



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Local Government and Communities Committee

**Wednesday 20 December 2017**

**Session 5**



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**LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE**  
**32<sup>nd</sup> Meeting 2017, Session 5**

**CONVENER**

\*Bob Doris (Glasgow Maryhill and Springburn) (SNP)

**DEPUTY CONVENER**

\*Elaine Smith (Central Scotland) (Lab)

**COMMITTEE MEMBERS**

\*Kenneth Gibson (Cunninghame North) (SNP)

\*Jenny Gilruth (Mid Fife and Glenrothes) (SNP)

\*Graham Simpson (Central Scotland) (Con)

\*Alexander Stewart (Mid Scotland and Fife) (Con)

\*Andy Wightman (Lothian) (Green)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Marianne Barker (Scottish Government)

Andrew Ferguson (Fife Council)

Brad Gilbert (Scottish Government)

Derek Mackay (Cabinet Secretary for Finance and the Constitution)

Angus Macleod (Scottish Government)

Dr Lindsay Neil

Paul Nevin

Kevin Stewart (Minister for Local Government and Housing)

Bill Stitt (Scottish Government)

Craig Veitch (Aberdeen City Council)

**CLERK TO THE COMMITTEE**

Jane Williams

**LOCATION**

The James Clerk Maxwell Room (CR4)



## Scottish Parliament

### Local Government and Communities Committee

*Wednesday 20 December 2017*

*[The Convener opened the meeting at 09:34]*

#### Decision on Taking Business in Private

**The Convener (Bob Doris):** Good morning, and welcome to the 32nd meeting in 2017 of the Local Government and Communities Committee. I remind everyone to turn off their mobile phones. As meeting papers are provided in a digital format, tablets may be used by members.

Agenda item 1 is a decision on whether consideration of the committee's response to the Finance and Constitution Committee on the draft budget for 2018-19 should be taken in private at future meetings. Do we agree to do so?

**Members** *indicated agreement.*

## Draft Budget Scrutiny 2018-19

09:34

**The Convener:** Agenda item 2 is scrutiny of the Scottish Government's draft budget for 2018-19. I welcome Derek Mackay, the Cabinet Secretary for Finance and the Constitution, and Kevin Stewart, the Minister for Local Government and Housing. They are accompanied by four officials from the Scottish Government: Bill Stitt, team leader, revenue and capital; Marianne Barker, non-domestic rates group secretary; Brad Gilbert, head of the financial innovation unit; and Angus Macleod, head of the tackling fuel poverty unit. I hope that I gave all those titles accurately. Thank you for coming to aid our scrutiny of the draft budget.

I invite opening statements from the cabinet secretary and the minister.

**The Cabinet Secretary for Finance and the Constitution (Derek Mackay):** I welcome this opportunity to discuss the Government's spending priorities with the committee and to hear members' views. As I made clear to the Parliament, the 2018-19 budget is being delivered under the most challenging of circumstances. It is because of that that the Government is proposing to use the powers of the Parliament to build a fairer Scotland, invest in our public services and support business to develop and thrive.

Local authorities are our key partners in delivering the vital services that the people of Scotland expect and deserve, which is why I have treated local government very fairly by delivering a total settlement of more than £10.5 billion. Within that total, I have been able to protect the resource budget in cash terms and increase the capital budget in real terms, which will result in a total increase in local authority core funding of £94 million.

The Scottish Government is proposing to use its tax-raising powers. If councils increase their council tax by 3 per cent, they will raise an additional £77 million, and will also secure a real-terms increase in spending on local government services again next year.

On non-domestic rates, I believe that we now offer the most attractive rates package in the United Kingdom. The number 1 budget ask of business was to cap the inflationary rise in the poundage at the consumer prices index rather than the retail prices index, and in my draft budget I propose to deliver that policy. I also propose a package of reliefs worth an estimated £720 million next year, including the small business bonus, which we have agreed to review, as recommended by the Barclay review of business

rates. The draft budget also includes a number of Scotland-only measures to cement Scotland as the best place to do business; that includes nursery relief and the creation of a growth accelerator.

I hand over to Kevin Stewart.

**The Minister for Local Government and Housing (Kevin Stewart):** Despite tough public expenditure conditions driven by Westminster, we have secured further significant investment for housing, including our ambitious affordable housing supply and energy efficiency programmes. Our draft budget for 2018-19 shows our commitment to delivering on those, with an increase to the more homes budget and maintenance of the fuel poverty and energy efficiency budget at its current level.

I will address each of those elements in turn, starting with how we are increasing the capital spending on housing supply. The budget document notes that the total spend on more homes will be increased by 24 per cent to £723 million. All of the £523 million capital funding for more homes will be directly invested in the affordable housing supply programme, chiefly for social housing. Together with the £92 million funding for transfer of management of development funding, which sits in the local government budget line, the total capital investment will be £615 million. That is a £144 million increase on the equivalent figure for 2017-18, and it will enable councils and housing associations to increase the momentum that is needed to accelerate the pace of delivery.

We have allocated £141 million of financial transactions to the affordable housing programme, which means that the total budget for affordable housing in 2018-19 will be £756 million. That is the most powerful way to invest in housing supply for a fairer Scotland.

On improving energy efficiency, our focus continues to be on reducing overall energy costs for Scottish consumers by improving energy efficiency in homes where we can. Next year, we will again allocate £114 million to tackle that and improve the energy efficiency of our homes. That investment demonstrates our long-term commitment to addressing the challenges of climate change and the inequality of fuel poverty in our society. We will deliver on that through our existing and developing fuel poverty programme, which offers a package of support to help those who are struggling to pay their energy bills and keep themselves warm.

Finally, I turn to the important matter of our on-going work to tackle homelessness. The homelessness and rough sleeping action group has already identified the immediate actions

needed to tackle rough sleeping this winter, which we are implementing right now. By late spring 2018, the group will be providing recommended longer-term actions to end rough sleeping, transform the use of temporary accommodation and move to end homelessness.

In our programme for government, we committed £50 million to the ending homelessness together fund over the next five years, with the first £10 million set out in the draft budget statement. I look forward to the further recommendations of the action group early next year and to taking forward a lasting change and improvement to ensure that everyone has a safe and stable home.

Overall, therefore, despite the tough public expenditure conditions, we will still provide significant investment and meet our commitments to build more affordable homes, improve energy efficiency and end homelessness.

**The Convener:** Thank you for those opening statements. It is only fair that we record our thanks for the additional transparency and information on the budget. Last year, the committee asked for more information when the Scottish Government budget was published so that we could read over clearly between headline figures in the draft budget and various local government funding streams. It is reasonable to say that that information has been provided and that it will help the committee's scrutiny. It will certainly have helped the Scottish Parliament information centre to prepare support for this morning's evidence session, which is welcome.

Of course, getting more numbers and getting them more quickly does not mean that there is a change to the annual—or perennial—debate about whether local government has sufficient funding. How would the ministers respond to criticism from local authorities and others that there is still not enough money in the pot to fund local government services? We will perhaps drill down to some of the numbers shortly.

**Derek Mackay:** I would say that it is a fair settlement, bearing in mind that we have had a real-terms reduction in our resource funding and that we have many priorities in the Scottish Government. We have worked with our local government partners, but it is true to say that they forecast a much worse settlement and a need to prepare for far less resource than the draft budget proposes. I believe that the settlement that we have outlined is fair.

I have had negotiations with the Convention of Scottish Local Authorities, which represents all local authorities—I welcome the fact that it again represents 32 out of 32 local authorities—and it has described that on-going engagement as positive and constructive. From outlining the

proposed settlement to COSLA, I know that it recognises that the settlement is better than it expected. I believe that the settlement gives local authorities sufficient resources to enable them to deliver quality public services, but of course they have their own fiscal lever in the council tax; they can increase the council tax by up to 3 per cent, which would generate £77 million. If they used that lever, it would take their overall resources into a real-terms increase. I look forward to further engagement with local authorities.

**The Convener:** COSLA has given us supplementary evidence, following publication of the draft budget. One of the things that COSLA has done is to predicate inflation running at 3 per cent and apply a 3 per cent deflator. However, I understand that the Scottish Government has a deflator of 1.56 per cent, which makes quite a big difference in whether the additional £77 million that could be raised by council tax brings local authorities into a real-terms increase or a real-terms cut. Why is there such a difference in those figures? Why would the Scottish Government figure be accurate?

**Derek Mackay:** Perhaps Bill Stitt can cover the inflationary analysis. There are different ways of measuring inflation. We believe that our measure is appropriate with regard to the services that local authorities provide.

**Bill Stitt (Scottish Government):** We use the gross domestic product deflators approved by Her Majesty's Treasury. They obviously take different things into account, but they more clearly reflect what is happening in Government rather than the outside world.

09:45

**The Convener:** Okay. Do you want to elaborate on that?

**Derek Mackay:** We can provide more information on the factors that lie behind the inflation statistics that are used, if you want us to do so.

**The Convener:** Okay.

One of the benefits of having additional information at an early stage is that when the Government and COSLA, for example, put their position, they talk about what they would apply a deflator to. For example, in its latest briefing for this committee, COSLA appears to apply a deflator to the budget line, "Overall Scottish Government Funding for Local Government", in table 10.20, which includes, for example, £121.9 million for city deals, Clyde Gateway, the home efficiency programme and the regeneration capital grant fund—there is a lot of capital funding in that table, to which COSLA would apply a deflator.

Does the Scottish Government take the view that all aspects of spend should be viewed in that way? Should some aspects have a deflator applied to them, but not others?

**Derek Mackay:** Bill Stitt can cover the specific issue.

Some funds are arrived at by way of a deal to local government. City deals are a good example. There is a negotiation between the UK Government, the Scottish Government and local authorities—other partners might be involved in city deals. The figure that we arrive at is, in essence, a deal. With city deals, as with other elements, the potential or capital expenditure is the cost of providing the deal, and an inflationary increase might not be relevant. The budget line for city deals is roughly doubled. The reason for that is that more deals have been signed up to. It would not be appropriate to measure everything with the same stick.

**Bill Stitt:** The real-terms increase that the cabinet secretary mentioned is on the local government settlement itself. In response to the committee's request, in table 10.20 we listed all the other local government money, which is not part of the core settlement. None of those capital or revenue items has been included in our calculation of a real-terms increase in the local government settlement.

**The Convener:** Okay. That is helpful, because COSLA appears to be taking a different approach.

In its briefing, COSLA also talks about commitments in the Scottish Government budget, which I know that we all welcome, including commitments on the expansion of early learning and childcare from 600 hours to 1,140 hours. COSLA has costed a number of the commitments that the Scottish Government wants local government to deliver and talks about

"£66m for health and social care (not ring-fenced)"

and

"£24m for additional 1% for teachers pay".

COSLA does not say where the figures come from, but the total amount is £153 million, which it presents as an additional burden on local authorities—although we might expect local authorities to be delivering and making progress on such services anyway. Have there been discussions between the Scottish Government and COSLA on what will require additional funding, what funding it would be appropriate to ring fence and what local authorities should just get on and do?

**Derek Mackay:** That is a fair question, which reflects some of the complexities of the local government settlement. Many of our priorities and

services are joint—they are partnership priorities. Childcare, for example, is delivered largely by local authorities, who are key partners. Health and social care integration is, by definition, a partnership approach.

In the budget negotiations that I have with COSLA, COSLA is interested in the quantum—that is, the total resource that it will have—and it is interested in a range of pressures, particularly those that it regards as being Government inspired. All that leads to negotiations. Let us take the teachers' pay settlement: local authorities sought extra Government support so that they would be able to deliver that.

The overall 2018-19 settlement that I have described is essentially flat cash for resource and an increase in capital, recognising that there are a lot of areas in which there is partnership work with local authorities. Housing is absolutely critical and local authorities are a key partner in that, as they are in city deals.

Within resource—the figures that the convener mentioned—are areas on which we have engaged with local authorities. For example, I specifically asked local authorities what figure would assist them with the pressures of health and social care integration. The sum that has been allocated to that within the settlement reflects local authorities' ask of the Scottish Government, as do the sums for support for teachers' pay and expansion of early learning and childcare. Those key elements of asks from local government to recognise the pressures on them are built into the settlement.

What local government was really concerned about was that, if they were going to have an overall reduction in the quantum—and as I said, many councils were forecasting a 3 per cent reduction, which is about £300 million or more—and they were going to be dealing with extra pressures on top of that, it was going to leave them in a more vulnerable position. That is why, through the negotiations with COSLA, we have made sure that there is resource within the settlement to support local authorities to deal with those pressures.

**The Convener:** Okay. I am going to read out the COSLA position, because I want to make sure that I capture it correctly.

“COSLA's view is that there is a £153m revenue reduction to the core 2018/19 settlement. To calculate this we have simply taken the SG's flat cash position and highlighted the new burdens that have been confirmed would be fully funded for local government. Our view is that if these items are funded then there is a reduction to the core settlement.”

That is where COSLA gets the £153 million figure. Is the Scottish Government's position that that is wrong? What is your view of that?

