

Heidi Alexander (Lewisham East) (Lab): Did my hon. Friend hear the Minister say, in the debate on amendment 254, that he envisages a five-year tenancy being the norm, as opposed to the two-year tenancy in the Bill? Does she agree that, if the Government expect that to be the norm, five years should be in the Bill?

Alison Seabeck: I thank my hon. Friend for her observation, and I am sure that it will not have been lost on Government Members. She is right that an arbitrary figure has been put in the Bill. During earlier interventions on clause 124, the hon. Member for Croydon Central expressed a view that two years was, in the main, too short. It is difficult to put a figure on, which is why we would rather have no figure at all. I am sure that we will come back to that again and again as we go through the rest of this clause and clause 131.

Two years is too short a period, and the comments of my hon. Friend the Member for Lewisham East about the five-year figure that has been bandied about suggest that. I half-expected to see an amendment from a Government Member that suggested either an extension to five or seven years or that a limited and fixed percentage of all new lettings could be let for a shorter period, but none of that has appeared. We are still stuck with what we have in the Bill, which is wholly unacceptable. The Council of Mortgage Lenders has said that its members are anxious about the risks involved in both affordable rents and the flexible tenancy scheme, because of the uncertainty in the system. The Minister needs to explain to the Committee exactly how he sees that working. Does he envisage a whole range of different-length tenancies spreading out across the social rented sector? If so, what discussions has he had with lenders about their assessment of the risks involved in their lending to, in particular, housing associations? We have deep reservations about the clause, and I urge my Opposition colleagues to vote against it.

Nic Dakin (Scunthorpe) (Lab): It is a pleasure to serve under your chairmanship again, Mr Bayley.

I support my hon. Friend the Member for Plymouth, Moor View and the points that she has made. The clause could have serious implications for people and communities. As my hon. Friend has said, there is no mandate for what is being proposed, and, if handled in the way that we fear it might, it will have an impact on individuals' aspirations and on cohesion in communities. I want to draw attention to the submission from Age UK, which mentions the dangers for older new tenants:

“Most evidence demonstrates that older people require the security and stability of a lifetime tenancy to protect both their physical and mental well being. Older people consider security of tenure to be essential to both quality of life and well being in retirement. Over the years many

tenants build up local support networks and use nearby services that enable them to remain independent. At the same time older tenants make a huge contribution to the health and vitality of their local community. A forced move under a flexible tenancy could undermine this position for many.”

Age UK has picked up some of the themes of concern expressed in discussions on housing, such as those mentioned by my hon. Friend the Member for Mitcham and Morden about what tenants with aspiration give to their community and how they enhance it, as well as the way in which prospering in the community saves the state money when it comes to supporting people in difficulty. The points made by Age UK about older people echo what my hon. Friend the Member for Plymouth, Moor View said in drawing on the submission on the young woman’s testimony. It illustrates the need to be very careful in proceeding down such a route with a massive stick, when it is an area where we should be using carrots. There is no mandate. I hope that the Government will think carefully before progressing in that way.

Heidi Alexander: I will make only a few brief remarks on the clause. Looking around the Committee, I wonder how many of us have lived in private rented accommodation at some point or how many of us are doing so now. I am fortunate at the moment. I live in a flat with a mortgage. Ten years ago, I lived in rented accommodation. I was quite lucky. The flat was nice. I had a one-year tenancy, with the possibility of renewal. I remember how that position affected me, and my need for stability and to be able to paint walls and do the garden. I desperately wanted to own my own home. That was partly to do with the sense of being rooted and not having the fear, each time the tenancy came up for review, that I would have to move on. I was in work. I did not have children. I was a single woman, who had moved to London. If that security was important to me then, it is much more important for the individuals and families whom I see time and again at my surgeries. I regard the provisions under the Bill as dangerous for the reasons outlined by my hon. Friend the Member for Plymouth, Moor View.

I shall put on record the comments of the London Tenants Federation about flexible tenancies in its response to the communities and local government consultation paper, “Local decisions: a fairer future for social housing”. It fears that

“references in this consultation paper to localism, fairness and flexibility are a smoke screen for failures to address the desperate need for social-rented housing, particularly in London... Instead of attempting to meet the needs in this respect of a significant percentage of people in London...the proposals for the introduction of flexible/short-term tenancies will condemn many to a life of being constantly on the move and leave social-housing estates to effectively become transit camps. This will damage communities, break up existing family and support networks and have a detrimental impact on health, well-being and educational achievements.”

I could not put it better myself. I do not wish to say any more on the subject, but that summarises the position well.

Gavin Barwell (Croydon Central) (Con): Does the hon. Lady think that her local authority will make use of the powers under the Bill?

Heidi Alexander: I honestly do not know the answer to that question, but I am sure that, when I meet the mayor of Lewisham, I shall discuss it with him.

My understanding of this part of the Bill is linked to the Government's desire to introduce an affordable rent model that might sit alongside flexible tenancies. I wish to put on record my concern about the ability of my constituents, and the people in the communities I represent, to pay rents on short-term flexible tenancies of up to 80% of market rents. I see people in my surgeries who cannot afford to buy a washing machine; the idea that they could afford 80% of the market rent in zone 2 of London is quite ludicrous. Although there may be some people for whom it might offer a solution to their housing situation, I am not convinced that it will address the big problems that I see in my constituency, so I have deep concerns about the clause, and I support the comments made by my hon. Friends the Members for Plymouth, Moor View and for Scunthorpe.

Siobhain McDonagh (Mitcham and Morden) (Lab): We read articles in the paper, generally in the women's section, about the most stressful things in life—divorce, moving home and all the rest of it—and how we should not do more than one or two of those things at the same time. Why are the stresses, anxieties and concerns of people in social housing of no matter? Why are we willing to introduce a rule that those people will face that situation at the end of a two-year period? The “who will take this up?” argument is not a good one, because if the Government do not want people to take it up they should not propose it in the first place.

Gavin Barwell: I have already made my view clear. If I were a Housing Minister I would not use these provisions in the vast majority of cases, although here are cases in which I would not give a lifelong tenancy. The point I was trying to make is that one cannot argue that every housing professional in the country is against the clause and then say that it will lead to disastrous consequences. Either the hon. Lady believes that Labour-controlled councils in London are going to take up these powers and use them, or she does not, in which case the problems she is talking about will not occur.

Siobhain McDonagh: I am not saying that housing professionals are right or wrong, and I am not saying what they believe; I am merely explaining how I feel about the clause based on the people I know and see and on the community in which I live.

When I had a proper job, before entering the House, my experience was in housing: I was the receptionist for Wandsworth council's homeless families unit; I was a housing adviser in Wandsworth council's housing advice section; and I was the person at Battersea Churches and Chelsea housing trust who looked for temporary accommodation for such families. I did not live in the world of policy or high-flying jobs; I did the bread and butter of making these things happen. I see my family and the people with whom I have worked, and I see how the disincentives that we create affect their lives and their life choices.

I do not want to detain the Committee with my zealous view that everybody should work—I have already done that—but if we introduce a ruling that states that councils with which we would not all agree can introduce two-year tenancies, we would be putting upon the families who can least support themselves and who have the greatest difficulties. Such families might have to move every two years while another Department is encouraging them to take risks, to go to work, to go to evening classes and to take day release. All the time that Department is trying to encourage such families, we are pushing them in the opposite direction and encouraging them not to make such choices.

