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Pàrlamaid na h-Alba

Official Report

FINANCE COMMITTEE

Wednesday 11 November 2015

Session 4

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FINANCE COMMITTEE
28th Meeting 2015, Session 4

CONVENER

*Kenneth Gibson (Cunninghame North) (SNP)

DEPUTY CONVENER

*John Mason (Glasgow Shettleston) (SNP)

COMMITTEE MEMBERS

*Jackie Baillie (Dumbarton) (Lab)
*Richard Baker (North East Scotland) (Lab)
*Gavin Brown (Lothian) (Con)
*Mark McDonald (Aberdeen Donside) (SNP)
*Jean Urquhart (Highlands and Islands) (Ind)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Diane Barr (Scottish Parliament)
Charles Brown (Scottish Government)
Helen Duncan (Scottish Government)
Anne McTaggart (Glasgow) (Lab)
Barry Stalker (Scottish Government)

CLERK TO THE COMMITTEE

Jim Johnston

LOCATION

The Adam Smith Room (CR5)

Scottish Parliament

Finance Committee

Wednesday 11 November 2015

[The Convener opened the meeting at 10:00]

Private Housing (Tenancies) (Scotland) Bill: Financial Memorandum

The Convener (Kenneth Gibson): Good morning and welcome to the 28th meeting in 2015 of the Scottish Parliament's Finance Committee. I remind everyone present to turn off mobile phones, tablets or other electronic devices. Members may be aware that there will be a two-minute silence at 11 am for remembrance day. I therefore intend to suspend the meeting at about 10.50 to allow any member who wishes to do so to make their way to the garden lobby to join the Presiding Officer in remembrance. The committee will reconvene shortly after 11 am.

Our first item of business is to take evidence on the financial memorandum to the Private Housing (Tenancies) (Scotland) Bill from the Scottish Government's bill team. I welcome to the meeting Barry Stalker, Helen Duncan and Charles Brown. Members have copies of the financial memorandum and all the written evidence, so we will go straight to questions from the committee. As is normal in the Finance Committee, I will ask the opening questions, to set the scene, and then—one hopes—colleagues will delve deeper into the financial memorandum. Where shall we start? I am sitting here with all this paper because there are so many questions that I want to ask and it is always so tempting to ask them all, but I will not do that, although quite a few issues have been raised—

Mark McDonald (Aberdeen Donside) (SNP): That will make a change—[*Laughter*.]

The Convener: I will ask all the questions today, then—no, no.

Let us start with the first-tier tribunal, because that seems to have caused a bit of upset among some of the people who have made submissions. In paragraph 49 of the financial memorandum, you talk about the FTT and a fee for applying to the Scottish courts of £70, although whether there will be a fee associated with making an application will be determined by Scottish ministers as part of the on-going work to develop the FTT. Again, in paragraph 83, you mention that the Scottish Government has yet to decide whether there will be a fee. How can you possibly put together a financial memorandum without knowing something as significant as that? I would have thought that, given the deliberations on the bill, before you put together the FM you would at least have made a decision not only on whether legal aid will be made available and whether there will be a fee, but on how much of an impact those things are likely to have and whom they are likely to have an impact on. Can you talk me through your thinking on those issues and how that relates to the best estimates that you are supposed to have when you put together a financial memorandum?

Barry Stalker (Scottish Government): Thank you, convener. I will kick off and then I may bring in my colleagues from analytical services.

You are right when you refer to paragraph 49, in that a decision has not yet been made regarding fees at the first-tier tribunal. That is a collective decision for ministers, and it will be taken forward as part of the operational detail as the new tribunal is implemented. The new tribunal is being implemented under the Tribunals (Scotland) Act 2014, and the first chamber in it will be the housing and property chamber. Work is under way, on which other colleagues are leading. Basically, the Government is bringing together the current Private Rented Housing Panel and the Homeowner Housing Panel in the new chamber for housing and property, along with a new jurisdiction called the private rented sector tribunal and a letting agents tribunal. The tribunals for the PRS and for letting agents come from the Housing (Scotland) Act 2014, so several things are coming together.

On the costs that we have set out in the financial memorandum, we have been able to build on the work that was undertaken for the 2014 act—in particular, for the PRS tribunal. We estimated the costs of transferring tenant-landlord disputes from the courts to the new jurisdiction. Most of those cases would relate to the current tenancy. In future, when the tribunal is up and running—probably a year after the new chamber is up and running—we will look to implement the new tenancy, subject to the will of Parliament. We have been able to look at the costs that were set out for the tenancy part of the new housing tribunal, so that has given us something to work from. For the financial memorandum, we have assumed that no fee is to be charged, but we have said that there may be a fee, which ministers will decide in the future. Our premise that there will not be a fee is reflected in, for example, our estimate of the number of cases involving the new tenancy that might come to the tribunal.

Likewise, legal aid is a matter for the broader tribunal. We expect that, whatever decision is taken on that, it will also apply to the new tenancy as set out in the bill. Again, we have assumed in

the financial memorandum that legal aid will not be available, but that is not to say that that will be the case. The assumptions that we have made for the financial memorandum are based on what we know: that there will not be a fee, although a fee could be charged in future; and that legal aid will not be available, because that is the case at present, subject to decisions to be taken by ministers.

The Convener: I thank you for that explanation, but you will appreciate that this is an important aspect of the bill. For example, the Association of Residential Letting Agents has said:

"we remain concerned about the cost implications for landlords when regaining possession of their property through the FTT … Where tenants lodge any case to the FTT we believe they should pay. This would remove any temptation for tenants to continue stalling proceedings with no financial costs or penalties to themselves."

Shelter, however, says exactly the opposite:

"Shelter Scotland is strongly of the view that financial provision must be made for legal assistance at the tribunal through a mixture of both advice and representation. It is also the view of Shelter Scotland that there should be no fee for private tenants to access the tribunal."

Such prevarication on making a decision does not seem to be pleasing anyone. Letting agents and landlords are a bit anxious that the approach could open the floodgates to a load of applications, delayed adjudications on decisions and so on, and then there is Shelter, which is concerned that tenants might have to pay. When are we likely to have a decision—might we have it at stage 2 or before the stage 1 debate?

Barry Stalker: There are a couple of aspects to that. First, the bill introduces a new type of tenancy, and you are asking us about the important element of how the system will work with that new type of tenancy. The matter is linked to other policy areas. My understanding is that ministers intend to consult in the new year on the question of a fee—whether there should be a fee and, if so, what that fee should be. If there is to be a fee, that would require secondary legislation, which would, of course, be scrutinised by Parliament.

The Convener: Let us move on—other members may want to pursue that point.

Paragraph 25 of the financial memorandum states that

"only 14% of tenants reported *ever* having left a tenancy due to unreasonably high rent."

You put the word "ever" in italics. Of course, the rent cap is a key aspect of the bill, but in paragraph 77 you say:

"A possible negative impact of a rent increase cap is that it may deter investment in housing and reduce the supply of new rented housing, or investment in improving the quality of existing housing, due to the lower expected rental return."

You then go on to say that an

"investor will be able to recoup these costs by setting a higher initial rent, since the rental increase cap will not apply to initial rents."

Effectively, it seems that you are giving with one hand and taking away with the other. What is the thinking behind that?

Barry Stalker: In a minute I will ask one of my analytical services colleagues to answer the point you make about the word "ever." There is a lot to unpack, so I will try to be as succinct as I can be. The bill is about a new type of tenancy and, because it is an open-ended tenancy, we need to address the question of what happens with rents, because the bill's overall aim is to improve security of tenure for tenants, with a balance of appropriate safeguards for landlords, lenders and investors. If you are going to improve security of tenure, what you do not want is the potential for unscrupulous landlords to hike the rent as a way of subverting that increased security for tenants. We have an adjudication process for tenants to protect against that. We also provide for predictability of rents for tenants, which means that a landlord may increase the rent only once every 12 months, having given three months' notice, which should help tenants to plan their finances. Both those measures were strongly supported in the two public consultations that we ran on the bill. I would put them in the category of things that would apply to a tenancy in general.

The third element on rents is the rent pressure zones, or the caps that would apply for sitting tenants in hot-spot areas. That part of the bill states that if a local authority is concerned about rents increasing significantly in an area and having a detrimental effect on tenants and housing, they can apply to Scottish ministers to determine whether a rent pressure zone should apply. If ministers designate a zone, they will be able to set a cap for sitting tenants at a minimum of the consumer prices index plus 1 per cent. At the start of a tenancy, rents will be market led, but rent pressure zones will have a cap for sitting tenants set by ministers.

You raised an important question about investment. Clearly, housing supply is important to the Scottish Government. One of our key policy aims is to attract more investment into the sector. We have been mindful of that, particularly in thinking through our proposals on rent pressure zones. Having listened to stakeholders in the investment community, we wanted to try to alleviate their uncertainty about our proposals, so we have done what we can in the bill to set the parameters. Based on feedback that we have received following the bill's introduction, investors

seem to be comfortable knowing that initial rents will continue to be market led and that there will be a minimum for the rent cap, because that enables them to model what they could see as the worst-case scenario should a rent cap be put in place and provides them with some degree of certainty.

Overall, we expect rent pressure zones to apply in limited circumstances, which would be dependent on local authorities identifying a need, as I said. In the main, rents would be market led, and we also have the two policies around predictability of rents and protection against unfair rent increases for tenants.

The Convener: I wonder how that would work in the following scenario. Let us say that a landlord has a £200,000 flat in Aberdeen. If mortgage rates, which are at an historical low, go up by 2 per cent, they will pay an extra £4,000 a year, or an extra £333 a month, on their mortgage. What would be the implication of that? Would they be able to put up the rent? Would the cap be lifted? Is there flexibility in the bill to deal with such changes? Also, if mortgage rates fell, would the cap be reduced? What would be the impact in relation to the major decisions that investors make, particularly in areas where there is a chronic shortage of housing? They will be presented with a cap, but who knows what the mortgage rate will be in three, five or 10 years? How will you address that?