**Derek Mackay:** That is its interpretation. I say again that in areas such as childcare, Parliament will be legislating to increase provision and we want to make sure that local authorities are resourced to do that. Some of the investment in childcare will go into expanding and improving nurseries to enhance their capacity in order to get to the 1,140 hours' provision. My point about interpretation is that that is real money—real cash—and it will sustain what local government has. I know that these are challenging times for public services and that local authorities are feeling pressures, but those are areas of negotiation, where the Scottish Government was asked to recognise the partnership approach and put that sum in.

If local authorities, for the purpose of their briefings or wanting to improve their quantum—which I understand—want to describe it as not being core money, that is up to them. What I am saying is that it is real cash that is being invested in partnership priorities. We have discussed the figures with local authorities and now, of course, I will write to the 32 authorities and ask for their agreement to deliver on commitments and ask them whether they accept the settlement. They will say that it is not core money, whereas I say that it is for partnership priorities—which you have touched on, convener—which are primarily around early learning, childcare and health and social care integration.

**The Convener:** I have a final question before we move on to colleagues, who will develop the discussion further. You mentioned that local authorities were preparing for a very different settlement. What settlement do you think that local authorities were preparing for and what has changed?

**Derek Mackay:** Obviously, I engage with directors of finance. I have met a number of council leaders over the course of the past few months and I regularly meet COSLA leadership teams. Their assumption, which was perhaps informed by others, was that they should expect about a 3 per cent reduction—a £300 million cash reduction—in the settlement. It would have been £300 million less than the figure that they have now received in the settlement, because flat cash is essentially a 0 per cent reduction.

Local authorities were forecasting and preparing for that, and many councils published options for saving with that in mind. There was a range of possibilities, as there always is with forecasting and assumptions. The possible reductions ranged from 2 per cent to as low—or as high, depending on your point of view—as 5 per cent, which would have been £500 million. Commentators took the view that the Government would not use its tax powers and was investing in manifesto

commitments, which led them to arrive at that reduction figure. That is not the figure that I am proposing in the settlement, which is far more positive than any local authority in the country was predicting.

I do not dismiss the idea that it is challenging for people who deliver public services. There is, of course, increasing expectation and demand on those services. They will face further challenges because of on-going austerity and welfare reform, for example.

In that context, the settlement is fair and it is not unreasonable for the Government to earmark and ring fence resources for something that is a priority. One good example of that, which is challenged by people who do not believe in ring fencing, is the pupil equity fund of £120 million. The evidence is that it is being spent directly on measures that will help to tackle the attainment gap. It has also ensured that hundreds more teachers have been employed which, we hope, will make a difference to outcomes and attainment.

That is an example of how ring fencing, although it might not sit comfortably with all of us in principle, works in many regards.

**The Convener:** It is interesting that you mentioned ring fencing. If I recall rightly, cabinet secretary, COSLA and Unison came to the committee and lamented ring fencing. When we asked them whether they agree with ring fencing they said that they do not, but when we asked them specifically whether they would take money away from the pupil equity fund, they made no comment. There is an interesting dynamic between what is and is not appropriate to ring fence, to which the committee might return.

**Elaine Smith (Central Scotland) (Lab):** Thank you, cabinet secretary and minister, for joining us.

I will explore the matter slightly further. It is not just COSLA that is concerned: the Scottish Trades Union Congress briefing says:

“The Scottish Government may have received a real terms cut from Westminster, but it still received a cash terms increase of £188 million. Local Government, however, can expect worse treatment from the Scottish Government as their cash terms budget is frozen.”

The STUC is also expressing concerns about real-terms cuts to local government. Have you responded to its concerns yet?

**Derek Mackay:** As Elaine Smith would expect, over the past couple of months I have met a number of stakeholders, including the STUC, which raised a number of matters with me, and not just to do with local government. Trade unions are concerned about a range of issues, not the least of

which is public sector pay policy. They also engaged constructively in the tax debate.

A key feature this year was to ensure that we went from a real-terms reduction in resource to being able to invest in real-terms growth. That related principally to the national health service. There is demand and a need for that, and there is no doubt that the NHS is a precious service. So, too, are local authority services, but local authorities can raise the council tax, which would increase their income and their resources.

We have to make choices and set our priorities, which we have done fairly in the budget while ensuring that there is economic growth so that we can have future revenues to continue to invest in our public services. The STUC raised a number of matters: pay policy overall, investment in our public services, tax and local government. However, the Government and, therefore, Parliament have to make choices.

Local government will campaign for more resources: it always has and always will. I did that when I was a council leader. It is to be expected. However, in the context of the reductions that we face, local government has been treated fairly.

**Elaine Smith:** Of course choices have to be made. In its briefing, the STUC goes on to make a point about the Scottish Government’s revenue-raising powers and the choices that can be made. However, to look at local government and the NHS specifically, many of the services that local government provides are interconnected with the NHS; many of them would take pressure off the NHS if they were fully funded and properly provided. We have to acknowledge that.

The cabinet secretary talked about pay policy, which has been raised with the committee. From looking at the COSLA submission, it seems that one of the issues in the dispute that you are having about whether there is a reduction to the core budget is the teachers’ pay settlement. Unison Scotland points out that teachers are directly employed by local councils and, therefore, negotiate their pay through COSLA. However, it feels that there is some confusion about why the Scottish Government cannot apply the approach that it is taking on teachers’ pay in order to ensure adequate pay funding for all public sector workers. I appreciate that the Scottish Government has lifted the pay cap for some workers in the public sector, but the point that Unison Scotland would make is that it does not apply to many low-paid workers in local government.

10:00

**Derek Mackay:** I want to correct one thing that Elaine Smith has said. Teachers’ pay is not dealt with only through COSLA: there is a very specific

tripartite arrangement with the Scottish Government. It is fair that, when the Government engages in such an arrangement, it thinks about the overall resource that local government has for teachers' pay, as their employer, so the Scottish Government should engage constructively in the negotiations.

**Elaine Smith:** Do you see that as the key difference between the teachers' situation and the situation of other local government workers?

**Derek Mackay:** There is a clear difference in that the Scottish Government is part of the tripartite negotiating arrangements on pay for teachers. To be able to secure a satisfactory deal with the workforce, local government asked for more resource, and it got that. Because the Government is part of the negotiations, the teachers' pay deal is different from the deals for other categories of council staff, in which the Government does not have a say over pay policy. Many would argue that it should not have a say outwith teachers' pay because of the very specific nature of the tripartite arrangements and framework.

I set out an overall pay policy that covers all areas that are within the Government's control. There are elements of which Elaine Smith will be very aware around health workers, for whom there is an independent pay review that might return with a different proposition to my policy. I have said that we will at least match that.

All that contextualises what local government might do with a pay award. Frankly, local government has said to me that I should be mindful of what I do on pay because it will create issues of consistency for local government. It is for local authorities to decide where they set pay increases and how they take account of any changes to their modelling.

COSLA may say one thing through briefings, as it has done. I have not seen much detail yet, but I have heard at least one council leader—from memory, a co-leader of Fife Council—say publicly that the settlement will allow that council to match Government pay policy. That is just one leader's view. Given that the settlement is better than anticipated and that local councils would have faced pressure for a pay uplift, they are in a reasonable place.

**Elaine Smith:** You obviously make the point that it raises aspirations among other public sector workers if promises are made to one sector and others feel that they might miss out. I appreciate that you have put your point about that on the record.

**Derek Mackay:** I make the point that it is not for me to instruct local authorities where to set a pay settlement. When that has happened in the past,

there have been industrial disputes. Government does not ordinarily give a view on what a pay settlement should be.

The context is that the Government has recognised the cost of inflation on household budgets. We also want to sustain and protect public sector workers. Our pay policy, as our tax policy is, is progressive. There will be no compulsory redundancies and there is support for people who are on lower pay. Those are key features of the policy that are not, I imagine, alien concepts to local government, although I appreciate that councils now have to negotiate with their workforces. I argue that they can do so with a better settlement than they had been expecting—one that is fair and one that gives them further flexibility.

Another element of the deal—on which I am happy to share the correspondence, although the matter is still live with COSLA—is the increased flexibility within the settlement that local government was looking for. I make the point that it is arguable that local government has a bit more room for manoeuvre than it has had in previous years.

**The Convener:** I want to move on. I promise the Minister for Local Government and Housing that we will get on to housing at some point. It might take a wee bit of time, but we will get there.

**Alexander Stewart (Mid Scotland and Fife) (Con):** Delivery of health and social care has been identified as one of the biggest issues facing local authorities. Has the Scottish Government done any evaluation or assessment of the ability of integration joint boards to maintain services under the pressures and constraints that they face because of cuts?

**Derek Mackay:** There are actually increased resources for health and social care; there is not a reduction. To be fair to local authorities, I say that they have invested more, as has the Scottish Government. An element of the £66 million settlement from the Scottish Government to local authorities is for investment in health and social care, which is roughly what local government asked me for. That is where the negotiations got to and that was the sum that they felt would address the pressures.

The further clinical demand aspects would be for the Cabinet Secretary for Health and Sport to answer on. From the finance negotiations that I have had with local government, I know that there are increasing pressures.

As Elaine Smith pointed out, more infrastructure at community level is good and helpful for acute services. Integration has generally been a good thing, with resources following the patient rather than the bureaucracy. All that is good, but my

allocation within the proposed settlement would meet what I was ultimately asked for by local authorities. There is increasing demand on the service, which is why there is increasing support and flexibility.

**Alexander Stewart:** The partnership working has certainly been a huge advantage for local government and social care, and you rightly identify that there will be pressures and burdens on the service, but at the end of the day there is still an opportunity for development. The money that you have allocated might cover the current situation, but as we progress, given the ageing population and all the other aspects in the process, there will still be a massive problem. Do you agree?

**Derek Mackay:** I certainly agree that the changing demography is a challenge, and that increasing pressure and expectations are challenges. I have reflected on the fact that we want care workers to be properly supported financially, which is why delivery of the living wage was so important. You are right that further transformation has to be delivered in the health service and in social care, which is why we are taking the twin-track approach of investment and transformation. Closer joint working between healthcare and social care is valuable and important. That is the right direction of travel, and extra resources have been allocated for that.

I entirely appreciate Alexander Stewart's point that further resources may well be required in the future. I would just like to offer him, as he is a Conservative, a gentle reminder that if I had followed the Tories' tax plans I would be looking for £501 million of cuts from across the public sector, and not at growth in the budget, which is essentially what most parts of the public service will receive.

**Alexander Stewart:** You talk about a fair deal. In my region of Mid Scotland and Fife, NHS Tayside and NHS Fife are seeing a cut of £23 million and Perth and Kinross Council is getting the most severe cut, of £5.4 million. How do you reckon that that is a fair deal?

**Derek Mackay:** To what numbers are you referring, exactly?

**Alexander Stewart:** Information has come out in the press today. My local authority, Perth and Kinross Council, is saying that it will get, under the settlement, a cut of 2.3 per cent, or £5.4 million. As I said, the Tayside and Fife health boards are looking at a £23 million reduction on day-to-day services.

**The Convener:** Are those numbers that you recognise, cabinet secretary?

**Derek Mackay:** I do not recognise those numbers. We have made much progress in respect of transparency and simplicity—although that is a bit of a contradiction in terms for local government finance—and we have been able to give more information than before. In respect of a cash freeze for resource, and a real terms increase in capital, we have circulated figures to local authorities, but I do not recognise the numbers that Mr Stewart has given. It may well be that local authorities are presenting what they believe to be their pressures overall, but we have a significant sum that is still to be allocated.

You will be familiar with the annual occurrence of portfolios transferring sums to local authorities, once they are in a position to determine how that sum is to be distributed. Sometimes that is done through engagement with COSLA. When that total resource is distributed, local authorities will have a reflection of that overall cash freeze in terms of resource and an increase in capital.

I should also say that local authorities specifically asked me for as much convergence as possible in the distribution of resources so that no council gets disproportionately more or less. That convergence tries to ensure fairness for each local authority within the overall settlement.

I do not recognise the numbers, so I will re-provide to the committee, council by council, the settlement figures that we propose. We must also remember that there is a further sum to be distributed to local authorities, which will counter the figures that Mr Stewart has told me he read in the press.

**Alexander Stewart:** The SPICe summary that we have received recognises that total revenue has fallen by 0.2 per cent and refers to the figure of £157.3 million. That figure is there as a total revenue reduction.

**Derek Mackay:** That goes back to the very first point that was made by the convener. I have described the partnership priorities with local government around teachers' pay, investment in social care and the expansion of early learning and childcare. All that is real cash and resource going to local authorities as part of the settlement. If you discount all that, you will arrive at a different figure, but I include it because it is real cash that is going to local authorities. It is as simple as that.

**The Convener:** I want to mop up Alexander Stewart's question. You mentioned other moneys that are to be added to individual local authority settlements, and there is also a budget line for integration joint boards. The global amount to be transferred is clear, but the amount for each individual local authority is not. Are local authorities flying blind in relation to how much money will eventually be transferred? Can you

give examples of portfolios from which you anticipate money coming? That would be very helpful to the committee.