Good people sometimes make bad decisions under pressure. The Minister mentioned that my council, Merton council, discharges 10 families a month to the private sector. Steve Langley

runs Merton council's housing department and has been around for almost as long as I have. He is a great man and is the least cynical public servant I have ever met, given his pressurised job as head of lettings in a London borough. He discharges those 10 families because he gets them out of the department, out of the council and into a home. The consequences for the families, whether they can get work and get on in life, are not part of his consideration. He is a great man, but if one is dealing with such a number of families looking for accommodation, one often makes decisions that are not in their long-term interests. We are handing local authorities and housing associations the ability, in desperate situations, to offload some of their tenants. It is not only those families who become wealthy that might have a problem.

Every member of the Committee should read the report, "Mirror, Signal, Manoeuvre", by Family Mosaic housing association. It is incredibly well written. One does not have to understand the detail of housing finance to get the picture. It is one of London's biggest housing providers and provides housing in inner and outer London and Essex. Its conclusion is that the increase in rents to 80% of market value may force them to offload their tenants who will not be able to afford the rents.

11.30 am

If housing benefit changes are brought in that are punitive on under-occupation, families moving out, children going off to university, there will be a huge gap between what people can pay in rent and their actual rent. Housing associations which apply for money from lenders to charge those rents will have to get rid of those people. That is not what anybody wants. Housing association staff are not bad people but they will be desperate to keep their housing float and to keep on developing. Developing is the glamorous part of a housing association's work. It is what draws in the brightest, the best and the risk takers and getting rid of that will rid these organisations of their life blood.

The hon. Member for Croydon Central said that he was a special adviser to David Curry, the former Housing Minister. I went up before David Curry as a young councillor and chair of my housing committee and we discussed under-occupation, particularly by the elderly ladies who live on the St Helier estate. At no point did he suggest that moving them out was the answer. We all know that in order to move people out of accommodation we must provide a better alternative. If we want people to work and to study, we need to do the things that make that more possible. I am not against forcing people to do things. I completely agreed with the introduction of the introductory tenancies so that if people acted in an antisocial manner they could be moved on. I have no problem with that, but I have a problem with using a stick against a family that is doing its best. That will not work for anyone.

The 80% market rents on new housing association properties will simply shift the costs somewhere else. The Department for Communities and Local Government is shifting its cuts on to the Department for Work and Pensions. There is a lack of joined-up government. The report from Family Mosaic says that its tenants' dependence on housing benefit will increase by 151%. That cost will go somewhere. We as taxpayers will still bear it. It will not be in subsidy to the housing associations, but in subsidies to individuals on housing benefits, which disincentivise work. We should look at the bigger picture. We should encourage good behaviour. We should not discourage people from getting on in life, which is all that the two-year tenancies can be about.

Ian Mearns (Gateshead) (Lab): I was not going to speak in this clause stand part debate, but a point has occurred to me. I lived in and represented a ward where there was a great deal of private sector rented accommodation. I was also on the chair of governors of a primary school. The head teacher and I were increasingly concerned about the amount of churn in the local community due to the uncertainty and short-term nature of private sector lets. We were often confronted by parents who had no certainty about where they would be in a month, let alone five months or a year.

We tried to bring parents into the family of the school and engage them in helping their children to learn, but quite often they were with us for three months, five months or a year, and then they were gone and they became someone else's problem. Where possible, parents would try to let their children stay at a primary school. Quite often, however, because of the nature of the turnover in their household circumstances, additional travelling was involved. As other children came into the family, different children were placed in different schools because of where they now lived and the vacancies that were available. I am concerned that clause 130 will add risk, for families in particular, and that it will produce additional uncertainty, concern and worry in the lives—often already chaotic—of people who find themselves living such a churned lifestyle.

I am an advocate for education, and I certainly support the concept behind the previous Government's policy—Every Child Matters. For a lot of families, and for an awful lot of children, school is one constant. It is one oasis of calm in lives that are sometimes otherwise chaotic. The additional pressure and uncertainty that the proposal will create for families who face so many other pressures, uncertainties and worries—including, sometimes, where the next family meal will come from—cause me great concern. What will happen to the children in those families? What will be their certainty? Where will be their oasis of calm? Where will be their one constant, if they face the prospect of being moved around because of the short-term tenancies with which they are provided?

Mr Raynsford: This has been a revealing debate. A series of powerful, persuasive and convincing points have been raised by the Opposition. Apart from two interventions from the hon. Member for Croydon Central, we have not heard a word from Government Back Benchers, and I do not suppose we will hear anything from them. We will get the ministerial statement, and the Minister will have to explain why he has changed his mind. Clearly, he has done so, because what he is proposing now is diametrically contrary to what he and his party were saying as recently as a year ago, before the most recent general election.

The proposal that we are dealing with is a classic product of the coalition Government. It has been cobbled together in a hurry. It is all about a year zero mentality; everything must change, because everything that went before is wrong. There is a total lack of willingness to learn from the experience of the past and to talk to the people who understand the issue most clearly. The arrogant assumption is made that the new Government know best, and they will simply impose their proposals. They do not have the guts to stand up and defend those proposals in Committee, because ultimately they know that they are ill-considered and will not have the consequences that Ministers like to pretend they will.

Indeed, the only defence that has been offered is to ask why we are making a fuss about the proposal, as so many people in housing are so opposed to it that it will not happen. It is pretty extraordinary for a Government essentially to say, "It cannot be that bad, because it will not happen, so please do not blame us for doing it." I do blame them. I blame them for what they

are doing to damage the self-esteem, confidence and security of large numbers of people who will no longer have confidence that—providing they pay the rent and abide by the tenancy conditions—they can treat the place where they live as their home and continue to live there if they want to. That is a pretty important principle that most of us take for granted. Most of us would not want to live in a place where we did not have the security that if we behaved properly, paid our housing costs and did not cause a nuisance we could continue to live there.

My hon. Friend the Member for Lewisham East asked an interesting question about how many of us have lived in the private rented sector. I spent four years living in the private rented sector, at the end of which my landlord decided that he wanted to gain possession of the property and was able to do so. That was long before the era of shorthold tenancies, but I was in an insecure furnished letting back in the late 1960s. There was a simple reason. My landlord, with whom I got on perfectly well, was a rational man. He noticed that the area was coming up in the world, that prices were rising and that it would be sensible for him to clear out the tenants, from whom he was receiving a reasonable income, to cash in on the gentrification of that area of Fulham. Believe it or not, he proposed that the basement flat, which I had occupied for four years, be converted into an indoor swimming pool as part of the gentrification of the property. That gave me a wonderful gag: I said, “At last, he’s found a solution to the rising damp.” That situation was, however, an indication of what can happen. I lived there, looked after the place and paid the rent. I did not cause a nuisance to anyone, but I had to go at the say-so of the landlord.

I accept that it is probably reasonable, certainly in the majority of the private rented sector, for that kind of ethos to exist. It is a very different matter, however, for social tenancies. Ever since the Housing Act 1980—passed by a Conservative Government, though they took up the previous Government’s Housing Bill, which fell at the 1979 general election—there has been a bipartisan, or tripartisan, view that tenants of social landlords should have security. Now that is being removed. A whole category of new lettings are being created where tenants will not have that security. They will not have the ability to feel that, if they behave properly and do the right thing, they can treat the property as their home.

