



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

FINANCE COMMITTEE

Wednesday 3 February 2016

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CONTENTS

	Col.
LAND AND BUILDINGS TRANSACTION TAX (AMENDMENT) (SCOTLAND) BILL: STAGE 1	1

FINANCE COMMITTEE
5th Meeting 2016, Session 4

CONVENER

*Kenneth Gibson (Cunninghame North) (SNP)

DEPUTY CONVENER

*John Mason (Glasgow Shettleston) (SNP)

COMMITTEE MEMBERS

*Jackie Baillie (Dumbarton) (Lab)

*Lesley Brennan (North East Scotland) (Lab)

*Gavin Brown (Lothian) (Con)

*Mark McDonald (Aberdeen Donside) (SNP)

*Jean Urquhart (Highlands and Islands) (Ind)

*attended

THE FOLLOWING ALSO PARTICIPATED:

John Blackwood (Scottish Association of Landlords)

Paul Curran (Scottish Property Federation)

Isobel d'Inverno (Law Society of Scotland)

Jonathan Gordon (Royal Institution of Chartered Surveyors)

Jo Joyce (KPMG LLP)

Daryl McIntosh (National Association of Estate Agents)

Marian Reid (Chartered Institute of Housing Scotland)

Susannah Simpson (PricewaterhouseCoopers LLP)

John Swinney (Deputy First Minister and Cabinet Secretary for Finance, Constitution and Economy)

CLERK TO THE COMMITTEE

James Johnston

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Finance Committee

Wednesday 3 February 2016

[The Convener opened the meeting at 09:00]

Land and Buildings Transaction Tax (Amendment) (Scotland) Bill: Stage 1

The Convener (Kenneth Gibson): Good morning, and welcome to the fifth meeting in 2016 of the Finance Committee of the Scottish Parliament. Our only agenda item is stage 1 consideration of the Land and Buildings Transactions Tax (Amendment) (Scotland) Bill, on which we will hear from three separate sets of witnesses this morning.

First of all, I remind everyone present to turn off mobile phones, tablets and other electronic devices.

Before we start, I invite Lesley Brennan MSP to declare any relevant interests.

Lesley Brennan (North East Scotland) (Lab): I have no relevant interests to declare.

The Convener: Thank you very much.

Our first witness panel on the bill consists of John Blackwood of the Scottish Association of Landlords, Paul Curran of the Scottish Property Federation, Daryl McIntosh of the National Association of Estate Agents, and Marian Reid of the Chartered Institute of Housing Scotland. I intend to allow 75 minutes or so for this session. I welcome our witnesses to the meeting. Committee members have received the submissions from each of our witnesses. We will go straight to questions.

Obviously, we are tight for time this morning—we have only about four hours in total for the three panels, and we have the stage 1 budget debate this afternoon. I will ask questions of individual panel members. Other panel members can comment on those questions if they wish to do so, but I will not necessarily go around all four members with each question, otherwise we will be here all day and my colleagues will not have an opportunity to come in—and I am sure that many of them have questions. I will set the scene, if you like, and then members will come in.

My first question is to Mr Blackwood. In point 2 of your submission, you talk about the proposed 3 per cent rate for the supplement and the impact

that that might have on inward investment. You say:

“this will help to attract investment to Scotland despite the less favourable legal framework. For this reason we believe the tax rate should be lowered and the purchase price threshold raised”.

How much investment in buy to let, as a percentage of the market, comes from outside Scotland?

John Blackwood (Scottish Association of Landlords): That is something that we are not aware of. We are certainly aware that we need to encourage investment here in Scotland, and that is exactly what we would like to be doing.

As you are aware, there is a different framework of regulation on the private rented sector, which is about to change even more through the Private Housing (Tenancies) (Scotland) Bill. We feel that investors will perhaps view Scotland in a different light in the future. In order to meet the Scottish Government's aims of increasing investment and growth in the PRS, we want to attract investment, and if it is to be from outwith Scotland, we want to do that.

The Convener: In paragraph 7 of its submission, the Scottish Property Federation says:

“Currently less than 2% of build-to-rent PRS investment is being directed to Scotland.”

The current situation is not having much of an impact in Scotland. We are going to have a level playing field with the rest of the United Kingdom after the legislation, so how will the bill make life more difficult in Scotland?

John Blackwood: We will not have a level playing field because of the framework of regulation that we will have in Scotland, so investors will view it differently. My colleagues who represent institutional investors can tell you more about that than I can—they can express their attitudes about investing long-term in Scotland compared with the situation at the moment. We are concerned about the future. We know that we need to increase investment, however we do that, and that Scotland needs to become a more attractive place to invest.

The Convener: The Scottish Property Federation also says in its submission:

“This will have a consequence for the house-building industry itself as buy-to-let purchasers are a significant proportion of their off-plan sales.”

Other witnesses have said the opposite—that more private houses will be freed up for other people to buy.

John Blackwood: Our main concern is about the lack of appropriate data sets that would allow

us really to see what the concern is in Scotland. Obviously, we are going only on feedback from our members and the concerns that they have raised. We know that we want increased investment, including in new-build properties, but the question is how we do that. We do not have information that would allow us to see how much of a problem there is. The Cabinet Secretary for Finance, Constitution and Economy is keen to ensure that first-time buyers have an incentive—if not an advantage over private landlords. However, we do not believe that there is a concern or an issue in Scotland but—as I said—there is a lack of appropriate data to quantify that.

The Convener: Paragraph 12 of the Scottish Property Federation's submission states:

"The supplement will be imposed as a slab tax, exactly the same approach that the Scottish Government was keen to move away from when it took responsibility"

for stamp duty land tax. Will you expand a wee bit on your concerns about that?

Paul Curran (Scottish Property Federation): We were referring to having a more progressive taxation system. The changes when LBTT was introduced removed the threshold point of £250,000, which had meant that everything was priced at around £249,995. It is about trying to get away from that and avoiding the slab tax approach. There is the question whether the measure should be introduced at all. However, from an institutional investment perspective, there should be more exemptions. In the bill as drafted we do not have any exemptions or any trigger points for the tax to come into force.

The Convener: You say that there are no exemptions, but our esteemed adviser, Professor McEwen, has written, for the committee, an excellent paper that looks at the potential to ride a coach and horses through the legislation. He mentions potential ways in which people, particularly companies, could avoid paying the tax. If we were to add a lot of exemptions, would the legislation not become virtually worthless?

Paul Curran: We are thinking about how we keep Scotland competitive and attract the global capital and investment that we have talked about. The large majority of private development finance now comes either from overseas or from large United Kingdom institutions. The waterfall effect of funding into Scotland, particularly on things such as large-scale PRS developments, will be impacted on if we do not have exemptions for some developments. Given the scale of developments and the unit numbers that could be planned, we really have to get exemptions in there. We have to be competitive in respect of the scale of development that is possible in Scotland compared to the scale that is possible down south.

That is looking at things from the institutional side. From a development perspective, small and medium-sized enterprise housing provision or smaller-scale developers require some funding; that funding is dependent on an element of pre-sales. In smaller-scale developments, if pre-sales are not achievable through some form of buy-to-let opportunity, a development might just not start.

The Convener: From Daryl McIntosh's submission, it seems to me that you do not think that that would necessarily be a bad thing. In paragraph 5, you state:

"Fewer people entering the buy-to-let market is encouraging for first-time buyers because they won't be in competition with as many individuals looking to invest in buy-to-let properties or second homes."

Are you saying that, without the competition from the theoretical big investors that we have talked about, house prices would be kept at a more reasonable level for first-time buyers, for example?

Daryl McIntosh (National Association of Estate Agents): If investors are deterred by the additional tax, theoretically the first-time buyer market should improve. However, we are finding that the main stumbling block will always be the lack of finance that is available to first-time buyers. We do not have any evidence that first-time buyers are losing out to investors and we are not hearing that from our members. They are not being priced out of properties; they just cannot purchase them at the moment because of the lack of finance being available to them.

The Convener: Fair enough.

In your submission, you also express a concern that

"For those people who do decide to invest in second homes or in particular buy-to-let property after April, it is likely that may see rent rises as landlords attempt to recoup the cost of paying the additional homes supplement."

Is that a real concern for you?

Daryl McIntosh: Yes. If investors have to pay additional tax, it basically comes out of their budget so either they will not be able to make any improvements to rental properties—that is a big concern—or they will increase the rents.

The Convener: Before I go on to the Chartered Institute of Housing Scotland, what general margins are landlords in the buy-to-let sector working to at the moment? I know that we have about 150,000 and that the average landlord has only about 2.5 properties—some have only one or two and some have many. Does anyone have information on that?

John Blackwood: The only thing that I can add is that it obviously depends on the kind of marketplace that one is investing in. We have some small-scale landlords with one or two

properties who might be investing in property in the region of £200,000 or thereby for houses in multiple occupation. The yield for that might be higher than it would be for a small one-bedroom flat in the centre of Edinburgh, for instance. It depends what one's motivation is as an investor. Many people are, as I am, looking at the situation longer term. They are not looking at short-term gain, but at capital appreciation, which they see as part of a pension pot, in effect.

It is difficult to assess average yields because of the variety of the marketplace and the different motivations of individual landlords.

The Convener: Okay.

The CIHS basically says in paragraph 2.3 of its submission that

"It is our understanding that the policy will not directly impact the build to let market"

and that

"the build to let market in Scotland remains small".

Could you expand on that a wee bit?

Marian Reid (Chartered Institute of Housing Scotland): That is not the main thrust of our submission, so—

The Convener: It is not, but we touched on the subject, so I wanted to hear your view.

Marian Reid: I probably have less detail on the build-to-let market than colleagues have. That is not the area that we are primarily concerned about, particularly in relation to our members.

The Convener: Fair enough. I will ask you about something else.

In paragraph 1.3 of your submission, under the "General comments" heading, you say:

"We agree with the general principles behind the policy. However, it will be important to ensure that it does not have any unintended consequences or a negative impact on the overall housing market."

What unintended consequences concern you?

Marian Reid: There is a range of potential unintended consequences that relate partly to the private rented sector, which other colleagues have been highlighting, but also to the housing association sector and local authorities. Housing associations and local authorities both buy properties out of the owner-occupied market for a number of reasons. In the case of local authorities, it may be where homeowners are struggling with mortgage payments; there is a scheme whereby local authorities can buy those properties and the homeowners then rent them.

There is also mid-market renting through the national housing trust. Mid-market renting is an important part of the market at the moment. It

provides affordable housing for people who cannot afford to buy but do not fall within the remit of the social rented sector or cannot be housed through it because of pressures in that sector.

We recently did a member survey in relation to evidence that we put together for the fairer Scotland submission. We and local authorities are keen to increase our capacity to build, but there are restrictions such as land supply and the cost of land, and there are sometimes planning issues in respect of the length of time that it takes to get things through. It was identified that being able to buy properties on the open market is filling a niche in terms of being able to provide affordable housing.

The Convener: Thank you very much.

Gavin Brown (Lothian) (Con): I understand that a stakeholders reference group has been set up by the Scottish Government. Very quickly, are any of you on that group?

John Blackwood: No.

Marian Reid: No.

Daryl McIntosh: No.

09:15

Paul Curran: I think that the SPF is.

Gavin Brown: The other three organisations are not, however.

You will have seen in the policy memorandum that a policy objective of the bill is

"to ensure that the opportunities for first time buyers to enter the housing market in Scotland remain as strong as they possibly can".

The benefit to first-time buyers here is that it is less attractive for buy-to-let properties but the disadvantage to first-time buyers, at least according to some of your submissions, is there might be a reduction in the amount of new house building and activity on the market. Taking those two factors—the pros and the cons for first-time buyers—into account, will the bill ultimately make life better for first-time buyers, is it neutral or will it make life trickier for them? I am happy for anyone to answer that question first.

John Blackwood: I will start. I suppose that the bill will at best be neutral and at worst be detrimental to first-time buyers.

Perversely, something else could happen, though. I referred earlier to landlords investing around the £160,000 to £200,000 mark. Although their overall pot of money is still the same, because of the increase in taxation they would need to think about investing in something smaller, which might take them into the same bracket as first-time buyers—the £145,000 bracket. We are

concerned that the supplement might push some investors who are not competing against first-time buyers at the moment into competing with them. To be honest, though, we have not seen any evidence that that is already happening.

Gavin Brown: Do other panel members have views on that?

Paul Curran: The key issue in the first-time buyer market is affordability, which is impacted by supply of housing. If anything makes it more difficult for developers—especially SMEs—to obtain development funding, that might reduce the availability of houses for people to buy at the lower level.

Marian Reid: Housing markets are not just national—they are also very local. The consequence of the supplement will depend on the locality. There is also the rural-urban difference. There might be a scarcity of property anyway in rural areas. If a consequence of the supplement is that some private sector landlords are squeezed out, that may have a negative impact. It may be that, because of the economy, first-time buyers are struggling anyway, even within those localities. That is why we recommend that it is important to have a peer review and to monitor how the supplement works on the ground.

Gavin Brown: One of the issues that has been put before us is that there is likely to be what is called forestalling; in other words, lots of activity could take place before 1 April in order to avoid the 3 per cent tax. I am sure that we do not have figures, but have your organisations seen any evidence of that on the ground since the announcement in the middle of December? Is it too difficult to say at this stage?

Daryl McIntosh: According to feedback from our members, they have noticed a spike already. They also noticed a spike with the introduction of LBTT.

Gavin Brown: My next question is on the second policy objective. The policy memorandum says:

“The supplement is ... necessary to ameliorate the likely distortions which will arise in Scotland when new SDLT higher rates ... are introduced”.

Obviously, this is happening south of the border as of 1 April, too. That is one of the reasons for introducing the policy. On the face of it, it seems like a plausible policy objective. Is it? Are we likely to see an influx of buy-to-let investors from south of the border if we do not do this by 1 April?

Marian Reid: That is quite hard to measure. We have a different regime in the private rented sector. A lot of work has been done to support the sector and to raise standards, but that includes

additional regulation and a new tenancy regime. That might deter such investors.

Dealing with different countries and regimes is not always entirely straightforward at the best of times, and we in Scotland are moving in a very particular way. I am afraid to say that what you ask is hard to quantify.

Gavin Brown: I will refer to some individual papers, if I may. I will start with the Scottish Association of Landlords and John Blackwood.