**Derek Mackay:** The total figure is about £10.5 billion and the sum that is yet to be distributed is about £200 million. Bill Stitt can give the committee more detail on that. That will give you the sense that local authorities have a great deal of certainty.

The reason why we put the budget circular out last week was to consult local authorities, which may come back to us about anomalies, inaccuracies, misunderstandings and so on. It is not a settled figure, so the circular gives us an opportunity to consult local authorities and then return with a local government finance order, as Parliament expects. If Parliament does not agree to the finance order, the money will not be issued.

Bill Stitt can give the committee an example of a portfolio that distributes.

**Bill Stitt:** It is all within the £10.5 billion total. We distribute as much as has been agreed with COSLA on the needs-based formula. An example of sums that are not yet agreed or distributed is the early years expansion, which is only just coming to the fore. A meeting has been set up for early January to agree the distribution of the early years expansion, which will be included in the local government finance order. Similarly, with discretionary housing payments, COSLA wanted a review of the distribution mechanism, which should be agreed at the same meeting. We need to look at the criminal justice social work grant, which was ring fenced as part of the overall settlement. As usual, the teacher induction scheme funding will not be distributed until the end of the year, because we need to find out how many teachers have been inducted.

I will go back to the point that Alexander Stewart made about Perth and Kinross Council. Like for like, the amount that is to be distributed in 2018-19 will be £27,000 lower than it was in the current year, but with the addition of the other sums that have been mentioned there is likely to be an increase, and not a reduction.

**The Convener:** Table 10.13 of the draft budget, under “other sources of support”, shows a figure of £355 million for healthcare and social care integration, which may be transferred to integration joint boards. Do local authorities know what share of that they will get?

**Bill Stitt:** That money is for the health and social care integration joint boards: it is money that local government will not need to put into the boards.

**The Convener:** I was asking whether local authorities know what each board is getting. Has there been a breakdown of that £355 million?

**Bill Stitt:** There has not, as far as I am aware, but health officials will be writing to the integration joint boards.

10:15

**The Convener:** That is helpful. Local authorities have, over the past couple of years, come to the committee to set out moneys that they have to spend, which sometimes includes integration joint board moneys, and sometimes does not. Alexander Stewart has questions about moneys that his local authority will receive: what is unclear is whether it includes IJB moneys, so we are trying to get a bit of clarity on that. That was quite helpful.

**Bill Stitt:** All the sums that I have just mentioned exclude that IJB money.

**Derek Mackay:** I will make one point, convener, because it will be helpful. Members may read in the press about reductions for their local authority, but the figure might be what the local authority assumed will be the amount. I have been hearing in the past few weeks assumptions from local authorities about reductions, and their planning assumptions, as opposed to what the settlement actually proposes for local government. There is a difference between what councils thought they might get, and have put in the public domain, and what we propose to supply.

**Jenny Gilruth (Mid Fife and Glenrothes) (SNP):** Just to highlight that point, cabinet secretary, we have a frankly bizarre situation in Fife at the moment. You might have heard some of David Ross’s comments. He said last week that

“If we raise pay for some workers”

through proposed tax changes

“it will mean cutting other services and probably losing other jobs.”

However, yesterday, David Alexander—the SNP co-leader whom David Ross is in administration with—said that Fife Council would actually be fine. He said that, as in the case of childcare—as we have already highlighted this morning—the council would be creating jobs to fill those posts. There is a bit of a disconnect going on on the front line.

With regard to service redesign, do you have a view on councils charging for services that might previously have been free? For example, in Fife, the council has introduced parking charges on Sundays to offset budgetary pressures.

**Derek Mackay:** Jenny Gilruth has asked quite a controversial question. Again, it would not necessarily be appropriate for a minister to set out

what local authorities should do with individual charging regimes. However, it is another fiscal lever that local authorities have, although it is not particularly substantial. Local authorities have council tax, but their main funding source is the revenue support grant. We would not normally express a view on individual charges made by individual local authorities; it is entirely up to them.

**Jenny Gilruth:** There have previously been suggestions that councils will need to strip back their services and just allow for the provision of front-line services. I know that Fife Council, under the previous Labour administration, took the decision to close 16 libraries, which are not a front-line service, but that decision impacted on the poorest and the most vulnerable people. Does the Government monitor how services are provided across the country in relation to how they are impacting upon the most vulnerable?

**Derek Mackay:** The Scottish Government has single outcome agreements—we have an agreement with local authorities on a partnership approach in relation to what we are trying to achieve and what the local outcomes should be. The main audit agencies look at the performance of local authorities on the outcomes, including how local authorities are using resources.

You have touched on leisure and culture. The local authority area that I live in—Renfrewshire—had huge cultural aspirations, which were dashed by not getting the city of culture bid. However, their culture plans are going on anyway, so they will still be investing in facilities and they will still be delivering events. I use that anecdote to make the point that although core services need to be delivered, councils can still choose to do what is important to them in their area.

Broadly speaking, there is a single outcome agreement between the Government and all community planning partners, but the audit agencies look at how local authorities are performing and how they are meeting their statutory indicators. At national level, we have Scotland performs, which looks at overall national performance, so there is a range of ways that the performance and delivery of councils is monitored.

**Graham Simpson (Central Scotland) (Con):** I am a little bit confused, to be honest. Is it your position that no council will have to make any cuts?

**Derek Mackay:** That is for local authorities to determine. It is my position that local government has a fair settlement. As I say, it is far better than was forecast. I think that the negotiations with COSLA have gone well in that it has raised a number of asks and I have been able to support it in relation to those particular pressure points.

Will local authorities have to continue to make efficiencies? Yes, they will. They have an efficiency target of approximately 3 per cent every year and they write to me every year to confirm that they have been meeting their efficiency targets. I have recognised that these are challenging times for all our public services while expectations rise.

We as a Government are proposing to use our tax powers to ensure that we can adequately resource our public services. Local authorities also have that ability in relation to council tax. It is enhanced council tax too, because we have increased the multiplier for higher-value homes. I know that Mr Simpson will want to use some pejorative language, but I think that the settlement is fair. Will it require tough choices? Of course it will. We in Government have also had tough choices to make, but the settlement is in essence a good deal for local government.

**Graham Simpson:** It is not pejorative language to say that councils will have to make cuts, as you have just confirmed that they will.

I will move on to another subject. What advice has the Scottish Government been given regarding the potential anomaly in giving profit-making private nurseries a tax break—you mentioned that in your opening statement—when nurseries in independent schools, which are charities and which assist the Scottish Government and councils with the provision of additional places for three and four-year-olds, would be ineligible for the same tax break?

**Derek Mackay:** The recommendations stem, of course, from the Barclay review of non-domestic rates and how we can use them more effectively. The position on giving 100 per cent rates relief to nurseries supports the Government's policy on expanding early learning and childcare, so it is a supportive policy and was a recommendation of the Barclay review that I was happy to accept. We have not distinguished between private and council-run nurseries in that respect.

If we want to improve the quality of nursery provision, we will have to invest in it. There has been direct investment in training, capacity, placements and infrastructure. However, the rates relief will support all nurseries. That was a clear recommendation of the Barclay review and we intend to see it through.

In relation to independent schools, the recommendation from Barclay was to remove rates relief from all independent schools. However, what I decided to do, following engagement and reflection, was to ensure that special independent schools and those of a very specialist nature continue to have rates relief. That position is distinct from that for mainstream independent

schools, which is that they do not continue to enjoy rates relief. However, that does not change their charitable status. I have seen some press coverage that suggests that the proposal changes their charitable status, but we do not believe that it does. It has also been suggested that we cannot separate the two types of independent school in the way that I have described, but I believe that we can—there will be secondary legislation on that in due course. In addition, there is plenty of time for independent schools to prepare for the difference in terms of rates relief. However, we are proposing quicker implementation of the proposal for nurseries so that they can enjoy the rates relief earlier.

**Graham Simpson:** Okay. It sounds as though you perhaps did not take any advice relating to what my first question asked about. However, looking at the independent schools sector, can you tell me what analysis you did of the potential knock-on effect on the state sector of introducing non-domestic rates for the independent sector?

**Derek Mackay:** If I can probe a bit further, I thought that I gave quite a comprehensive answer on the difference between a nursery and an independent mainstream school, so I am totally—

**The Convener:** Cabinet secretary, I apologise for stopping you there. Of course you must continue to answer that question and of course Mr Simpson wants to ask another supplementary question, which is fine. I am giving members a degree of latitude in their questions, but I remind them that, given that we are doing budget scrutiny, questions should be about how the draft budget would impact on the local government financial settlement and whether there would be knock-on consequences for services.

**Graham Simpson:** That is exactly what my question is about.

**Derek Mackay:** I have engaged with independent schools and looked at the evidence that was supplied to me when I got the Barclay recommendation to lift rates relief for independent schools.

Although I accepted a number of the Barclay recommendations very swiftly, I said that some required further reflection, engagement and consultation. The recommendation to lift rates relief for independent schools was one of those and I object to any suggestion that I did not engage on the subject. I have fully explored the information that was presented to me. There were also meetings with officials.

I have come to the view that, if we look at the total income for independent schools, the change in status for non-domestic rates should not have a disproportionate effect on their financial running. The information that I have seen suggests that

there will not be a mass exodus from independent mainstream schools to state schools, therefore there should not be massive extra expenditure for those education authorities that might have more pupils.

I say that that rate change is the right thing to do as regards independent schools. It does not affect their charitable status, although it has been put to me that some such schools may well change their bursary support for those who might not otherwise be able to afford to go there. I think that all children deserve the best education, which is why we have put more resource into it. However, there will not be a disproportionate effect. The sums involved in non-domestic rates can be absorbed by such schools.

**Graham Simpson:** The reason why I ask the question is that fees could be increased, which could mean that some pupils leave that sector and go into the state sector. I spoke to the Scottish Council of Independent Schools, which said that up to one in 10 pupils might leave that sector. That could mean thousands of pupils going into the state sector, which would have an impact on council budgets. I merely ask whether you did any analysis around that.

**Derek Mackay:** Yes, of course. I say—for the third time—that I looked at the evidence that was presented to me by independent schools, and by their representative organisations, in direct meetings that I had and in meetings that we had with officials. I say again that if we look at the overall cost to an independent school, non-domestic rates should not have a disproportionate impact.

In terms of fees, there are other inflationary increases that independent schools have had and I do not recognise the figure of 10 per cent as being a likely shift from independent schools to state ones. I can also tell the committee that it has been put to me that many people would take a very dim view if independent schools were to become arguably more elitist because they had to pay non-domestic rates, which, incidentally, would put them in the same league as council schools.

**Andy Wightman (Lothian) (Green):** I seek a few clarifications. We have had a briefing from SPICe. As the convener has said, we welcome the greater transparency in the numbers this year. Cabinet secretary, I take it that you broadly agree with the numbers from SPICe and that you have no issues with them?

**Derek Mackay:** I broadly agree with the numbers. It is a matter of interpretation as to whether you count what I allocate as cash in a settlement as part of the settlement or not. I argue that it is. I do not broadly object to the numbers, which are approximately in that area.

**Andy Wightman:** Another question arises from when we had the Accounts Commission in about the uprating in council tax and the uplift in the top bands. Last year, the money that that raised was given directly to the council within which it was collected. Will you clarify that, this year, it will be distributed through the normal formula?

**Derek Mackay:** The same approach as last year will apply, which is that every council will keep every penny in council tax that is raised in its area. The multiplier will stay in the pot for local authorities to use.

**Andy Wightman:** But the council tax receipts form part of the formula. Last year, the money raised by the uplift in the top four bands was ring fenced for the councils in which it was raised and it was not subject to the formula. I ask whether, this year, it will be.

**Derek Mackay:** Okay, that is about distribution, so I will ask Bill Stitt to come in on that.

**Bill Stitt:** Yes, we discussed that with COSLA at our joint settlement and distribution group. It was agreed that we would revert to the previous equalisation process.

**Andy Wightman:** Okay, that is helpful.

**Bill Stitt:** It was left separately in 2017-18, because of the question about how it was to be funded.

10:30

**Andy Wightman:** That is very helpful, thank you.

There is a continuing debate about ring fencing. The cabinet secretary mentioned that there is some partnership working for which moneys are allocated from within resource, and there are other moneys that are outwith that—I think that most of us would accept that ring fencing, however we describe it, is appropriate in certain circumstances.

I have a meeting with the Cabinet Secretary for Education and Skills to ask about the legacy from 2008 of funds that were previously ring fenced. Specialist music schools are a good example; an issue arose when the City of Edinburgh Council wanted to close the City of Edinburgh Music School. Because the ring fencing has gone and the money falls into the general settlement, it is very unclear what the status of the money is and whether it is still intended for that purpose.

Do you have plans to review how some of the legacy ring-fenced funds, which were taken into the settlement in 2008, could be clarified, particularly in areas such as specialist schools that are still in existence? Some of the previously ring-fenced funds are no longer applicable.

**Derek Mackay:** I remember the period well, because I was a local authority leader at the time and I welcomed the direction of travel. The short answer is that I have no immediate plans to review legacy elements of the grant settlement, as you described them. That said, local authorities, through COSLA, negotiate with me every year and raise areas in relation to which they want more flexibility or have different asks. We still have that engagement every year. However, I have no immediate plans to review historical elements of the settlement.