These proposals are not being introduced on the basis of any manifesto commitments. As my hon. Friend the Member for Plymouth, Moor View, rightly pointed out from the Front Bench in her powerful opening speech in this debate, there was no manifesto commitment. The proposals are not being introduced on the basis of evidence from the sector, because there has not been evidence from the sector telling the Government to do that. There has been a lot of interesting debate in the sector about how to provide for flexibility in the context of building communities and helping people to feel confident in their homes. That is absolutely right and proper. There is no support, however, across the sector for the proposals. They have been cobbled together in a hurry. They are being introduced for effect.

The most telling thing is how the proposals were announced. They did not come from any review; they came from a throwaway remark by the Prime Minister in a question and answer session in August. That bounced the Government—to the shame of the Liberal Democrat party, it allowed itself to be bounced, in contravention of everything they had ever said previously—into this ill-conceived and damaging set of proposals. We have heard quite enough from other Members, so I will not say any more about the inappropriateness of the solution and the damaging consequences that it would have.

Finally, I would like to reinforce the point made by my hon. Friend the Member for Plymouth, Moor View, about the Law Commission. That expert body looked at the issue and produced a series of proposals designed to give a degree of flexibility, a point on which we would probably reach agreement if we were to sit down in a room, work at it and find a solution. It had a way of doing that while also creating greater consistency in lettings in the social housing sector and maintaining the principle of security. The issue has been looked at and worked on; there are proposals that have been gathering dust for many years. As the Minister who asked the Law Commission to do that, I thought it was an excellent piece of work. I regretted my successors' failure to implement it when we were in Government.

I put it to the current Government, however, that there is a fine piece of work that could be the basis of sensible legislative proposals to give flexibility and to maintain the basic principles that have been so important for security in social lettings. That could have been done in a consensual way. The way that the coalition Government have acted is an appalling comment on them. They have not based their decisions on evidence. They have not based them on manifesto commitments. They have not based them on logic. I am afraid to say that we are being asked to pass something that has very little support other than among silent Members on the Government Benches.

11.45 am

Andrew Stunell: It would be appropriate for me to respond as fully as I can to the various points made. Perhaps I will start by addressing a point that the hon. Member for Plymouth, Moor View, made in her speech opposing the clause. She referred back to amendment 254 and suggested that we had failed to answer the charge of the right hon. Member for Greenwich and Woolwich. In fact, that is not the case. Provisions in the Bill of any shape or form clearly still require authorities to comply with common law, and nothing that we do could overcome that. There is a perfect defence for local authorities based on article 8 of the European convention on human rights, and tenants would also be able to rely on that as a defence.

Mr Raynsford *rose*—

The Chair: May I warn both the Minister and the right hon. Member for Greenwich and Woolwich, who is trying to intervene, that we have concluded the debate on amendment 254? We cannot return to it, unless the point is relevant to the stand part debate.

Andrew Stunell: I heed your warning on that point, Mr Bayley.

Mr Raynsford: As the clause that we are debating uses the word “must” in relation to giving possession, I believe that it is in order for me to say that the Minister must recognise that the Supreme Court judgments are subsequent to all previous legislation. It seems a nonsense to fall back on the argument that because there are existing mandatory possession grounds, they must be interpreted in light of the Supreme Court decision, but that does not in any way invalidate the new legislation. If we are to produce wording that means anything, it must be accurate in the light of recent Supreme Court judgments. I am sorry that the Minister did not feel that that necessitated an amendment, but I will move on; otherwise, I will incur your wrath, Mr Bayley.

The Chair: It would be reasonable to allow the Minister to respond, but when he has done so, I hope that he will confine his remarks to the clause's main purpose, which is to introduce the Government's proposals on flexible tenancies.

Andrew Stunell: My response just consists of reminding the right hon. Gentleman that neither he nor I are qualified lawyers. If any issues arise from our discussion, I am sure that the lawyers will pick it up quickly.

Clause 130 gives local authorities the power to offer flexible tenancies to new social tenants—I stress that the power is for local authorities. A flexible tenancy is a secure tenancy of a fixed term of not less than two years. I have already drawn attention to the Government’s consultation response, and paragraph 8.6 on page 47 includes the following statement:

“We think, for example, that two-year tenancies should be an available option for landlords, though we would expect, and responses to the consultation suggest, the vast majority of tenancies to be provided on longer terms, particularly for vulnerable households or those with children.”

Subsequently, in paragraphs 8.10 and 8.11, we set out the policy aims and the factors that we believe should be taken into account. In response to an earlier debate, I said that it was the Secretary of State’s intention to publish a draft direction including those elements set in paragraphs 8.10 to 8.12. The document will be available for debate, so we will come back to the precise nature of the limitations on the power, which will provide an opportunity for further discussion.

Bearing in mind some of the misrepresentations that have flown around—and not only during this sitting—I want to make it absolutely clear that this is not a compulsory requirement for local authorities. A local authority can decide to make no change at all to the way in which it allocates tenancies, or it can decide that it will apply to a certain category or type of tenants. It might, for instance, specifically exclude older people. In many cases, one assumes that that would be the case. If a bungalow is allocated to a lady of retirement age, it would not be likely that there were any grounds for her having a flexible tenancy.

Nic Dakin: It seems that the Minister’s explanation is that there is no need to worry because people will not use such tenancies, and that we can therefore feel reassured. The reality is that people are very concerned, and others will become so, and that the process will be haphazard over the country. We will be putting people in a vulnerable position and making them worry when they might not need to.

Andrew Stunell: I remind the hon. Gentleman that we have already discussed clauses that will require local authorities to have both an overarching tenancy strategy and a tenancy policy, which will have to be transparent and open. The direction that we will give will be designed to make it absolutely clear what the boundaries of their discretion are. When a local authority decides to use that discretion, as opposed to deciding in principle not to do so, it will have to make that public, and furthermore—

Alison Seabeck: Will the Minister give way?

Andrew Stunell: If I may, I will finish my sentence. That circumstance will not be an unexpected outcome for any particular tenant. Tenancies will be granted for a particular period, and tenants will know what position they are in from the first day of taking up their tenancy.

Alison Seabeck: Does the Minister therefore expect people to look at tenancy strategies and the range of tenancies that are being offered, and then search for local connections in

authorities that have more generous lengths of tenancy or security of tenure? Does he expect people effectively to start shopping around within the law as it stands?

Andrew Stunell: I really could not speculate on that, but I think it is rather improbable. As several members of the Committee have said, social housing is a very scarce resource. Despite the investment we are making and the increased number of social and affordable houses that there will be by the end of this Parliament compared with at the start of it, it will still be a scarce resource. We are aiming to get a better fit of people in social tenancies to the homes that we have.

We have 400,000 social homes that are under-occupied—those with more than one spare bedroom—and we have more than 200,000 social homes that are overcrowded, with families living in very unsuitable accommodation. I have given an example—

Siobhain McDonagh: Will the Minister give way?

Andrew Stunell: I will in a moment, but I will give my example. Much direct experience and passion have been expressed, particularly by the hon. Lady, and I want to express some of mine.

During the passage of the Bill, a family has presented itself at my surgery, as happens to all of us all the time. The family members currently have a social tenancy, with three teenage children, not all of the same gender, living in a two-bedroom house. That is a very unsuitable circumstance, and they are desperate for a three-bedroom house. On the same estate, there are several three-bedroom houses that are occupied by a single, retired person—frequently a widow whose family has left. It would make great sense for the family I have seen to be allocated a three-bedroom home for 10 years. In 10 years' time, the youngest child will be 22, and that will be the time to have a reappraisal of whether they should continue to have a three-bedroom home or should be offered a two-bedroom home. Otherwise, we will simply build in the misuse of the stock, with families in overcrowded and unsatisfactory situations on one the hand, and underused stock on the other.