Barry Stalker: We have thought of that—it is a good point. Section 34 gives ministers the power to change the inflation index. Depending on what has happened with inflation, we could change the index that would be used for the setting of any cap.

We would also be able to repeal a rent pressure zone, if it was felt that the conditions had changed to such an extent that a zone that was in place—it could be in place for up to five years—was no longer required. There is a facility in the bill to repeal a zone, if that is found to be necessary.

In the financial memorandum, we have made our best attempt to model what the potential impact would be on landlords, using the recent historical data for Aberdeen. If it suits the committee and would be helpful, my colleague Helen Duncan, who is an economist, will be able to explain a little more about that.

10:15

Helen Duncan (Scottish Government): The figures in the financial memorandum are based on historical figures and are our best estimate of what would have happened with those figures. They are for two-bedroom properties and were indexed to inflation to present the numbers in 2014 prices. Then the annual change was calculated to establish whether a rent cap of CPI plus 1 per cent would have come into play in those years. If the annual increase was above CPI plus 1 per cent for that year, the rent cap was applied. The rent was stated as what it would have been if the increase had been above CPI plus 1 per cent, and the impact that that would have had on the landlord's loss of profit was stated and then averaged.

The Convener: I am sure that others will want to look into that in further detail. I just want to touch quickly on a couple of areas before colleagues come in.

The Scottish Property Federation has said:

"There is frequent reference to 'modest' and 'negligible' costs the extent of which have not been set out in the summary table or elsewhere in the Memorandum. These cumulative costs to a small to medium sized company can become overwhelming."

I think that the point that is made in the financial memorandum is that most landlords—95 per cent of them—have only one or two properties.

Barry Stalker: Yes, or thereabouts.

The Convener: Do you accept that the additional costs would have a detrimental effect on people deciding whether to put a place up for rent?

Barry Stalker: Again, that is a good question and is something that we have thought about. The important point for the Government is that we want private landlords to continue the important role that they play in housing supply, but we need to make the changes that are set out, because the PRS has changed from where it was when the current tenancy was developed in the late 80s. In fact, it has changed a lot even since the late 90s.

The financial memorandum says that because we are looking to provide a balance through the grounds for repossession—with landlords still being able to recover possession of property in all reasonable circumstances—there should not be an impact on their ability to invest in property. For example, if you are a private landlord and you are looking at a property as an investment, clearly it is important that you are able to receive a rent and to appreciate the capital value of your investment through its sale. Both those things can be done in the grounds for repossession—there is a ground for selling, which is a mandatory ground, and there are also grounds that deal with rent arrears, for example. We feel that through the grounds that are set out in the bill, we have been able to provide cover for landlords so that they are still able to use or to let out their property, and to recover their investment in it, in a way that is similar to the existing position.

The Convener: The last point I want to make is about students. Some concern has been raised

about how the 12-month tenancy will impact on students who often, in places such as Edinburgh, have nine and 10-month tenancies. That suits them, because they do not have to pay for a full year when they are here for only nine or 10 months, and it suits the landlords, because they can then rent out the properties to tourists and others in the summer. What is your thinking on that, and are there any proposals to change it?

Barry Stalker: The position of ministers is that the new tenancy basically replaces the assured tenancy regime, so all those tenants who are covered by that regime will be transferred across to the new tenancy regime for future lets. What that means for students in an assured tenancy is that they will transfer to the new tenancy regime. Ministers are keen for the new rights that we are providing through the new tenancy to apply to all tenants who transfer across. On the specific point about students, they will basically have the same rights under the new tenancy as all other tenants. We are looking to have a more simplified, clearer tenancy than the one that exists at present—something that is simple and straightforward and which works across all tenants in the sector is attractive.

Regarding students, we recognise in the financial memorandum some potential impact on landlords who let in that market. We recognise that they will need to engage with their tenants—they probably engage well already, but they should continue to do so—and to ask them when they might be looking to leave, for example. Nothing in the bill deliberately ties tenants to year-long tenancies. At the moment when a student rents under a short assured tenancy, the landlord will probably have a set date when the tenancy should end. In most cases, the tenant will leave on that date, although not always. Under the new tenancy system, it would be for the tenant to provide notice to the landlord of intent to leave.

Tenancies in the student market tend to be backed up by a guarantor. Students looking to stay on will continue to pay the rent, but if they are looking to leave at the end of term—as you say, because they might want to stay for only the nine months—they will be able to hand in notice to leave at that time. If they want to stay on for another year, they can still do so. The key difference is that the decision of when to leave is in tenants' hands—unless, of course, the landlord uses one of the grounds. However, there is no ground at the moment—and we do not intend to have one—specifically to end a tenancy because a tenant is a student.

The Convener: I could ask a couple of supplementary questions, but I will allow others in.

John Mason (Glasgow Shettleston) (SNP): I am interested in the impact on students, so we will carry on with that.

Should students be treated in the same way as other people? There are policy issues in there that the Finance Committee is not looking at, but I am concerned about the knock-on costs. This is not to be derogatory about younger people, but a lot of students will not think, "Oh, I'd better give in my notice by a certain time." From what I understand, heading towards the end of a student year—at around about Easter—landlords will be looking at people staying in the flat over the summer and booking up students for the following year. I get the impression that that system works fairly well in some areas. I just wonder whether, if that system is disrupted, there will be costs for landlords, with those costs then handed on to the students. If the students do not give their notice, landlords cannot advertise for the following year and cannot bring someone in over the summer, so the assumption is that the costs would go up for the likes of students.

Barry Stalker: I will start at the end of the question and work back, if I may. If students do not hand in their notice, they will still be paying the rent and in the tenancy. As I said, the overall aim that ministers have set for the new tenancy is to increase security of tenure, balanced with appropriate safeguards for landlords, lenders and investors. Key to that is not including what is commonly known as the no-fault ground under the new tenancy, which is when a landlord can bring a tenancy to an end on a specified date. Instead, landlords will need to have a reason.

The National Union of Students and other student representative groups seem fairly supportive of the principle that students should have the same rights under the new tenancy as other tenants. On the question of costs and what a landlord can do, the bill says that a tenant needs to give eight weeks' notice if the tenancy has gone beyond six months. As a minimum, therefore, a landlord would have eight weeks' notice before the tenancy ended, but they would probably have more. A student would probably have an idea fairly early on about what they expected to do. For example, a first-year student might be staying in a private residence or in halls, with the university as landlord, but they might think about moving somewhere else in their second year. That is what tends to happen. I think that students probably have a fair idea of what they are looking to do.

John Mason: Students may have an idea, but my suggestion is that they will not bother telling the landlord—they will get to the end of June and will have forgotten to hand in their notice, and then they will just walk away.

The Convener: That is right. Who is going to chase them?

Barry Stalker: First, we talk in the financial memorandum about landlords having good engagement with their tenants, so if a student forgot, the landlord could always ask, "What are your intentions?" There is nothing to prevent them from doing that. As for what happens if a student walks away, I mentioned that most students have a guarantor, through whom landlords already protect themselves against the risk of the rent not being paid. The bill also covers the grounds on which a landlord who needs to recover unpaid rent could go to court. We do not expect a significant change in how tenants deal with their tenancies.

John Mason: I suppose that the wider problem, as pointed out by several people who submitted evidence, is that in the table on page 22 of the financial memorandum the words "negligible" and "modest" appear several times, especially towards the bottom of the page. The final column is headed "Costs on other bodies, individuals and businesses"—I assume that that includes both the tenants and the landlords, who are major players—but the total costs are said to be modest in both cases. The committee has been unhappy with a range of bills that have been brought here without anyone naming a figure. In most cases, we would prefer some kind of figure to the words "modest" and "negligible". Could you have put some kind of figure there?

Barry Stalker: In a minute, I will ask my colleague Charles Brown to go through how we got there, but I completely appreciate the point about not being able to include a figure. The simple answer is that we have done extensive consultation with stakeholders. We have developed a business and regulatory impact assessment, we have had two public consultations, and we have talked to stakeholders and engaged with them regularly. No one has been able to give firm figures for the potential impact on the sector. We can work only with the available figures. We felt that the best that we could do was to highlight in the financial memorandum the areas—you have brought them to our attention, too—where there is a potential for costs. We did that, but we could not always specify the costs, because that information was not available.

The term "modest" means that we do not expect the amount to be that much. I appreciate what you say, but I do not think anyone has been able to reach a firm figure.

Charles Brown (Scottish Government): We have tried always to put evidence-based figures in the table, so we have based the costs on existing operating tribunals whose costs we know. We also try to use information provided to us by stakeholders to give us an indication. In those senses, we have tried for something evidence-based—we have tried not just to pick figures out of the air. When we cannot do that, as in the case in question, we have expressed the cost as narrative or text, rather than affixing to it a figure whose robustness we could not be confident of.

John Mason: I am afraid that I find the whole concept quite strange. We presumably have legislation because there is a problem, and I thought that one of the problems was that landlords were making excessive profits in some cases by raising the rent, and that that was why there was a possibility of restricting rents. Even if we looked at that point on its own, the super-profits—whatever we call them—that the landlords were making will not be made by them any more, so presumably they lose out and the tenants who were paying those super-profits will gain. At the very least, I would have expected those two groups to be affected, or are we saying that there is no evidence that there are super-profits?

10:30

Barry Stalker: We would not necessarily say "super-profits", but what we have done in the financial memorandum, for example, is look at Aberdeen and Aberdeenshire in the recent past. The table that Helen Duncan was talking about is one example of where we have looked to say, "We know what the rents have been in that area. We know that they have been rising quite high and we've been able to model what potential caps there would be for certain tenants in that area." That is an area where we have been able to provide some costs on potential rent pressure zones.

As Charles Brown has said, we have taken an evidence-based approach. Where there has been evidence, we have used it, and where there has not, we have done the best we can with the explanation and narrative.