In your submission, you set out the association's position and give a range of potential exemptions and reliefs that you would call for if the legislation were to proceed. You refer to exemptions for those buying six or more properties, which is similar to the threshold for multiple dwellings relief; those buying new-build properties; properties that are subject to joint purchase; houses that are not suitable for mortgages; properties that are on the market for more than six months; and existing buy-to-let holiday homes. That is a fair number of exemptions. Do not give us chapter and verse, but can you briefly outline the consequences of not having exemptions in some of those situations?

John Blackwood: Our biggest concern is that not having an exemption will discourage investment. We want to encourage investment; in fact, we want more people—institutional investors as well as individual investors—to invest in the private rented sector.

The approach that we took in our submission was to look at what the consequences will be if the legislation proceeds—and we all know that that is happening in other parts of the UK—and what we could do to mitigate them. We looked at specific areas with the thought that there may be an argument for exemptions and that they would help to alleviate the potential negative impact of the proposal.

Gavin Brown: For my own benefit, what does the expression that a property is “not suitable for mortgage” mean?

John Blackwood: We have some properties of non-standard construction. There is nothing wrong with the properties and they are perfectly habitable but, perhaps because of when they were built or the kind of construction they are—such as timber-framed—they can be a concern for some mortgage lenders. Those properties are not in the mainstream, as it were. We need to encourage them to remain in the marketplace and to be turned over if the seller wants to get rid of them. We want to encourage that—and maybe that is something that we can look at, too—but first-time buyers are not competing in that marketplace.

Gavin Brown: I guess that the idea of discouraging investment could apply to a few of

the exemptions or reliefs that you have called for. You also suggest exempting properties that have been on the market for longer than six months. What is the explanation for that exemption?

John Blackwood: Our rationale behind that is that, although there seems to be an assumption that there is competition in which first-time buyers are vying against private landlords for the same properties, we do not see evidence of that. I think that it is evident that, if a property has been lying there for months and nobody is buying it, landlords are not interested in it. Rather than having a property potentially lie empty and not turn over in the marketplace, is it not better to shift it? If that shifts it into the PRS, it is providing more housing for people to live in. We therefore saw an exemption as a positive step.

Gavin Brown: The paper from the Scottish Property Federation talks about some similar exemptions, but the main exemption that it seems to call for is an exemption where the transaction involves more than six properties. Mr Curran, can you expand on that?

Paul Curran: There are two aspects to such transactions.

The first aspect is large-scale PRS investment. We want to avoid a position in which there is no exemption on that type of investment as it is one of the main opportunities to deliver a lot of the housing requirement. If we do not have that exemption, or a level of exemption, it will put us in a less competitive position—certainly against the UK—when it comes to attracting institutional or overseas investment in these large-scale projects, in which there is definitely a huge appetite to invest. The more costly it becomes to do that, the less attractive it is for investors to tick the box with their investment committees.

The other aspect to consider is smaller properties and—again—SMEs. We need to remember that a large proportion of the property market was decimated back in 2008 and 2009. A lot of SME house builders ceased to exist because of the crash in the property market, and we want to encourage entrepreneurial organisations of that type to support and deliver a large proportion of the new-build property that is required to meet demand.

The introduction of an exemption at a level of six properties on an individual new-build development would provide an opportunity to be slightly more competitive than the rest of the UK. Given the scale of development in Scotland, it would enable developments to be funded. Small SME-type organisations are heavily dependent on funding, and funding on such sites very much depends on achieving a level of pre-sales, which tend to be to buy-to-let landlords.

Gavin Brown: The Scottish Property Federation has a sister organisation, the British Property Federation, which I presume is involved in the consultation on the change to stamp duty land tax. From your discussions with the British organisation, do you think that there are things that we could be learning from the consultation, which might speed things up and help us to avoid making mistakes up here?

Paul Curran: From my knowledge of the discussions with the UK Government, the exemption levels that people are looking at are higher—they are looking at an exemption level of 15 units, which is regarded as key in retaining attractiveness for institutional and other types of investment.

The reason why we are looking for something lower is that we recognise the scale of the Scottish market compared with that of the rest of the UK, given our smaller investors and smaller developments. We do not have London-scale developments all over Scotland; we tend to depend heavily on smaller schemes of 20 or 30 units, so six units is a reasonable level.

Gavin Brown: Thank you.

The Convener: We have been joined by Jackie Baillie, but the next questions will be from John Mason.

John Mason (Glasgow Shettleston) (SNP): If someone is sitting in London with a spare half a million pounds and is thinking of buying a second home in Scotland for £200,000, then whether the house costs £206,000 or £220,000 will not really affect them, will it? They are not going to go to Birmingham to save a few thousand and pay £190,000, are they? I suppose my question is whether we need to worry about what is happening down south. Do we not have a separate market up here?

Paul Curran: I do not think that we have a separate market; there is very much a competing UK market. Whether we are talking about small or large-scale investment, people are looking at how each individual city competes. In the larger-scale property market we are very much competing with Manchester, Birmingham, London and all the regional cities. An individual investor who has £500,000, £200,000 or whatever will look at the yields that they can achieve on their investment, so the minute that we apply additional taxation the investment becomes less attractive.

John Mason: If they are buying a home for themselves, the yield is not an issue, is it? Location would be the issue.

Paul Curran: Yes, but if someone is looking at location, it is very much a personal purchase, so it is not an investment decision.

John Mason: Yes, but as I understand it, the bill covers personal purchases as well as investments.

Paul Curran: It does, but in the buy-to-let market, which is where the bill will probably have the biggest impact, it is the investor view that is more relevant. I cannot talk about individuals' personal purchase decisions.

John Mason: A lot of villages in Scotland are being gobbled up by people who are making personal decisions, are they not?

Paul Curran: Well, yes, potentially.

John Mason: You said that there is one market in the UK and there is not a separate market in Scotland. I do not know whether the other witnesses agree. I suppose that I still feel that some people actually want to live in Scotland and the price is not the only factor for them.

Would it be a good idea for us to wait for a year, see what happens and then legislate if there is a problem? The question is for anyone to answer.

John Blackwood: I think that that would be a more sensible approach. We need to do more research, so that we understand the dynamics of the issue in Scotland. Is there a need for a surcharge and, if so, where?

I completely take your point about second homes. The Parliament and the Government should take into consideration the fact that that is a completely different marketplace. The people who we are representing are investing in providing primary homes for people. They should be seen differently and not tagged as the same as people who just want to have a nice little bolthole somewhere in Scotland.

09:30

John Mason: But they are still competing with first-time buyers. If someone cannot afford to buy a house, they are forced into the private rented sector. I know that some people want to be in that sector, but others want to buy and their second choice is to rent in that sector. If we unfairly advantage the big companies by giving them exemptions, will that not disadvantage the first-time buyer even further?

John Blackwood: We would need to look at the motivation for the investment. I know that it is difficult to analyse and regulate that but, at the end of the day, if someone wants to invest in a property for the purpose of renting it out, whether as an institutional investor or a private landlord, they should be encouraged to do so. We need more of that. The Scottish Government has said clearly that its objective is to grow and develop the

PRS, so we want to see that happen. In my view, that is not—

John Mason: But presumably we do not want to help the private rented sector at the expense of the bought sector. We want to help both—we want more investment. Giving an exemption to someone who has six properties—or 15 properties—is like giving the supermarket a cheaper rate than the corner shop, which disadvantages the corner shop. Would creating such an exemption not disadvantage the first-time buyer?

John Blackwood: I do not know. We need more research to understand the issue; our concern is that we do not understand exactly what is happening here in Scotland. Research has been done in the south-east of England in particular, but we do not think that that correlates to what is happening here in Scotland. We could be wrong—we just do not have the data sets that we need to understand the issue properly.

The average house price that first-time buyers are paying is around £133,000. We do not think that there is a major issue with first-time buyers being pushed out of the marketplace by people with second homes, or private landlords in the PRS, who are my main concern.

John Mason: Surely it is unfair to give more exemptions to a company with six or 15 houses than to an individual who is trying to get on to the property ladder. Do any of the other witnesses have thoughts on that?

Paul Curran: I do not think that that disadvantages people, because we are talking about housing supply and affordability. The more houses that are built, the lower prices should be. Encouraging an increase in supply and affordability, whether in the PRS or in homes for sale, will be beneficial to everyone.

John Mason: This point goes a bit wider, but in my constituency there is loads of empty land that nobody wants to build on. The builders are guilty of not doing as you suggest: there is demand and they could build more. However, that is perhaps another issue.

We have not touched on the issue of purpose-built student accommodation. I do not know whether any of you have expertise in that. It has been suggested that such accommodation should be treated separately. Do you support or oppose that?

Paul Curran: That accommodation is in a slightly different asset class—it is not property that is on the open market for letting. We say in our submission that we support it being exempt as well.

John Mason: I dealt with a case in my constituency in which property was built for students but was then sold off by mistake to individuals who were not students. How strong are the categories? Even if we say that accommodation is purpose built for students and we should treat it differently, presumably at some stage it could be sold off separately.

Paul Curran: That is more a question for planning departments as it is about the classification of buildings, what they have been constructed for and what consents they have.

John Mason: Both Lesley Brennan and I are on the Delegated Powers and Law Reform Committee, which generally does not look at the policy, but one point that came up for us was the question of valuation of properties.

Is that a concern for anyone? I did not pick that up from the meeting papers, although I confess that I read them fairly quickly. Will it be clear from the legislation how properties are valued, or is that a concern? Related to that, will there have to be frequent valuations if somebody has a property that is near a boundary such as £40,000?

If nobody has any comment on that I have lots of other things to ask.

Another area, which some of you may have experience of, is the question of paying up front and then reclaiming later if the property is sold. Some people in Scotland are buying before they sell—they may be trying to sell first, but they do not manage to for various reasons. There are also other reasons why someone might pay the tax up front and then have to reclaim it. Concerns have been raised about that; is it something that any of you have concerns about, or is it not an issue?

Daryl McIntosh: That concern has been raised because of people accidentally falling into that situation through no fault of their own. For example, as you hit on, if somebody has already purchased a property but their sale then falls through with their purchaser, they have to complete their purchase and they then have two homes, which they never intended to have. They are unfairly penalised: they probably do not have the finance—or they are scraping it together—to pay a bridging loan and then, unfairly or unjustly, they have to pay the extra tax as well and then claim it back.

John Mason: Is there a better way of working?

Daryl McIntosh: I do not know.

John Mason: From my point of view the fear would be that, if people could just say that their intention was to sell the house and lots of people did that, the whole system would start to fall apart. People would have to be chased up a year later to find out whether they did sell the property. It is

tidier to proceed in the way that is proposed, but, as you have said, for some people that would be quite an issue.

Daryl McIntosh: Yes. I do not know what would be the best way.

John Mason: Another specific example was that if a family bought a property for their children they would be charged. Is that really a problem?

Daryl McIntosh: I think so, yes. We see that a lot, certainly in the university cities. People are purchasing for their children, or with the children on the mortgage as well, to get them on the ladder—in effect, helping them to be first-time buyers. That is going to be an issue as well.

John Mason: Could they not just lend their children the money—or do they not trust their children? [*Laughter.*]

Daryl McIntosh: I will not touch that one.

John Mason: My final point is on housing associations. I realise that none of you represents housing associations, but we do not have anyone from a housing association coming before the committee today. I ask any of you who are comfortable in the area whether housing associations should be treated any differently. Is there an issue? Should they just be treated like everyone else?

Marian Reid: The concern with housing associations is in the mid-market rent area where housing associations have subsidiaries and they deal in a slightly different way or under a different regime. If they were subject to the tax, it would affect their operation in terms of what they were able to do and their flexibility. They are meeting a housing need in what are sometimes quite pressurised areas for people who—as I was saying earlier—cannot afford to buy but who do not fall under the eligibility criteria for social housing because there is such a squeeze on those waiting lists. There are definitely implications.

John Mason: Housing associations are competing more with the normal private rented sector, but they are slightly cheaper, as I understand it.

Marian Reid: Yes. They are mid-market rent. I am not an expert on the rates or where they sit, but it is mid-market.

John Mason: A level of 80 per cent has been mentioned, but I think that it varies.

Marian Reid: Yes, so there is a concern.

John Mason: Should housing associations be treated in the same way as the normal private rented sector, or do you think that they should be

treated more favourably because of that social aspect?

Marian Reid: They are meeting a slightly different market, potentially. They are meeting a market that cannot go out into the marketplace and say that they want private lets and have a range of choice because they have the income. The housing associations are filling a niche; that is why they are there and why local authorities are involved as well.

The housing system is quite complicated at the moment. There are a lot of things going on and there is a need to balance all the different bits so as not to have unintended consequences on parts of the market that are meeting need that might not be met elsewhere. It is important to get the balance right.

John Mason: You have raised an important point about things being complex. My hope had been—and I think that we achieved it—that LBTT would be a fairly straightforward tax. Will what is now proposed complicate things?

Marian Reid: The points that we are raising are more about thinking through what the potential consequences are. We are all probably struggling because we do not yet have all the data to let us know that, so it is hard to say.

John Mason: Mr McIntosh, are estate agents going to have to ask a lot more questions, or is it a solicitor who does that?

Daryl McIntosh: It will be the solicitor's job to do that.

John Mason: So it should not complicate your efforts.

Daryl McIntosh: Agents will still market the property at the relevant valuation.

Lesley Brennan: I should perhaps have mentioned that I did a study for the Scottish Government in 2009 on the baseline of the private rented sector in Scotland. One of the things that came up then was the lack of data, so it is disappointing that the data has not improved since that report was published in 2009. What I have heard is quite a lot of anecdotal evidence, but there is not much robustness there. I have also done a number of private rented sector studies in England, and have conducted focus groups with landlords, but what I missed is what you are describing—the philanthropic landlords. You are suggesting that landlords are investing to give people housing, whereas the landlords whom I spoke to across the country were investing because there was a good rental yield.

John Blackwood: I want them to be investing to provide more housing. That is the whole point and the whole thrust of what we are doing. We

need more housing in Scotland so we should encourage investment, but yes, they are doing it as businesspeople. They might not be doing it for a short-term gain, and the yield might be negligible in some scenarios, to be perfectly honest, but of course, as businesspeople, they are looking at long-term gain. We are trying to encourage them to see Scotland as a place to do business and to see investing in property as something attractive that they can do, although there is regulation that they must follow because they need to provide a good service. We want them to see it as a business that is worth doing, and the consequence of that in the long term is that we provide housing for people, which is something that we should be encouraging here in Scotland.