I understand that in the flow of debate we have to say certain things, but this is not an ideological argument. It is about making proper use of a scarce resource, and about safeguards that will be set out fully in the Direction—with a capital letter—which have been clearly indicated in our response to the consultation.

Mr Raynsford: Will the Minister give way?

Andrew Stunell: I will give way in a moment to the right hon. Gentleman and the hon. Member for Mitcham and Morden.

A large number of local authorities have said that they believe that the flexibility should be introduced. Some of them have said that while also saying that they themselves would not use it, but they can still see the importance of having it. My defence of the proposal is not that no one will use it, but that it should be used with discretion in certain circumstances, which will be set out in the direction and which individual housing authorities will be able to tailor to their circumstances as they see fit.

Siobhain McDonagh: The 80-year-old ladies who are living on the St Helier estate in the three-bedroom houses in which they brought up their children and from which their husbands went to war are not misusing their council properties. They have a right to be there, and they should be there. If they need to be moved, we should provide accommodation to which we can encourage them to move.

What is the impact of the two-year rule on people who wish to accrue a discount on their property to use their right to buy or their right to acquire? Obviously, the two-year rule, if introduced by any authority, will prevent people from getting on, doing a bit more and buying their home, which I understood at least one of the parties in the coalition thought was a good idea.

Andrew Stunell: I did not say—if I did, I certainly did not intend to—that those people were “misusing” the home. They are under-occupying it; that was the phrase I used. The situation will not arise for any tenant with an existing tenancy, but if someone were in a flexible tenancy with a defined end, there would be an opportunity at the moment of that end for the landlord and the tenant to appraise future accommodation need. Of course, the hon. Lady is right that it makes no sense—it would never make any sense—to terminate the tenancy of a single individual in a three-bedroom home without providing them with appropriate alternative accommodation, but there is nothing in the proposals that even hints that that is the direction in which we wish to go.

Mr Raynsford: The Minister will know that the extent of under-occupation is far greater in the owner-occupied sector than in any other sector. I am sure that he would not think it appropriate to try to force under-occupying owner-occupiers to move into smaller accommodation, even though there is a chronic shortage of owner-occupied housing available for first-time buyers, for example. Will he please justify why he is doing this exclusively for social tenants? Secondly, why has he not paid heed to the Law Commission report to which my hon. Friend the Member for Plymouth, Moor View and I referred in our speeches? He has not mentioned it so far, but its proposals provide an opportunity for flexibility while at the same time maintaining security. Why will he not consider it?

Andrew Stunell: Let me answer that point directly. As I am sure the right hon. Gentleman knows, the Law Commission proposed an extensive and complex rewrite of housing law that would have left a confusing picture on the ground for many years to come. I understand that he was unsuccessful in persuading his successors in the Department to move ahead with it, and clearly his lack of success has gone forward for another generation.

12 noon

One of the points that the hon. Member for Plymouth, Moor View raised was about the linkage between tenancies and income. Clearly, that is tied into housing benefit. She postulated that there might be a temptation to conceal income and matters of that sort. There is nothing in the Government’s response—I refer again to paragraphs 8.10 to 8.12—that talks about income as the driving force for a tenancy change. I agree with the hon. Lady that it could be a good option to have a linkage of that sort, but I agree with her also that it would be important not to create perverse incentives in doing so. The suggestion in some of the talk that seems to be floating around, that “if you get a job, you’ll lose your council house,” is absolutely not contained in the policy aims that we have published in response to the consultation, and is absolutely not part of the framework of our proposals.

The clause provides for the circumstances in which a new tenancy will be a flexible tenancy. It provides for the process by which a landlord may offer and terminate a flexible tenancy, and it provides for a tenant's right to terminate a tenancy or to request a review of the landlord's decision with regard to the offer of the termination process. It removes the rule that requires a landlord, without exception, to provide lifetime tenancies regardless of what sort of tenancy is best suited to the needs of the household.

As hon. Members have rightly said, freedom needs to have boundaries, and we propose to direct the regulator on the content of a new tenancy standard, which will set the parameters within which landlords can exercise the additional flexibility available to them. We have published our broad policy proposals, to which I have already referred extensively, and we are proposing that the tenancy standard places a requirement on landlords to publish a tenancy policy, which sets out the kinds and lengths of tenancies that they will grant, and the circumstances in which they will grant a particular tenancy.

I want to make it clear that a local authority that decides to move towards flexible tenancies is not thereby obliged to make every tenancy flexible. It is not obliged to apply that to every part of its area. It might take a geographically based view about where flexibility was better and where it was not, or about the category of tenants. However, local authorities will be required to publish that, it must be clearly in the public domain and, of course, any tenancy will be let in a transparent way to the tenant, who will be fully aware of the terms.

Heidi Alexander: I want to press the Minister on the question put to him by my hon. Friend the Member for Mitcham and Morden on the right to buy and the right to acquire. I am not sure that the Minister addressed that point. I was giving him time, because I thought he might reflect on it. Where would the accrual of time transfer? If individuals are forced to leave their property after two years, are they disadvantaged by moving properties?

Andrew Stunell: On the original point, the hon. Lady is right—I overlooked my response. We have included a provision that makes it clear that the right to buy endures for flexible tenancies as well as other tenancies let by local authorities. On her point about transfer, I will wait awhile for inspiration, but I will return to it.

There are important protections for tenants that we propose directing the regulator to set. We shall consult on the draft direction later in the spring. The clause itself provides important statutory protections for those who are granted a flexible tenancy. A person who is offered a flexible tenancy by a prospective landlord may request a review of the landlord's decision on the length of term offered. The landlord will be required to look at their decision again and explain how it was reached in light of their published tenancy policy. Tenants will usually be able to terminate their tenancy at any stage, as we would expect, but they will still enjoy the same protections from eviction as a secure tenant during the flexible term. The local authority will need to demonstrate to the court that one or more of the usual grounds for possession is proven, and that it is acting reasonably in seeking possession before the end of the tenancy period.

We expect landlords to discuss housing options with tenants well before the fixed term of their tenancy comes to an end. What needs to be underlined is the fact that, in many cases, we would expect the tenancy to be renewed. If we take the example of the family that I mentioned earlier moving into the three-bedroom home with a tenure period, it might be worth while to report that the youngest child would then be 22 years old. There might be good reasons why the

family still required their three-bedroom home, and a good reason to extend their tenancy for a further period. I am sure that there are other examples.

Ian Mearns: I wonder, in the modern-day context, about the likelihood of the 22-year-old's moving out of the tenancy. If they are one of the young people who are lucky enough to inherit £27,000 of tuition fees and go off to university, even at the end of that stage they might have to go back to the family home. We are seeing a growing social trend throughout the country of young people staying at home until their early 30s. The Minister's example is good, but I am not sure that it well reflects the modern-day society in which we live.

Andrew Stunell: Perhaps the hon. Gentleman will accept that, in 10 years' time, the landscape might be different. I fully understand that there needs to be a review with no automatic assumption that the status quo will or will not continue.

When the landlord decides that the tenancy should not be extended, it is essential that the tenant is given the opportunity to challenge that decision as well as sufficient time to find alternative accommodation following advice and support from the landlord. Local authority landlords will be required to serve a notice on the tenant six months before the end of the flexible tenancy. I can perhaps describe that as stage 1 of coming to the end of a flexible tenancy. That will tell the tenant that they are minded not to reissue the tenancy at the end of the fixed term.