**Andy Wightman:** I will move on. According to the Scottish Fiscal Commission, the overall impact of policy proposals in the draft budget for 2018-19 is an additional £28 million. The SFC reported that income tax policy would raise £164 million, but that sum is greatly reduced by the changes to the non-domestic rates regime, in particular the introduction of the business growth accelerator and the switch to CPI. What economic impact assessment has been made of the business growth accelerator? What economic impact is it likely to have?

**Derek Mackay:** The business growth accelerator was a recommendation from the Barclay review. Barclay recommended that we use our existing powers to try to stimulate growth in the business community.

We cannot say, “This amount of intervention equals this amount of economic growth”; there is not a figure for that. However, the evidence from business organisations was that it is difficult for businesses to invest in their property or premises without having a chance to raise some revenue. I think that that is why the panel made its recommendation. The view was that, if businesses had a bit of respite or a period of grace—it will be a year—following improvement work, expansion or whatever, they would be able to raise revenue .

Such an approach contrasts favourably with the approach south of the border, or anywhere else in the UK, for that matter. If a business improves its premises, there will not be an immediate buoyancy as a result. The view of business was that the approach would act as a stimulant to the economy and to those who want to invest in their property, by giving businesses a bit of support. Ultimately, it is thought that it will pay for itself, because of the extra investment that it will bring.

**Andy Wightman:** The Scottish Fiscal Commission said of the policies in the budget:

“Apart from the change to public sector pay policy, the Commission’s judgement is that these policies are not of a large enough magnitude to have a significant aggregate impact on the Scottish economy”.

I will leave that there.

What is the cost of the small business bonus scheme in terms of the revenue that is foregone?

**Marianne Barker (Scottish Government):** I think that the forecast for next year is around £230 million. If I am incorrect, I will email you with the up-to-date figure.

**Andy Wightman:** I understand that you have accepted the Barclay review recommendation that you review the scheme. When will you do so, and how?

**Derek Mackay:** The timescale was set out in the implementation plan.

**Marianne Barker:** The review of the small business bonus will commence in the new year.

**Andy Wightman:** In a letter that you wrote to the Rural Economy and Connectivity Committee, you noted that new shooting and sporting properties are coming on to the valuation roll. There are 10,300 of them, with a total rateable value of around £16 million. However, according to an analysis that was published in response to a freedom of information request—it is freely available from the Scottish Assessors Association website in any event—10,174 of those properties are valued at less than £15,000 and a mere 72 are valued above £15,000. The idea of getting a £4 million to £6 million yield when 99.9 per cent of the properties are eligible for small business relief seems a bit strange, and people such as Mohammed bin Rashid Al Maktoum, the ruler of Dubai, will not be paying any tax at all because of the small business bonus scheme. Does that seem fair?

**Derek Mackay:** It is quite hard for me to talk about any individual. I do not know the gentleman, his tax affairs or any of the background. I am happy to look into the details to see how we are applying the small business bonus, if you think that it is unfair. I can double-check those numbers.

Small businesses may be able to benefit from the small business bonus scheme, but it applies only up to state aid limits and there are only so many properties that a proprietor can receive the small business bonus for. I am loth to give a view on any individual's business affairs.

**Marianne Barker:** I can also clarify that the assessors still have a few thousand properties that we believe will go on to the valuation rolls. Also, if someone has a property with a rateable value under £15,000 but they have other properties as well, they might not be eligible for small business relief.

**Andy Wightman:** I am aware of that.

**Marianne Barker:** Whether they are is not always apparent from the valuation roll. I can also correct the small business bonus cost that I

gave—£235 million is the forecast cost for next year.

**The Convener:** That was not bad, Ms Barker—you were quite close.

**Andy Wightman:** That is helpful. I will leave it there, being conscious of time.

**The Convener:** Before we take Mr Gibson for our final question on this area, as I am sure members are primed to ask lots of questions on housing, I will ask something that I meant to ask at the start that will help our budget scrutiny.

There is always much debate over the local government funding formula, in terms of what moneys go to which local authorities and in what quantities, and what methodologies are used to decide. As we know, everyone talks about changing the methodology and then says that it is too difficult and we will just leave it as it is.

Has the Scottish Government assessed how the ring fencing of various priorities may have influenced the overall direction of moneys? To take the bands multiplier as an example, I am delighted to hear that those moneys will now be redistributed in the normal way rather than being retained by local authorities. I think that that is the right thing to do. We have pupil equity funding moneys going directly to schools in line with a needs-based assessment that is based on entitlement to free school meals. Various moneys are now going to local authorities under slightly different distribution models. At some point will the Scottish Government think about taking a step back to take stock of whether that approach has made for a more progressive or targeted use of moneys, or what the balance is?

**Derek Mackay:** Your remarks about how complex distribution is were fair and accurate. Most folk do not want to bother with the complexity of a wholesale, systematic review of distribution and therefore do not want us to bother. I think that 32 out of 32 council leaders can come up with a formula that suits their council better.

Distribution is done through partnership with local government. There is a distribution assessment group through which we engage with local authorities on how to distribute new funds or how, if there is a proposal to change funds, we embark on that in a partnership fashion.

Sometimes, it is appropriate for funds to be specifically needs based; at other times, it might be proportionate and appropriate to determine shares through other mechanisms, such as population size.

After we put funds through the distribution formula, with all its various indicators, we arrive at a number that each local authority should get. Then I set what is called the floor, which in

essence realigns the allocations and brings them closer to a point of convergence. Therefore, all that work and debate takes us to a point where we still ultimately have convergence around what a council may actually receive, which is a matter for the Scottish Government and not necessarily local government. That is why we engage, through the local government finance circular, on the local government settlement, as proposed last week.

There are no immediate plans to change the overall formula. I would engage positively if local authorities wanted me to do it, but I suppose that COSLA would have to approach me and say that it wants me to look at the formula again. The convener will be very familiar with this. Every time it has been tried, a lot of money is spent on a lot of consultants, and each council argues for the position that suits it best—rural versus urban, island versus mainland, east versus west, deprivation versus supersparsity—I could go on. I have no great desire to revisit the overall distribution formula.

**The Convener:** Perhaps I did not articulate the question the way I meant to. I am suggesting that the variety of ring-fences and the use of different methodologies to give money to local authorities, separately from the way in which the revenue grant is distributed, may have had an impact on how moneys are directed to different parts of the country. That may be positive, because we should be progressive and redistributive, but will it be looked at in the round at any point?

**Derek Mackay:** I entirely get the point. We always look at the outcomes for individual local authorities when we allocate resources as well as the overall picture. Sometimes, moneys can be very specifically needs based or in a pot for a specific function. A good example is the housing money, which we will come on to. There is a substantial uplift to invest in housing, which is an area where there is a specific need. Local authorities should now get on and spend those resources with partners.

**The Convener:** It will be in Mr Gibson's hands whether we move on to housing at this point as part of his general questions.

**Kenneth Gibson (Cunninghame North) (SNP):** There are a couple of areas that have not been covered, such as capital.

**The Convener:** I should apologise to the minister over the scheduling of this session. We should probably have asked him to come an hour or so later. Apologies that we did not identify that opportunity.

**Kenneth Gibson:** Labour council group leaders tried to look at a new funding model three and a half years ago. Given that that would have cost

North Ayrshire £5.1 million per year, it was understandably abandoned.

Although £235 million in revenue might have been lost in supporting the small business bonus scheme, the Federation of Small Businesses said, at the height of the recession, that one in six small businesses would have gone bust without the scheme. It keeps people in work and helps the revenue streams of the Scottish Government.

**Derek Mackay:** I agree. The Federation of Small Businesses has said that the scheme has been a lifeline to many small businesses and ensures that we have a competitive package of business rates relief. We have to give people reasons to live, work and invest in Scotland. One example is a Paisley cafe that I visited when it stopped paying business rates because of the bonus scheme. The saving was used to employ a new member of staff, and she was delighted to be working there. Many businesses use the scheme to employ staff or invest in their premises. It has been a lifeline during turbulent economic times.

**Kenneth Gibson:** You probably share my astonishment at the crocodile tears of the Conservative members on the committee about the cuts to local government. What is the reduction in local government funding in Scotland relative to the reduction in England, where the Conservative Party has been in power for the past decade?

**Derek Mackay:** From memory of an equivalence analysis for a previous question, the English reduction is about four or five times any real-terms reduction that Scottish local authorities have faced.

**Kenneth Gibson:** We spoke at the beginning about the HM Treasury deflator. How relevant is that deflator when we have different circumstances in Scotland? For example, the UK is not lifting the 1 per cent pay cap, but we have signalled clearly that we will.

Also, how will councils be able to deliver expectations on salary, given the disproportionate number of workers earning £30,000 or less and the fact that councils are also squeezed by the policy of no compulsory redundancies?

10:45

**Derek Mackay:** I am happy for Bill Stitt to return to the deflator issue. However, from what I have seen and know of local authorities, they knew that there would be a degree of pressure on them to move on pay. What they do in negotiations with trade unions is a matter for them but, putting it in the context of councils making efficiency savings and having a better settlement than they expected, I think that they will be able to arrive at a fair

settlement for their workforce. However, I do not set that.

I acknowledge that the Scottish Government's lifting of the pay cap creates a culture of expectation about what local authorities may be able to do, but that is a matter for them. They certainly have far more room for manoeuvre in a pay award than they would have had if the settlement had been a £300 million reduction. Let us take another scenario: if I followed the Tories' tax plans I would have to find £501 million from front-line public services. That is not what I am following and, therefore, the settlement for public services and local government is fair.

**Bill Stitt:** The deflator is used by HM Treasury and by Scottish Government central finance, so it seems strange for local government to use a different number. As part of the process of clarification, we use the same number so that everything can be looked at in the same light.

**Kenneth Gibson:** Even though that number does not reflect inflation, which is what we are actually dealing with.

**Bill Stitt:** According to HM Treasury, it does reflect inflation. That is why I am going to write to the convener with the explanation of why it is used.

**Derek Mackay:** To make a further helpful point, the Scottish Fiscal Commission is obviously strengthening its position and growing. Maybe, in the fullness of time, it will be able to provide more analysis on such matters. It builds up the forecast from Scottish economic circumstances, rather than using a top-down perspective of what might be coming from the UK level.

**Kenneth Gibson:** It is a while since inflation has been 1.65 per cent, but I will move on to capital because I know that the convener wants to move on to housing.

In the figures provided by SPICe, I notice that the real-terms change in the revenue settlement—which is thanks partly to the Tories' £200 million cut in our resource—varies from a 0.1 per cent reduction in Midlothian to a 4 per cent reduction in Argyll and Bute, and the average is 1.8 per cent for Scotland. However, in capital, things are quite different. In my area of North Ayrshire—in which I am pleased to say we do not have any independent schools—the capital reduction is some 94.2 per cent, but in the Borders capital is increasing by 42 per cent. There seem to be colossal differences in next year's capital allocation, whereas the revenue allocation is very steady. Why are there those huge variations across Scotland, particularly for North Ayrshire?

**Bill Stitt:** Those huge swings are to do with the flooding money. If a local authority does not spend

its flooding allocation in one year, it will get it the next. We go out to each local authority each year to ask what has been spent and what the plans are for the following year, and we make adjustments. A figure of £42 million is guaranteed each year for the flooding programme and we have to move that around between the local authorities to ensure that they all have sufficient to carry their programmes forward. There are some slippages and some overestimations, and North Ayrshire has sufficient money at the moment without being giving any additional money from the flooding allocation in 2018-19.

**Kenneth Gibson:** As long as you bear in mind that the Garnock valley flood prevention programme will be coming forward for funding pretty soon.

**The Convener:** You have made your point; I suspect that the cabinet secretary will not want to comment on that specific scheme.

**Derek Mackay:** That shameless bid for funding.

**The Convener:** Absolutely. We will move on to housing. Does Mr Wightman want to open up on that?

**Andy Wightman:** Yes, by all means. There are important and welcome resources for housing. A week or two back, we looked at comments that the First Minister had made during the Scottish National Party conference, when he said that, if an authority did not use all its allocation, the Government would take back the balance and give it to one that could use it. We have ambitious housing targets, and I am concerned that statements like that send the wrong signal to local authorities, some of which may be facing challenges in assembling land and having to work over longer timescales. Can you give us an assurance that the plans that each local authority has to deliver housing can be realised and that there will not be any arbitrary clawing back of allocations?

**Kevin Stewart:** I have made it clear from the start that, if local authorities do not use their resource, we will recirculate that resource. We have said all along to local authorities that they should build in slippage to ensure that they maximise the amount that is allocated to them in the resource planning assumption. I have to ensure the best use of the resource that is available to us over the session of Parliament, and certain local authorities have been somewhat slower than others in getting things off the ground. If they are unable to spend their resource, we will give it to local authorities that are further along the way.