Lesley Brennan: In your submission, you suggested that the biggest impact of the proposals will be on vulnerable tenants, as less money will be spent on improving stock.

John Blackwood: If there is less money to go around, there is less money to spend on improving the properties that people are investing in. If they have purchased a property, they have a finite pot of money to invest, which has to cover capital costs, taxation and the cost of meeting all forms of regulation. That continues; it is not just at the point of purchase. Landlords could find—inadvertently, as a result of all this, not just one aspect of regulation—that they have less money in the longer term to invest in their properties, and we do not want that either. We want them to be putting the money back into their properties.

Lesley Brennan: Shelter has said that large landlords crowd out first-time buyers because they can access cheaper credit. What is your view on that?

John Blackwood: I cannot talk about larger investors or institutional investors, as that is not my field. I cannot say whether they can access better sources of funding. From an individual investor's perspective, which is my area, it is not more attractive for them to access funding than it is for a first-time buyer.

Lesley Brennan: I would like Ms Reid to comment on the CIHS submission, paragraph 1.4 of which states:

"In addition, we feel that if the measure is to support the housing market in a meaningful way, the additional funds raised should be reinvested into the housing sector."

Marian Reid: Yes. By that, we mean the affordable housing sector. We must keep supporting and maintaining the aspirations that we all currently have to increase affordable housing supply. That does not mean that we must always invest the money in local authority housing or housing associations. It can also go towards

carrying on improving the standards in the private rented sector.

There are a great deal of smaller landlords in Scotland. You see the term “accidental landlords”. I cannot remember whether we mentioned it in our submission, but it refers, for example, to people who inherit property and rent it out or two people who move in together and do not sell the second property. Those people rent the property out as an investment, but it is also important that they get the help and support that they need to be the best landlords that they can be. Therefore, we feel strongly that it is important that the money be reinvested, especially if there is a potential for an adverse impact on parts of the market that provide social housing.

09:45

Lesley Brennan: As John Mason mentioned, paragraph 4.1 of your submission says:

“Local authorities and registered social landlords ... should not be subject to the charge if purchasing homes on the open market”.

You mentioned mid-market rents. I am a councillor in Dundee. Dundee City Council bought housing on the open market, which it is renting out as social housing.

Marian Reid: Yes. There are different reasons why that happens. I do not know the specific example to which you refer or why it happened but, sometimes, there are blocks in which the local authority might have some properties but others have been sold through the right to buy and, if they come up on the market and the price is appropriate, the local authority might choose to bring them back into its stock. If it all stacks up financially, it is easier to do that than it is to start from scratch and build something else, and it can create a more coherent community and make more sense for maintenance. That is one example, but there are several rationales for why local authorities might buy housing on the open market.

Lesley Brennan: So you are looking for an exemption for registered social landlords.

Marian Reid: Yes.

Mark McDonald (Aberdeen Donside) (SNP): The notion has been raised that the surcharge could hamper new-build development because a lot of such development is predicated on advance sales in the buy-to-let market. Does anybody have any detail on the percentage of new-build properties that are purchased as buy-to-let properties? I see a lot of blank expressions. The reason why that is a concern for me is that it appears that certainty is being inferred from supposition. If we do not know what percentage of

new-build properties are sold as buy to let, it is difficult to infer what the impact on new-build properties would be were the surcharge to have a behavioural impact. Is that a fair assessment?

Paul Curran: The point that you raise is one of timing and the information and research that are required to consider the measure properly. That is one of the issues with the pace that we are going at in reviewing the bill. More research, information and analysis of the market is required.

Mark McDonald: Are any house builders saying to the CIHS that their ability to access the capital to develop is predicated on the buy-to-let market being part of their advance sales?

Marian Reid: We do not work so closely with house builders. We work more with the social rented sector. I am sorry, but I do not have that information.

Mark McDonald: How about the SPF?

Paul Curran: Such sales are key for the small and medium-sized enterprises—the entrepreneurial organisations that do the smaller-scale developments—to secure equity funding or bank funding. Banks still need a level of certainty about how they will get their money back, which is delivered by achieving a small number of pre-sales on sites. Again, there is no evidence about the impact.

Mark McDonald: I was away to say that. I presume that there is no evidence that those pre-sales could not be undertaken by people upscaling into a new property or first-time buyers entering the market.

Paul Curran: There is no evidence on that either way. Developers do not have a preference about who they sell to, but the issue is the need for early sales in a development to enable the development to go ahead. The key things is that first-time buyers will not have certainty on funding, so they will not be able to commit to a contract in advance of construction.

Mark McDonald: I am trying to think of the best way to word my next question. What level of advance sales do developers have to achieve in most developments in order to be able to access that capital?

Paul Curran: With a small-scale development, we would be talking about a level of about 20 per cent. A small-scale development would be one of 30 units, so that is where our proposal of six units as the level for an exemption for new-build properties comes from. Some lenders might seek a higher level of forward purchase, depending on the type of property. With an apartment scheme, they might seek a higher percentage of forward purchase, such as 30 or 40 per cent but, in

general, a level of 20 to 25 per cent is enough to enable a development to commence.

Mark McDonald: Mr Blackwood, you mentioned the difficulty in attracting inward investment. I think that it was suggested that the percentage of capital that is invested in the buy-to-let market that comes from furth of Scotland is 2 per cent. If that is the situation at present, would maintaining the status quo really have that much of an impact in attracting investment from outside Scotland? Given that the level of investment that has been attracted from such investors has not gone beyond 2 per cent, is it likely that that figure would shift dramatically if the proposed surcharge were not to be introduced?

John Blackwood: Our point is that we want to see an increase in the level of investment from within and outwith Scotland. The figure of 2 per cent is low; we want it to be higher. Why do we want that? We want that because there is not enough housing for people. We need to encourage such investment across the board in the private rented sector.

Mark McDonald: But surely the flip-side of that is that, if there were to be such an increase in investment, that increased investment would purchase properties that could otherwise be purchased by first-time buyers. Is that not the case?

John Blackwood: That could happen. We do not know what the situation might be, because we are working only with proxy data sets. At the moment, we do not have evidence of that. At present, we do not have the surcharge. I know that it is early days, because it has been introduced in other parts of the UK only recently. Are first-time buyers being pushed out of the market? Do we have evidence that house prices are going up? No, we do not. That has not been the case in recent times in Scotland.

If prices were to go up, that would mean that that was an issue. Why would it be an issue? There might be more competition in the marketplace. I do not believe that that is the case at the moment. That is not to say that that would not happen in the future—I appreciate that—but we seem to be guessing what is going to happen and implementing a surcharge based on supposition.

Mark McDonald: I think that it is the SPF that has called for an exemption from the supplement to be introduced at a significantly lower level than the one that has been introduced south of the border. I presume that we have an idea of the number of entrepreneurs or companies out there that are purchasing in bulk or purchasing a number of properties. What percentage of the market would be impacted if there were to be a

15-property exemption, as there is south of the border, as opposed to a six-property exemption, as the SPF has recommended?

Paul Curran: I think that we need to look at the issue from the point of view of institutional investment. There is £30 billion of large-scale institutional investment in the UK. The figure of 2 per cent has been mentioned. That is where the volume would come from. Without such an exemption in place, Scotland would be uncompetitive from the point of view of investment in comparison with the rest of the UK.

If we look at smaller new development sites, which I think is what you are getting at in your questioning, it is hard to put a number on it. It is more a case of timing. We need to have time to do analysis and to produce proper stats.

Mark McDonald: If I hear someone saying, “We need to set the exemption threshold at six properties,” for example, I assume that there is some hard data underneath to show that there is a market distortion beyond that point. You seem to be suggesting that there could be a market distortion, but you are not very sure.

Paul Curran: We simply propose bringing the threshold in line with what would be considered a commercial transaction under existing legislation.

Mark McDonald: Out of curiosity, why do you think that the exemption threshold has been set at 15 for stamp duty land tax? You say that it should be set at six, beyond which it would enter the commercial realm. Why has the threshold for stamp duty land tax been set so much higher?

Paul Curran: It simply recognises the scale of the housing market in the rest of the UK in comparison with Scotland. We must recognise that the market and the scale of development in Scotland are smaller. That is the reality.

Mark McDonald: Presumably that is true in some locations but not in others. For example, one could imagine 15 properties or more being purchased in one go in Edinburgh, Glasgow or Aberdeen, but perhaps less so in Irvine or Arran—just to pick two examples, for no reason whatsoever. *[Laughter.]*

The Convener: One of those is in my constituency, but the other one is not.

Mark McDonald: Would that be fair?

Paul Curran: It will be different in different locations, but it would be very difficult to produce a threshold that reflected that.

The Convener: That concludes questions from the committee members, but I have one or two further questions on an area that has not really been touched on.

Mr Blackwood, you said just now that “there is not enough housing for people.”

Surely, in many areas of Scotland, there are enough houses for people. In Arran, which has just been mentioned, there are plenty of houses, but 42 per cent of them are second homes. People may visit them for three or four weeks a year and then rent them out for three or four months. For seven or eight months, particularly in winter, they lie empty. They are often bought by people from outwith the island. The same applies to many places in Scotland; in Cumbrae, the figure for second homes is 50 per cent. The economy is weakened in winter because there is not much spend in the local shops and so on. Local indigenous islanders find it very difficult to compete for housing, and it is very difficult to attract teachers, national health service professionals and so on to the island and to other rural parts of Scotland, because they have to pay well over the odds for housing.

Surely, the 3 per cent charge will have a positive impact and allow at least some respite for people who want to buy their own home without having to compete with second-home owners.

John Blackwood: To be honest, I agree with what you have said. Our organisation represents private landlords who are in the business of buying properties to provide principal homes for people to live in; I am not here to advocate for people who wish to buy second homes and use them as holiday homes, as you suggest.

The Convener: I understand that, but—

John Blackwood: A distinction should perhaps be drawn between the two, and there is currently no such distinction in legislation, from council tax all the way through. That is wrong. The legislation should focus on the nature of the property use as opposed to the type of ownership.

The Convener: I was trying to make the point that you are not keen on the bill progressing, but there are positive aspects to it, including the one that I described.

Mr McIntosh, what is the view of the National Association of Estate Agents on the provisions relating to second homes?

Daryl McIntosh: Again, it all depends on the circumstances, and how one justifies the purchase of a second home. We have already highlighted that some second homes are accidental, where people have been pushed into them, and that people may purchase a second home with or on behalf of their children simply to get them on the housing ladder. A majority of second homes are purchased in that way to get first-time buyers on the ladder. We are constantly saying that the

lending criteria and access to finance must be improved.

10:00

The Convener: I will return to Mr Blackwood, on the issue of reliefs. Under section 4 of your submission, you pointed out a number of areas where you would like reliefs to be applied to the legislation. Which of those reliefs should be prioritised?

John Blackwood: We thought that if we put down a few reliefs, you would at least pick one or two of them that might be of use, so we had a bit of a brainstorming session on that. To be honest, I think that they should be prioritised in the order that they appear in the submission—it is perhaps no accident that they are listed in that order.

There was the issue of joint purchases in which one of the parties is a first-time buyer. We discussed cases in which parents buy the property but, for a number of reasons, it is not in their name. However, often it is in their name, so they are joint owners. You could say that it is a first-time purchase for one of the purchasers as part of that transaction. That could be taken into account.

We have touched briefly on one of our biggest concerns, which is how this charge is administered and how we can make sure that there are no loopholes, so that it does the job that it is intended to do, which is to help first-time purchasers. That is our concern, and we feel that we can justify so many exemptions, but is it really going to help the people that the policy is intended to help?

The Convener: Thank you for that. That is a good response.

Gavin Brown: I want to come back to an issue that John Mason mentioned, which is worth exploring a bit more. That is the idea of an accidental second-home owner—someone who buys a new home and whose current home is not selling, so they have to pay money up front for the new home. I think that Mr Mason was correct when he said that that is the clearer and simpler approach, and that it is clearly the best solution administratively. However, it will be challenging for a lot of potential home owners to stump up that money up front.

What impact do you think that that issue will have on market activity? Some people are naturally cautious. Personally, it would put me in a position where, before I ever considered buying the new home, I would sell my current home. There must be lots of people who are naturally cautious. Would that not lead to a slow-down in activity? If so, what level of slow-down would there be?

That question is for anyone. Mr Blackwood, you were making eye contact, but you do not have to kick off on this.

John Blackwood: I think that it is a potential unintended consequence of that measure. We do not want the market to slow down. It is important that it is flexible and meets market conditions when they change.

I am not an expert in this field, but I think that there may be a way round that. When a buy-to-let investor is going to invest in new property, the source of the money to do that is checked as part of the money laundering processes. At the conveyancing stage, it would be evident whether they were intending to sell a property to get that money, or whether they were buying with savings or with money that they had inherited. Therefore, from an administrative point of view, it might not actually be so difficult to track that. However, I have colleagues in other fields who would be far better than I am at answering that question. That might alleviate some of the fears that people have about having to sell their home before buying something else.

Without question, I think that there would be a negative consequence in the marketplace.

Gavin Brown: That is something that we can explore with the Government later.

The Convener: I thank our witnesses for answering our questions. I realise that this has been a truncated process, so I appreciate you coming in at short notice and making substantial contributions. I also thank my colleagues for their questions.

10:04

Meeting suspended.

10:10

On resuming—

The Convener: We continue our consideration of the Land and Buildings Transaction Tax (Amendment) (Scotland) Bill by taking evidence from our second panel of witnesses this morning. I welcome to the meeting Jonathan Gordon of the Royal Institution of Chartered Surveyors, Isobel d'Inverno of the Law Society of Scotland, Jo Joyce of KPMG and Susannah Simpson of PricewaterhouseCoopers. We have your submissions and will therefore go straight to questions.

My first question is for Mr Gordon. In paragraph 3 of your submission, you say:

"it was prudent of the Cabinet Secretary for Finance, Constitution and Economy to match the UK levy, as the Scottish housing market could've seen an influx of buy-to-

let investors from England and Wales if a similar regime is not introduced."

You may have heard a number of the earlier witnesses say that an influx of additional investors was exactly what they wanted, given that only 2 per cent of institutional investment in buy to let in the UK is in Scotland. Will you expand on why you hold your view?