The notice will set out the reasons for the decision, which should reflect the landlord's published policy and give the tenant the opportunity to seek an internal review. When that review upholds the landlord's original decision, the tenant will have a right to challenge the landlord's right of possession as part of the possession proceedings in the county court. That will be on the grounds that the landlord has failed to conduct the review properly or made an error in law.

Nic Dakin: As I listen to the Minister, I am becoming more concerned. He talks about the issue as a housing stock issue, which is about maximising the efficiency of plant. I fully understand that that is an issue, but these are people's homes. My hon. Friend the Member for Mitcham and Morden talked about widows. These are homes in communities, which people have committed to. There is a big difference between a bit of housing stock and a home. I am very concerned about that.

Andrew Stunell: I absolutely share the hon. Gentleman's concern. It is absolutely right that people should feel that they have secured possession of their home. They will know what length of time they have their secure possession for, and they will know that at the end of that period, if their circumstances require it, they can continue to have that home. The hon. Member for Gateshead drew my attention to the possibility that older children might still be living in the house. In such circumstances, it would be absolutely appropriate for the tenancy to be extended.

Gavin Barwell: We have heard Opposition Members discuss, with real passion, the case for security of tenure and the needs of people living in existing social housing stock. Does my hon. Friend agree, however, that it is important to set against that the thousands of people on waiting lists and their housing needs? Does he agree that it is reasonable for the Committee to look at the way in which social housing is allocated, so that a balance is struck between those

who are given a tenancy initially and those who may be sitting on a waiting list? That is the key issue.

Andrew Stunell: Yes. That is correct. I want to pick up on another point that was made earlier when I was awaiting inspiration. The right to buy will be available for a tenant who has spent five years or more in social housing—even if they move to different social housing—and that also applies to the right to acquire in the registered social sector. I hope that reassures the hon. Member for Lewisham East that we will not be dispossessing those tenants from their rights to buy and to acquire under existing legislation.

I was saying that the first step is that notice will be served six months before the landlord seeks possession, and there is the possibility of a tenant challenging that intention in the county court. Step 2 is that the landlord will be required to serve a second notice two months before seeking possession. The court must make a possession order if all the conditions are complied with. Obviously, the debate that the right hon. Member for Greenwich and Woolwich and I had, which I am sure that you do not want us to repeat, Mr Bayley, dealt with the circumstances that might arise there. Taken together, there are important protections for tenants to set alongside the new freedoms that we are providing for landlords.

I want to respond to some of the points that arose in the debate that I have not dealt with so far. I have dealt with the significant points that the hon. Member for Plymouth, Moor View made from the Front Bench; I am sure that she will advise me if that is not the case. The hon. Member for Scunthorpe said that the proposals would be a particular problem for older people, and he quoted extensively from a submission from Age UK. I hope that I have said enough to make it clear that it is hard to see how any responsible landlord would see any need, in giving a tenancy in specialist accommodation, or even just a bungalow or a flat, to an older single person, to do anything other than provide a lifetime tenancy.

Bearing in mind that we are discussing the social landlord sector, some of the fears that have been expressed have seriously undervalued both the spirit and the integrity of social landlords. Under clause 129 we discussed the duty of the Secretary of State to set out those matters, and I have lingered perhaps slightly too long on the direction and what is in there, but I invite hon. Members with real concerns to look at pages 48 and 49 of the document dealing with the consultation responses, so that Members are fully aware of the Government's intention.

The hon. Member for Lewisham East asked whether we had experience of the private rented sector. I wondered whether it was a bit of a revivalist meeting where we were supposed to put our hands up, but I put my hands up and say that I spent four years in the private rented sector at three different addresses, so if that qualifies me to know anything about it, I want to claim my badge.

Heidi Alexander: In asking that question, I was making the point that members of the Committee, if they have lived in rented accommodation of any sort—private or social—will probably recognise the feelings of insecurity and instability that come alongside having a short tenancy, where one does not know what will happen after the one or two years is up. Did the Minister's experience in rented accommodation lead him to feel that way in any respect?

12.15 pm

Andrew Stunell: I do not want to give a personal testimony to add to the revivalist feel. However, I would say that a tenancy that was given for only two years would be exceptional. My right hon. Friend the Minister for Housing and Local Government has cited an example from his own constituency on a couple of occasions in debate. That example concerns a gentleman who suffered serious injuries and disability, and who clearly needed short-term accommodation to get his life back on track. There will be special cases for which a two-year tenancy is appropriate but, as we have explicitly said, it would not be appropriate for vulnerable households, and particularly those with children. I hope that that addresses the point made by the hon. Member for Lewisham East.

The hon. Member for Mitcham and Morden is passionate about these matters and has practical experience of them, which I certainly do not discount. I shall read her words in *Hansard* because she made some important points that we must not overlook. What we aim to provide is a framework for this new proposal that will reassure vulnerable families that their future homes are not being put at risk. The Government well understand the points that have been made about the need to preserve the stability in a community, and to preserve people's motivation to look after their homes and to play an active part in what we might rather grandly call civic society. They will certainly be considerations that should be taken into account, and if they do not appear in suitable words in the direction that the Secretary of State publishes, I am sure that plenty of Opposition Members will point to my words now and question whether we achieved that.

The hon. Member for Gateshead expressed concern about the stability of communities while drawing on his experience of churn in the private rented sector. In many large towns and cities, there are whole wards with significant numbers of private rented property, and I recognise that that can be a problem. London is an outstanding example of that. Our proposal clearly will not make a difference to the private rented sector, but I agree with the hon. Gentleman. I hope my response to the hon. Member for Mitcham and Morden shows that we are fully aware of the questions of stability and civic capacity that have to be considered.

Ian Mearns: The ward that I represented had about 1,700 properties in the private rented sector. There were about 2,500 that were owner-occupied and about 450 in the local authority sector, which was relatively low for my borough. The small estates containing the local authority housing were made up of high-demand, low turnover properties, but outside my ward, where the local authority properties were at a much higher density, there were particular estates in which there was high turnover and relatively low demand. We always want to strike a balance in housing management by not destabilising very stable communities while at the same time bringing some stability to the areas in which there is not such high demand. At the moment, I fail to see how these provisions would help us to achieve that.

Andrew Stunell: I certainly hesitate to give housing management advice to the Gateshead metropolitan borough. The hon. Gentleman might be right, and Gateshead may decide not to take advantage of this flexibility, but some authorities will. That brings me to the right hon. Member for Greenwich and Woolwich, who certainly waxed lyrical—or perhaps Wagnerian—about what the proposal meant. It is interesting that the London borough of Greenwich's response to the consultation said that it welcomed the increased flexibility.

The right hon. Gentleman asked what the evidence base for the proposal was. I have given some of the evidence base—under-occupation and overcrowding. The consultation document gives us another bit of evidence, which is that many housing authorities believe that it would

be useful to them, and useful to the social housing sector, if such flexibility was available. I am sure that the right hon. Gentleman has read the responses, so he will have seen that there is a wide range of responses on how that flexibility could be used, and that is as it should be. We are giving social landlords and local authorities a capacity—a new tool—that they can use if they choose within parameters that will be clearly set out in the direction, which will be subject to further discussion in this place in due course. This is a sensible clause, so I strongly urge the Committee to support it.