As I have said to the committee previously, I am determined that our housing programme will benefit the whole of Scotland, including rural,

urban, Highland, border and island areas. However, local authorities' planning—we have guarantees over the next three years—must take account of the money that has been allocated to them and they must be able to do the work to spend that money. That should include slippage, in case some things do not go to plan.

**Andy Wightman:** We heard evidence from the Association of Local Authority Chief Housing Officers that there is a need to reconsider how the affordable housing investment programme works, particularly in more remote and rural communities and in relation to special needs housing. In the light of what you have just said about planning over the next three years, if other political parties were willing, would you be open to sending signals about longer-term funding commitments beyond this parliamentary session? Obviously, that would be a political commitment rather than one on paper. That would allow some authorities that want to plan using longer timescales and that have particular difficulties with access to land—for example, authorities in rural areas—to plan for delivery in four or five years' time.

**Kevin Stewart:** As Mr Wightman knows, the Government cannot make commitments beyond the end of this session of Parliament. Nevertheless, I am willing to talk to all parties about all issues, as members will know. If Mr Wightman and others want to talk to me about the future, I am more than willing to have those discussions.

On ALACHO's comments about rural housing and special needs housing, we have put in place the £25 million rural housing fund and the £5 million island housing fund in recognition of the differences in those areas. As I have said to the committee and all stakeholders in relation to the affordable housing programme, there are points where we recognise that there need to be flexibilities, and folk should talk to my housing officials on the ground.

In certain places, the level of subsidy that is available is not going to make the inroads that are required. We recognise that. That is why additional subsidy has been allowed for the likes of the new houses at Ulva Ferry, off Mull, which won the SURF housing award the other week. The same applies to other rural and island housing in areas where we recognise that the general subsidy will not do the business.

My officials will continue to talk to folk about those flexibilities. ALACHO knows that, because it has heard me say it at the joint delivery group, of which it is a member.

On housing for disabled people, in "A Fairer Scotland for Disabled People—Our Delivery Plan to 2021", we have made it clear that we will be

flexible in our approach to housing delivery. As I have previously said to the committee—I will repeat it—if a project requires additional funding, we have the flexibility to consider that. I should also say that all the housing that is built for special purposes should fit in with the local authority's housing needs and demands assessment of the requirements for its area.

Over the last period, I have made a number of visits throughout the country to look at housing that is wheelchair accessible and that has made a huge difference to people's lives in places including Dundee, Inverness and Glasgow. We will not stymie the building of such housing by arguing about subsidy; we will talk about the flexibilities to make those homes a reality.

**Andy Wightman:** I have one final, brief question on housing. There is an increase in the financial transaction funding in the budget. What information can you provide about whether any of that will be used for housing?

**Kevin Stewart:** I think that we will be able to provide more information on the building Scotland fund at the beginning of next year. I pass that question to the cabinet secretary, because it is his decision.

**Derek Mackay:** We must not lose sight of the capital that has been allocated to housing as traditional capital, as people understand it. It is a significant uplift for the resource planning assumptions, and it will help to deliver the 50,000 affordable homes. Financial transactions may assist where there have been help-to-buy schemes and, potentially, I am proposing to use some of the money to capitalise the Scottish national investment bank and the building Scotland fund. There may be other ways in which we can support housing growth by using financial transactions. However, the 50,000 affordable homes target is being met through traditional capital.

**Kevin Stewart:** I repeat what I said in my opening statement: the affordable housing figure for this year is £756 million. That is part of the £1.754 billion of resource planning assumptions that have been given to local authorities over the past three years. As I said earlier, that gives them stability and security in planning over the piece in order that they can help us to meet our target.

**Derek Mackay:** Mr Stewart certainly did not lose his voice when he was asking for the money.

**Kevin Stewart:** No, I certainly did not lose my voice at that point.

**The Convener:** If the Government was to meet its manifesto commitments, housing was always going to be the big winner. A 22 per cent increase is pretty spectacular for any budget line—that is

stating the obvious—but what we are scrutinising is the delivery, not the budget line.

One part of the housing budget that is still pretty minimal relates to adaptations. I have lost my notes, but I think that there is a £10 million flat cash settlement—

**Kevin Stewart:** It is £10 million, convener.

**The Convener:** Given the mammoth budget for the affordable housing investment programme and the health and social care integration funds sitting beside that, and given the stories that we have heard of backlogs of adaptations that need to be done, there must be a cleverer way of using the money. More than £10 million should be available within existing resources—if it is not, we must find more resources for adaptations.

What is the minister's view on having a huge budget for meeting our joint housing ambitions but a £10 million flat cash settlement for adaptations?

**Kevin Stewart:** The Public Bodies (Joint Working) (Scotland) Act 2014 delegated powers, responsibilities and budgets for adaptations to integration joint boards, and they have to produce a housing contribution statement as part of their strategic plans. Therefore, the £10 million that we have made available again this year for registered social landlords is above the moneys that should be provided by integration joint boards for the adaptations that people need.

11:00

As the committee is probably aware, we set up an adaptations working group that looked at what was going on in a number of areas across the country. The recommendations from that working group have crossed my desk just recently, and I intend to meet my officials in the new year to see how we can ensure that they are acted on. That will include working with senior staff in health and social care partnerships on the preventative benefits of investing in a well-functioning and well-resourced adaptations service. Integration joint boards must recognise their responsibilities. Many are doing well in that regard, but others are not doing so well. Nevertheless, we are committed to implementing the recommendations of the adaptations working group and the evaluation of the adapting for change test sites that I spoke about earlier. As I have said, we have continued with the £10 million budget for RSLs over this year.

**The Convener:** That is helpful. I want to check something. Last year, would it have been assumed that integration joint boards were also going to make a contribution to that budget line? If so, are figures available for what would have resulted if you had added to the £10 million the

money that the 32 integration joint boards were expected to put in? What would the national spend on adaptations have been? I fully appreciate that those numbers might not be collected, but you will understand that the committee is keen to get hold of such information in order to see a trend or pattern and, more important, to know the outcomes from the spending of that money.

**Kevin Stewart:** I do not have those numbers to hand, and I do not know how easy it would be to gather them from integration joint boards. Nevertheless, I will attempt to get them for you and will write to the committee. However, I reiterate that the Public Bodies (Joint Working) (Scotland) Act 2014 passed responsibility for that to integration joint boards. We have put in an amount of effort with the work of the adaptations working group and the adapting for change test sites. I am willing to share all that information with you, convener, and, as I have said, I intend to meet my officials at the beginning of the new year to look at how we can improve the work that is going on with integration joint boards.

**The Convener:** That is very helpful, minister. I am aware that there is always a balance to be struck between getting the data to provide to our committee, so that it can scrutinise the spend, and the bureaucracy that is created by collecting the data. However, with £355 million in the draft budget going to integration joint boards, the committee is keen to track, over time, the crossover between the £10 million adaptations budget that comes direct from the Scottish Government and other funds from the Scottish Government that go to integration joint boards that are expected to be spent in the same area. I suspect that the first couple of years' outturns might not illuminate very much but that, over time, we will get a sense of where things are going. Any information that you can provide in that area will be gratefully received.

**Kevin Stewart:** I will do my best, convener.

**The Convener:** Thank you. Graham Simpson has a question.

**Graham Simpson:** I am loth to ask Mr Stewart another question.

**Derek Mackay:** You did not hold back with me. [*Laughter.*]

**Graham Simpson:** I just want to clarify something. Earlier, Mr Gibson accused me and Alexander Stewart of shedding crocodile tears. I assure Mr Gibson—

**The Convener:** I must ask you to ask the minister or cabinet secretary a question, Mr Simpson.

**Graham Simpson:** I will, but I must point out that our concern for the future of local government is real.

**The Convener:** I am sure that, when you were making your point about private schools greeting about tax breaks being taken away from them, other members of the committee would have liked to use pejorative language. We did not; we said nothing, and we gave you the chance to ask the cabinet secretary several questions on the matter. Mr Gibson is being afforded the same privilege.

I must ask you to ask a question now.

**Graham Simpson:** I thought that you might be uncomfortable with that, convener.

**The Convener:** I am uncomfortable with inconsistent chairing—my chairing has been consistent. Ask your question if you want to ask one.

**Graham Simpson:** The Scottish Government pledged to spend more than £0.5 billion pounds on energy efficiency over four years, or an average of £125 million a year. However, spending in the current year is £114 million, and that figure has been frozen in the draft budget. There seems to be a disconnect between the spending and the commitment. I wonder whether you can explain why you have not increased the amount.

**Kevin Stewart:** Our aim is still to spend £0.5 billion pounds over the four-year period. Since 2009, I think—I am looking at my officials to see whether that is right—we have spent £1 billion on energy efficiency. As Mr Simpson will be aware from my answers to Mr Wightman last week, we will lay out more detail on all of this when we produce Scotland's energy efficiency programme route map and as we move forward with the warm homes bill, which will be introduced this year.

We are on track to spend that £0.5 billion pounds, and, by the end of this parliamentary session, we will have spent £1 billion on energy efficiency since 2009.

**Graham Simpson:** I am not going to put Mr Stewart through any more agony, convener.

**Kevin Stewart:** You are very kind.

**The Convener:** Apparently, Mr Gibson does not have the same qualms, as he has put in a bid for a question. I ask other members to catch my eye if they wish to do the same—I know that the deputy convener has a couple of questions himself.

**Kenneth Gibson:** Thank you, convener. I think that Mr Stewart is paying the price of a nasty habit.

COSLA has said:

“we continue to have concerns around the difference in grant subsidy level available per unit to councils and RSLs.

Overall, these levels currently stand at £57k per unit for councils and £70k per unit for RSLs.”

Given the huge increase in support for housing, is there now room to provide additional funding to local authorities to allow them to get more of their own council housing plans on track?

**Kevin Stewart:** I do not intend to open up a whole can of worms around renegotiating subsidy levels, which, after much debate, were set at the beginning of 2016 and added £14,000 per unit to the subsidy. As the committee will be well aware, the reason for the differential is that local authorities can borrow at much cheaper rates than housing associations. If I were to open up that can of worms and try to renegotiate subsidy levels again—which I am not going to do—we would probably spend more time arguing about those subsidies instead of getting on with the job of delivering houses across Scotland.

As I have said to the committee, I am willing to be flexible on a number of issues, and my officials on the ground, who have the most conversations with local authorities and housing associations, are aware that I want that flexibility to be in place. We have already gone over such flexibilities, but they include some higher rates for island and very rural communities for wheelchair-accessible housing and housing with many more bedrooms than the average where need shows that that is necessary. Instead of opening up a can of worms and having a rammy about what the new rates should be, I would rather be flexible and have the constant discussion.

**Kenneth Gibson:** Thank you.

**Alexander Stewart:** I, too, very much welcome the increase in the housing budget. However, in the past, we have struggled to spend the full amount of money. In 2015-16, there was a 16 per cent underspend of about £74 million. What processes and procedures are in place to ensure that as much as possible of the housing budget will be spent and that we try to avoid an underspend?

**Kevin Stewart:** We will do everything possible to spend every penny. I do not recognise the figure that Mr Stewart cited. However, the vast bulk of what was deemed to be underspend in last year's budget was actually receipts that we did not expect to get. I cannot remember off the top of my head the exact figure for those receipts. If the committee is interested, I will pass it on.

**Elaine Smith:** Thank you for your patient wait, minister. I have a practical question, which follows the line that was taken by the convener. When private companies build new houses, they seem to be able to build in the ability to adapt the stock easily and relatively cheaply. Adapting existing housing stock for adaptations might not be easily

done. With all the welcome new building by councils and other parts of the public sector, do you know whether houses are being built to a standard that will allow them to be more easily adaptable?

**Kevin Stewart:** The latest figure that I have for the affordable housing programme shows that 94 per cent of the houses that are being delivered are classed as houses for varying need—in other words, housing that could be readily adaptable.

Ms Smith mentioned the private sector. Building standards officials are particularly busy at this time, given the tragedy at Grenfell, for example, and all the other work that we have on. In the near future, at my request, they will look at building standards and the part that they can play in dealing with housing for varying needs in the private sector.

The committee can be absolutely assured that I will continue to monitor the situation closely. As far as I am concerned, 94 per cent is a good figure. However, I would like to drive that up further in order to meet our obligations in light of the demographic change that is taking place and the obligations that we spelled out in the disability action plan.

Ms Smith is quite correct to say that a number of houses are not easily adaptable. Over the past while, I have found from constituency cases that where there is a will, there is sometimes a way in getting that absolutely right. We need to ensure that common sense applies to a number of the things that are going on. Therefore, we will look at the adaptations working group recommendations and at the tests that we have done in parts of the country to ensure that we get the best practice that is going on in certain places applied across the board.

I have heard anecdotal examples of folk living in very similar accommodation, but in different places. In one place, the accommodation could be adapted easily, but in another place it was not quite so easy.

**Elaine Smith:** The minister knows that the committee has been taking a big interest recently in building standards.

We have spent a lot of time talking about the disability strand in relation to housing. Will you comment further on the other equality considerations that have been taken into account in developing the housing budget? For example, age covers not only older people, important though they are, but younger people. Can you give us some general comments on the equalities considerations in the housing section of the budget?