Jonathan Gordon (Royal Institution of Chartered Surveyors): The RICS has a duty under its royal charter to look out for everybody's interests. Although the members of my PRS forum are mainly letting agents who work in the sector, looking after investors and landlords, they obviously look after tenants as well—that is part of our process. I have some personal views on the sector, but there are also the views of the RICS to represent as a whole, and those are exactly as stated in the submission. Those who follow Twitter, property groups and so on will have seen some chatter about the announcement of the change after it had been made, with people thinking about investing in Scotland. I have anecdotal evidence that clients from England who had invested here and down south were thinking about their next investment being here.

The Convener: Is your concern about that additional investment that it would push up house prices and make things difficult for first-time buyers?

Jonathan Gordon: Personally, I think that the evidence is not that clear on that, but there is a risk—you have perhaps to copy the policy and explore it further as it develops. The risk is quite high—that was the key reason stated by the finance secretary.

The Convener: So you do not think that the finance secretary could have waited a year to see how things developed and then introduced the legislation if necessary.

Jonathan Gordon: There is probably a range of views in the forum on that. Some people feel that we could attract more inward investment and that it would not affect the market. The balance of opinion in the RICS was just that it was safer to copy the policy now.

The Convener: I do not think that Isobel d'Inverno would agree with that. In her submission, she says:

"the timescale and manner in which this proposal is being considered is not conducive to the formulation of good-quality, robust tax legislation."

Isobel d'Inverno (Law Society of Scotland): It goes without saying that if you have to do something in a hurry there is a risk that you will make mistakes or at least that you will not address all the issues that need to be addressed. It is a

very truncated timescale, but we make that point with a view to the future—and I do not think that this will be the only time that Scotland will want to introduce a measure quickly because one has been introduced in the UK. We perhaps need to think a little about the process for introducing such policy, because it will be quite an effort to get the legislation through in the timescale.

10:15

The Convener: One of our earlier witnesses, Mr Blackwood, said that it is important to ensure that such legislation has no loopholes. I was intrigued by the Law Society of Scotland's submission in which, at section 4, the myriad suggestions for reliefs goes on to such an extent that I expect the £17 million to £29 million that the Scottish Government hopes that it will get from the supplement to decline as I turn from page to page. However, when it comes to section 5—the potential for tax avoidance under the supplement and how that should be addressed—the submission says “No comment”. I was quite surprised by that.

Isobel d'Inverno: Our view is that the Scottish general anti-avoidance rule is already sufficient to address any avoidance issues. Our larger concern is about some of the situations where the legislation in its current form may have quite capricious results.

Circumstances might arise in which it does not seem fair that the supplement should have to be paid. Dealing with those is probably our main concern and the concern of our members. One example is of someone inadvertently ending up with two houses because something has gone wrong with the transactions and they have not managed to settle both on the same day. That happens quite a lot—that point was raised in the earlier evidence session.

We think that there ought to be a grace period—we suggest 30 days—in which, if one transaction does not complete when expected, the person does not have to pay the 3 per cent up front, even though they have two houses for a short period of time. If they have not sold one property by the end of the 30 days, the return has to be amended and the supplement paid. We think that a 30-day period would be sufficient to deal with quite a number of cases in which people have not intended to have two houses but there has been a hiccup somewhere along the line.

The Convener: I will ask you the same question that I asked Mr Blackwood. How would you prioritise the reliefs that you list? You have already mentioned one—would that be your number 1 priority?

Isobel d'Inverno: That one is quite important. If there is no such relief, some solicitors may take the view that they will have to tell clients that they need to budget for paying the 3 per cent supplement, because it will have to be paid if anything goes wrong and the purchase and sale are not completed on the same day. It is quite important.

The Convener: Jo Joyce takes the opposite view from the RICS in relation to investment. She says in her submission:

“Investors in the private rental sector ... are a key driver in ensuring that new residential properties are constructed, whether by way of direct investment into new developments, or in ensuring that house builders are confident that there will be a buoyant market for their product.”

I ask her to give us some more information on that.

Jo Joyce (KPMG LLP): A lot of our information on that is anecdotal and comes from our clients. We have been gathering information in response to both the LBTT supplement and the introduction of the surcharge in the UK—a lot of our clients are nationally based. Particularly in the small and medium-sized market, clients look to sell a lot of their properties off plan in order to forward-fund the development or to secure bank funding. They often have people buying one, two or three apartments in a block, and obviously at least two of those will be for buy-to-let investment. Without that, our clients will struggle to get funding going forwards. We do not have hard data on that; it is just what our clients have been telling us.

The Convener: I move on to Susannah Simpson. You say in your submission that you are concerned that unless the legislation is brought in there will be “distortions” in relation to the UK market. Some of the previous witnesses might say that those distortions would mean that Scotland had a competitive advantage, given that only 2 per cent of inward investment in buy-to-let properties is directed at Scotland. Would they not give Scotland that competitive advantage? Why do you have concerns about that?

Susannah Simpson (PricewaterhouseCoopers LLP): Like Jo Joyce, in canvassing our clients we hear that any uncertainty or inconsistency between the rest of the UK and Scotland causes additional complexity. That is our main driver. Coming out of our client base is a wish to keep the rules as consistent, clear and simple as possible. However, to take up Isobel d'Inverno's point, we should not focus on that at the risk of bringing legislation through too quickly and without proper consideration. There may be benefits to be gained from delaying and seeing how things settle south of the border.

The Convener: Okay, that is fine.

Under the heading “Scope of charge and requirement to be disposing of an existing main residence”, you raise some concerns. You talk about

“inconsistencies in the treatment of taxpayers who are in similar positions.”

You go on to say:

“For example, where someone owns a buy-to-let property and is moving out of rented accommodation (their main residence) into their first home, they will pay the extra 3%, whereas a buy-to-let investor who already owns their own home and is replacing it would not.”

Susannah Simpson: Yes, there are a number of anomalies that will come through. Just as Isobel d’Inverno said, we should also be concerned about people who are in that reluctant landlord position. Our example relates to people who own a buy-to-let property. It seems inequitable that someone who has an existing main residence and is replacing it should not pay the additional charge, whereas another person who is buying their first main residence would be caught by the charge.

The Convener: You also say:

“We agree with the policy of providing an exemption from the additional 3% for investors who will contribute to the growth of the housing stock.”

You say that

“an acquisition by any investor of 6 or more residential properties”

should be catered for. However, in terms of a portfolio threshold, you also talk about

“an acquisition by any investor of one or more residential properties, where that investor ... will own at least 15 residential properties following the transaction”.

Is that right?

Susannah Simpson: The concern behind that goes back to the point that the RICS made, which is that the rules should not prejudice the private rented sector more generally. Although it is difficult for Parliament to discriminate against different types of investor—particularly if we look at European Union law—we have considered whether it is possible to introduce exemptions. Those were a couple of the ideas that we came up with.

An investor who is buying more than six properties in one transaction would suggest a more widely held portfolio—that goes against the avoidance that the legislation is trying to target. Equally, there could be an exemption—this is similar to the one that has been suggested down south—for an investor who already has a number of residential properties and the acquisition takes them above the residential property threshold of 15. In the same way, the non-resident capital

gains charge has an exclusion for diversely held acquirers. Again, that moves us away from the example of a husband and wife who buy a property and then buy their second property through a company to work their way around the rules. Those are suggestions as to how those situations might be distinguished, keeping the private rented sector going.

The Convener: Mr Gordon, I was about to ask you a question on that, but I think that you wanted to comment anyway.

Jonathan Gordon: My point relates to the original question. Although the RICS thinks that there is a need to be careful and consider matching the stamp duty changes because of the risk, that does not mean that I consider LBTT overall, or the additional homes supplement, to be a good idea. Regardless of how you frame it, LBTT is not a progressive tax. The changes were welcome in terms of how the thresholds move and the non-slab structure, but overall it is a tax that does not target wealth or income; LBTT taxes people who happen to own an asset or have the ability to buy one.

Sometimes real-life examples are quite useful. I am 45 years old, have virtually no pension and have a large mortgage on a relatively modest family home in Portobello. If I need to move to a bigger home to accommodate my family, I would pay a much higher price for a similar but larger house in the same area. I do not have the LBTT money available to do that, let alone the extra deposit money that would be required. I am not a wealthy person with a huge income. However, a wealthy person with a huge income can buy a bigger house, perhaps in Fife or the Highlands, and they would pay the same tax as me. In that regard, LBTT is not a progressive tax.

The additional homes supplement has unintended consequences for the affordability element in all sectors. I will give a specific example. We have a number of clients who buy or trade in properties that are licensed as houses in multiple occupation. Sometimes those properties have emergency lighting, fire escapes or sprinkler systems and are not particularly suitable for individuals to own and live in as their home—sometimes they do not even have a lounge—although they are suitable for multiple occupation. From late last year, an investor buying such a property under the new LBTT structure will pay a fairly high—or penal—rate for a property that costs around £300,000 or £400,000. Under the old structure, if they had bought three or four properties of a lower value, they would have paid no stamp duty. Under the new structure, they become even more incentivised towards buying smaller properties, which are exactly the type of properties that first-time buyers are trying to buy.

There may well be the unintended consequence of pushing people to invest in the lower end of the market rather than the upper end.

The Convener: That is interesting. At paragraph 17 of your submission, you say:

“more can be done to entice institutional investors to build purpose-built accommodation for rent; not only by providing a stable policy and legislative environment, but creating a financial framework that would encourage them to do so.”

Will you tell us a wee bit more about the type of financial framework you are thinking of?

Jonathan Gordon: As well as representing the RICS at the committee today, I represent it on a number of other groups. Next month, I will join the joint housing policy delivery group. I am on the PRS working party, which supports the PRS champion who, for those who do not know, is funded by the Scottish Government and employed by Homes for Scotland. The champion is specifically tasked with encouraging such investment in build-to-rent homes. A number of those developments are on areas of land that would not otherwise be developed for homes. They bring in significant institutional investment from high-quality landlords such as Standard Life and Aberdeen Asset Management—companies that have reputations to protect. It is extremely important that such landlords enter the market. The PRS champion is working with the working party to deliver a set of recommendations for the Scottish Government, and the responsible cabinet secretary is amenable to most of the recommendations; indeed, some of them, including those that relate to planning or guidance to councils, are already being implemented.

The Homes for Scotland submission includes comment from the PRS champion and gives specific reasons and explanations about why an exemption for such investment is important. Only a small percentage of the investment in the UK in the sector comes to Scotland, and some of that is to do with the risk around uncertainty over changes in regulation, such as those in the Private Housing (Tenancies) (Scotland) Bill. There is a feeling that some of that uncertainty is perhaps to do with investors only making their decision once the legislation is finalised and in place. That decision might be positive, but introducing at this stage a tax change to disincentivise investment will produce further uncertainty and recalculations that may not then produce investment.

The Government published its strategy on PRS in 2013, and since 2007 it has done a lot to improve safety and security in the sector. We have a repairing standard that includes mandatory elements on electrical and gas safety and fire alarms. Throughout the rest of the UK, the majority of those elements are covered by guidance only,

so Scotland is a very good, safe and secure place for tenants.

The Government is creating the right environment to create a better sector, but if nobody is buying new houses to put into the sector, the majority of homes will continue to be the old stock that is perhaps in poorer repair than some of the new builds. A key recommendation in my submission is to exempt all new builds from the additional homes supplement.

The Convener: Thank you for that. I will open out the session to colleagues around the table, who are all champing at the bit. First is Gavin Brown, to be followed by Jean Urquhart.

Gavin Brown: My first question is to Isobel d’Inverno. The Law Society submission talks about a grace period of 30 days. In my view, having a grace period would be far better than having no grace period. Is 30 days not a bit tight? My fear is that that would put huge amounts of pressure on the seller, who may then be tempted by—and vulnerable to—lower offers late in the day in order to avoid the taxes. Is a 30-day grace period fair or is that just a starting point?

10:30

Isobel d’Inverno: The 30-day period was just a starting point. The best position would be if purchase of one’s main residence did not attract the supplement. However, it is quite difficult to implement that because, if someone already has a house, the question arises whether they are going to sell it. We were trying to develop an approach that would not be too problematic and would not let too many things slip through.

You are right that 30 days is too tight; three months or longer would be better, because so many things can and do go wrong. People are on quite tight budgets these days, so another 3 per cent is quite a lot to have to play into the equation from the beginning.

Gavin Brown: You are saying that people are finding things financially tight these days. From your experience as a property lawyer, do you think, considering your clients and the market as a whole, that it would have a detrimental market impact if the bill is not changed in this area? Would people hold back and only ever purchase once they had already sold? What do you think would happen?

Isobel d’Inverno: It is difficult to say exactly what would happen. Our members would need to ensure that people appreciate the emerging danger of the 3 per cent. When they are going through the transactions, everybody thinks that it will all work out. Often, for one reason or another,

it does not work out. People need to be able to fund that if there is not some sort of grace period.

The 30 days also aligns with the time limit. It is a matter of having something that oils the wheels.

Gavin Brown: That is helpful. Thank you.

I turn to the RICS paper. Jonathan Gordon spoke about when the UK measure was first announced. You saw it on social media, with various tweets saying how people were going to start investing in Scotland and so on. On the marketplace as you have seen it since the Scottish announcement was made around mid-December, have you seen a spike in buy-to-let properties being purchased so that people can avoid the April cut-off?

Jonathan Gordon: My company looks after buy-to-let properties. Unfortunately for me and our company, we have not seen a massive spike. However, John Gell, who used to be the chair of the PRS forum in the RICS, runs a letting agency in Inverness, and he has seen a significant spike in people trying to buy to let.

We have some anecdotal evidence about this. At the moment we sell only properties that have been rented out and that people want to sell on the market. We have a few properties available on the market and off market, and we have seen a little spike in people buying second homes, rather than in buy-to-let investors, where there is actually very little interest—or rather, there is similar interest in terms of investors.

That spike in second homes is not necessarily for holiday lets. Some cases involve people who live in London whose families are here—they have children and grandchildren living in Edinburgh, for example, and need somewhere to live when they come up here.

Gavin Brown: So, for clarity, your company has not experienced a spike in buy to let, but there has been an increase in interest in second homes.

Jonathan Gordon: Yes.

Gavin Brown: Some of your colleagues—one, at least, in Inverness—have said to you that they have seen a spike. Is that a fair summary?

Jonathan Gordon: Yes.

Gavin Brown: In your submission, you express concern about discouraging smaller landlords. Can you expand on that a tiny bit?

Jonathan Gordon: I cannot remember the exact term for this at the moment, but there are a lot of things that people think about landlords that are not true.