Alison Seabeck: We have had a very wide-ranging debate. The contributions from my hon. Friends the Members for Scunthorpe, for Lewisham East, for Mitcham and Morden and for Gateshead, and my right hon. Friend the Member for Greenwich and Woolwich, have raised the quality of the debate on the clause simply due to their vast experience, including from working in and around the housing sector for many years. We got the same message from them all: flexible tenancies do nothing to support families or communities, and add further churn, risk and worry.

We have talked about the private rented sector. I was recently at a conference where I talked to young people who were living in the private rented sector. I heard repeatedly that those people did not have any sense of community because they lived somewhere for a short period—six months or a year—and then moved on. Sadly, the introduction of flexible tenancies and the possible increase in their use will do nothing to help to make communities sustainable.

It would be interesting to hear from the Minister how many people who responded to the consultation said clearly that they had no intention of using flexible tenancies. The consultation document is not available in hard copy—it is available only online—and that presents problems to members of a Bill Committee, for whom it is helpful if hard copies are easily available.

The Minister repeatedly used the mantra that there is no need to worry and that the proposal will not be used in the way that it could be used. That argument simply does not wash, as my hon. Friend the Member for Scunthorpe pointed out.

Andrew Stunell: I think there is a hard copy in the room, but I refer the hon. Lady to paragraph 3.2 of the consultation, which states:

“Around two thirds of landlords said that they expected to take advantage of the new flexibilities, with about a further fifth saying they were undecided.”

Alison Seabeck: That is helpful information and I will retrieve a copy, if indeed there is one in the room.

Given that housing is a scarce resource and tenants will be presenting in need, does the Minister not have any worries that there will be a sort of “take it or leave it” situation with people saying, “We are going to offer you a shorter tenancy; sorry, if you do not like it, tough”? I know tenants who have concerns along those lines and we are certainly not happy with the way in which the provision is written. The Minister has not persuaded Labour Members that any of his proposals will do any more than move the pieces around more frequently. The hon. Member for Croydon Central talked about the need to move people around different parts of the waiting list in the interests of fairness. Unfortunately, unless there

is stock, all that happens is that people are moved from one place to another and there is no stability in the system. The supply must be increased.

Andrew Stunell: The hon. Lady raises the point about a “take it or leave it” situation. My presentation was diverted several times, so let me point out that the first step is the requirement to give tenants notification six months before the end of their flexible tenancy that the landlord is minded not to reissue it. At that point, the tenant has the right to challenge the decision—first, internally with the landlord and, secondly, if necessary, in the court. That is prior to the second notice two months before seeking possession.

Alison Seabeck: That is not quite the end of the process that I was discussing. I was talking about the up-front process where people are, in the first instance, offered tenancies but told that they can have only two years or five years when they might feel that they need, or are likely to need, a more secure form of tenancy. That puts them in a difficult place.

The Minister says that the Law Commission report would have required major changes. That is the case, but he cannot seriously be suggesting that the measures that the Government are introducing, whether in health, education or housing—it is certainly the case for housing—are not major changes that will not be more disruptive than something that has been talked about, thought through and discussed with every sector of the housing world. His argument does not stand up.

The hon. Gentleman talked about information around tenancy strategies and the length of tenancies going into the strategies, but what discussions has he had with lenders about how they would view different areas of the country with different strategies and tenancy lengths? Would they view those that had a smaller number of options as a better bet for investment because there would be more certainty in the system? Is he saying that he expects the market indirectly to influence the type of tenancies that are offered? Lenders might have expressed a view that they would prefer tenancies of certain lengths and certain types of security.

There are no further points that I want to make about the clause, other than to say that we are deeply unhappy with it. We do not think that it has been properly thought through, so we will press it to a Division.

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 15, Noes 10.

Division No. 32]

AYES

Barwell, Gavin

Bruce, Fiona

Cairns, Alun

Clark, rh Greg

Gilbert, Stephen

Howell, John

Lewis, Brandon

Morris, James

Neill, Robert

Ollerenshaw, Eric

Smith, Henry

Stewart, Iain

Stunell, Andrew

Ward, Mr David

Wiggin, Bill

NOES

Alexander, Heidi

Dakin, Nic

Dromey, Jack

Elliott, Julie

Keeley, Barbara

McDonagh, Siobhain

Mearns, Ian

Raynsford, rh Mr Nick

Reynolds, Jonathan

Seabeck, Alison

Question accordingly agreed to.

Clause 130 ordered to stand part of the Bill.

Clause 131

Flexible tenancies: other amendments

12.30 pm

Question proposed, That the clause stand part of the Bill.

Alison Seabeck: I think I speak for all Opposition members of the Committee when I express my regret at the decision to keep clause 130 in the Bill. Clause 131 is linked to that clause and prescribes the circumstances in which an introductory tenancy, on coming to an end, becomes a flexible tenancy. It also sets out the compensation arrangements available to secure tenants of local authorities and how that will not apply to the new tenancies.

This is largely a technical clause, but it raises a number of concerns. I would welcome clarification from the Minister on introductory tenancies that are to become flexible tenancies, which is the change to the Housing Act 1996 outlined in proposed new section 137A. Will the new tenancy be for two years, or will it take account of the year already spent in a home, meaning that a family will, in effect, have only six months' tenure before their position is reconsidered and they may have to move on?

On demoted tenancies, proposed new section 143MA seems to suggest that a family who previously earned themselves a demotion because of their behaviour will be re-offered not a secure tenancy, but only a flexible one. Is that interpretation correct? We understand the need for demoted tenancies as a means of encouraging improved behaviour, but equally, we know that some families are dysfunctional—for want of a better word—for only a short period and, with appropriate support and intervention, can get themselves back on track as good members of their community. An incidence of mental health problems may have caused behavioural issues that led to the demotion, but with care and treatment that might be managed. Those are exactly the type of people who need a sense of security in their lives, so if they are further penalised and lose their right to a secure tenancy, that may well not have a positive long-term outcome. Is that the effect that the proposed new section will have, or will it allow people to revert to their secure tenancy? That is not clear, and I would welcome the Minister's reassurance.

The Government have taken their position on compensation for work undertaken on cost grounds; that is understood. However, a great deal of evidence suggests that people living in short-term lettings do not, in general, worry about the upkeep of either the property or the wider area. I am concerned about how properties will be maintained, and I hope that the Minister can reassure us. I remember very well the appalling state of disrepair of social housing that was inherited by Labour in 1997 after 18 years of Tory neglect. Some of the stock was in such a poor state of disrepair that it was not possible to refurbish it, and some of it had to be demolished. Moreover, a significant sum of money that could have been put into building new homes went instead into the decent homes programme to deal with the backlog and to keep homes available for rent. I hope that the Minister can tell us that the clause will not risk a slow slip back towards those levels of disrepair after all the work of the past 13 years, which enabled so many local authorities to return much of their stock to a decent standard suitable for letting.

That brings me back to the issue of suitability. Another good reason for the Government to reconsider the two-year period—I touched on this earlier—is that there is less buy-in from the

community where short-term tenancies of two years or perhaps a little longer are the norm. I would welcome the Minister's view on that.

I am sure that you will rule this out of order if it falls outside the clause's remit, Mr Bayley, but will the Minister confirm that housing associations with assured tenants are already able to use the ground 9 provision to manage stock as long as there is suitable accommodation to move tenants to? How does that fit in with this clause and the previous one?

Andrew Stunell: As the hon. Lady says, this is largely a technical clause. To clarify, the introductory tenancy period is in addition to the flexible tenancy period, and not deducted from it. Although I understand her perplexity at the clause's language—I also sought clarification on it—I am reliably informed that its wording achieves our intention, which is that when demoted tenants come to the end of their demotion period, they get back whatever they had before.