John Mason: I am sorry, but I am still struggling to understand all this. Can we therefore assume that, at the end of the day, the landlord will get the same amount of rent and the tenant will pay the same amount of rent, because the initial rent will be increased, given the knowledge that there will not be serious increases during the rental period? There is also a suggestion that, if there are restrictions on rent, it will drive some investors out of the market, which will push up the rents in the medium term, although I assume that it would bring in more landlords in the longer term. If we are really saying that the total costs for other organisations are modest, it seems to me that we are saying that in the long run there is no financial impact on anyone from this measure.

Barry Stalker: Basically, rents will be market led, and I outlined a little earlier what we have put on that in the bill. Even when a tenant believes that a rent increase is excessive, and they can seek adjudication on that, the test will be whether the rent for the property that the tenant is in is comparable with that for a similar property in that area—basically, whether it is the market rent.

The general principle that was set out in the bill was that landlords will be able to charge market rents; they do so now and they will be able to do so under the new type of tenancy. As I have said earlier, the one exception will be where a rent pressure zone is designated, and we have set that out in the table at the end of the financial memorandum.

On the point about investment, I suppose that there are two areas of investment in the PRS. As the convener mentioned earlier, there are the smaller-scale, more individual landlords—landlords that have a smaller portfolio—and there are many different types. There are those who actively invest, those who have inherited a property and those who could not sell, but they all tend to have a relatively small portfolio and it tends to be existing stock that they buy, sometimes with a buy-to-let mortgage.

The other side of investment is what we are looking to achieve. We want to encourage more institutional investment in the sector. That is part of the Government's broader drive to increase overall housing supply. That second area is still in its early days, but some investments have been announced in the lead-up to the bill. In particular, in Edinburgh, there are about 700 units in Fountainbridge from two separate developments, which will be institutional investment-led PRS stock. Also, I think that LaSalle has recently bought a Dandara-built development of around 300 units in Dyce in Aberdeen; again, that is full-market-rent PRS stock.

I am sure that the committee will have seen in recent press coverage of the bill commentary about what its impact might be. To provide a balanced view, I should say that the Scottish Property Federation's chair, John Hamilton, who would not support a lot of what we are proposing in the bill, says:

"The SPF firmly believes that the introduction of rent controls will not help this nascent new source of homes to develop in Scotland. In fact, it may well stop it from going beyond a handful of schemes".

Alternatively, Mark Donnelly, associate director of Colliers International, which provides global real estate services, said about the bill:

"there is nothing in it which ought to stop institutional investors considering Scotland for PRS investment."

On the point about investors, I suppose that it is a matter of perspective. On the one hand, we have got some stakeholders saying, "Investors are looking at this and perhaps putting their investments on hold to see which way the wind blows and what the final outcome of the bill will be." On the other hand, we have got stakeholders saying, "This is not a problem and nobody is telling us that it is a problem." Again, we have done what we can in the financial memorandum to reflect that.

John Mason: I have just one more point on a separate issue. Glasgow City Council raised the point that, when we talk about rent pressure zones, there could be a variety of housing within an area, and some might be more pressured than others. There might be lots of student accommodation and not so much in the way of family homes. How will that be taken account of, and will there be a cost to the council of digging into all that?

Barry Stalker: The answer to the first point is that this will be for local authorities. What we have in the legislation is basically discretionary powers for a local authority to apply to ministers. The detail around that would need to be taken forward in secondary legislation. The answer to the question is that it will be for a local authority to identify where a rent pressure zone is required, subject to its meeting the test that is set out in the bill about detrimental impacts on tenants and housing rents rising too much. Subject to the will of Parliament, the implementation of the bill will involve working with local authorities that may be considering whether to make an application for a rent pressure zone. That will ensure that there is a process in place that works.

John Mason: But your feeling is that there will not be a huge cost for local authorities from doing that study.

Barry Stalker: We have worked closely with local authorities, both at a strategic level and through the bill. For example, the Association of Local Authority Chief Housing Officers and the Convention of Scottish Local Authorities are on the joint housing policy and delivery group, and they were both on the review group that considered the current tenancy regime and made the recommendation to ministers that there should be a new tenancy. That is where what we have set out in the bill started from. Both organisations replied to the two public consultations and we have discussed the matter with them. Up to the point of the financial memorandum, which sets out our best estimates on the cost of the bill's introduction, the issue of the cost to them was not really raised.

The financial memorandum gives what we think the costs to local authorities will be, and they are

mainly around rent pressure zones. From reading the evidence submitted to the committee, I am aware that they, having had a chance to look at the bill in detail, may think there are a couple of areas where more cost might accrue to them. I am meeting Glasgow City Council later this month to talk about the bill, and I am sure that we will pick up on some of the matters that it raised in its evidence to the committee, which we will be more than happy to discuss.

John Mason: Thanks very much.

The Convener: Let me take you back briefly to your answer to John Mason's question on investment. You quoted two individuals, one of whom said that the bill would have no impact on whether they would decide to invest in Scotland and one who said that it would. Has anyone actually said that they would invest because of the bill? Has anyone said, "We were not going to invest in Scotland, but the bill looks great, and we will invest as a result of it?"

Barry Stalker: That is a good question. Clearly the bill is looking to support our broader work on the PRS to make it a more professional sector that is attractive to investors. I was recently in a meeting with Lowther Homes, which is the private rented sector arm of the Wheatley Group. It is very supportive of the bill and what it looks to achieve. It is a current investor in the PRS. It has invested significantly recently and is looking to invest even more in the long term.

The Convener: You are saying that the stability caused by the bill could encourage more people to come in and invest.

Barry Stalker: We believe so, yes.

Gavin Brown (Lothian) (Con): Good morning. In its submission, the University of Edinburgh said:

"It is therefore absolutely vital … that accommodation 'provided by Universities or Colleges' remains exempt from the proposed legislation."

Is it exempt from the legislation?

Barry Stalker: Yes.

Gavin Brown: Any university or college-provided accommodation?

Barry Stalker: Yes. It is in schedule 1 to the bill, which sets out the exemptions. We have carried across what happens currently under the assured regime, so where a university or college is a landlord, it will be exempt from the new tenancy as it is for the assured tenancy.

Gavin Brown: That is helpful. Thank you.

Staying with students, the convener asked a number of interesting questions. You have obviously consulted a bit, but from the sense of the evidence that we have received is there not a slight concern that, instead of landlords offering nine-month lets, which seems to suit both parties, the market will change so that you can basically only get a 12-month let? As a result, students who do not want to be in Edinburgh, for example, for the summer would be tied into a 12-month let. Is that not one potential consequence?

Barry Stalker: As the bill stands, it is possible that, in the initial period that we have set out, students could be offered 12-month lets by a landlord. If tenants accept that initial period, that would in effect tie it in for 12 months and also restrict the grounds that a landlord could use to evict for that period. In the financial memorandum, we say that we recognise that certain parts of the PRS would need to adapt. Whether that would actually happen, it is possible, but not necessarily certain. Again, that comes down to what is in the bill on the initial period.

Gavin Brown: Okay, but what are landlords who let to students saying to you? Are they saying, "We'll find a way around this. We'll try to keep similar arrangements and just communicate better with our tenants," or are they saying, "In order to minimise risk from our point of view, we think that we are going to move to 12-month lets"? If that is what happens, students will not be able to find a nine-month let. What are landlords saying to you as you consult?

Barry Stalker: Landlords have not said that to me about 12-month lets. The evidence to the committee is the first that I have seen of that. It is fair to say that landlords, including the Scottish Association of Landlords, are not in favour of there being no no-fault ground in the new tenancy. In that sense, landlords are saying that they would be less supportive of what we have set out in the bill. Other stakeholders, such as the National Union of Students, Shelter and so on, who are not necessarily landlords, support what we have set out. Lowther Homes, which I mentioned earlier, is a private landlord that supports what we have set out.

It is fair to say that the main landlord representatives would be less supportive of not having a no-fault ground, but we recognise that we need to get the balance right, which is why it is important to have the grounds that we think will cover all the reasonable circumstances that a landlord will need. It is important to get that right. We set out in the financial memorandum that landlords will still be able to work and that, where they have to adapt, they will be able to adapt while still being able to work. Fundamentally, they will still be able to sell properties and to manage properties effectively. They will still be able to take action if, for example, there are rent arrears.

Gavin Brown: Moving on to first-tier tribunals, I am after some clarity, because you gave a couple

of different answers and I am just trying to work out which one is the official Government position. You said that you are working from the premise that fees will not be charged. Is that the premise that ministers have asked you to work from, or is that just a bill team decision?

Barry Stalker: As the bill team, we are required to provide a financial memorandum that estimates the costs of a bill at introduction. We did that on the basis of what we know now, so no decision has been made. As for the analysis—Charles Brown will correct me if I am wrong—we have assumed that there will be no fee, but we have also said that ministers have yet to decide on that, so there could be one. If there is a fee charged, that is not something that has been accounted for in the financial memorandum, because we do not know whether there will be a fee. We can only go with what we know.

10:45

Gavin Brown: I get that. I am just trying to figure out which is the default position. Have ministers said to you, "Work from the premise that fees will not be charged," or have they simply been silent on the matter in their discussions with you?

Barry Stalker: In terms of this analysis, they have been silent with us.

Gavin Brown: But they are saying that they will consult in the new year.

Barry Stalker: They will consult in the new year, as I said earlier.

Gavin Brown: Is it the same answer in relation to legal aid? Have ministers been silent to you on that issue?

Barry Stalker: Yes.

Gavin Brown: Will that form part of a consultation alongside the fees issue?

Barry Stalker: Clearly, this is not my policy area, but the position is that legal assistance is a broader policy matter for the implementation of the FTT. It is not included in the cost for this. It is a policy matter that is still under consideration. Tribunal procedures are designed to be accessible and understandable, and they do not generally require legal representation. That will be the case in the new tribunal. We recognise that cases that will be handled by the tribunal, including those involving repossession, can be of a serious nature, and we are considering the requirements for support for parties bringing a case as part of the detail of the operation of the tribunal. That could be provided through funding support for legal representation and/or some form of lay representation. Funding support for legal representation in other tribunal jurisdictions is generally provided through assistance by way of representation, or ABWOR, which is administered by the Scottish Legal Aid Board. If selected, this would be set in place by secondary legislation, which would be scrutinised by Parliament. That is really all I can say on that.