11:15

**Kevin Stewart:** The equality assessment of the budget is presented in the equality budget statement, which has been published alongside the Scottish draft budget every year since 2009 and takes a systematic approach to assessing policy proposals and their impact on various groups.

Another aspect beyond that is how local housing strategies are formulated. The housing needs and demand assessment flows into the local housing strategy, which then flows into the strategic housing investment programme, and all local authorities should be looking at the equalities impacts at the local housing strategy stage of the process.

As the committee is very well aware, I will be undertaking my now traditional Christmas thing of looking at the strategic housing investment plans over the course of the holidays; they were delivered to my desk last night.

**Derek Mackay:** He knows how to live, convener.

**Kevin Stewart:** Indeed. I am going to have chocolate and strategic housing investment plans. Like last year, I will be going through those programmes with a fine-toothed comb and looking at exactly what has been taken into account with regard to disabled people's needs.

According to the latest figures that I have seen—if my memory serves me well—12 per cent of new starts are housing for special needs. However, that figure is off the top of my head, and I will clarify it in writing for the committee.

**Elaine Smith:** Thank you. I am sure that the committee looks forward to hearing from you in due course about your deliberations over the festive break.

I want to ask the cabinet secretary a similar question about this year's equality budget statement. As the minister pointed out, an equality impact assessment is produced every year for the draft budget. Do you have any comment on areas in which improvements have had to be made over the years with regard to the impact assessment?

**Derek Mackay:** Part of this is about the important engagement that I have in the build-up to the budget, and it is also about analysing our policies, the difference that they can make and the ways in which they are addressing equalities. Perhaps I can give you an example that goes beyond the equality budget statement. In determining our tax proposition, we had to think about what it meant for progressivity, inequality and, indeed, gender issues—after all, more women are lower paid than men. All of that features in the decisions that we have taken. Of

course, income tax is such a big fiscal lever that it was right for us to look at the impacts on households and the categorisations within that to understand what impact our decisions would have.

That good practice stems from our approach to equalities budgeting and our looking at the difference that our investment will make, the intended and unintended consequences and so on. A range of things that we are doing from our good engagement with others and our analysis of our policies has got us to a place where Government and officials, for that matter, think about impacts in a more holistic way. That good practice and approach to investing expenditure are significant, as is our approach to raising revenue. This was absolutely a key plank of our thinking on income tax, which I use as a live and current example of our thinking with regard to the decisions that we have made.

**Elaine Smith:** Thank you.

**The Convener:** As there are no more bids for questions, all I can do is thank the minister for persevering through the lurgy that is afflicting him.

**Kevin Stewart:** I think that we both have it, but we have survived.

**The Convener:** I should also say that nothing gets me in the Christmas mood more than knowing that you are reading 32 different strategic housing investment plans from local authorities. Thank you for getting us all in the festive spirit.

I thank the cabinet secretary, the minister and their wider team for their evidence. We will appreciate getting any additional information that you might want to provide, as it will help with our budget scrutiny and deliberations.

I suspend the meeting briefly before we move to the next agenda item.

11:20

*Meeting suspended.*

11:24

*On resuming—*

## Common Good Property and Funds

**The Convener:** Item 3 is common good property and funds. The committee will take evidence from Craig Veitch of Aberdeen City Council; Andrew Ferguson of Fife Council and the Society of Local Authority Lawyers and Administrators in Scotland; Dr Lindsay Neil, former chair of Selkirk and district community council; and Paul Nevin, who is appearing on behalf of Alasdair McEachan—I apologise if I am pronouncing that wrong. Paul Nevin worked closely with Alasdair on the written evidence that has been submitted. Thank you very much for coming along to give evidence today. I believe that everyone has some short opening remarks to make. Let us start with Mr Veitch.

**Craig Veitch (Aberdeen City Council):** Hello, everyone. I am Craig Veitch, the property team leader within legal services at Aberdeen City Council. I am relatively new to common good and all the aspects of it, as I joined the local authority from private practice and an oil and gas history only in February 2016. Suffice it to say, it has certainly been a hot topic since I joined. In any of our client services relating to land and property assets, a key question if anyone is looking to sell or lease an asset is whether it will be subject to common good. It is an integral part of what I and my team of five solicitors and three paralegals have to deal with on a day-to-day basis, so I look forward to listening to and contributing to today's discussion.

**Andrew Ferguson (Fife Council):** In the interests of speed, I have nothing to add, but I am happy to take questions.

**The Convener:** That is my kind of opening statement. No pressure, Dr Neil.

**Dr Lindsay Neil:** None at all. I will be brief. I hope to be able to illuminate further the question of ownership of common good, and to suggest practical measures whereby that can be achieved easily. Secondly, I have always wanted to democratise the common good and restore to the community some control over its common good, and I would be willing to answer questions on that. I should add that I am here representing William Telfer, who could not be here today, but I know what he would want to say. The only other question that has not really been addressed is whether local authorities should be charging common good funds for the work that they do that is governed by the Local Government (Scotland) Act 1973. That is all that I wanted to say. I will illuminate members on any of those questions.

**The Convener:** I hope that members are listening and are scribbling notes on those points.

**Paul Nevin:** As you said, convener, I am appearing for Alasdair McEachan, whose submission was made in a private capacity. I am representing his view, because I work closely with him in the area of common good. I have been with my local authority for more than 10 years. I am happy to give my own personal view, and what I believe to be the views of our members and of the Moray local public, all three of which are sometimes at odds with one another, and to talk about the three possible options for change of common good.

**The Convener:** Thank you very much. I asked for brief statements, and that was absolutely on the money, so I appreciate that. Our first question is from Andy Wightman.

**Andy Wightman:** I thank all the witnesses for coming in this morning. Common good is a long-standing issue. I think that it was first raised in the first year of this Parliament's existence, and it has had limited but ad hoc attention since then. The committee is grateful for all the written evidence that has been submitted. Because of timing and scheduling, we have not been able to get round to an oral session to deal with that until now.

You do not all need to contribute an answer to this question if you do not wish to, because there will be further questions, but I would like to know what key issues in the legal framework surrounding common good, in terms of ownership and administration, you think Parliament should pay some attention to. Can you give us some idea of the consequences of the legal framework as it stands just now, which are less than optimal? I suppose that I am asking whether the current legal framework is fit for purpose.

**The Convener:** I saw a flash of eye contact from Mr Nevin, so I will take him first.

11:30

**Paul Nevin:** The current legal framework creates a special status for this small area of property and funds, which represents less than 1 per cent, loosely speaking, of council assets. The legal framework has led to a disproportionately complicated process of administration of common good assets, which means that the cost of administering them generally far outweighs the value of the asset that is being dealt with. By comparison, the amount of legal time and council resources that are used in dealing with the leasing of industrial premises, for example, is quite small compared with the value of the rental income. In dealing with a common good asset, which is often a small parcel of ground, the resources that need to go into identifying it and establishing whether it is alienable or inalienable—which raises difficult

and time-consuming legal issues—are disproportionate to the value of the transaction.

Of course, that does not take account of the value that is attached to common good assets by the inhabitants of the former burghs, who see more than their economic value—they see their local historical interest and reputational factors that perhaps do not have a monetary value.

**The Convener:** Do any of the other witnesses want to comment? Do not feel under pressure to.

**Dr Neil:** I think that an awful lot of time is wasted on trying to decide what constitutes common good property and what does not. As I mentioned in my written submission, in the 2003 court case *Wilson and others v Inverclyde Council*, three judges at the inner house of the Court of Session came to a very clear judgment that was based on what had been said in a 1944 case that Mr Ferguson will be familiar with, because it is mentioned in his book. That judgment, which the judges all agreed on, was so clear that it is not necessary to have and fight about what is common good and what is not.

There will be some exceptions. To sort them out, I propose having greater involvement of local people in the management of a local common good. That way, such questions could be argued over, discussed and decided at a much lower level without having to involve the entire council and all its staff in the expensive chasing of documents and whatnot.

**Andrew Ferguson:** I am broadly in agreement with Dr Neil and Mr Nevin. As Mr Wightman says, the issue has come up again and again. It involves a disproportionate amount of time.

As I said in my submission, as far as definitions are concerned, there are two issues. There is the issue of what is and what is not common good, which Dr Neil mentioned. The other is the abstruse academic question of what is alienable and what is not alienable. That matters because it determines whether the local authority has to go to court. I have included in my submission some recommendations for doing away with the second of those definitions. When local authorities want to do something, there should be a simple and transparent process that involves consultation and engagement with the local community. That should be a simple and straightforward process so that everybody is clear about how such properties can be dealt with.

I recognise what Dr Neil said about the case law, but the problem is that the case law is always capable of a wide range of interpretation. That is great fun for lawyers, but it does not move the process forward that much.

The current legal framework is not perfect. I think that the way forward might be to introduce some straightforward legislation that sets out a definition and a simplified disposal process that involves proper consultation, because at the moment it takes up a disproportionate amount of time. Earlier, the committee spent some time looking at local government finance. The areas that deal with common good in local authorities are the back-office functions, and we all know what happens to back-office functions in the current budget climate—they are squeezed more than the front-line services. It is not as if the resources to deal with such issues are growing.

**The Convener:** Mr Veitch, do not feel obliged to speak if you feel that the issue has been suitably covered, but do you want to add anything?

**Craig Veitch:** Yes. As I work in a local authority, I always try to look at things from the perspective of the people we serve, and our client services are the same—they look to deal with and manage the assets as best they can.

To reiterate the comments of Dr Neil, Mr Nevin and Mr Ferguson, there is now a raft of case law and lots of judicial commentary on the previous law. We have a great opportunity to codify several of the judicial authorities and, as I said, to include the issue in the community empowerment legislation. It is about the consultation of community bodies when we decide whether to alienate common good land. If we had everything in the statute book on what common good is and how it can be disposed of, and if that was linked to the consultation process that has been introduced through the Community Empowerment (Scotland) Act 2015, that would be a great step forward.

**Andy Wightman:** In response to the question whether the rules that define common good are adequate, the Law Society of Scotland and Alasdair McEachan basically say no. There is an interesting comment from Neil King, who I understand is a retired solicitor. He says:

“I can’t emphasise strongly enough that merely codifying the common law rules in statute won’t make these uncertainties go away.”

That is because we still need to investigate every case on its merits, which is often the challenging bit. That situation means that a lot of land is just left abandoned and unused, because people can never get round to doing that.

On the flip side, the situation also ties up a lot of time. That happened even here in Parliament with the City of Edinburgh Council (Portobello Park) Bill, which went through last year as a consequence of a dispute raised by residents who claimed that the land involved was common good. The City of Edinburgh Council accepted that it was common good, but that question was never put to

a court and I suggest that, had it been, the court would probably have found that the land was not common good. Nevertheless, the Parliament had to go to an awful lot of bother passing a specific piece of legislation just to allow a school to be built.

Neil King goes on to say:

“The only way to make these problems go away is to have a definitive register”.

In other words, the definition of what is and what is not common good is based on case law but in statute it would be about whether something is in a register. Obviously, some time would need to be allowed to ensure that everything that people want to be on the register was on it. However, at a certain point in time, if something was not on the register, by statute it would not be common good. Various solutions are suggested, but is that the kind of approach that might help to give clarity in future?

**Paul Nevin:** That does not form the basis of Mr McEachan’s submission, which I am talking to, but I read Mr King’s submission, and I think that it is an excellent idea. As you say, to define or codify—as Mr Veitch said—common good will not solve the problem, because there will still be argument. If we had a code that said that if something was not bought for a statutory purpose, is not in a trust and was formerly owned by a burgh council, it is common good, that might be the definition, but it would then have to be evidenced and, as you say, that is where the difficulty is.

It is certainly a solution to have a register with an end date, after which if something is on the register, it is common good, and if something is not on the register, it is not common good—end of story. However, getting to the point at which that register is complete will involve lots of cases with the Lands Tribunal for Scotland. That will involve cost and time. I think that Mr King suggested 10 years until the register is closed, but we recognise that completing the land register of Scotland is going to take 10 years, so that is a short time when we consider how long the issue has been a problem.

A register is not one of the solutions that I am talking to, but it certainly is a solution. I am not sure whether it would be accepted by the public, because there will be on-going argument. However, if there was an end date, it could definitely work.

**Dr Neil:** I agree that we should have a register. There should be sufficient time—10 years or five years or whatever—for it to be compiled. However, it should use the inner house ruling as the start point and anything that falls outside that or is in dispute could be disposed of at a local level. That is why I advocate increasing the number of local

people involved in the common good administration. You would get free service from them and it would not cost the way it does today to investigate these things. We have done that in Selkirk already and it works.

**The Convener:** How do our other witnesses feel about the idea of getting a register and having a cut-off date?

**Andrew Ferguson:** I suppose that having a register will help and the consultation in terms of the 2015 act will help to thrash out some of the arguments that people have about particular properties. At the end of the day, a judgment call will have to be made on some properties, and the question is whether it is then accepted that that is the decision and we can move on or whether it just goes round in a big circle and starts all over again.