Only a small number of landlords do not try to look after their tenants, or try to push rents to the

extreme. As with any civil or criminal matter, legislation exists to catch the people at the extreme end, so we need measures in place to cover that. However, rents in Scotland are not rising at the rates that people are talking about. What is happening is that there is a large increase every year in the number of people having to rent in the sector, and there is no supply to meet that demand. For that reason, rents for advertised properties are rising.

We do an annual review of rents for our properties with existing tenants and compare them with the market. Some of our tenants have been in properties for five years or more. We ask landlords if they want to increase the rent incrementally on the tenants who have been there for a long time, but they know by that stage that those tenants pay the rent and look after the properties. We carried out an exercise last year in which we emailed 100 landlords in areas where the rent levels had changed significantly, and not a single one wanted to increase the rent by any incremental amount that we suggested. There is a big disparity and lack of data about what actually happens in the market, which is affecting all the decisions that policy makers are considering, including the bill.

Gavin Brown: The convener asked you a couple of questions about exemptions. You suggest in your submission that there should be an exemption for new build if owner-occupiers fail to buy after a period of time. We had a suggestion earlier that the period should be six months. What period would be appropriate?

Jonathan Gordon: No, I do not suggest that. That example came from within the forum—it was not one of my comments.

With regard to the sort of payment that we are discussing, many people—particularly people who are trying to sell their homes and cannot—will not have the money either to pay the stamp duty on one house, let alone on two houses, in the first place, or to pay the additional charges. It is hard enough these days to find a deposit. At whatever level of the housing market, it is very difficult to get a mortgage that requires a low deposit and also has a decent interest rate.

Lesley Brennan asked about the interest rates that buy-to-let landlords pay. The rates are fairly comparable; sometimes buy-to-let landlords have a bigger deposit when they get a mortgage on another property and can get a better rate for that reason, rather than just get better rates in the market overall.

There are other interesting consequences that I want to mention. One of the difficulties with the speed of the change is that every time I read somebody else's submission or think again about what I am going to talk about, more potential

issues pop up. What we are discussing is not simply a minor adjustment to LBTT—it is really a new tax that will affect the market in unknown ways.

We set up in 2008, and a majority of our first hundred landlords in 2008-09 were people who had been unable to sell their homes when they moved in with their partner or when they moved to a family home as they were getting married and having children. They rented out their other property and were lucky enough to be able to afford to move, but the negative equity if they had had to sell their property would have wiped out all their savings.

That will continue to be the case; we still have new landlords coming to us who are unable to sell their own home in areas where the market has not improved—places such as Clermiston, or ex-council areas—and have to rent the property out so that they can buy a family home in an area where they need to move to for a bigger home or for work. They will have to pay the stamp duty on the higher-value property, which is fairly penalising.

Gavin Brown: That is helpful—thank you. I will move on to Jo Joyce and the KPMG paper. The main thrust of the paper, in my view, is that you—or your clients—are concerned that the legislation could be a deterrent to the development of new homes. Can you expand on that?

Jo Joyce: As I said earlier, a lot of the concern is what we have been hearing anecdotally from our clients. There are two sides to the issue. There are the small and medium-sized businesses in which individuals buy one, two or three properties off-plan and the guaranteed future income helps them to secure the financing for the development, then there are the large-scale institutional investors, which forward fund big developments. Although an exemption is proposed for large-scale investors from the SDLT surcharge, we do not have any details on whether there will be a similar exemption from the LBTT surcharge. In addition, if there is not a similar exemption north of the border, that will make south of the border a more attractive place to invest in. It is vital that when the new surcharge is introduced there is clarity on exemption and how it will be applied in order to provide certainty for taxpayers and for developers that look for forward funding.

Gavin Brown: For accidental second-home owners—people who cannot sell their residence after they have bought a new property—you suggest an up-front relief. Will you expand on KPMG's thinking on that? How could we tackle the issue?

Jo Joyce: There are a couple of ways to do that. The submissions from Isobel d'Inverno and

Susannah Simpson address the issue. Instead of having an end-of-the-day approach to when the 3 per cent rule applies, there could be a main-purpose test to establish whether someone is buying their next residential property to live in as their main residence. If so, they would get a relief on the 3 per cent surcharge, regardless of whether they had been able to sell their previous residence. That relief could be clawed back in 18 months or three years—we think that 18 months is probably all right, given how the property market is at the moment, but the market is quite cyclical, so the period might need to be extended to three years. When that relief was claimed, all the information would be on an LBTT return, so Revenue Scotland would easily be able to pick up on whether the person had made the amendment that they needed to make or whether they needed to pay the additional 3 per cent.

Gavin Brown: Would guidance or regulations be necessary? I think that we need such a relief, because I am worried about the state of the market. However, if people wanted to get round the supplement, they could put their house on the market at an unreasonable price and refuse to accept any offers on it. I presume that regulations would be necessary to make the system absolutely watertight.

Jo Joyce: That is fair, but as Isobel d'Inverno said, there is the Scottish general anti-avoidance rule, so if someone does something purely for the purpose of avoiding tax, they will be caught. It is quite a strict and strong measure.

In the majority of instances, people need to sell their previous home in order to move forward. When people buy a second home, it is quite obvious that it is not their main residence. I accept that there are grey areas, but it is very hard to legislate for those without putting out reams and reams of regulations, which is definitely not what we want. Guidance would be very helpful.

There are precedents for a relief with other taxes—for example, the principal private residence relief for capital gains tax—on which we could draw.

Gavin Brown: I turn to Susannah Simpson's submission. You have already been asked about investors' contribution to growth, so I will skip that subject and stick to accidental second-home owners. You made a specific proposal on how PWC thinks that could be tackled. Will you expand on that?

Susannah Simpson: I will go back to the time period—we have suggested three years. Our preference is that acquisition of an only or main residence should be excluded from the tax. Although I accept that that would allow people multiple times to buy a main residence, live in it,

do it up and sell it on, our view and the view of our clients is that the practical inconvenience of doing that means that such cases will be relatively few and far between. There is the back-up of the GAAR to deal with intentional avoidance.

If the tax had to be paid within a specific period, we suggest that, rather than having to lodge the tax, people should be able to submit a request for a deferral application, which could be revisited within three years. In our view, that would mean that a positive application would have to be made to Revenue Scotland, so Revenue Scotland could monitor the situation and would be able to pick up on the fact that a further return had not been made within the three-year period.

10:45

Gavin Brown: You made a fairly comprehensive submission to the SDLT consultation, alongside your submission to us. Is it your view that the committee and the Scottish Government ought to liaise pretty closely with that consultation to try to ensure that there are not unintended consequences on either side of the border?

Susannah Simpson: As I understand it from releases from HMRC and Revenue Scotland, the intention is for the rules to promote first-time buyers. The two intentions are aligned and the timing of the introduction of the taxes is similar. Our clients have said that any inconsistency between the rest of the UK and Scotland increases complexity and uncertainty. It is therefore a good idea for the two to liaise in framing similar sets of rules. Where exemptions are introduced in the rest of the UK, they should certainly be mirrored north of the border. Otherwise, we will end up with a distortion in the markets, which can never be good.

Gavin Brown: Thank you.

Jean Urquhart (Highlands and Islands) (Ind): I want to follow on from the point that Gavin Brown has just raised and your explanation in response. I am interested in the fact that your recommendations are that there should be no difference.

You say that people should understand the market and the tax, that it should be clear and that there should be no difference, but there is a huge difference between the markets. We heard in evidence earlier that we attract far less inward investment. Whether or not we think that is a good thing, the point is that it is a different market. House prices have been dramatically different over the years—we are not stepping into that situation now.

In time, there will of course be differences. Why do you not recognise any of those circumstances? Why are you so determined that the rest of the UK and Scotland should maintain similarity on the tax?

Susannah Simpson: In our view and our clients' view, the paramount point is simplicity. Most of our clients trade north and south of the border and they include SMEs and large diversely held property investors. There might well be differences north and south of the border, but we have not carried out any research to understand that, and that is not what I am here to advise on.

Interestingly, the difference in the threshold for LBTT up here and that for SDLT in the rest of the UK—it is £145,000 up here—means that the 3 per cent supplement will arguably impose a larger burden in Scotland than in the rest of the UK, because of the hike in rates and the lower thresholds as you work up through the bands. Therefore, the 3 per cent will be a much heavier burden north of the border. Parliament might want to take that into account when taking a decision on the issue.

Jo Joyce: The big issue for our clients is simplicity. LBTT is a complex tax, as is SDLT. As the RICS paper sets out, we are talking about another incredibly complex add-on to the tax—in effect, it is another tax—and that is the case in both systems. Given all that, it is incredibly difficult for taxpayers to manage all these changes.

Another point is that the policy objectives of both Governments seem closely aligned on the issue. I realise that the markets are very different, but even in the rest of the UK we have incredibly different markets. The market in London and the south-east bears no resemblance to the market in the north-west. We have very different investor types and purchasers.

That is why the legislation is so complex and why the UK and Scottish Governments need to ensure that any legislation that is introduced is robust and fit for purpose. If that means that there is a divergence in Scotland because that is the best way of achieving the policy objective, that is fair enough, as long as both Governments have thought that through and the legislation is introduced on a sound basis.

Isobel d'Inverno: There are already quite significant differences between the two systems. The treatment of mixed purchases in the bill that we have appears to be different from the approach that will be taken down south. For example, if someone is buying a residential property with a commercial property—the shop with the flat above it—our LBTT legislation will apply the 3 per cent surcharge to the flat, whereas from the UK consultation that does not appear to be the case in

the SDLT legislation. Again, purchases of six or more dwellings are taxed at the commercial rate, and it looks as though the SDLT surcharge will not apply to such transactions, whereas the LBTT one will do.

We already have quite a different approach—and there are other differences between SDLT and LBTT—and I am not sure that it would be terribly easy to align the two systems totally. We need to ensure that there is clear guidance about LBTT, so that taxpayers are aware of how it works and the fact that the systems are different.

Jean Urquhart: Thank you.

Jonathan Gordon: I can say from my background in land economics, rather than my RICS perspective, that the difficulty about whether to match a policy that the UK Government introduces is one that the Scottish Parliament will face multiple times.

The devolution of a small number of taxes leaves little flexibility for altering the approach to taxation here. The larger partner in the group decides on tax for England and Wales, where there are 50 million people, who are all potential investors in the market here in Scotland, which has 5 million people. That type of competition here is far too big a risk to ignore.

The same problem will arise in decisions about income tax and everything else. When the Scottish Government has only a small number of taxes on which it can make decisions, it might copy UK tax changes or introduce changes here not because it is a good idea to change income tax or LBTT rates but because there are no other options, in that there are no other taxes to alter or introduce.

Jean Urquhart: I am sure that the Deputy First Minister will be listening to your comments on that.

In paragraph 9 of the paper from the RICS, you acknowledged that Scotland's rural population is in decline and that there is a lack of housing in rural areas, but in paragraph 26 you recommended an exemption for holiday homes.

In the rural Highlands and Islands, which I represent, there are many communities where as many as 40, 50 or indeed 60 per cent of homes are holiday homes, which brings huge problems for the community. If you were to ask people in those communities, I think that a lot of them would say that they would like people to pay a higher tax, with no exemption for holiday homes, because that is one of the most significant problems that we have to deal with.

Jonathan Gordon: I guess that that is why it is good to give oral evidence. The RICS proposal is to exclude purpose-built holiday homes, so we are talking about things like holiday cabins, chalets on holiday parks and so on. The exemption is

specifically for purpose-built homes for rent. We made the same recommendation for purpose-built student accommodation, which is not suitable for individuals to own in their own right.

In Aviemore and other places in the Highlands there are purpose-built holiday villages. People stay for a couple of weeks and rent the accommodation out when they are not there. Such homes are not suitable for people to live in full time.

Jean Urquhart: I hear what you are saying. You suggested in your submission that your proposed approach would incentivise investment and advance tourism, but why would we single out that particular aspect of tourism for tax relief, when no other aspect of tourism is singled out?

Jonathan Gordon: I will provide some anecdotal evidence. If it snows a lot this week and I want to go skiing at the weekend and I try to book a chalet, it will be difficult to do that. Anyone from London to Inverness trying to do that would find it difficult to book accommodation and go there as a tourist. Specific purpose-built holiday accommodation is not the same as homes for local residents to live in.

Jean Urquhart: I think that we will have to disagree about that statement, but I suppose that that is a discussion to be continued.

Jackie Baillie (Dumbarton) (Lab): I want to look at some of the assumptions that have been made on transactions and yield, if that is possible. The Scottish Government estimates the number of transactions to be from 8,500 to 12,500. I am keen to get a view, given your experience, on whether you think that that is a reasonable assumption.

The Government estimates the yield to be between £45 million and £70 million without any unintended consequences but, once it applies a behavioural response, the yield drops to between £17 million to £29 million. Again, in your view, given your experience, is that a reasonable assumption to make?

Susannah Simpson: I am afraid that I cannot comment on that because we have not carried out the research and we do not have enough evidence to comment on it.

Jo Joyce: I think that our response would be the same. That is not the angle that we have come at it from.

Isobel d'Inverno: I am afraid that we cannot comment on that either.

Jackie Baillie: I am striking out.

Jonathan Gordon: I can always try.

Jackie Baillie: God loves a trier.

Jonathan Gordon: I believe that, since LBTT was introduced, the income from it has not met targets or the planned budget. One reason is the unintended consequences of the Government trying to make property more affordable at the bottom level by exempting a large proportion of the purchases from LBTT altogether.

That relates back to the example that I gave of my situation. If I do not move into a slightly bigger house, my house is not available for the next person to move up the ladder; nor can the first person on the ladder move up from their one-bedroom flat and afford to buy my family home when they start a family. Their home is therefore unavailable to the person at the bottom.

There are fewer transactions at the top because a lot of the people who live in the high-value properties that are subject to the penal rates at the top end are not in those properties because they are wealthy or because they have high incomes. They are there because the value of their properties has grown with a rising property market. They may well have an asset that is worth a lot to them but, if they cannot move on to the next property because of the new penal rates, it will not free up the next properties down the line for, eventually, the first-time buyers. There is a lack of supply at the moment because property prices in Edinburgh and in other hot spots around Scotland are rising extremely fast—although perhaps not in Aberdeen.

The problem is not a shortage of supply of homes; it is a shortage of the right type of homes in the right location at the right price.