Mr Raynsford: I am sorry to raise the issue, but can the Minister say why, at the termination of a flexible tenancy, a demoted tenancy would be created? At the termination of a flexible tenancy, the landlord has the right of possession, subject to the matters that we debated earlier. If the landlord were unsatisfied with the conduct of the tenant, what on earth is the logic of offering a demoted tenancy? I cannot see the purpose.

Andrew Stunell: That is a really good question. I shall wait for the answer. I do not want to speculate before receiving divine inspiration, but probably both of us have slightly misunderstood the text. By way of introduction, I said that the clause was highly technical, and I have certainly found it problematic to interpret.

The intention is to make sure that demoted tenancies are essentially in the same position at the end as they were immediately before the commencement. The hon. Lady asked about the use of ground 9 to manage stock; both statistical evidence and feedback from landlords suggest strongly that that is not effective and that, in fact, landlords do have to offer suitable alternative housing in any case.

Why demote a flexible tenancy? I can now answer the right hon. Member for Greenwich and Woolwich. A landlord could demote a tenancy during a flexible tenancy. It might make sense if there was a long, fixed-term period in the same way as for a secure tenancy. Once the demotion period has been served, the provision allows the position to be reinstated. As I strongly suspected, both he and I were slightly misled by the technical phraseology of the provision.

Mr Raynsford: I am most grateful to the hon. Gentleman. The Bill states:

“This section applies to a demoted tenancy of a dwelling-house in England that—

(a) was created on the termination of a flexible tenancy”.

That does not imply the application of a demotion in the course of a flexible tenancy. If he remembers, my question was: why on earth should an authority want to move someone at the termination of a flexible tenancy into a demoted tenancy when they have the right of possession? I still remain absolutely mystified. Perhaps the problem is the wording of the Bill, and if so, I should be grateful to know whether the Government will have a further look at it. It certainly implies something other than what the Minister suggested in his explanation.

Andrew Stunell: I believe that the right response now is to say that I will write to the right hon. Gentleman.

One other point: I may have given a misleading impression about the termination of tenancies. The court challenge by a tenant would be at the six-month stage against possession action, when the landlord seeks possession on an error-of-law basis; that would be the same as for any possession proceedings. With that, I hope that members of the Committee are ready to let the clause stand part of the Bill.

The Chair: Thank you all for making a technical clause more interesting than they usually are.

Question put and agreed to.

Clause 131 accordingly ordered to stand part of the Bill.

Clause 132

Secure and assured tenancies: transfer of tenancy

Question proposed, That the clause stand part of the Bill.

Alison Seabeck: The clause provides for tenants to be able to keep their secure tenancy rights if they mutually exchange with a tenant who does not have secure tenancy rights. Such as it is, we welcome the provision to enable people to keep their rights, as that is the only way to maintain some flexibility in the system. That issue has informed debates, including those prompted by the Hills review and those on how social mobility, specifically in the social housing sector, affects and restricts employment opportunities. We know from evidence that families are reluctant to move, and to sever local and family ties, if jobs are low paid and insecure. However, for those who want to transfer, a national scheme should be supported.

We are told that the existing rights of tenants will not be changed, and that tenants with a secure tenancy will always keep their secure tenancy rights. Last week, the Minister for Housing and Local Government told the House:

“there is no chance of, or way in which, a social tenancy can be broken or changed for anybody already in council or housing association homes.”—[*Official Report*, 28 February 2011; Vol. 524, c. 19.]

In November, the same Minister, in response to my question on whether he would give his personal guarantee that the rights would not be changed, gave the very brief but direct answer, “Yes.”

Will the Under-Secretary explain why the response to the consultation on his proposals—a document signed off by the Minister for Housing and Local Government—states, at paragraph 8.12, that the Government will

“Protect the security and rights of those who were social housing tenants at 31 March 2012 by granting them a tenancy with no less security where they choose to move to another social rent home (this requirement does not apply where a tenant chooses to move to an affordable rent home)”?

I am not sure whether that means the rights are protected or removed, because the wording is a little ambiguous. I am sure that the Under-Secretary will say that the rights are protected, but I am unclear how, during that mutual exchange process, if someone decides to move to a home that has an affordable rent, their rights will travel with them. I may have misinterpreted the provision; I would welcome the Minister's clarification.

Andrew Stunell: Perhaps this is the way to look at it: paragraph 8.12 sets a floor below which the conditions offered to tenants may not fall. It means that if tenants move to another social rent home, they are absolutely protected; if they choose to move to one of the new affordable rent homes, there is not a floor that requires that to be the case. A landlord could easily determine to offer that continued protection with a move to an affordable rent, but the phrase in brackets indicates that that will not form part of the floor minimum offer available to tenants.

Mr Raynsford: I have just heard the Under-Secretary state that the guarantee that the Minister for Housing and Local Government gave—that no existing secure tenants need worry—is not actually operative. We know very well that many authorities will have difficulty finding options for people who need to transfer into alternative secure tenancies. If they are in a position to say, “If you move into an affordable rent tenancy, you lose your security,” many tenants will feel that it is Hobson's choice—either they have to move to get a decent home, or they have to stay in grossly overcrowded conditions to retain their security. That was not the pledge that the Minister for Housing and Local Government gave, which was that all existing tenants would retain their security. I am deeply concerned that the Under-Secretary is apparently conceding that that pledge was not fully operative.

Andrew Stunell: The right hon. Gentleman has made his point, but we are talking about the preservation of those rights in socially rented accommodation; that is the pledge made by both the Minister for Housing and Local Government and the Secretary of State. I am taking stock of what the right hon. Member for Greenwich and Woolwich and the hon. Member for Plymouth, Moor View, have said, and I will take stock of the precise nature of what we have announced. I certainly do not want to contradict anything that the Secretary of State has said on the matter.

12.45 pm

In everything that we have introduced, we have been clear that existing social tenants are protected while they continue to have social tenancies, either in their current tenancy or if they transfer or move to another tenancy. That applies to the arrangements for flexible tenancies as well.

Mr Raynsford: This is extremely important. The Minister has just said that existing secure tenants will continue to enjoy security if they remain in their existing tenancies or transfer to another tenancy. Those are the words that he used. That is not compatible with the passage in the response to the consultation paper that my hon. Friend the Member for Plymouth, Moor View highlighted. If tenants lose their security as a result of accepting a move to an affordable rent tenancy, what the Minister has just told the Committee is not the case. Will he clarify the position?

Andrew Stunell: Yes, I certainly will. I do not think we are talking about two different situations. The guarantee always applies if existing secure tenants or existing assured tenants are required to move by the landlord. But if a tenant chooses to move to an affordable rent

property, it is reasonable that discretion should be available to the landlord as to whether that remains in place in that particular case. A tenant's decision to choose to do that might be linked to what offer he or she thought the landlord was making about longer-term security. In a situation in which there is a requirement to move, the guarantee continues without exception. In a situation where a tenant chooses to move to affordable rent, it could be maintained by the landlord, but it is not part of what I have described as the floor requirement.

Nic Dakin: I think the Minister is saying that there is no assurance to tenants in overcrowded conditions who need to move for personal reasons. They might have to choose to take a less secure tenancy to address those needs. My right hon. Friend the Member for Greenwich and Woolwich is clearly saying that there is no assurance to such people in that situation, which is disgraceful.