The community empowerment legislation is a great opportunity for communities to take things on. I say this as someone who comes from Glenrothes rather than an old burgh, but there is a wider issue about how councils use assets and I think that the community empowerment legislation will help to tackle that. I would not want common good to end up being shunted into a corner, as people have strong feelings about common good property and are proud of the burgh's heritage, but it is not the complete picture.

**The Convener:** Are we left with cut-off dates as the big issue rather than the register, because that will happen?

**Dr Neil:** It is about the confirmation of the register—if it is not done in two or three years or whatever time you dictate, that is the register fixed then.

**The Convener:** But I suppose that it is about the general principle. If we said that the cut-off date would be in 30 years, in 29 years and six months there would still be chunks of land out there that people were disputing. It is about the principle of a cut-off date, irrespective of when that date is set. I am just trying to get a sense of whether everyone accepts that there should be a cut-off date.

**Craig Veitch:** With all these things, if you do not set cut-off dates, they just roll on and on and there is no focus and there are no targets, so I agree with that principle.

What is difficult, especially for the larger local authorities such as Aberdeen City Council, is the number of titles to be examined—we have several thousand individual titles that would have to be examined. Some will be obviously common good but, with others, we will have to delve into not only the title deeds but council minutes from the 1800s and 1900s, and check with archivists. If we are to do that with a relatively slim legal team, in the face

of the current budget restrictions and the resource and cost cutting that is going on in all the local authorities, setting an early target date will make it extremely difficult for a number of authorities to achieve that target.

I know that the completion of the land register is a different topic, but there is already pressure from the Government for public land to be registered by 2019, so adding a further burden in the form of the common good register will put even more strain on our authorities and our departments.

**The Convener:** That is obviously about timescale and resources. Before other witnesses come in, I am conscious that this is Mr Wightman's line of questioning, so I will just pass it back to Mr Wightman.

**Andy Wightman:** I have just one final question on management. Dr Neil talked about what is going on in Selkirk. Given that the Local Government (Scotland) Act 1973 provisions were put in place to protect common good in response to pressure from town councils, which wanted some protection for those assets and got it in the 1973 act, do you think that, in general terms, there is a case for allowing local communities to regain ownership of those assets if they so wish?

On the specific point about the Community Empowerment (Scotland) Act 2015, we have a problem with the provisions that allow asset transfer requests to be made. I know of at least two cases in which asset transfer discussions have begun that relate to common good property and the local authorities have said that they will have to go to the courts. In other words, common good law is getting in the way of the intent of that part of the 2015 act.

11:45

**Dr Neil:** If the matter is devolved to a local area, people will volunteer to help the established councillors. Between them, they will be able to sort out what is common good property and what is not. If they do not agree, I presume that it would fall back into the council's hands. That way, with a cut-off date, we will get a register. If people do not make a case for an asset to be common good before that date, with the input of equal numbers of elected councillors and local people so that nobody can bulldoze anybody else, that will be it: the register will be done—end of story.

**Andrew Ferguson:** I endorse Mr Wightman's comment about asset transfer requests. I picked that point up in my submission, I think. If the Parliament is going to legislate on common good, it should tie the two together so that there is no doubt that, if an asset transfer request is made, you do not have to go through the provisions of section 75 of the 1973 act.

**Paul Nevin:** I entirely agree that there should be a closing date for the register. However, Mr Wightman was not talking about that alone; he was talking about whether the list is a definitive legal definition of what is and is not common good. I agree that it would be a more useful register if it was.

Local management of common good assets would be the second-choice solution. It would be a good solution to transfer them to local trusts, community councils or people with local knowledge. The disadvantage of that remains knowing what we are transferring. We are still stuck with the question of what is common good.

**Alexander Stewart:** You have already talked about the financial burdens that local authorities face in keeping the records of common good assets. We have also touched on the Community Empowerment (Scotland) Act 2015. Will it give help and guidance on improving record keeping? Do you still maintain that the financial burden for the local authority will be heavy?

**Andrew Ferguson:** The 2015 act's provisions on setting up a register are perfectly sound and are there to be implemented. You have heard from our local authority colleagues that it will be a big job to do. Once it is done, it should not be that difficult to maintain the register. Fife Council has already gone through the process voluntarily, so I know that a massive input of resources is needed at the start. Once the register exists, the input is not huge. However, there is a big lump of work to be done.

**Alexander Stewart:** Because of the constraints that councils face, is it reasonable to expect them to do all that or will they put the work on the back burner because it is not a major priority?

**Andrew Ferguson:** The issue is the timescale. It is about how long you will give us to do it, to be frank.

**The Convener:** How do you anticipate that councils will produce the register? One way would be to have a cut-off date in 10 years' time. I assume that a local authority will trawl through assets that the council owns and that it suspects are, in practice, common good lands and properties. Therefore, as it goes through an area, if it does not put land on a common good register, it is saying in effect that that land is not common good. That can be done before an artificial cut-off date.

Could local authorities take a phased approach whereby they create different geographical zones and track one zone after the next, working out what should be common good and transferring assets into a common good register as appropriate, and then deeming everything else within that area as not being common good? Do

we have to do this with a big bang cut-off date in 10 years' time, or could we do it incrementally?

**Dr Neil:** It could be done incrementally, but to simplify the whole process and avoid further argument and discussion, it could be done by having a cut-off date and involving local people. A lot of administrative work will be unnecessary if local people have had an opportunity to claim what is common good, and then if something is not on the register at the end of that time period, it does not belong to the common good—end of story. That is what I am trying to get across.

**The Convener:** That is a fair point.

**Paul Nevin:** Your suggestion of a phased approach is a good one, convener. In the case of Moray we have 11 former burghs—it is hard for a Northern Irish man to say that word—and we already know that some have more common good than others. If we took a phased approach, we could look at each former burgh area for six months or one year and it would make the task more bite sized. That might let us have a better focus and make the work more manageable. Then it would be less likely for people to take the attitude that they do not have to do it for another nine years, so they end up leaving it until the final year before they start.

**The Convener:** And then they would come to a successor committee and say that they do not have enough time, resources or expertise in the local authority area to deliver it, which would be my concern.

One of the requirements would be good-quality community consultation. A local authority's decision on whether land is or is not common good, using whatever set process it might have, would involve community engagement. However, in some areas community councils are a lot more vibrant and active than in others. There are natural campaigners in some communities but not in others.

Where is the incentive for local authorities to do really good-quality community engagement, and what should that look like? On the flip side of that question, will some local authorities have a self-interest in having some lands not appear in the common good register? If there is a conflict, how could it be resolved? This is not my area, so I apologise if that question does not stack up, but it occurred to me after looking at the papers.

**Dr Neil:** There is still a residual knowledge within communities as to what belongs to the common good and what does not. If decisions were questioned, they could be looked at. The point is that if decisions do not get questioned and the deadline occurs, then fair enough—it is not common good.

**The Convener:** But something could be set in common good—I am thinking of Glenconner park in my constituency, although I do not know whether it is common good. I think that the hold that Friends of Glenconner park has over that trust to the city lapses this year and it will revert to the city and its wider developmental plans. We have a local regeneration group there that is quite focused on what that land should and should not be used for and will be very attentive to that, along with local housing associations and a variety of others.

However, there will be lands elsewhere where that skill set just does not exist or where, decades later, what land was or was not used for will be a distant memory for most people. How do we ensure that local authorities do proper community engagement in relation to that? Something could be held in common good but the community is completely unaware of it—it would not be on their radar. Are there any more thoughts on how to do that community engagement?

**Andrew Ferguson:** There is a really positive outcome when local authorities consult their local communities properly. I totally agree with Dr Neil. Particularly in the bigger local authorities, with the changeover of staff over the years, nobody knows their own local area. In Fife, there are 26 former burghs. Even if someone has been in the local authority for as long as I have, it is often only a particular area—of central Fife, in my case—that they know quite well, whereas the people in the local communities generally know a lot of their history. There can be really positive outcomes from consulting properly.

Obviously, guidance can help us with how to carry out a consultation and an awful lot of work has been done on what a good consultation should look like in various contexts, so, in itself, that should not be that difficult.

There are other cases in which a community has strong feelings about a particular asset. Common good is sometimes part of the equation in those cases but the community empowerment powers now give communities greater power to take things into their own hands if that is what they want to do. Again, the issue is part of a wider landscape.

**Dr Neil:** For the benefit of those who do not know, I note that, in 1907, officials under Lloyd George—I think—went through every property in the land and assigned ownership to each of them. One can find maps of these things—you can get them at West Register house—and use them to track what was once upon a time common good land. You are not going to suddenly find things that are not on those maps. We have done a good proportion of the work, and it can be done

elsewhere. We are able to identify common good property at a point in time.

**Paul Nevin:** The convener asked a question that I do not think that we answered, which was whether there is any advantage to a local authority not finding an asset to be common good. The honest answer has to be yes. If the council finds that an asset is common good, particularly if it is inalienable common good, we have to go to the courts to change its use or to sell it. Further, if we sell it, the proceeds must go into a common good account, which has a special status, and not into general coffers. I hope that local authority lawyers who deal with the definitions of common good are not worrying on that basis, but I can say that it would be beneficial to the council if a piece of land was not common good.

With regard to consultation, there is a difficulty because, as the convener said, although there are council areas that have very involved inhabitants who know a lot about the local history and are extremely interested in common good and would, therefore, engage in consultation, there are other areas that do not have such inhabitants, which means that the common good land could be overlooked. The consultation process in those burghs might have to begin with education to raise the awareness of what common good is and what it could be in that particular area. That might have to be done before you are able to get meaningful buy-in to a consultation process.

**The Convener:** I suspect that that is where the tension comes from with regard to local authorities—I do not mean that in a bad way. Once you raise that awareness, you create a demand and an aspiration. That leads to issues of bureaucracy and time consumption for local authorities, which have to manage all of that. If no one responds during a statutory consultation, that is one thing. However, if you leaflet an area, knock on a few doors and hold a public meeting that 20 folk come to, you then get community activism that might challenge some of the actions of the local authority. There is an issue about where the incentives and disincentives sit in relation to that.

**Elaine Smith:** I have a specific question for Mr Ferguson—*[Interruption.]* I apologise; I seem to be losing my voice.

In your submission, you talk about disposal, which relates to what Mr Nevin said about disputes. I think that the point that you are making is that the procedure could be simpler and that one of the ways in which it could be made simpler is through the establishment of a land tribunal. Could you expand on that?

**Andrew Ferguson:** In terms of disposal, currently, either a council decides that something is not that part of the common good that needs

court approval, in which case, it goes through the usual internal processes—either through a committee process or a delegated process. In that case, there is still an obligation to consult the community, but everything is fairly straightforward. If the council decides that court approval is needed, the matter can be taken either to the sheriff or the Court of Session. My submission details the pros and cons of each course of action, but neither of them is particularly accessible for a community unless, as the convener said, the community is a thoroughly organised and focused one that is used to taking on these kinds of things.

In my view, if such a case comes up, the legal issues are pretty straightforward. What it comes down to is the best interests of the community and I do not really see why a highly paid sheriff is needed to decide that. If a lower tribunal could deal with the issue more efficiently, I would have thought that that would be in the best interests of the community and the council. That would delegalise the process a bit.

12:00

**Elaine Smith:** Does any other panel member have a view on that?

**Craig Veitch:** Aberdeen City Council is considering a court petition in relation to property at Union Terrace Gardens, which is in the heart of the city centre. The proposals have already gone through full council and approval has been given to go ahead, but we have had to spend several thousand pounds on a counsel opinion just to confirm that we should go for a petition. We are going to have to do all the petition work, despite the fact that the proposal will clearly benefit all the citizens of Aberdeen. It will involve a lease of part of the recreational ground for coffee shops and retail, so it will benefit the community.

As Mr Ferguson said, do we have to have a highly paid sheriff to decide what should just be common sense? I support what Mr Ferguson has said.

**Paul Nevin:** At the risk of keeping common good complicated, I want to reflect a recent experience that Moray Council had. We applied to the sheriff court to release inalienable common good—a former burgh chambers, which is really special common good—and it was pretty painless. It was a summary application to the sheriff, which was dealt with quickly. It was done well, because there was a good consultation and there were no objections.

Much as I would like to see such cases not having to go to the sheriff court, there have been some pretty straightforward experiences. It is not that hard.

**The Convener:** Dr Neil, do you want to add something?

**Dr Neil:** You mentioned whether the approach should be based on community councils or something else. Community councils are generally attended by the local elected councillors for the area. It would be a simple thing to tack a management committee on to the end of a community council. It would not involve additional staff of the local authority. I do not foresee big expenses and staff costs being involved in order to carry out a democratisation of the common good back to the local area.

**Elaine Smith:** Could I just pick up that point with Dr Neil? The other issue to do with legalities that I was interested in relates to Live Borders. I think that you are saying that there are no local people from the burgh on Live Borders. Perhaps you could talk us through that.

**Dr Neil:** The management of the common good fund should be done by people from the local area, whether that is councillors or whatever. Live Borders is a separate organisation that is not governed by common good law and there are no defined representatives from each area where common good has been taken over. The organisation has not taken over the whole common good, just parts of it. It is a mish-mash and it does not conform with the original diktats of common good law, especially the old 1491 one, which is delightfully simple.