Jackie Baillie: Okay. There is an assumption that the yield is going to rise in the next four years by 87 per cent. I know that you have not looked in detail at the maths but, given your experience, is it reasonable to assume that there will be that size of rise?

Jonathan Gordon: I do not know.

Isobel d'Inverno: It is very difficult to say. As regards the yield from LBTT, it is probably appropriate to point out that there is a difference between the commercial and residential yields. The effect of the residential rates has certainly had an impact. There was indeed a lot of activity before LBTT was introduced, which therefore brings things out of the equation. One would not have thought that there would necessarily be the same sort of timescale for that to happen in relation to the supplement under the bill, but we are in the early days of forecasting tax revenues.

Jackie Baillie: It might be more wishful thinking than reality, but we can only wait and see.

I will touch on the likely effects of forestalling. Mr Gordon was asked about it earlier. Are any of you

seeing evidence of a rush to buy or indeed sell properties? Is what is happening more down to the changes to the UK income tax regime that are coming in, or is it down to the supplement? I am keen to get your views as to the balance of what you think is the causal effect.

Susannah Simpson: I agree with the RICS that we have not seen a huge amount of evidence of that happening so far, but it will inevitably happen when a date is fixed. I therefore expect to see some increase in transaction activity before April if the bill proceeds as planned, so that should be taken into account in budget forecasts. I do not have much more to add than that.

11:00

Jo Joyce: From my perspective, although we do not really deal with individual transactions, the majority of queries that I have been getting, both north and south of the border have been from people who are clients but who are ringing up with personal queries about buying second homes or investing with parents or children. Given the uncertainty around the tax, the advice can only be, "If you're going to do it, do it before 1 April, because we don't know how this is all going to work yet."

Isobel d'Inverno: There has not yet been a huge amount of information about the proposed LBTT supplement in the public domain, so people have a lot of queries about it and I suspect that in the next couple of weeks how it works will become clearer, which may well trigger greater activity as people try to buy things before the date. The timescale for starting from scratch and completing transactions may mean that it is just not possible, but there will certainly be some people trying to do that.

Jonathan Gordon: Eighty per cent of our new landlords are people who are moving out of their home. They are not purchasing a home to rent it out. One of the immediate failings in the discussions around the new tax is a misunderstanding of how the market creates itself and develops. Those are just normal people, and they often keep the property because they do not have a pension and the property will be their pension. I have only minor anecdotal evidence, but I have a couple of clients who are getting rid of all three of their properties, rather than just one, because of the changes to the mortgage tax relief that are coming in.

The majority of our landlords are completely unaware of most of the legislative changes to do with smoke alarms, electrical safety and the new tenancy regime that will give tenants security of tenure. We write blogs and send people links to the information, and they open the email but do

not click on the links, so they are unaware of the changes. They rely on us to look after everything for them and they get on with their daily lives because they are just normal working people; the majority of them are not wealthy investors.

Jackie Baillie: That is interesting. There is something that I would like to pursue with Ms Simpson. KPMG suggested that, because of forestalling, people might end up overextending themselves in the rush to buy. Your suggestion is that lead-in time should be extended, but surely that increases the chances of forestalling. If you were to extend the lead-in time, by how much would you extend it?

Susannah Simpson: Extending the lead-in time would indeed increase the chance of forestalling. It gives the Scottish property sector the ability to see how the charge hits and lands south of the border, and it goes across the overarching view held by us and our clients that certainty north and south should be promoted, whatever happens.

I would add to my earlier comments that the upcoming removal of interest relief on mortgage payments, which is not devolved and therefore takes effect for the whole of the UK in April 2017, could combine with the additional charge to create more forestalling than perhaps has happened in relation to other tax changes in recent years. It may be that combination of the two that is worth taking into account.

John Mason: Before I go on to my main question, I want to follow up on that last point. Words such as “consistency”, “distortion”, “simplicity” and “complexity” have been used, and it seems that some of those things are in tension with one another.

Correct me if I am wrong, but you seem to be favouring consistency across the UK, presumably because that is where your clients are, but having a simpler system in Scotland—which we have tried to achieve with LBTT—might advantage first-time buyers and smaller buy-to-let landlords. Am I right in thinking that that would be less important to you because of your client base?

Susannah Simpson: Not particularly, because our client base extends to cover SMEs and smaller buyers and investors in property as well. You are right that a balance has to be struck between having simplicity and pushing on and helping the PRS in Scotland. The point was made earlier that there are differences between the two markets and we simply have not carried out the research to be able to understand that in enough detail.

John Mason: In the longer term, is it not a good thing—indeed, it was one of the reasons for devolution—for the Scottish tax system to compete with the English tax system?

Susannah Simpson: That is a policy decision for Government; it is not something that I am here to comment on.

John Mason: But competition is part of life. Apparently, KPMG and Ernst and Young compete with each other.

Susannah Simpson: Apparently they do.

John Mason: So you are in favour of competition.

Susannah Simpson: Competition is a good thing.

John Mason: The main area that I want to touch on is whether there should be different reliefs for different kinds of purchaser, which we discussed with the previous panel.

The convener raised the issue of exemptions for purchasers of six properties or 15 properties. I am struggling to get my head around whether any number should be applied and, if so, whether those numbers are appropriate. Given that both we and the UK Government are trying to help first-time buyers in their competition against the conglomerates, surely it is a good thing that anybody with more than one property pays a bit extra, as that will inevitably shift the balance towards the first-time buyer. Can anyone expand on why the numbers six or 15 should be favoured?

Jo Joyce: The whole question of six or 15 properties is a bit strange. There is no rationale for why the UK Government plucked the number 15 out of the air.

If the figure six or more was applied, it would bring a transaction within the non-residential rates system and it would be recognised as a commercial transaction. It is my understanding that, in the early days of SDLT, the British Property Federation lobbied for that approach, because it has sound reasoning behind it. That is why the same rule was introduced for LBTT. There is a clear acceptance that the purchase of six or more properties is not a residential purchase but a commercial transaction.

The second point is whether big conglomerates, as opposed to individuals, should have relief at all. We probably need more data on that, but I do not think that the larger investors are competing with first-time buyers; they are buying and investing in very different things. The larger investors will potentially buy numerous flats in a big apartment complex to rent out, whereas first-time buyers might be looking to buy existing property stock. That is a key difference.

From what you have said, it seems that there is a real problem with second homes and holiday homes, which is not the area that the big investors are looking to invest in; such investors are looking

to invest in new builds—the purpose-built rental sector.

John Mason: I will switch to asking you about new builds, Mr Gordon. I think that you suggested that we should favour new builds as against older properties. Is that correct?

Jonathan Gordon: Yes. The Scottish Government's strategy from 2013, "A Place to Stay, A Place to Call Home", talked about ensuring fairness, security and safety and about encouraging more investment in the sector. We are probably all aware of house builders in the 1980s and 1990s developing a site and selling all the properties before they even started building them. When they were built and came on the market people would flip them and sell them at a profit, because the market was moving so fast.

There is a development next to our office in Broughton in Edinburgh, which is a very popular area for rentals, where Barratt Homes has been building 300 or so flats over the past five years. The builder has built them gradually; the number of sales coming through the door has given it the confidence to build one block after another. In such a development, there is no competition between first-time buyers and investors buying a single flat.

The house builders all have to have a certain amount of land banking in order to plan for the next few years ahead and run their company. Whether it is the right amount of land that they control is skewed a bit, because it is difficult to have the confidence to build on a site. They cannot build any more cheaply and they cannot reduce the price that they paid for the land, so they cannot sell the houses at lower than a certain level and still have it be profitable.

The confidence to build houses along with faster build-out—there will be an increase in sales if investors are all pushed towards the new-build market—would encourage new builds to be completed more quickly. That would bring more houses on to the market and more confidence to start new sites, which house builders are keen to do—new sites may already be in, or past, planning. That would improve the supply and drive up the quality in the private rented sector by introducing new-build properties into the market in the right areas, rather than people having to rely to existing properties with electric heating or old single glazing in poor areas.

John Mason: I would question the quality. I have just been visiting new properties in my constituency, which happen to have been built by Persimmon, and the quality is just awful. An investor—either an individual or a company—would be better off buying existing stock like my 1950s flat, where the walls do not move.

Would we not be distorting the market away from existing properties if we favour the new properties?

Jonathan Gordon: The key difficulty in the private rented sector at the moment is the lack of housing supply to meet the demand. Often, we do not take on a property because it does not meet our repair standard or is just not in a good enough condition—for example, it might need new carpets. If a landlord says to me, "Why will you take my property on only if we replace the kitchen and put in new carpets? That would cost £5,000. Will I get that money back in a higher rent?", I say, "No, probably not." There is a shortage of supply, and tenants have to take what they can get. If a landlord rents a property at £500 per month, they will get that regardless of whether they put in a new kitchen.

Although you have specific experience of a development in your area, I have wide experience of visiting flats in the existing stock that I would not want to live in. It is much more common to be in the existing stock than in the new stock.

John Mason: Another specialist area that it has been suggested should be treated differently is purpose-built student accommodation. Is that generally the feeling? Presumably a lot of students rent in blocks that are always going to be for students, so it is not those places that we are thinking about; I guess that we are thinking about people buying student flats that are outwith a main campus setting.

Isobel d'Inverno: One point about student accommodation is that a lot of the purpose-built stuff is cluster flats, with a central dining room that has a kitchen and five bedrooms clustering around it. In the context of looking at relief for bulk purchases, the point is that such a flat is treated as one dwelling for, for example, multiple dwellings relief, although it is actually five bed spaces, so maybe it ought to be treated as five dwellings.

Another point that is being made about student accommodation—

John Mason: Can you clarify who is buying that kind of place? Presumably it is not individuals.

Isobel d'Inverno: Investors.

John Mason: So it is not the students or their families.

Isobel d'Inverno: Not generally, no.

John Mason: The whole block is not owned by one investor; they are still bought individually.

Isobel d'Inverno: No, it is.

John Mason: The whole block is bought by one investor.

Isobel d'Inverno: Yes. I was looking at it from the angle of relief for investors.

Jonathan Gordon: That type of flat is in a different planning class.

John Mason: Is it not possible to buy and sell those flats individually? Do they have to be bought and sold as a block?

Isobel d'Inverno: No, they do not have to be.

Jonathan Gordon: In theory, those flats could be split up in future, but it is not the intention of any investment companies to do that.

John Mason: I had not quite understood that.

Isobel d'Inverno: It can happen, in some cases. There is a vague development of people, after they graduate, thinking that they might quite like to live in something like that, although I certainly would not. [*Laughter.*] Well, maybe it would be more fun. However, those developments are designed for students to live in, so the point is to make sure that there is not a slowdown in developing them.

The PRS probably needs a relief partly because if there is a relief from SDLT—it sounds as though there will be—it would be unfortunate if there was not a relief in Scotland as well, although it would not necessarily need to be exactly the same.

11:15

John Mason: You seemed more relaxed earlier about differences between Scotland and England because there are so many already. Are we being too slavish in following England?

Isobel d'Inverno: Well, I think that the figure of 15 was plucked from the air, as Jo Joyce said. That is what we understand—there is not necessarily any science behind it. However, the scale of investment in student accommodation and the PRS in Scotland is different, so there are different considerations.

Jonathan Gordon: It is important to understand who the investors in the PRS are. They are companies such as Standard Life and Aberdeen Asset Management. They are the type of company that invests in multifamily homes in America or in building blocks of flats to rent in Germany, Holland or elsewhere in Europe where more people live in private rented accommodation than here and the accommodation is potentially more affordable and of higher quality than in the private rented sector here.

Two key things have been stopping that investment in this country over the past 25 years compared to other countries: there is a lack of land available for investors to get, and building houses has been profitable over the years with the growth

in house prices. The investors are not wealthy conglomerates that are making vast profits; the margins that I see on specific developments that are planned for Edinburgh, Aberdeen and Glasgow are right on the cusp of whether it is possible for the investor to develop the house and make a yield that is anywhere near competing with the commercial investments that they make. Such companies are either investing in building another shopping centre such as that at the Gyle or building 300 flats for people to live in.

If there is a desire to improve the quality of accommodation for people in the private rented sector, it is essential that such investors are not disincentivised from investing in the UK or Scotland. If the LBTT supplement is charged at 3 per cent of the value of the investment either at the beginning when an investor buys a new development that they have arranged with the developer to develop for them to buy or when it is traded on later, it will make the difference between achieving a gross or net yield that is profitable and one that is not profitable.

John Mason: Do most of those companies operate only in the UK, or are you suggesting that they operate throughout Europe and even throughout the world?

Jonathan Gordon: The Royal Bank of Scotland is trying to create £1 billion of investment in the sector. Legal & General, M&G Investments and lots of other UK-based investment companies—the companies that run the pensions for most people—are looking to diverge from commercial into residential property at this stage when they have not done so in the past. It is probably 50:50. There are pension companies that look to invest here that will not develop but will buy property from a developer.

John Mason: Do they invest only in UK property, or do they invest in Spanish property too?

Jonathan Gordon: Aberdeen Asset Management invests throughout Europe, I think. In Holland, far more people rent their homes than here.

John Mason: My point is: are those companies used to dealing with multiple tax regimes and legal systems? If the same company invests in Spain, Ireland, England and Scotland, the system does not matter because they are used to dealing with lots of different systems.

Jonathan Gordon: Different tax rates are not an issue but penal tax rates are. They have not invested here because it has not been cost effective.

John Mason: Because the tax rates in the UK are much higher than those in Holland or Germany.

Jonathan Gordon: I think that it is more to do with the ability to get land at the right price to build houses.

John Mason: So tax is not a big part of that.

Jonathan Gordon: It is essential because it is the other consideration.

John Mason: But the cost of land is the main one.

Jonathan Gordon: In my experience, it is all in the mix. If you increase the tax that investors have to pay, you make it even more difficult to invest.

Isobel d'Inverno: The point is that, if an investor is considering Edinburgh and somewhere down south and there is a relief from the 3 per cent down south but not up here, it will stop thinking about investing up here.

John Mason: My point is that if the companies are also investing in Spain, for example—I understand that a lot of British individuals do that—we should also consider how our tax rate compares with the Spanish tax one. Although it is our main neighbour, I feel that we are too fixated with what is happening in England. If what Mr Gordon says about international competition is correct, should we not also look at Spain and Ireland and others as well? We do not have time to do that and I do not expect an answer.

My final question is on housing associations. Should we favour housing associations in any particular way?