Gavin Brown: I cannot ask you to make things up, but the position on fees is clear in that there is going to be a consultation and ministers will take a decision, and you do not have any further particulars on whether there will be a consultation on legal aid.

Barry Stalker: Yes. I have said all I can on that.

Gavin Brown: Lastly, I want to come back to something that the convener asked about, which is what happens if there are changes to mortgage rates. Most of us have now become accustomed to interest rates of half a percent and we think they are normal, but clearly that will not always be the case. Under section 34, ministers will be able to make changes under regulations, but is there anything in the bill that forces ministers to act? Let us say that a rate increase is announced by the monetary policy committee, it happens immediately and banks and mortgage providers within days or weeks change those mortgage rates. Is there anything in the legislation that compels ministers to review the situation quickly, or is it something that could lie dormant potentially for months or years before any changes are made?

Barry Stalker: In terms of the policy position, ministers should be able to vary the cap in the rent pressure zones, for example because of the scenario that you mentioned. When making a determination on the rent pressure zones, they are placed under a duty to consult tenants and landlords before making a decision. That provides some kind of safeguard by feeding in the potential for that to happen. However, there is nothing in the bill that would make ministers have to change the cap because of a change in the interest rates.

The Convener: We are going to have a break in a couple of seconds, and I will let Mark McDonald and Jackie Baillie come in after that. I just want to say that I find the student thing a bit confusing. At the moment, you have got a nine or 10-month let, and then for two or three months the landlord will let his or her property out over the summer. Let us say that everything under the new legislation goes well, they communicate brilliantly and the student agrees to leave after nine or 10 months. If, however, the landlord decides to let the property out for two or three months in the summer, will they have to have a 12-month lease even though they might only want to have a two or three-month let in the summer before they start their student

letting again in the autumn? What would happen over that intervening summer period?

Barry Stalker: In the scenario that you are outlining, landlords would normally have a holiday let, which would not be subject to this legislation because it is not someone's principal home. If a landlord has a student let and they look to let the property out over the summer, they would still be able to do that, subject to the tenant moving out. If they want to let to the student again for the next term, they will be able to do that, but it would be on a new tenancy.

The Convener: Thank you very much. I understand that the tannoy is about to go any second—[*Interruption*.] There it is. I will call a halt to proceedings and we will recommence shortly after 11.

10:50

Meeting suspended.

11:11

On resuming—

The Convener: I now reconvene the session.

Mark McDonald: I want to touch on a couple of issues. As an Aberdeen member, I am obviously interested in the fact that you have selected the north-east council areas as comparators. What dictated the use of the consumer prices index instead of the retail prices index? I know that when local authorities set rents, for example, they use RPI as the inflationary indicator; we certainly do so in Aberdeen. Why did you opt for CPI?

Barry Stalker: There are a couple of reasons for that. I might ask my colleague Helen Duncan to comment on this question, too.

One reason is that other countries with some form of rent cap tend to use the equivalent of CPI. The stakeholders that we consulted included Shelter, which said that CPI would be an appropriate inflationary measure. As I understand it, some housing associations use the measure, too. It tends to be used in housing as an inflationary index.

Helen, did you want to chip in?

Helen Duncan: Not particularly. Barry Stalker has set out the main reasons. As has been said, CPI is the standard measure that we would use in the Scottish Government in terms of housing, and that is why it has been used in this case.

Mark McDonald: In terms of impacts, the submission from the Association of Residential Letting Agents speaks of the difficulties that the bill could pose for independent agencies and individual letting agents as opposed to larger organisations and agencies. ARLA says that the measures could lead to some being forced out of business or selling their interests because of the costs that may be incurred. What is your response to those concerns?

Barry Stalker: We have obviously noted the concerns in the written evidence with keen interest, and clearly we do not want to put any business out of business. Some of the other evidence provided to the committee has come from the Council of Letting Agents, which has not raised any concerns similar to those raised by ARLA. CLA, the Scottish Association of Landlords and Shelter are probably the three main representative bodies for tenants, letting agents and landlords in Scotland, and they seem to suggest that the methods that have been used to calculate the figures certainly appear to be fairly sound.

I was interested in ARLA's figures, because they seemed fairly high. It has mentioned compliance costs for large firms running into hundreds of thousands of pounds, and we know that the larger letting agents' turnover in Scotland is probably somewhere in the region of £3 million to £4 million. The figures cited seemed a wee bit high; they are certainly higher than what we have estimated in the financial memorandum. However, the fact is that we are looking to implement in the bill a change in the tenancy regime, and that is going to have some impact on letting agents.

11:15

There is a balance to strike here, because the new tenancy will be easier to use and simpler than the current one. We will also provide a standard model tenancy agreement, which should make things easier and have cost benefits for letting agents. ARLA has not come to the same conclusion as we have in our assessment in the financial memorandum.

Mark McDonald: In terms of awareness raising and training, I note that you anticipate costs to local authorities to be nil. Evidence that we have received from Glasgow says:

"Demand for information is more likely to be sourced at a local level".

It has also said:

"we would suggest that a proportion of the campaign funds be targeted to would-be PRS customers in partnership with locally based or Council wide organisations".

Do you feel that a nil cost for local authorities to be a true reflection of the likely impact? It might be that letting agents or landlords will go to the local authority for information rather than looking at the national level, and that might have a cost impact.

Barry Stalker: As I have already mentioned our extensive consultation and how closely we have worked with local authorities and particularly with ALACHO and COSLA, I will not go over all that again. Needless to say, however, we did that work during the development of the bill and the financial memorandum that supports it. Not many local authorities have brought our attention to this issue, but you are right to say that Glasgow is one of them. In terms of our assumptions in the financial memorandum, the Scottish Government has a marketing budget not only for spreading the word to landlords and tenants but for helping advice bodies and representative bodies with training to ensure that they are prepared to help tenants and landlords when the changes set out in the bill occur, subject to Parliament's will.

We will do most of that legwork, but that is clearly something that local authorities have brought to our attention now that they have seen the bill and considered its detail. I mentioned earlier that I will be meeting Glasgow City Council in a couple of weeks' time, and that will no doubt be one of the issues that I will discuss with them. Ultimately, it is important that there is a facility to ensure that when, subject to Parliament's will, the new tenancy comes into effect, landlords, tenants and everyone else involved understand it and can use it.

Mark McDonald: ALACHO's evidence ties into that, because it talks about the practical experience of the last time that significant changes were made to the law. It says:

"many landlords, estate agents, solicitors and property managers were very slow to properly understand the changes and reflect them in their day to day practices."

It also says:

"it remains a sector characterised by its atomisation with many landlords in particular operating without any regular professional assistance or support."

That might lead to a burden on private sector housing officers in local authorities; after all, they might be the go-to people for landlords who because they do not operate as part of a wider organisation might not have that support readily to hand. What input have you had from those areas on the likely impact in terms of workload and subsequent cost?

Barry Stalker: It is not an issue that has been raised by ALACHO until now, but again, I think that that is because it has now seen the bill and the policy detail. ALACHO responded very positively to both consultations, and it seems to welcome the broad thrust of the bill's proposals. It is, broadly speaking, supportive of what we are looking to do, although it has highlighted a couple of areas for further discussion.

I think that I am right in saying that when ALACHO refers to the last time, it is referring to the last time there was a change in the tenancy regime, which would have been the late 1980s. We are in a different world now. Nevertheless, it is important that we look back and learn any lessons that we can from the last time such a change was made.

Your question covers two areas, the first of which is the potential impact on local authorities. I have looked at the evidence that has been provided to the committee, and clearly this is an issue that we will discuss further as the bill is implemented. The policy in the bill is about improving security for tenants and putting in place appropriate safeguards for landlords, lenders and investors. The potential impact on, say, homelessness is that there is likely to be less pressure on homelessness from the PRS, because tenants will have more security of tenure. If there are areas where, from a local authority's perspective, there might be issues with regard to the demand coming to them, there might well be other areas where, because of what the policy is seeking to achieve, the demand is less.

The second point that I would make is about the discussion that we are having with local authorities about what we would normally expect them to consider business as usual and what they see as being more than that. On the point about training, local authorities will need to know and understand what the new tenancy is and the point at which a change in legislation moves beyond something that, for example, a lawyer might use in their continuing professional development to something that the Government might want to contribute towards in terms of training. We are very open to discussing those matters further with both ALACHO and COSLA.

As I said at the start of the session, we have outlined the budget in the financial memorandum, and it looks to provide for marketing, training and so on. On the training side, we were thinking principally of representative bodies and advice agencies, but it might well be that there is something we can work with in that for local authorities, too, if they make a good case to us that such a move would benefit them.

Mark McDonald: On the issue of student accommodation, which has been well aired, I am interested in one area that might go slightly wider than the current discussion. Many students in private lets are also in houses in multiple occupation, and individuals—students or otherwise—who live in HMOs do not always begin their tenancies at exactly the same time, which will give those tenancies not only varying start dates but also varying end dates, if they are on a 12-month tenancy. You have talked about landlord

engagement and landlords monitoring tenancies, but if a landlord is operating a number of HMOs where the tenancies vary in their start and end dates, that will obviously create an administrative burden for the landlord that might not have previously existed. Have you looked into that at all?

Barry Stalker: My understanding is that in the HMO sector, the current tenancies tend to be joint ones. In effect, everybody starts the tenancy at the same time under the regime and then leaves. That will still be provided for under the new tenancy.

Jackie Baillie: I have just one brief question that brings us back to the issue of fees and legal aid for tribunals. Given that there is no mechanism for secondary legislation to have a financial memorandum and given your intention to deliver this through secondary legislation, I assume that you will be telling us the cost then.