**The Convener:** Our deputy convener could be an expert on the 1491 common good law, but we will not press her further because she will only get embarrassed.

**Andy Wightman:** The Borders has traditions such as the common ridings and all the rest of it, and some quite large areas of land are held in the common good. In Selkirk, a lot of work has been done to improve the administration and management of the common good. Edinburgh, Glasgow and Aberdeen are, however, big cities. I am just wondering how management could be placed in the hands of local people when, in effect, local people in the city of Edinburgh for example are represented by one council.

You do not have Selkirk town council any more, so there is a sense in which you are wanting to take back control in Selkirk instead of leaving it to the bigger entity. How might we improve administration in the cities, which still have unitary authorities?

**Dr Neil:** Does Edinburgh not have localised community councils?

**Andy Wightman:** Yes—it probably has 20 or so.

**Dr Neil:** If the system is based on them, they will know their own area, and it could be put to them to identify what is or is not common good. I presume that their meetings will be attended by their local elected councillors, so it would be easy to tack a discussion of the common good on to the end—or, indeed, the beginning—of a community council meeting.

**Andy Wightman:** We will leave that hanging, I think.

One of the most complicated areas is that of disposals, which leads to petitions to the court. We are talking about the difference between alienation, disposal and appropriation, between inalienable and alienable and so on. As the author of a book on this topic, Mr Ferguson, you will know all too well that any such definitions have not yet been agreed. You have hinted at this already, but should we, as part of any reform, look to simplify the process of how we decide whether, for example, a park in Edinburgh should be used for a school, which will involve an appropriation; whether a long lease of 50 years should be given to a business for a bit of land by the River Clyde; or whether a former city chamber should be sold to someone else? Should all those processes be subject to a much simpler—though no less transparent—procedure to ensure that people do not have to grapple with complex legal questions with regard to whether something is an alienation or a disposal?

**Andrew Ferguson:** In short, yes. All those issues are terribly interesting to those who want to write a book about them, but I think that, to an extent, the community should have just as much input into something that turns out to be on the alienable side of the fence as into something that is inalienable. Obviously certain really key things, such as former burgh chambers, fall into that category but, at the end of the day, they are all part of the common good.

You have made a good point about the cities. You can have a localised community council dealing with a particular asset in its part of Edinburgh, but it all ends up in one pot and one fund. I do not want to speak for my city colleagues, but I think that there is an issue with getting input from all the smaller parts of what are, in the case of the cities, quite big communities.

**Andy Wightman:** Where do we go from here? Does Parliament need to do something more on this question, or is the iterative process of tweaking definitions, the disposal regime and so on a little bit every five years or so adequate?

**The Convener:** That is a great question. What would you change, and how could we make those changes?

**Dr Neil:** I would like to change section 104 of the Community Empowerment (Scotland) Act 2015 by adding local people to the same number as elected councillors to ensure that there is equality in the local management of common good. At the moment, it just refers to any member of a body that has been approved, but a number should be put on that.

**The Convener:** Does anyone else have any suggestions about what they would like to change, or does anyone want to put to us as policy makers what they think could be done differently?

**Paul Nevin:** Common good should absolutely be abolished; parity should be created with ordinary council assets; and the normal democratic process that all of us in unitary authorities work within should be used to call councils to account in selling or not selling—or in leasing or not leasing—land. It is a hangover from the past, and it is archaic. It is historically interesting—I love working with it and indeed have enjoyed doing so for the past 10 years—but it is really not a modern form of government.

**The Convener:** That leaves us in a very odd place in this evidence session, given our discussion about cut-off dates and common good registers, but it is certainly a very challenging view.

I will let you back in, Mr Nevin, but I will take Mr Ferguson first.

**Andrew Ferguson:** I would probably not go quite as far as abolishing common good—to be quite frank, you are not going to get a lot of votes that way—but I do think that you need to simplify things. We need to do away with all the archaic distinctions between alienable and inalienable, create a simpler disposal process for local authorities and align the system with the rest of community empowerment to ensure that communities are involved in decision making. I suggest that you look at that in formulating policy.

**The Convener:** Okay. I will take Dr Neil in a second, but I want to give others a chance to come in.

**Craig Veitch:** I just wanted to make a short point, convener. [*Interruption.*] I am sorry—I lost the thread of what I was going to say.

**Andy Wightman:** My question was whether Parliament needs to act or whether we can just let things drift.

**The Convener:** We can come back to you, Mr Veitch. I will take Dr Neil next.

**Dr Neil:** All I want to say is that, if you abolished common good, you would immediately face a riot in Hawick, and I do not think that that would be a very good thing.

**The Convener:** Does anyone here represent Hawick? If not, I will move to Mr Veitch.

**Craig Veitch:** I just wanted to say that we would want the common good procedure to be simplified, mainly with regard to disposals and appropriations. The 1973 act refers to “a question” arising with regard to a local authority’s right to dispose of certain common good land. A chapter of Mr Ferguson’s book focuses on that very question, and simplifying the procedure in that respect would help everyone.

**The Convener:** I have a brief question that I want to leave to the end, but do you want to follow up on any of that, Mr Wightman?

**Andy Wightman:** This issue comes up in Parliament every three to four years on average, but it always gets put on the too-difficult pile, mainly because Parliament and its committees have a lot of business to get through. With what urgency should we act on this matter? Does Parliament need to act soon—say, in this parliamentary session? This committee needs to come to a view about what to do. We could easily sit in private session after this meeting and agree that the issue is a bit too difficult and not really a priority. I want to get a sense of the priority that should be attached to reforming this area and whether, if the issue is one of simplification, that job should not be too complicated in itself—withstanding the fact that there will be arguments about how simple it would be to abolish common good altogether.

**Paul Nevin:** Short of abolishing common good, which I agree with Mr Ferguson might not get you votes—

**The Convener:** Not in Hawick, apparently.

**Paul Nevin:** I fully agree that we must avoid riots at all costs, convener.

I agree with my colleagues that definitions of alienability—which is another difficult word for a Northern Irishman—should be abolished. All of that nonsense should go, because it has no place in modern law.

However, something that the committee could recommend and which could be done as a quick fix—indeed, it has already been discussed—is making the register legally definitive. That would be easy to do. It would not come without dispute, but it would involve consultation and bringing the local community with you. We are going to spend what I agree with my colleagues will be a lot of local authority time and resources on creating a list that will still be disputed; after all, common good is and always will be a controversial area. Having a list with a cut-off date after which you could say, “If it’s on the list, it’s common good; if it’s not, it isn’t” would be a simple thing that the

Parliament could do and would mean that we would not have to come back to the issue for, say, another five or six years this time. Of course, if we abolished it, we would never have to come back to it.

**The Convener:** You are welcome back any time, Mr Nevin.

**Dr Neil:** Never mind abolition—I think that you should bring in sections 102 and 104 of the 2015 act as soon as possible and, if possible, extend section 104 to include more people who could act locally in the management of local common good.

I agree with all the points about having a register in place.

**Elaine Smith:** When you talk about “bringing in” section 102, do you mean highlight its terms? I understand what you are saying about section 104, but what do you mean by “bringing in” section 102?

**Dr Neil:** With regard to section 102, I am agreeing that we need to decide what constitutes common good fund property.

**Elaine Smith:** Okay.

12:15

**The Convener:** We are coming to the end of our evidence session, but for the sake of clarity, I note that section 102 of the 2015 act establishes a common good register. However, it is not a definitive register. Just because something is not on it does not mean that that thing is not common good. You might get an extra degree of protection if the item is on the register, but even then, witnesses seem to be arguing for a more streamlined process for disposing of that land for community benefit. That might provide a degree of additional protection, but as Mr Nevin has pointed out, having greater protections for some public asset land and not for other such land might lead to inequality. That is why he has suggested that we should just abolish the lot and put in place reasonable protections and processes for the disposal of all community asset land. Have I captured the situation accurately, Mr Nevin?

**Paul Nevin:** I think that you are spot on, convener. I would also point out that we have had common good registers before—the burgh councils had them. As Mr Ferguson says in his book—I agree with him entirely—just because something is on an old burgh council common good register does not mean that it is common good. This is the 21st century, and we are creating registers again. They were not definitive in the past, and they are not going to be definitive today.

**The Convener:** I wonder, then, whether a key question for our committee is what difference it

makes for the disposal of community assets if they are on the common good register.

Finally, I want to move us a little bit away from what we have been talking about. The committee is about to look at the Planning (Scotland) Bill, one of the key features of which is the development of local development plans every 10 years instead of every five years. That might provide a huge opportunity for us to focus our minds if the drive is to have these kinds of lists so that we can do audits and so on.

The bill also contains provisions for promoting communities' local place plans. When communities decide to pursue such plans, should local authorities then have an obligation to carry out an audit of the land within the boundary of that area in order to assure themselves about what is or is not common good? Does the bill that the Parliament is about to consider provide a natural opportunity to do that sort of thing separately, instead of taking a big-bang approach?

**Andrew Ferguson:** I had not thought about the Planning (Scotland) Bill, its provisions with regard to stretching LDPs to 10 years and the idea of place making. I think that all of that sits well with the issue of common good assets. I am not sure how you would tie everything together, but it is part of the wider picture of local authorities and communities looking at how things are put together and at where common good assets sit in that respect and asking, "What is the best use for this?" They might well say, "Let's not put this in the too-hard pile any more—let's look at it as part of our overall plan for these communities." In that respect, I would agree with you.

Going back briefly to Mr Wightman's last question, I would say that there have been one or two nips and tucks to legislation on common good over the years. Frankly, you have weightier things to talk about, and I suggest that, this time round, the committee should simply look at what can be done to simplify things and then just leave the matter be.

**The Convener:** I will bring in Mr Nevin, but I want to signpost that everyone else will get the opportunity, if they wish, to make some closing remarks. I therefore suggest that you marshal your thoughts.

I do not know about the rest of the committee, but my take-home message from this is that the issue is not whether something is on a common good register. I mentioned the Planning (Scotland) Bill because the issue is actually how communities shape the assets in their areas and how they can mould and shape the types of communities that they want and how land is used, irrespective of whether in 1907 some Prime Minister pointed at a bit of land and said, "That's common good" or

"That's not common good", or said "You own that" or "You don't own that." I am not sure how democratic the process back then was compared with today's democratic standards with regard to communities shaping the environment in which they live.

That is my take-home message, but if the witnesses think that I am wrong, they should tell me so in their final comments. Mr Nevin, I will let you go first.

**Paul Nevin:** Like Mr Ferguson, I had not thought about your local development plan suggestion, but it is certainly a good idea. The other benefit that it might have is that you get more community engagement with local plans, because communities can see that they are about what is going to happen in the reasonably immediate future to schools, housing et cetera in their area. It is therefore likely that more people will engage with the consultation on local plans, and if those plans also deal with common good issues, you might catch people who might otherwise have not involved themselves in a consultation that was purely on common good.

**The Convener:** Thank you. Because we went from left to right for the witnesses' opening comments, I will go from right to left for their closing comments. Dr Neil is next.

**Dr Neil:** There is still a chance for ministers to direct how the 2015 act should be implemented under sections 103 and 105. In other words, there are opportunities to refine the act even though it has gone through, and I would advocate doing that as fast as possible.

As for the map from 1907, that would identify to people only what had been common good land. Very often, these are parcels of land or whatever that are overlooked today. That is the value of it.

**Andrew Ferguson:** Convener, you have helped me shape my own thinking on where I would suggest that the committee go on this matter. It is about common good being part of a wider place-making agenda—I think that that is a very good phrase to use in this respect. The register will help to flush out difficulties, and once local authorities have it, it will be there for people to access. It will not end all the arguments, but at least something will have been put in place.

At the end of the day, though, community involvement is the crucial issue. As I have said, this is part of the wider landscape of community empowerment and the involvement of communities through the Planning (Scotland) Bill, if that legislation comes to pass, and the community empowerment legislation in decisions on particular assets. That will go beyond burgh boundaries and will involve other communities.

**Craig Veitch:** All that I would say in my closing remarks is that, as we have been teasing out towards the end of the discussion, the Community Empowerment (Scotland) Act 2015 and common good as it has historically been are not sitting perfectly together. The Parliament has legislated on community empowerment in asset transfers to allow communities to take back control of certain public buildings that are not being properly used. However, they might hit the buffers of a common good query, and it would be best if we could align ourselves better and tidy up common good legislation.

We have to remember that the law protecting common good was put in place generally to stop the misappropriation of funds by councils, but time has moved on and we now have a lot of legislation and financial regulation controlling councils, which have to get the best value for all their assets. I might not be moving towards suggesting the abolition of common good, but we must look at the issue as soon as possible.

**The Convener:** I thank all of our witnesses this morning, and I am sorry that you had to wait before we started the evidence session. I hope that you have got something from this, and we will go back and read the *Official Report* to see what we can take from the discussion and where we will go next.

That ends item 3. As previously agreed, we will take item 4 in private.

12:24

*Meeting continued in private until 13:08.*



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