Isobel d'Inverno: One point to make is that—as I understand it—all the normal reliefs from LBTT will also be relevant for the 3 per cent supplement. For example, if a housing association is a charity, it will not pay the 3 per cent supplement because it will not pay LBTT on a purchase.

John Mason: I think that the example that was given before was mid-market rent, where there may be a subsidiary that is not a charity. Do you feel that such a body may need to be favoured a bit?

Isobel d'Inverno: It would be helpful, but it has been mentioned that, as more reliefs are added on, there will be nothing left to collect.

John Mason: That is a good point to finish on.

Lesley Brennan: I think that we are hearing that there are still questions to ask, and maybe some more evidence to be gathered.

I will go back to Mr Gordon. A number of times, you mentioned a lack of supply in the private rented sector in Scotland. I will join up a couple of

points that you made. You mentioned a lack of supply in the private rented sector, which is pushing up rent. You also mentioned that there is a lack of inward investment in this sector in Scotland. Is that correct? Did I hear you right?

Jonathan Gordon: Yes.

Lesley Brennan: I am just playing devil's advocate. Susannah Simpson and Jo Joyce referred to simplicity. If the decision was taken to not apply the 3 per cent supplement, would there be an opportunity to expand the private rented sector in Scotland?

Jonathan Gordon: The difficulty is the risk of too much inward investment to Scotland, particularly from other parts of the UK.

Lesley Brennan: Could you expand on that? What is the risk?

Jonathan Gordon: Inward investment from outside the UK is different from other parts of the UK. It is much easier for somebody sitting in London or Manchester to consider buying a flat in Aberdeen or Edinburgh. Somebody in China or the far east will not look at the tax changes that are made in Scotland to encourage investment. Somebody might see the opportunity to market things to them and, if that happened and we did not have the rate in Scotland, it might attract more inward investment here. However, that is a risk.

Lesley Brennan: A risk to who?

Jonathan Gordon: There is a risk to the people that the policy is intended to help. That is first-time buyers or anybody who is trying to buy a home that they can afford. As more people try to buy on the market, the price rises.

Lesley Brennan: You also talked about a situation in which there was an exemption for purpose-built rented accommodation. In that situation, where would the risk of not applying the 3 per cent be?

Jonathan Gordon: I do not think that there would be any risk in not applying the 3 per cent in that situation. If the UK Government chose not to exempt purpose-built private-rented sector build-for-rent developments at scale, I think that there would be a fantastic opportunity for the Scottish Government to attract inward investment and to meet the aim that the Scottish Government has set the PRS champion in Scotland—a role that it funds.

There are two separate issues. I favour the idea, which is another opportunity, to differentiate by focusing on new builds all together. I am a member of committees of the SPF, RICS and the PRS working party. Across those groups—and among many other people—there is a consensus about the requirement to exempt purpose-built

accommodation at scale. There is a much smaller number of people—such as me—who think that the idea of exempting new builds to encourage more new builds to be built, and better quality PRS to enter the sector from new suppliers or landlords at the individual level, would remove the penalisation of small landlords who are set against large-scale investors. I think that large-scale investors are needed, but why should small landlords be excluded from investing if that means an increase in homes?

We would need strong tracking of the data on what happens with the prices of new house builds. One could argue that, if everything was pushed into that market, the house builders' prices would rise in key hot spots. At present, there is no competition in the market because they are building as the houses are sold. With such an exemption, builders would build more and sell more quickly, and that may affect prices, which would have to be tracked. However, it could be a safe exemption to put in place as an interim measure for a year.

Lesley Brennan: Paragraph 7 of your submission states:

"If this supplement is enacted, we would urge the Scottish Government to consider ring-fencing revenue generated from the 3% ... for investment in housing".

Jonathan Gordon: Sorry—which paragraph is that?

Lesley Brennan: It is number 7.

Jonathan Gordon: I apologise—I made my own submission as well as looking at the RICS submission.

On ring fencing, I think that it is important that any taxes that are raised from the property sector are ring fenced and spent in the area, particularly if the tax is additional, as this charge is intended to be. That revenue could be targeted at affordable homes in particular.

Lesley Brennan: Lastly, I have a general question for whoever wants to answer it. It is about the workability of the measure for second, or more, homes.

Part 6 of the proposed new schedule 2A to the 2013 act is headed:

"What counts as a dwelling owned by a person?"

Paragraph 9(2) states that

"Dwellings situated outside Scotland (as well as such property in Scotland) are to be counted."

If the bill is implemented, how workable is that provision?

Isobel d'Inverno: We have concerns about that, and good guidance will be needed. The point is that the bill refers to ownership of dwellings and

properties overseas being counted if the interest that someone has is similar to ownership of a dwelling in Scotland.

Obviously, Scottish solicitors are not familiar with the real-estate systems in other countries. How will someone in Scotland necessarily be able to tell whether a person has something in Spain that is similar to ownership in Scotland? There will be quite difficult cases, and it will be important to have guidance from Revenue Scotland that tells people what counts and what does not, with a list of the things that are in or out. It will not be fair to leave it to taxpayers or their agents to try to fathom whether someone's interest in a property in Spain is the same as ownership of a dwelling in Scotland.

It is probably inevitable that properties all over the place will have to be looked at if we are going to look at properties in the rest of the UK, which it would seem sensible to do if the provision is being introduced. We see some issues with the provision.

Susannah Simpson: It comes down to enforceability. Ultimately, we will be relying on taxpayers to self-assess, as with many of the taxes that are currently in place. There are exchange agreements between countries, but we will be relying on that working. The issue is whether it is discoverable that a second home has been missed in another territory. That is something to take into account.

Jo Joyce: That is why we favour a main residence purpose test, because it would not matter what someone owned in the rest of the world. If they were buying a house with the intention of using it as their main residence in Scotland, they would not pay the 3 per cent charge. If they were buying a holiday home or buying to let, they would pay the 3 per cent supplement irrespective of what else they owned globally. That would make things clearer for inward investment, and it would also be much easier to administrate. As Isobel d'Inverno said, the legalities are different all over the world, and it will be very difficult for people to determine their position.

Jonathan Gordon: For once, I was going to say, "No comment," but, with regard to our general view on the risks around investment from the rest of the UK if we do not have the provision, I suppose that a main residence test would potentially remove the risk of people looking for a flat to buy or rent in Edinburgh because it is cheaper to do so here. If they have to come and live in it, they will not do it, so that is a potential change that could remove some of the risk.

11:30

Isobel d'Inverno: As others have said, the main residence exemption would be the best approach, if it can be made to work. It is worth mentioning that the capital gains tax main residence test comes at the other end: it is a sale-based test, so it is possible to look back and see what has happened, whereas what we are talking about looks forward and at the intention. It could perhaps be linked with incredibly high penalties if someone said that a property was their main residence and they were telling an untruth. However, intention is always a problem. We would need a period of time after which the penalty would apply if it turned out not to be someone's intention to use the property as their main residence. People's intentions change—life happens and different things come into play. A main residence exemption would be a much simpler approach, rather than go through all the hoops of the 18 months, holiday homes and so on.

Susannah Simpson: The other point that should be tied into that is about aligning the residence definition with both the capital gains tax principal private residence exemption and the Scottish resident income tax. That goes back to my point on complexity and ensuring certainty across the taxes. If we have one test for one tax and a different test for another, that will just confuse matters.

Mark McDonald: I am interested in the main residence exemption. How easy would it be to administer that? Also, how easy would it be to get around it? For example, someone could purchase a property and declare that it was their main residence and then, for whatever reason—perhaps employment—they could argue that it has ceased to be so. If someone chose to be untruthful, as Isobel d'Inverno has suggested, how easy would it be for them to manipulate that exemption?

Isobel d'Inverno: Most people only really live in one place. Under the Scottish taxpayer test, if someone has two houses, they have to decide which one is the main one. Revenue Scotland has issued lists of things that could be taken into account, such as where someone's family lives, where their credit card bills go or where any clubs that they belong to are. Anecdotally, where your dog lives is also a good indicator. It is possible to determine that as a matter of fact, but a person's intention is slightly more difficult to establish. The question is really whether, when someone buys a property, it is going to be the one that they live in and, if not, they will have to amend their tax return and pay the 3 per cent.

Mark McDonald: Would you expect there to be a length of time for which an individual would have to say that a property would be their main

residence? Otherwise, potentially, it could be their main residence for six months and they could then flip it, as a means of avoiding the 3 per cent surcharge. That is entirely hypothetical but, at the end of the day, that type of situation would merit some probing if that exemption were to be introduced.

Jo Joyce: We already have clawback provisions for other reliefs, and those could be introduced in this case. If someone claims the relief on the 3 per cent and, six months later, they get another main residence and claim the relief again and they have disposed of that previous main residence within either the 18-month period or the three-year period, the relief that they claimed should be clawed back—they would have to pay the money back. Clawback is in place for group relief, certain transactions under charities relief and relief for multiple dwellings, so there is already a precedent.

I appreciate that it might be easier for people to be fraudulent. However, fraud is fraud and if people are being criminal they are being criminal. I do not think that the majority of people would behave that way.

Mark McDonald: That flows into the other questions that I want to ask. First, there has been a lot of talk about the potential for market distortion, either by introducing the 3 per cent charge or by not introducing it. It has been suggested that we should perhaps have held back for a year and waited to see what impacts there were. Is there a risk that, if there were significant displacement as a result of the change being introduced in England and Wales but not in Scotland, it would be difficult to undo that displacement a year later and put the 3 per cent charge on? If everybody has rushed to make those purchases in the intervening period, it would be impossible to put that genie back in the bottle.

Susannah Simpson: I think that you are right. If the 3 per cent was delayed for that period, there would be a distortion. Ultimately, though, once it was introduced, things would sort themselves out over time. It would not necessarily harm things in the more distant future or the medium term, although there would be a risk for the period in which there was a difference.

Jo Joyce: I agree that that is definitely a risk. Our approach is that it is far more risky to introduce hastily put together legislation, with collateral damage and unintended consequences, which takes years to unpick, than to put together something that is fit for purpose and does what you want it to do.

Isobel d'Inverno: There are quite a lot of points that we have not bored you with in relation to partnerships, trusts, joint ownership and so on.

There are a lot of technical areas in which it may be necessary to make improvements to the legislation so that things work as intended.

Mark McDonald: The cabinet secretary is coming up next, so if there are technical questions that you think we should ask, if we get them on the record it at least allows for that discussion to be had. You suggest that it might bore us. I cannot speak for everybody, but if there are specific questions that need to be put, I think that the committee should be advised of them.

Isobel d'Inverno: We need to be sure exactly how trusts will be treated. For example, if a trust that has a corporate trustee buys a house, will that automatically be treated as subject to the 3 per cent charge, even though the trust does not have any other residential properties? That would be for a discretionary trust, where there is no one with a life interest and so on.

Similarly, where the trustees are individuals, one would not have thought that their purchases in their capacity as trustees should be affected by what they personally own. The house that the trustee owns as an individual should not affect purchases by the trustee as a trustee. Also, what is the situation for trustees of more than one trust? What is the intention in all of those cases?

Mark McDonald: Are you asking whether the purchase will be assessed in relation to the trust as an entity rather than in relation to the interests of individual trustees?

Isobel d'Inverno: Trustees are either individual or corporate. We have to think about how it ought to work. One would think that, if the trustees are individuals buying as trustees, the fact that they personally own a house should not affect whether the trust buying a house has to pay the 3 per cent. I am talking about those sorts of questions.

In partnerships, too, partners are individuals. It appears that, if any of the partners has a house as an individual and the partnership buys a residential property, it would be automatically caught. However, that is not necessarily appropriate in some cases, because it might be a farming partnership buying a house for employees to live in. It is not clear that that follows the policy. Those are the kind of things that perhaps need to be explored a little further.

The Convener: I thank colleagues for their questions and, most of all, I thank our witnesses.

Next, we will take evidence from the cabinet secretary. As we are 15 minutes behind schedule and Parliament is considering the Budget (Scotland) (No 5) Bill this afternoon, we will just have a brief break. We will reconvene at 11.45 sharp.

11:40

Meeting suspended.

11:46

On resuming—

The Convener: We continue our scrutiny of the Land and Buildings Transaction Tax (Amendment) (Scotland) Bill at stage 1 by taking evidence from the Deputy First Minister. Today, Mr Swinney is accompanied by Robert Buchan, Greig Walker and Sean Neill of the Scottish Government. I welcome our witnesses to the meeting this afternoon, and I invite Mr Swinney to make a short opening statement. I should say that it is not quite afternoon; it just seems like it, because we have been here for so long. It is still the morning, so good morning, cabinet secretary.

The Deputy First Minister and Cabinet Secretary for Finance, Constitution and Economy (John Swinney): I did not want to correct you, convener. Good morning and thank you for giving me the opportunity to make an opening statement ahead of our session on the Land and Buildings Transaction Tax (Amendment) (Scotland) Bill.

I would like to start by thanking the committee for its role in expediting the timetable for the bill, which delivers on the commitment that the Government made in the 2016-17 draft budget to introduce a 3 per cent LBTT supplement payable on additional residential homes, such as buy-to-let or second homes. Subject to the proposal receiving parliamentary approval, from 1 April 2016 anyone who buys a residential property in Scotland who already owns one here or anywhere in the world will pay an additional 3 per cent LBTT on the whole purchase price of that property unless they are simply replacing their existing main residence.

The bill has been introduced to maximise the opportunities for first-time buyers to enter the Scottish property market and to counteract the potentially distortive effect of the new stamp duty land tax higher rates that are being brought in in the rest of the UK. Without an LBTT supplement, the SDLT higher rates would make it relatively more attractive for investors to buy up homes in Scotland, particularly at the lower end of the market, thereby increasing the competition for first-time buyers.

The LBTT supplement will be payable on the whole of the purchase price of an additional home for any transactions of £40,000 and above. The supplement will impose greater tax burdens on purchases of additional property, particularly lower-value transactions, where demand for properties for investment purposes or holiday homes can make it difficult for new entrants to the

market to purchase a main residence. For example, someone who buys a property as their main residence for £100,000 will not pay LBTT, whereas someone who buys the same property as an investment or as a second home will pay £3,000.

As is noted in the draft budget, it is estimated—after taking account of behavioural effects, including the impact on underlying LBTT revenues—that the supplement will raise between £17 million and £29 million in 2016-17. The Scottish Fiscal Commission, which recognises the uncertainties that are posed by the lack of Scottish data on such transactions, has endorsed that estimate as reasonable.