Barry Stalker: It is not my intention, because it is not my policy area.

Jackie Baillie: I am talking about on behalf of the minister.

Barry Stalker: I know. I have probably said all that I can say on that by indicating that ministers intend to consult on fees. I know what the position is on legal aid. What is important is that when those decisions are taken, they apply to the bill when the provisions commence later in 2017.

Jackie Baillie: But we are talking about quite a substantial part of the bill. I would have thought that it would have been helpful to provide estimates. I accept that you wish to consult on the matter of fees—that is fair enough—but the question of legal aid touches on the public purse. It is a hard-pressed budget. Are you saying that no estimates have been made at all to inform the minister's decision about whether legal aid can be afforded?

Barry Stalker: I will answer that question with reference to the bill and say that that is not something that we have considered with regard to this legislation. As for the broader policy, I am not able to provide an answer other than what I have already said to the committee.

Jackie Baillie: Even if it is not your policy area but somebody else's, it would be helpful to the committee to know that these costings have been done, even if they are broad estimates just to inform the minister. I think, convener, that that would be useful information for the committee.

The Convener: I agree.

Jean Urquhart (Highlands and Islands) (Ind): I just wanted to ask you about market rent and what that means. I accept that the premise of the bill is to have a much simpler, clearer and fairer system of tenancy and private rents, but going back in my own history, I remember that when I shared a flat with five other girls in Edinburgh and the landlord put the rent up by 50 per cent, we called somebody—I think they were known as the rent adjuster—who came along with the property owner and agreed a 20 per cent increase in the rent. We accepted it and he accepted it, and then everybody went away and that was the end of it. How will we see fairer rents under the bill—I think it would affect the financial memorandum—in terms of outcomes, appeals, the tribunal and so on in the same situation? In other words, is the market rent whatever anybody can get for it? Is it the case that whatever rent the owner can attract for the property is okay by everybody?

Barry Stalker: How we have described it in the financial memorandum is that rents are market led—basically, a willing landlord and a willing tenant agree what the price will be. If that happens numerous times, averages are created, which will give market information on what the market rent is. Under the bill, tenants will be able to seek adjudication. For example, you talked about a 50 per cent increase, which seems quite large. In that scenario, the parties would be able to go to Rent Service Scotland, which would then determine whether the increase was fair or reasonable. In determining that, the service would refer to what other people are paying for similar, comparable properties. Rent Service Scotland has a lot of experience of that sort of thing. That is the position on market rents.

Jean Urquhart: I suppose that Scotland has changed dramatically. I think that I am right in saying that at one point 70 per cent of people in Scotland lived in social housing. That has changed because although that housing sector is coming back into play, it has not been there in the recent past and therefore there has been a dramatic growth of the private rented sector in the past 30 to 40 years. Have we looked at countries that have always had a private rented sector that seems to work well and where that has been the norm? Germany or the Netherlands come to mind. There are people in such places who have lived in the same house for all their lives, through the rented sector. We are not used to that in Scotland.

11:30

Barry Stalker: That is a good and interesting question. The short answer is that we have. I have a copy here of a strategy that the Scottish Government published in 2013. It was developed in consultation with stakeholders through the private rented sector strategy group, which informed the Scottish Government's final strategy. It sets out what we are looking to achieve in the PRS and how we are going to achieve it. One of

the actions is to review the tenancy regime, which leads to where we are today.

Other countries have private rented sectors. You mentioned Germany, which is the oft-cited example of a country with a large private rented sector. There, folk tend to look at the rented sector as a more attractive option, and they stay in it in the longer term. It is interesting to look at the evidence about that. There are reasons for it, some of which are cultural and some of which are to do with the broader fiscal framework and incentives that the Germans provide to landlords. Ultimately, what we are looking to achieve in Scotland is having a private rented sector that is attractive to everybody who wants to live or invest in it or invest in anything associated with it. We want it to be a positive choice for those who want to stay in it, which it currently is for many but not for everyone. That is why we are looking to make the changes that we are making, including the new tenancy that will improve security for tenants and provide appropriate safeguards for landlords, lenders and investors.

Jean Urquhart: Thank you.

Richard Baker (North East Scotland) (Lab): I want to return to student tenancies, because some important issues were raised in previous questions. I appreciate that the intention is to keep rents down, including for students, which is welcome, but I worry about the unintended consequences. Obviously, we hope that there is good dialogue between the landlord and the student. Then, as you said, the tenancy can come to a mutually agreed end, which benefits both parties, and it can work as it does normally. But if it does not—as can obviously happen—and somebody on a rolling contract or with an indefinite agreement walks away for whatever reason in September or October, rather than in an organised fashion in June or July, the landlord is left high and dry because they have missed out on the student market, which can make a big difference to the rent at which they can let the property out.

If landlords who have gone through that experience on a number of occasions decide, “No, this is just not for us. We can’t live with this model any more,” and just walk away, is there not a danger that you will get a reduced supply? New people will come in at a higher level, and they will start off by immediately charging higher rents. Potentially, as has already been said, this legislation could cause students to pay higher rents. How far have you worked through that scenario, and to what extent have you consulted on the potential for that to happen?

Barry Stalker: We said in the financial memorandum that we accept that some sub-markets of the PRS will need to adapt, based on what we intend to do with the new tenancy, but we do not see that as a fundamental adaptation. Things can change, and landlords will still be able to do what is ultimately most important to them, which is to manage their properties effectively and, if their property is an investment, to realise their investment in one way or another.

At the moment, if the landlord has issued a short assured tenancy, they can say that the tenant has to leave at a certain point. More often than not, they do, but sometimes they do not, and it can take months for a legal eviction to take place. That is one of the reasons why we are looking to move to a more accessible, specialist tribunal system, which landlords broadly support.

Under the new system, we do not expect the pattern to change much. Most students—this is backed by the representative body, the National Union of Students—want to stay for nine months. They do not want to be paying rent on somewhere where they are not staying, so if they will not be staying there, they will look to give notice and move. Landlords will be able to rent out the property for the following year, as was mentioned earlier, and, from the landlord’s point of view, the worst-case scenario is that they have eight weeks to do that, but with good engagement they could have more than eight weeks. Therefore, once the tenant has confirmed what they intend to do, the landlord has the certainty that they currently have.

Although the change will obviously rebalance the relationship between tenants and landlords to some extent, so that it is not quite as favourable for landlords in terms of how they currently manage their properties, it does not fundamentally change their ability to let out properties.

Finally, it is important to note that the short assured tenancy does not work too well; that is one area on which there is broad consensus with stakeholders. It is complex and it is hard to know whether you have done it right. As we set out in the financial memorandum, the way the sector currently works is that most tenants—perhaps 90 per cent or so—will look to leave the tenancy, so a landlord would not know whether they have done it right. However, in some instances, landlords think that they have a short assured tenancy and therefore a no-fault ground, but then realise that the paperwork has not been done properly and they do not. There are benefits to having a clearer, simpler system that will support a more professionally managed, high-quality private rented sector that inspires consumer confidence and attracts investment.

Richard Baker: Surely the key issue for the NUS, which has quite rightly raised this with us on a number of occasions, is the amount of rent students are paying, which has clearly been far too high. The nine-month contracts seem to work

quite well. Why did you not consider separate arrangements for students in consultation with the NUS and other bodies? Or did you?

Barry Stalker: We have discussed this with stakeholders, who have made their various positions known. Ultimately, as I said earlier, we have said that we are going to have a simpler, clearer system—one tenancy that is clearer and simpler to use than the existing arrangements—and that everyone who is under the current assured tenancy system will transfer to the new system for future lets. Ministers have said that they want all tenants who transfer across to have the same rights under the new system as they currently have. They do not want to differentiate between students and other tenants in a way that would potentially leave students with fewer rights than other tenants in the PRS.

Richard Baker: The key thing is the point about students paying higher rents. My concern, Mr Stalker, is that although you have said that you have engaged in consultation, the University of Edinburgh is clearly not reassured that the rental market will not be disrupted. It is worthwhile us knowing why it still feels that way. I would like to be reassured about the changes. Clearly, they are well intentioned and students want rights that are as good as other tenants', but fundamentally they do not want to pay higher rents, and I do not feel assured that that will not be an unintended consequence.

Barry Stalker: Okay. We have consulted broadly, with two full public consultations. The bill team and I have engaged with the broad spectrum of stakeholders, including those who provide university accommodation, and I have answered the specific question that the University of Edinburgh asked about whether it would still be exempt.

Richard Baker: Sure, but that is their own accommodation.

The Convener: I think a lot of landlords might just say, "You know, we're just going to give them a 12-month tenancy," the students will have to pay for 12 months, and that is going to be it, rather than all this engagement with students and so on, which I think, frankly, will be more trouble than it is worth for a lot of landlords. At the end of the day, the students are the ones who could lose out here.

In a moment I want to touch on something that has not really been covered in questions, although you did touch on it in your last answer. First, though, you said that some sub-markets will need to adapt and our concern is that they might adapt by providing less supply.

On the loss of the no-fault ground, the Scottish Association of Landlords said of the new legislation:

> "This element of discretion may prolong the time it takes to evict the tenant and ultimately, if the tribunal does not award possession, may result in the landlord being forced to continue the tenancy despite the fact that the tenant is breaching the terms of the tenancy."

The association went on to state that, where a tenant has stopped paying their rent, currently

> "repossession can often be achieved in 2-3 months. Under the proposals we estimate that it will take a landlord at least 5 months to recover possession from a non-paying tenant. Clearly this will have big financial implications for landlords in terms of lost revenue."

Again, the issue there is supply and whether people will want to enter such a market, given that there are 146,000 landlords who have, on average, 2.5 flats—I know some have dozens, but a lot have only one, so it is the small people I am thinking about. From your reply to Richard, you seem to be of the view that the legislation will make it quicker to process an eviction in such a case. Did I pick you up right on that? It is not what the landlords seem to think.