Andrew Stunell: I have already given the example of my family with their three teenage children. Their route to getting a suitable home would be to take out a 10-year tenancy agreement on a three-bedroom house, which would be subject to review at the end of that time. That would be one option. They could choose not to do so. They could choose to remain and wait for another option to become available. I do not want to speculate too far how a local authority might arrange its flexibility, but they might go to part of the borough where the local authority had a different tenancy arrangement.

Alison Seabeck: When I stood up to speak on the clause, it was not my intention to press it to a vote. I thought I was going to receive reassurance from the Minister. In fact, he dug himself into an even bigger hole. To his credit, he said that he would go away and take stock of the comments made by my hon. Friends, and I hope that he will do so, but I have deep misgivings about the discretion of the landlord. If someone chooses to take a tenancy, they could lose the security that they were enjoying. It is still not clear what would happen in the case of a mutual exchange which, by default, is a choice that someone has made. Will all the people on mutual exchange registers find themselves in a position where they could move but lose their existing tenants' rights? I am afraid that we are going to put the clause to a vote.

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 15, Noes 10.

Division No. 33]

AYES

Barwell, Gavin

Bruce, Fiona

Cairns, Alun

Clark, rh Greg

Gilbert, Stephen

Howell, John

Lewis, Brandon

Morris, James

Neill, Robert

Ollerenshaw, Eric

Smith, Henry

Stewart, Iain

Stunell, Andrew

Ward, Mr David

Wiggin, Bill

NOES

Alexander, Heidi

Dakin, Nic

Dromey, Jack

Elliott, Julie

Keeley, Barbara

McDonagh, Siobhain

Mearns, Ian

Raynsford, rh Mr Nick

Reynolds, Jonathan

Seabeck, Alison

Question accordingly agreed to.

Clause 132 ordered to stand part of the Bill.

Clause 133 ordered to stand part of the Bill.

Schedule 14 agreed to.

Clause 134

Succession to secure tenancies

Alison Seabeck: I beg to move amendment 264, in clause 134, page 121, line 36, at end insert ‘or

(c) P is normally resident in accommodation held by a person, Q, where Q holds an introductory, assured, or secure tenancy, and where P is in a subsisting relationship with Q, or

(d) P is normally resident in accommodation held by a person, Q, where Q holds an introductory, assured or secure tenancy and where, P has acted as a carer for Q for a period of not less than one year, or

(e) P is normally resident in accommodation, for a period of not less than one year, held by a person, Q, where Q holds an introductory, assured or secured tenancy and where P is the sibling of Q.’

The amendment will no doubt seem familiar to the Committee, as it is broadly similar to amendment 220, which we debated on 1 March as part of our consideration of clause 121. The Minister criticised that amendment as badly drafted, which is a pity, because it used the same language as clause 134, courtesy of his parliamentary draftsman.

With the amendment, we are again seeking to extend protection to carers—something on which I am sure my hon. Friend the Member for Worsley and Eccles South will have a view—to live-in siblings and to people who are in a relationship but are not married. Following from our debate on amendment 220, I am sure that the Minister will say that there is no need for the amendment, that there is provision for local flexibility and that therefore he is not minded to accept the amendment. However, I would like to draw the Committee’s attention to subsection (5), which states that the provisions apply if

“more than one person...fulfils the condition in subsection (1)(b)”,

The condition in subsection (1)(b) is that a person, “P”

“is the tenant’s spouse or civil partner.”

Under the clause, two or more people can be considered the spouse or civil partner of the tenant and have statutory succession rights, but carers or siblings cannot. There may be Liberals in the Government, some of whom are even still liberal-minded, but even I cannot believe that the Minister intends to legislate for bigamists’ rights ahead of those of live-in carers.

I am not alone in being concerned about the way in which the Government are seeking to remove succession rights for carers. Age UK said in its submission:

“Given the contribution of carers, they deserve to succeed to a tenancy or have an offer of alternative social housing with a lifetime tenancy.”

Our amendment would do that and give succession rights to carers. I appreciate that the Minister will say that there is provision for local councils to do so on a discretionary basis, but carers deserve better. Clearly, organisations with experience such as Age UK believe that the

Bill as it stands offers inadequate protection, which is why we tabled the amendment. We would like to hear the Minister say that he will make his one acceptance of an amendment in this case.

Andrew Stunell: Clause 154 is needed, because at the moment different rules exist for secure tenants of arm's length management organisations and councils, and for assured tenants of registered social landlords. Both types of tenants can be succeeded by a spouse or a partner, but secure tenants can also be succeeded by another family member. Importantly, there can be only one succession to a tenancy, so if the existing tenant was a successor they cannot by law be succeeded by anyone else, regardless of the circumstances. We propose an equalisation of rights for new social tenants with secure, assured, flexible or assured shorthold tenancies, with one mandatory succession for spouses and partners. I must say for the sake of completeness that we are looking at the case for a technical amendment to clauses 134 and 135, because there may be some confusion or ambiguity in the wording. It is not clear that a non-spouse or partner can succeed where there has not already been a succession, and we intend to correct that in due course.

We propose to give landlords the power to vary tenancy agreements to give whatever further succession rights they choose, which is a move in the direction that the hon. Member for Plymouth, Moor View is seeking. At the moment, the succession rights are clear and absolute, but giving landlords the ability to vary tenancy agreements means that they can, at their discretion, have a tenancy policy that covers the point that the hon. Lady has made. That will happen for the first time. This new freedom will allow landlords to act on a case-by-case basis; if they believe that the individual circumstances of the household merit a further succession, they can vary the tenancy agreement accordingly.

The proposed changes in the clause will bring flexibility to landlords and certainty to tenants. The ability of a landlord to customise succession rights means that before they move in, prospective residents such as adult children seeking to care for elderly parents will be aware of their position, and landlords can exercise more control over their stock. Landlords will not be limited by the one succession rule, nor will they be required to allow family members who would not otherwise qualify for social housing to take over a tenancy that they do not need. That seems to me to be the right position; it gives landlords flexibility to accommodate the cases to which the hon. Lady has drawn attention, but it does not impose a legal obligation on them to do so and perhaps to become involved in considerable discussions about whether the carer is in an appropriate relationship with the household, which is always an area of risk for a housing authority.

I hope that the hon. Lady will accept my assurances that the proposal gives landlords the opportunity for the first time to exercise their discretion in exactly the direction that she is requesting, and that that flexibility is better than having a legislative requirement that might result in local authorities giving succession rights in inappropriate cases.

Alison Seabeck: I understand the Minister's comments about this being a tidying-up process, and I understand that clauses 134 and 135 need further tidying up. I also heard him say, "This is a move in the right direction, isn't it?" Yes, it is a nudge, but I think we need a bit of a shove. We may want to return to this on Report, but I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 134 ordered to stand part of the Bill.

Clauses 135 and 136 ordered to stand part of the Bill.

The Chair: Before we conclude proceedings this morning, I want to inform Members that this is the last sitting of the Committee that I will chair, because my Select Committee is going abroad this afternoon and I am going with it. I have never before chaired a long Bill where the discussion has not veered away from the questions in the Bill. That is quite extraordinary, and it is a tribute to the knowledge and experience of Front Benchers and Back Benchers on both sides of the Committee. It is 25 years since I ceased being a local government councillor, and the expertise of Members on both sides has given me a fantastic refresher course in local government.

1 pm

The Chair adjourned the Committee without Question put (standing Order No. 88).

Adjourned until this day at Four o'clock.