Barry Stalker: Landlords support the tribunal because it is a more accessible and specialist form of redress, compared with the courts. This goes back to the Housing (Scotland) Act 2014, and both the Scottish Association of Landlords and Scottish Land & Estates said in committee evidence that they were supportive of it. One reason for that is that when a landlord has to go to court through the court system—although it happens less often than you think—it can take some time, particularly for rent arrears, which are one of the main reasons why landlords go to court. Landlords supported then and continue to support the first-tier tribunal as an effective place of redress for both tenants and landlords.

The Convener: But surely if we do not know whether there are going to be fees or legal aid, we do not know how many people will try to access the system, because those things will have a huge impact on the number of people. If there will not be any cost to tenants, you will get a lot more people going to tribunal than if they have to pay a cost and if they do not get legal aid. How can you be confident that the time taken to process applications will be less than it currently is, when you do not know how many there will be and in what circumstances?

Barry Stalker: Okay. I am going to ask my colleague to outline what was set out in the financial memorandum on the potential demand from the change in policy on the first-tier tribunal. That assessment is based on the current position of there not being a decision on fees, and therefore no fees, and what I said earlier about legal aid. Charles, would you mind outlining the numbers that we expect?

Charles Brown: We have a fairly good idea of the number of cases that we expect. In the financial memorandum, we say that it is just over 1,100, and we based that figure on the operation of the Private Residential Tenancies Board in Ireland. Therefore, the figures that we have quoted in the financial memorandum are based upon a tribunal system that is up and running. From an evidence base point of view, there is no reason to expect a particular surge if that is what is happening in another country with a similar-sized PRS.

The Convener: In Ireland, do they get legal aid and are there fees?

Barry Stalker: I am not sure on the question of legal aid, but I know that they do charge a fee in Ireland, yes.

The Convener: Yes, but if there is no fee here, that number of 1,100 would be significantly increased, and the population of Scotland is bigger, although I do not know if the rental market is larger. We are talking about 368,000 properties and 146,000 landlords in Scotland. Are the figures comparable in the Republic of Ireland?

Charles Brown: The PRS in Scotland is slightly bigger than in Ireland and we uplifted our estimate to reflect the larger size of the PRS in Scotland.

The Convener: Just one last question. If there is no fee, what impact will that have on the number of people applying for tribunals?

Barry Stalker: If there is no fee, the figures are those that we set out in the financial memorandum. Those are the figures that we have assessed and provided.

The Convener: But based on what—on getting legal aid or on not getting legal aid? There are too many imponderables here.

Barry Stalker: The assessment set out in the financial memorandum assumes that there are no fees; and we have not assumed that there is legal aid either. That is not to say that it might not happen, but that is what we put into the model when we produced the numbers.

The Convener: Okay. That concludes our questions. Are there any further points you want to make to the committee before we wind up? Okay, if there are no further points, thank you very much for your time and for answering our questions in such detail. We have a natural break so we will suspend briefly until 11.50 am to enable a changeover of witnesses.

11:44

Meeting suspended.

Transplantation (Authorisation of Removal of Organs etc) (Scotland) Bill: Financial Memorandum

11:50

The Convener: Our next item of business is evidence from Anne McTaggart MSP on the financial memorandum accompanying her member's bill. Ms McTaggart is joined today by Diane Barr from the non-Government bills unit. I welcome our witnesses to the meeting and invite Ms McTaggart to make a short opening statement.

Anne McTaggart (Glasgow) (Lab): Thank you, convener. Good morning—it is still morning, but only just. I thank all members of the committee for this opportunity to provide evidence on the Transplantation (Authorisation of Removal of Organs etc) (Scotland) Bill and for allowing me to submit supplementary evidence over the past few weeks.

The committee's focus is on the financial aspects of the bill, but I will take a few moments to explain why the bill is necessary and why I introduced it. There are currently 571 people in Scotland waiting for an organ transplant. Demand for organs far outweighs the number of organs being donated and, as a result, three people who are in need of an organ transplant die each day in the UK, which is far too many. Many more people face years of ill health, often with no guarantee of there being a suitable donor. That needs to change. I believe that a soft opt-out system of organ donation is the solution.

Calls for an opt-out system are not new. Members of this Parliament, and indeed members of this committee, have considered the issue many times over the years. I commend the work done by MSPs from all parties to highlight this important matter. Their work has helped to inform the bill and, more important, has given hope to those awaiting a transplant and their families. This is not a party-political issue; it is about saving lives.

The bill would introduce a soft opt-out system of organ donation in Scotland. According to international evidence, a soft opt-out system can lead to an increase in organ donations of between 25 and 30 per cent. The financial memorandum focuses on the costs of implementing the bill, and much of the evidence that the committee has received also focuses on costs. However, we should not lose sight of the potential gains. Needing an organ does not have boundaries; it can happen to anyone. If you have ever spoken to someone who has received an organ donation, you will know how transformational it can be. It is

not too strong to say that organ donation can be a matter of life and death. The Scottish Government and I share the same ambition: more donors, more transplants and more lives saved. That ambition will not be realised without investment and change.

The financial memorandum provides a best estimate of the expected costs. In my letter to the committee I have provided a revised estimate of £6.8 million, with details of each area of spend. I believe that that is a realistic and accurate assessment of the costs of implementing the bill. The written evidence received by the committee suggests that most people agree with me.

Some of the best-performing countries in the world for donation and transplant rates have a soft opt-out system. Support is growing: Wales has recently introduced a soft opt-out system, and the Northern Ireland Assembly has recently agreed stage 1 of an opt-out bill. Scotland has led the way on many health issues, so we should lead on organ donation, too. Let us not limit our ambition for Scotland. Let us lead the charge and not wait and wait. Do not put on hold the lives of those who are waiting for an organ donation.

Thank you for listening. I am happy to answer members' questions to help us make this bill possible.

The Convener: Thank you very much. This is your first time at the Finance Committee—as you probably know, I will ask some opening questions and then colleagues around the table will come in.

The first question comes from the Scottish Government's submission; as you will understand, a number of questions arise from that submission because it was the most detailed that we received. You are right to say that many of those who submitted evidence more or less said that there would be no real impact, so we will focus on the organisation that said that it would, which is the Scottish Government.

You said in your opening statement that what you want—I think that we would all want this—if this legislation goes through is more donors and transplantations and to reduce the number of people waiting, in particular those whose lives are threatened. Paragraph 4 of the Scottish Government's submission states:

"The bill does not provide an estimate for the number of additional donors, nor transplants, that the legislation would lead to."

What is your response to that? Has any work been done to see what the impact would be?

Anne McTaggart: We thank the Scottish Government, because it was able to give some of the detailed information and costings that we were not able to provide. Given that we are unable to put a cost on people's lives, the Scottish Government provided its best estimate, and we—myself, Diane Barr and the bill team—looked at that as a best estimate. We took a lot from the actual costs that were incurred by the Welsh Government through the soft opt-out legislation and used that in our bill; obviously, we adapted the information because we have a larger population.

The cost of additional transplant operations arising as a result of the bill is far more difficult to quantify. Indeed, the Scottish Government acknowledges in its submission that despite NHS National Services Division having

"undertaken a great deal of work to forecast the potential costs of additional transplants arising out of the Scottish Government's Donation and Transplantation Plan for Scotland, over the period 2020",

it was

"not in a position to provide any robust estimate of financial costs/savings to the NHS and to Scotland"

as a result of the possible 25 to 30 per cent increase in organ donation from the implementation of a soft opt-out system. However, NHS National Services Division's written evidence states that it would expect to manage any increase in activity

"within the existing financial portfolio."

The Convener: On costs, you have almost answered my next question about the Government saying that

"it is impossible to accurately assess the costs of the proposed measures from the limited information contained within the Financial Memorandum."

Individual members who introduce bills with the best intentions do not always have access to all the information that they should have when putting bills together. The Parliament should consider that issue.

Regarding the documents that are in front of us, I return to the question. One of the things that I wanted to know was how many additional donors and transplants there would be as a result of the bill. In other words, from the evidence from Wales and elsewhere, how many more organs are likely to be available for transplant as a result of your proposals?

Anne McTaggart: I apologise for not covering that initially. We have the figures. It is expected that there will be, as I said, a 25 to 30 per cent increase, which could mean—I think that this is the figure you were looking for—an additional 24 to 29 donors a year and an additional 75 to 90 operations a year. Obviously, how many organs are removed from each person will equate to how many operations can go ahead.

12:00

The Convener: Thank you—that is very helpful. The role of the authorised investigating person has also been raised. People have asked whether that role really exists and how much it would cost. What training would be required? What kind of people would apply? Can you give us a wee summary of what you think the job would entail and how much it would cost? Obviously, it is a new position.

Anne McTaggart: With the authorised investigating person, you will see from the Scottish Government's financial estimate that it has created a whole new tier. We have not done that because, quite simply, we do not see a need to create a whole new mass of people. There are people working in that role currently—they are called senior nurses in organ donation, or SNODs. Those people have the skills and are doing that job. The bill aims to enhance and extend their current role.

We do not recognise the Scottish Government's figure. I see the option that the Government has selected as the least preferred and most expensive option—in our trade, we would describe it as the Rolls-Royce model. Creating a new role is not a requirement of the bill, so the costs of doing that are not missing from the financial memorandum; we do not reckon that they should be there.

The Convener: I have one further question. I do not want you to think that we are focusing only on what the Scottish Government said. NHS Lothian said in its submission that, as a service provider, it will be disproportionately impacted by the bill and that there is

"uncertainty over the impact on levels of transplantation activity to be undertaken."

I think that you have touched on that latter point, but I wonder whether you have done any work on how individual health boards—specifically NHS Lothian—might be affected, as opposed to the national picture.

Anne McTaggart: The costs will be met from the NHS board budgets. Paragraph 25 of the financial memorandum confirms that most of the additional costs are

"expected to fall on the Scottish Government's health budget"

and that the Government's contribution to NHS Blood and Transplant should not change. That is similar to the Welsh Government's approach, and I refer the committee to the confirmation in the Scottish Government's submission that NHS National Services Division

"has undertaken detailed consultation with NHS Boards to ensure resources will be made available to support these additional costs"

related to meeting the Scottish Government's targets.

Anne McTaggart: Do you want to add anything, Diane?

Diane Barr (Scottish Parliament): The evidence from NHS National Services Division confirmed that additional costs related to the implementation of the bill would be met. It said:

"If there were to be an increase in transplantation activity as a result of the Bill, National Services Division would expect to manage this within the existing financial portfolio."

It does not look as though there would be additional costs that could not be met.

The Convener: Thank you. The deputy convener is next.

John Mason: It is probably best to continue with that theme. I might come back to NHS Lothian, but NHS Western Isles in particular seemed to feel, in its submission, that it would be disadvantaged. Obviously, it is one of the smaller boards and does not carry out any transplants itself. It seems to get recharged, as I understand it, by other health boards that do the work. How do you see NHS Western Isles being affected?

Anne McTaggart: It is about trying to offset some of the savings. I am not sure that NHS Western Isles would not benefit, in a sense. We are signed up to UK-wide organ transplantation delivery, so the costs would be met throughout. Not all the organs that are transplanted into people—perhaps from the Western Isles or within Scotland—necessarily come from deceased persons in Scotland; they are UK-wide.

John Mason: So there would be a saving. As I understand it, one of the main savings would be on dialysis, but in other cases there are not such obvious savings if somebody gets a transplant.

Anne McTaggart: That is right. You are right to mention dialysis. Currently, 571 people in Scotland are awaiting a transplant, and 425 of those people—or 74 per cent—are waiting for a kidney transplant. There is potential for savings from the majority of the transplant operations, and the Western Isles will be part of that.

I can talk most about kidney transplants, if you want more information about how much that would save. The greatest number of the people who are waiting are waiting for kidneys, so that is where a lot of the money is perhaps offset, from kidney dialysis, in the on-going cost of a person not getting a transplant.

John Mason: Overall, I agree with your opening comments and I am very sympathetic to the bill. However, the committee must look fairly carefully at costs and potential savings. Annex B of the

Government's submission was quite blunt. At one point, it said:

"We are required, however, to make the point that—with the exception of kidney transplants—patients who do not receive a transplant will die"

and will therefore not incur on-going costs. Without going into all the detail, do you accept that if some patients get a transplant, that will mean that there is a cost? They will have a quality of life that they would not have had before, but there will be on-going costs that they would not have had either.

Anne McTaggart: I can give you some of the figures on the on-going costs. The cost benefit of a kidney transplantation compared with dialysis is £24,100 a year. Over a 10-year period, that is—members of the Finance Committee are good at maths—£241,000. For example, the 153 transplants that were performed in Scotland in 2014-15 represent a cost saving of approximately £3.7 million, or £37 million over a 10-year period.

John Mason: That is specifically for kidneys?

Anne McTaggart: Yes.

John Mason: But it is the exception. For the others, if somebody gets a transplant—looking just at the NHS and leaving aside quality of life and all the rest of it—would it mean a higher on-going cost for the NHS?

Anne McTaggart: Yes, and the aim is to offset that with the kidney cost savings. We are talking about only 26 per cent.

John Mason: NHS Lothian gave us quite a full range of comments. One of its points was that the bill does not highlight explicitly the additional costs of organ retrieval and transportation. Do you consider that a major point, or is it quite minor?

Anne McTaggart: I am sorry—

John Mason: NHS Lothian says towards the end of its submission that the bill does not explicitly highlight the additional costs of organ retrieval and transportation. Do you accept that, or is it a minor point?

Anne McTaggart: If additional investment in retrieval services is required, that is a matter for the Scottish Government to decide.

John Mason: Okay.

Anne McTaggart: How the savings are redistributed within the NHS would also be for the Scottish Government, and for the NHS, to determine. I do not think that I would be able to answer that within the realms of the bill.

John Mason: Is it your argument that, although we are getting feedback from the individual boards, they are unable to look at the whole picture, whereas you are looking at the whole picture in the bill? Is that the logic?

Anne McTaggart: Yes. I do not foresee many of the health boards writing to tell you that they will be able to gladly splash cash around and are awash with cash. I do not think that many health boards would write to you in such terms. I think that the boards have given what they reckon. However, you are exactly right. I have looked at the overall picture for Scotland.

John Mason: Okay; I accept that.

My final point is on NHS Lothian as a service provider of both transplantation and organ retrieval. I think that it does some of the stuff nationally. NHS Lothian will be disproportionately impacted by the bill. Although it might be disproportionately impacted, will the overall picture be more neutral?

Anne McTaggart: Again, I think that we are going over the same question. I see it as an overall broader picture. If the person in the Western Isles or the person in Lothian needed the transplant, we would need to look at the picture Scotland-wide, as opposed to each individual—

John Mason: Health board. Okay. Thanks very much.

Gavin Brown: Quite a lot of stakeholders seem to agree with your financial memorandum but, as has been touched on, there is a bit of a difference with the Scottish Government. As a first impression, the difference looks massive but that is over a 10-year period. There is quite a big difference in percentage terms, but it is not so big in absolute terms year on year. You say that the figure will be £680,000 a year, and the Government says that it will be £2.2 million a year over a 10-year period.

Two differences are cited. One difference, which has been mentioned, concerns the authorised investigating person. The Scottish Government has estimated a cost for that of £10.9 million over a 10-year period. You described that as the Rolls-Royce option and said that you think that other options would do. You referred to people called SNODs, and I guess that you have assumed the cost for that option would be nil. What are the cost implications of the SNOD option compared with the AIP option?

Anne McTaggart: I included that under training. I said that the AIP option would be the Rolls-Royce model with a different team. The people who do the job now are the SNODs, and we have estimated the bill for enhanced training at £0.5 million.

Gavin Brown: The Scottish Government reckons that 18 AIPs would be needed. Your view is that existing staff could be used, although they

would have to be trained, which would have a cost implication. However, you do not think that new staff would be required; you think that the work could be done with existing people.

Anne McTaggart: Not only do I not think that new staff would be required, but if we brought in an extra layer of staff, that would create a different system from what has been operating elsewhere. I am not sure why we would bring in an additional team. The Welsh Government has not done that and it is ready to roll out as of December. I am not sure how that would work out, given that we have a UK-wide service. Could the SNODs do the work down there, if we called them something different up here and they had a different role? I am not sure how that would work. I do not think that it would work, which is why we did not look at that option.

Gavin Brown: The system in Wales has not gone live yet—it goes live next month—but is Wales following the model that you have in the bill? It is not having AIPs, as the Scottish Government suggested. Is it doing what you have outlined?

12:15

Anne McTaggart: Yes, most certainly. I have worked with and spoken to some of the drafters from the Welsh Government and Northern Ireland. We meet up regularly to try to piece this together as much as we can and to make the bill the best that we possibly can. The Welsh Government has not included AIPs separately and neither have I.

Gavin Brown: Okay. I guess that Northern Ireland is behind Wales, but ahead of us. As far as you understand it, is Northern Ireland's approach similar to what you are suggesting?

Anne McTaggart: Yes.

Gavin Brown: I suppose that that takes care of the biggest financial difference between you and the Scottish Government. There is a second difference, which the Government describes as on-going publicity. You have set aside funds to the tune of £2.8 million in the financial memorandum for the publicity that would be required. The Scottish Government's view seems to be broadly similar to yours on the initial publicity, but its estimate comes to a total of £4.9 million over and above yours; I guess that that is for on-going publicity for the eight years following the initial two. The Government's argument is that people reaching the age of 16 or anyone who is new to the country might require specific communication, while others will need a general refresher. You do not have that figure. Can you explain the difference between your thinking and that of the Scottish Government?

Anne McTaggart: Yes. The Scottish Government has an obligation under section 1(b) of the Human Tissue (Scotland) Act 2006 to

"promote information and awareness about the donation for transplantation of parts of a human body".

To meet that obligation, the Government has an organ donation annual advertising budget. It is reasonable to assume that any recurring campaign costs related to organ donation would be included within that annual budget and that no separate advertising budget would be required.

Any recurring organ donation advertising and campaigning costs are not additional expenditure attributable to the bill, so they were not included in the financial memorandum. The financial memorandum includes the most up-to-date organ donation advertising spend information that was available, which was £527,000 for 2012-13.

Gavin Brown: In your view, the bill leads to an increase in advertising spend for years 1 and 2, but it does not have an impact on that spend in years 3 to 10.

Anne McTaggart: Yes. That is right.

Gavin Brown: Thank you.

Jackie Baillie: I have just two questions, one of which is a follow-up about the authorised investigating person. NHS Blood and Transplant suggested in its submission that it would cost around £1.1 million a year to ensure the 24-hour availability of such nurses 365 days a year. It seems to accept your premise that you do not need a whole new bunch of people—there are existing people—and it has not commented adversely on the amount allowed for training, but it seems to suggest that those people need to be available 24 hours a day. Can you comment on that?

Anne McTaggart: The sum of £1.1 million is NHSBT's estimate of employing an additional 18 staff as authorised investigating persons. However, I repeat that that is not a requirement of the bill, as you are probably well aware by now. That was not NHSBT's approach to the implementation of the Welsh soft opt-out legislation, which updated the policies and processes of the senior nurses—SNODs—and the clinical leads, who are called CLODs, to reflect the changes to their roles. As NHSBT provides a UK-wide service, I would expect it to take a similar approach in Scotland.

Jackie Baillie: If they have done it in Wales, they can do it in Scotland—that is very helpful to know.

Finally, let me turn to Wales for a minute. The Scottish Government wants us to wait and to evaluate because the opt-out legislation in Wales

is fairly recent. That is not unreasonable. Why should we not wait?

Anne McTaggart: The Welsh Government will monitor the process—it has started to monitor, but it has not started the process. It will evaluate the impact of the soft opt-out legislation over a five-year period, and the final report will be published in 2017, which is a long way away.

The Scottish Government's decision to wait for at least two more years will have a financial impact on the NHS. Paragraph 31 of the financial memorandum makes it clear that the costs of kidney transplant procedures are offset due to the costs associated with dialysis and the length of time for which a patient is expected to survive on dialysis. Again, 74 per cent of people awaiting organ donations are waiting for kidneys. There will be a financial cost to the NHS in continuing dialysis treatment for the 425 people who are waiting. In financial terms, that means £30,800 per patient, per year.

Six hundred and nine kidney transplants will save the NHS £145 million in dialysis costs. Waiting for at least another two years—it could be longer—would incur not only a financial cost, but a cost to those people affected. I am afraid that that is the real cost. The longer people wait, the larger the number of people who are taken off the waiting list because they are so poorly or, as the convener mentioned, who pass away because they are so ill.

The Convener: The deputy convener mentioned that. I am too sensitive to mention such issues.

Anne McTaggart: I am sorry.

The Convener: That appears to have exhausted members' questions. Do you want to make any further points before we wind up the session?

Anne McTaggart: Are there no more questions? I was just getting the hang of it.

The Convener: I cannot force them to ask questions.

Anne McTaggart: I hope that I have given the committee what is required. If the committee requires any further information, please do not hesitate to ask; I will get back to you in writing with the figures and information that we have.

The Convener: Thank you for that offer, which is very helpful. If we need to, we will take it up.

12:22

Meeting suspended.

12:23

On resuming—

Fiscal Framework

The Convener: Our final item of business is a report on the recent fact-finding visit to the Basque Country by Richard Baker and me, accompanied by Jim Johnston and Ross Burnside. Members have received copies of a short written report summarising our findings. I am not going to go through it all, but I want to highlight some points. I will then let Richard come in and if there is anything that he wants to add, he is free to do so.

The report summarises the key findings from our visit. The Basque Country is a fascinating part of Spain. It is less than a tenth of the size of Scotland, and it has 2.2 million people. It comprises three very prosperous provinces. The level of productivity per person is 34.5 per cent above the Spanish average. Its human development index is higher than that of Iceland, Norway and Sweden. It has less than 5 per cent of Spain's population, but accounts for more than 6 per cent of its gross domestic product. It is interesting that the Basque Country's contribution to the Spanish state is fixed at 6.24 per cent—it is known as the quota—so it pays 6.24 per cent of Spanish state expenditure in areas not devolved to the Basque Country.

Everything has been set up through something called the economic agreement, which regulates the financial and tax relations between the Spanish state and the Basque Country. It derives from historical power held in the Basque territories to regulate, manage and collect taxes. It was drummed into us when we were there that that goes back well into the mists of time and is part of their historical rights, about which they feel very strongly. As such, the Basque Country has a history of a specific Basque tax system with its own Treasury and tax collection infrastructure. Because the economic agreement is bilateral, the intergovernmental machinery provides equal weighting to the Basque and Spanish representatives. The bilateral relationship was considered to be a key element of the economic agreement.

Nearly all the politicians and officials we met were strongly supportive of the economic agreement. It was seen as an effective mechanism for governing, which has allowed the Basque Country to develop a successful and distinctive economic and industrial policy. There was agreement about the strong causal link between the economic agreement and the positive economic and social indicators evident in the Basque Country. For example, on GDP per capita, productivity, employment, research and

development spending, inequality and higher education participation, the Basque Country significantly outperforms Spain and the European Union average. A key message was that Scotland's tax powers must be for a purpose, and usable.

The visit was also interesting in showing a common "team Basque" approach to success. Last week the committee discussed behavioural patterns and the effect of taxation on them, and we asked questions about that. Despite the fact that the Basque Country has higher personal income taxes than the rest of Spain, that was not perceived as an issue, because the quality of the workforce, infrastructure, and research and development investment was seen as more critical.

Richard Baker: That sums up the key points. It is important to put on record how helpful the Basque Government and Parliament were with the committee's inquiries. They provided us with a huge amount of information. The key thing that I took from the visit was the importance of the bilateral approach in agreements between the Basque and Spanish Governments. While there is certainly consensus in the Basque Country about the financial arrangements and the economic agreement, they are disputed in parts of Spain; but they have survived, clearly because of the bilateral approach to agreeing the tax regime and dealing with disputes about it and broader economic policy.

In the context of the Scotland Bill, we have been discussing what will happen in any disputes between the UK and Scottish Governments as a result of our new tax powers and whether to have an independent arbiter. In fact, the experience of the Basque Country is rather that there should be joint committees with equal representation of the two Governments. That was a helpful model to examine, and we should take it into account as we go on with consideration of the new fiscal framework.

The final point, which you made very well, convener, was that the approach to personal taxation and related issues was not much of an issue for people moving to and from the Basque Country; other factors were more important. Clearly there is an economic success story there, and we can learn more broadly from that.

The Convener: Yes, the economic agreement has lasted 34 years under different Madrid and Basque Country Governments, which shows how robust it is. While Madrid, like the UK Government, holds the upper hand constitutionally, the Basques have significant bargaining power. We asked what happens when there is disagreement; what does Spain do? They laughed and said, "We collect the taxes; we have got the money in our pocket, so they have to work with us," and that equality of partnership is significant.

It was a bit remiss of me not to say that the level of assistance that we were given was such that the day before he was to present the budget to Parliament, the finance minister spent an hour and 45 minutes with us, going in great detail through the approach to the fiscal framework and how, historically, the present situation was reached. All the Basques were extremely hospitable about working with us and trying to help us. They are keen to develop a relationship with Scotland and other countries.

12:30

John Mason: I am interested that the quota has not been touched since 1981. It is the equivalent of the block grant, although it goes the other way. It is the balancing amount. Presumably, it is quite a sensitive issue for them, as the block grant is for us.

The Convener: I think it is. The Basques have 4.6 per cent of the population and 6.07 per cent of GDP, but they are expected to contribute 6.24 per cent. I think their view is that given the fairly small difference between GDP and the quota, there is no reason to go to all the trouble of noising up the Spanish Government and creating all sorts of political battles when they are doing much better than the rest of Spain; there is no real reason to quibble.

Of course, if the Basque economy continues to develop and grow and its share goes above 6.24 per cent of GDP, they will still be held to that 6.24 per cent, so they will be able to say to Spain, "When it was below, we did not quibble about reducing the quota, so we are not going to quibble about it now." It is about making that judgment.

It has to be said that the left nationalists who make up 21 of the 75 members of the Basque Parliament, as opposed to what you might call the mainstream nationalists—the PNV have got 27—want to renegotiate the quota, because they say that it should not be spent on things that they do not agree with, such as the Spanish monarchy, defence and so on. The rest of the parties basically take the view that it is really up to Spain to decide how it spends its money, just as it is up to the Basque Country to decide how it spends its money, so they have a non-interference policy.

Is there anything else anybody wants to ask about? The clerk has just pointed out that because it has to be agreed unanimously, it makes it difficult to change, but broadly, across the Basque Country, there is no real urge to change it at this point.

Mark McDonald: Can I ask about it from a slightly different angle? One of the issues that we have been looking at both in this committee and in the Devolution (Further Powers) Committee is the scrutiny that can be applied to intergovernmental relations and intergovernmental agreements, particularly around the fiscal framework. I note that an arbitration process is mentioned in the briefing paper, but I wonder what scrutiny, if any, is applied to the discussions and negotiations that take place between the Basque Government and the Spanish Government, particularly in relation to financial operations and the economic agreement.

The Convener: My understanding is that the scrutiny is quite in depth. Not only is there the arbitration board, but when the two sides have discussions, they are represented by six individuals each. The Basque Country is represented by three representatives from the Basque Parliament and one from each of the regional provinces, each of whom wants to look at the impact on them. There is quite extensive scrutiny, because it is a key aspect of their entire financial structure. I think they scrutinise it quite effectively.

Richard Baker: The key point that Mark brings up is that whatever structure we come up with, it needs to be very open to parliamentary scrutiny. The convener is right: there is great representation from the municipalities as well as the Basque Government; but I did not get a strong sense of what the parliamentary scrutiny was. Certainly for us in learning about the process there is a structure there, but we have a different parliamentary structure here, so I think we would have to attach that. Obviously, we want to establish best practice in scrutinising how the process works. The learning point for me is in the fact that there has to be a bilateral approach. The joint committee is the big thing to take from the model, but I think we will have to develop our own process of scrutiny, to be honest.

The Convener: To be fair, we were looking a lot at the relationship between the Spanish state and the Basque Country and the transparency about how the two institutions operate. We did not really pay as much attention to how the Basques feed back to their own provincial Governments and Parliament, but one imagines that they scrutinise that. I would have thought that the Basque Parliament would want to know exactly what its representatives were doing in Madrid on the agreement and to ensure that everybody was playing by the rules. There certainly seems to be a broad consensus that it has been beneficial for both sides. We now have the third Scotland Bill in fewer than two decades, whereas there seems to have been a level of stability in the Basque Country that has allowed those areas to develop significantly over the years.

Jean Urquhart: This is only a related thought. The committee has made some effort to visit Stockholm, the Basque Country and Ireland. Has there been any interest from the Westminster Government in looking at those examples before declaring this the most devolved region in the world? Did it spend any time looking at how the Basque region works within Spain or how any other devolved region works in order to draw that conclusion?

The Convener: I do not know that I can speak for the Westminster Government. However, I would not necessarily agree that this is the most devolved place on earth. That is not the case at all. Clearly it seems that there is greater devolution. In the report, you will see a whole list of taxes that are administered by the state, but they are all kind of collected in the Basque Country—everything from VAT to excise duties, income tax and corporation tax. Incidentally, corporation tax is different in the Basque Country, and it also has a wealth tax. There are a lot of different taxes, so there certainly seems to be more devolution there, and it has been seen to be able to operate with a high level of stability over a long period of time.

Jean Urquhart: Thank you.

The Convener: Anyone else? If not, I thank everyone for their contributions today.

Meeting closed at 12:36.

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