The Convener: Thank you very much for that opening statement.

The draft budget states—you touched on this—that the supplement

“targets the lower end of the market, where demand for properties for investment purposes or second homes could make it difficult for new entrants to the market to purchase a main residence.”

You said that the new SDLT higher rates in the rest of the UK could have a “potentially distortive effect” on investment, but the Scottish Property Federation pointed out to us that only 2 per cent of all investment in the UK comes to Scotland.

The Institute of Chartered Accountants in England and Wales has said that, in

“copying the UK’s proposals”,

the Scottish Government has

“missed ... an opportunity to distinguish Scotland as an attractive location to live, work and do business”.

The ICAEW goes on to say that a YouGov survey for the Council of Mortgage Lenders found that 34 per cent of landlords will reduce investment in the private rented sector following the announced income tax changes and the introduction of the SDLT additional rate. Do you not have concerns that, as has been said, we have missed a trick, because it is not as though we actually get much investment in the sector anyway and Scotland perhaps needs a bit more of it?

John Swinney: There will always be conflicting ambitions and aspirations in the marketplace. One issue that is very much in my mind and was in my mind when I designed the land and buildings transaction tax legislation in the first place is the importance of ensuring that I create the right investment opportunities for individuals to get on the property ladder, principally as first-time buyers. The evidence of stimulation of that market has been clear to see from the performance of land and buildings transaction tax since the start of the current financial year.

The danger in taking up the market opportunity that your witnesses have suggested is that, although that could have attracted investment into Scotland, it could have attracted investment that crowded out the opportunities for first-time buyers to gain access to the property market in Scotland. That would simply be because of the ability of financially stronger individuals and institutions to invest in the Scottish market in a fashion that made it more difficult for new entrants to access the property market.

When the proposition in the United Kingdom emerged, the judgment that I arrived at was that there was a potential for the policy approach that I had taken on land and buildings transaction tax—it is consistent with the Government’s wider policy agenda on home ownership, in which we have taken significant steps to try to strengthen the ability of individuals to gain access to the property ladder—to be undermined had I not acted to ensure that those opportunities were open and available for members of the public in Scotland.

The Convener: PricewaterhouseCoopers, for example, said that there is no competition between first-time buyers and institutional investors. There is a consensus that the bill should exclude purpose-built new build in order to attract those investors and that that would not have an effect on first-time buyers. The Council of Letting Agents and the Scottish Association of Landlords have said that the less-favourable legal framework in Scotland is already a disincentive to investment in housing and therefore, if the bill becomes legislation, the threshold and rates should not be the same as those in the rest of the UK.

John Swinney: I remain open to those questions in the light of the evidence that the committee has taken on the question. There is certainly an argument, which I am exploring, about the extent to which reliefs should be formulated in relation to the application of the legislation. I am actively considering the particular question of new-build reliefs. I have reflected on the issues and I will do so further once I see the committee’s report when it is published in due course. There is undoubtedly an argument to be made in that respect and I will give it careful consideration.

The Convener: Our call for evidence closed only on Friday. This morning, we have heard from two panels and you, and we have to produce a report next week. The Law Society of Scotland said that considering the bill with such haste is

“not conducive to the formulation of good-quality, robust tax legislation.”

Would it not have been better to wait a full six months or a year from the introduction of the measure in the rest of the UK before considering whether it could be applied in Scotland, as that

would have allowed more time to create more “good-quality, robust ... legislation”, as the Law Society suggests?

John Swinney: The challenge for the Government and, I suppose, the test for the committee and for Parliament is the extent to which we can create robust legislation at whatever moment we decide to so, and according to whatever timescale.

I can think of some proposed legislation that Parliament has laboured its way through, giving it its greatest consideration. Having been considered by absolutely everybody, it has been found to be flawed. We can give these things all the time in the world but then find that we have missed something when they come to be tested. That has happened to Parliament on a few occasions after it has devoted an extensive timescale to a bill.

I will not now try to persuade the committee on all occasions that we should condense the timescales for the consideration of legislation; that is an observation on what has happened in certain cases.

One of the issues that I have discussed with the committee on previous occasions is the fact that our legislative process as a Parliament, which has been carefully constructed over many years and which takes a long time to consider and assess all the relevant factors in bills, may not be able to be applied when we have to take swift decisions on tax and budgetary issues. We have seen some of those interactions already. We saw them over the introduction of land and buildings transaction tax, when our careful, thoughtful preparatory timescale was overtaken by the actions of the United Kingdom Government, and I had to act accordingly.

The interaction of wider factors with our legislative process is not always all that simple. I have taken a great deal of time over the course of the formulation of the tax responsibilities of the Parliament to consult extensively with organisations such as the Law Society of Scotland—and there are many others—which give willingly and voluntarily of their time to help us in the process of creating good legislation. I want to encourage that.

We adopt a particular approach to the formulation of tax legislation, which is as thoughtful and comprehensive as we can make it. There will, however, be circumstances where I judge that there is a necessity for us to act. In this circumstance, and referring to some of my earlier answers, I would be concerned that, if we had left these measures for a year before being implemented or if we had waited for them to be considered—which might mean having to leave them for longer than a year, as some issues will

take time to resolve—we might have found the market opportunities for first-time buyers in Scotland to be eroded as a consequence of the differential between Scotland and the rest of the United Kingdom.

The Convener: Okay—although we have not seen any hard evidence on that so far this morning.

The Association of Local Authority Chief Housing Officers has suggested that there should be

“an early and comprehensive review of the impact”

of the proposed legislation on the housing market, both nationally and locally. Is that something that the Scottish Government would want to do?

John Swinney: I would certainly give consideration to that, yes. Given the fact that we are undertaking the legislative process in an expedited timescale, that is a reasonable request to consider.

The Convener: I have a couple of further points to make before opening out the questioning to the rest of the committee.

First, the issue of loopholes has been raised this morning by the Scottish Association of Landlords and one or two other organisations. The Law Society has basically said that any loopholes would be covered by the general anti-avoidance rule. Do you believe that to be the case?

Secondly, the Chartered Institute of Taxation points out that the

“inclusion of exemptions and reliefs will potentially provide more opportunity for tax avoidance.”

In view of that whole issue around exemptions, reliefs and loopholes, should we have broadly the same reliefs as those that will be contained in the UK legislation, given that you do not want to have any market distortions, or do you wish to take a distinctive approach to that issue?

12:00

John Swinney: I will make two points. First, I reinforce the Law Society's point that the general anti-avoidance rule, which is in the Revenue Scotland and Tax Powers Act 2014, is designed to capture any artificial practices. Artificiality is the key test in the general anti-avoidance rule. The Law Society is correct that there is a catch-all threshold.

Secondly, we have to design and draft the legislation in a fashion that minimises the scope for the artificiality test to be avoided. By that, I mean that we have to try to identify in the legislation the approach and the intent that mean that the artificiality test is able to be applied in as

many circumstances as possible where people are trying to pursue loopholes.

Our approach combines the application of the general anti-avoidance rule and trying to get the legislation as effective and as focused as possible.

Exemptions and reliefs are an entirely legitimate part of taxation legislation, and there will be circumstances in which we will wish to design exemptions and reliefs to deal with certain circumstances, but they must also pass the test of not being designed to create loopholes. Therefore, we have to consider what may be the contents of exemptions and reliefs very much with a mind to avoid any artificial behaviour emerging as a consequence of the drafting and design of the provisions.

The Convener: The Chartered Institute of Taxation has helpfully provided an example of a way in which the tax could be avoided. To quote from our adviser's briefing:

"Mr A lives in a flat worth £100,000; he buys a house worth £300,000 to move into and his elderly mother moves into the vacated flat; LBTT supplement £9,000 ... Mr B lives in a house worth £300,000 and buys a flat worth £100,000 for his mother to live in".

The supplement then would be only £3,000. The point that is being made is that someone with greater resources can manoeuvre the system to ensure that they pay less.

How would the Scottish Government address such matters? I am not asking you to comment specifically on that example, as I have just given it to you; I am trying to emphasise the fact that there are still concerns about the legislation at present, and I am looking to see how the Scottish Government will look at that, perhaps at stage 2, to ensure that it is tightened up.

John Swinney: We will certainly look at those circumstances. As part of our routine preparations for tax legislation, of course, we established the tax consultation forum and the devolved tax collaborative, which enable us to hear the views of stakeholders as part of the process. We have had a very helpful discussion with a whole range of stakeholders that has covered a variety of different sectors and interests, and that has given us a great deal of food for thought. We will, of course, continue to look at any scenarios that are put to us.

Fundamentally, the legislation is designed around the simple test that in any circumstance in which somebody is purchasing an additional property, they are liable for the LBTT supplement. That strikes me as the correct way to go about the matter, through identifying the very lowest common denominator of test that can be applied and then applying it. The Government will, of course, look at other given scenarios to determine

whether that test remains robust in fulfilling the purpose of the legislation.

The Convener: Thank you for that. I will now open out the session.

John Mason: As the cabinet secretary probably knows, one of my privileges is to be a member of the Delegated Powers and Law Reform Committee. Ms Brennan and I are both members of it. I suspect that you have seen its report, which I want to start with, if I may, before I move on to the more interesting side of things.

Under paragraph 14(2) of proposed new schedule 2A to the Land and Buildings Transaction Tax (Scotland) Act 2013 as inserted by section 1(3) of the bill, which relates to the power to amend the threshold figure in paragraph 9(3) of the same schedule, Government ministers basically have the power to vary the £40,000 limit. It has been argued that, in other places, the £40,000 is just an administrative figure for notification; however, as far as the bill is concerned, the figure is effectively a tax band in that properties below it are ignored and on properties above it people will have to pay 3 per cent. That is fair enough, but the Delegated Powers and Law Reform Committee felt that the negative procedure should not be used here; instead, the affirmative or probably the—

Lesley Brennan: The provisional affirmative.

John Mason: Indeed. Thank you.

Instead, the affirmative or the provisional affirmative procedure should be used, given that they are normally used for changing tax bands and tax rates. Has the Government been able to consider that?

John Swinney: We have not yet considered that issue in full, but I understand the point that has been made. Of course, we must consider the exercise of order-making powers carefully in any legislative process, and I will reflect on the conclusions of the Delegated Powers and Law Reform Committee to determine whether any changes require to be made.

I should point out that we exercise order-making powers only with the Parliament's consent that it is reasonable for them to be undertaken in a particular way, which means that we have to take parliamentary consent with us with regard to the theoretical exercise of the powers in question. I will certainly reflect carefully on the point that the Delegated Powers and Law Reform Committee has made.

John Mason: That is appreciated.

Another relevant point came up at the Delegated Powers and Law Reform Committee but was not included in its report, as it related

more to policy. Basically, someone buying a property below £40,000 is effectively ignored for the purposes of the legislation. Of course, valuations can go up and down. Elsewhere in the bill, the issue is the price that someone has paid, but a valuation could be affected by, say, whether a property was tenanted and could at different times move above or below the £40,000 level. How would that issue be treated? Are you going to look at that?

John Swinney: We would have to go on the basis of the purchase price, which would have to be above £40,000 to—

John Mason: But what about someone who had been living in a house for, say, 20 years?

John Swinney: My answer would rest on the issue of the purchase price, which I feel is the key test for arriving at this particular judgment. After all, a test has to be applied for notification of a property for LBTT purposes; £40,000 is the point at which a return has to be made, and that will be driven by the purchase price. That said, I am just looking at the contents of part 6 of proposed new schedule 2A to the 2013 act, as inserted by section 1(3), in which the issue of “market value” is referred to.

My sense is that the bill’s clear intention is to capture properties at £40,000, and that has to be the test for making the notification to Revenue Scotland. That is the point at which individuals will have to register for the payment of a charge in this respect.

John Mason: Thank you. I will leave that for now.

A lot has been made of the comparison with the UK; indeed, the convener has already asked you about that. I remain unconvinced, however, that we are dealing with the same market. After all, for someone in London with half a million pounds of spare money who is thinking of buying a holiday cottage in Arran, Ullapool or somewhere like that, 3 per cent will make little difference to them, and I wonder whether not having the 3 per cent supplement will lead to more people suddenly rushing in to buy houses. Even if it was higher—say, 10 per cent—would that be enough to discourage such people? A witness has suggested, not today but on paper, that a supplement of 10 per cent would have more impact in discouraging second homes. Have you thought of going higher than 3 per cent for second homes?

John Swinney: I have not. The 3 per cent charge will be applied differently from LBTT, for which we have previously legislated and, comparatively speaking, it will raise a larger charge. As a consequence, there will be very different charges on, let us say, a property worth

£100,000 as a main residence and a property worth £100,000 as a second home.

The differential remains significant, and it will be part of the calculation that an individual will have to make in determining whether they wish to buy a second home. It will not necessarily prevent people from doing that, because people may be in the financial circumstances that Mr Mason mentioned and they may be quite happy to pay the charge, but it is a relevant consideration. It puts up more of a disincentive to making the purchase than would otherwise exist.

I return to the point that I made to the convener in response to earlier questions. Without such a provision being in place, first-time buyers, whom we are keen to motivate, would be at a disadvantage in the market.

John Mason: That is fair enough. I totally agree. I am very much in favour of trying to help first-time buyers, or local buyers, as against people with lots of money coming in from outside to buy a second home.

We heard quite a lot of persuasive evidence this morning that the second-homes market, about which there is probably broader agreement that we need to do something, is different from the private rented sector investment market, where on the whole we probably want more investment. We want companies to come into that market and invest, and in some cases it has been suggested that that includes the international companies that are looking at England, Spain and Germany. Do we need to treat individual second-home buyers differently from larger investors who will create jobs and new buildings in Scotland?

John Swinney: We have to look carefully at the points that have been made in evidence about the larger-scale private rented market, because it involves more substantial investment in the provision of a wider housing supply contribution within the marketplace, as opposed to simply the acquisition of additional properties in housing markets that are already congested. Different sets of circumstances may well exist there, and that is one of the issues that I am considering in relation to the bill.

I will be interested in the feedback that the committee has received on the matter, because there are different characteristics to the market between the objectives of boosting housing supply versus protecting market opportunities for individuals to be able to gain access to the property market.

John Mason: I totally agree with that answer and am encouraged by it.

Another view that was expressed this morning is that landlords with either more than six or more

than 15 properties should be treated differently. The argument is that they are serious commercial organisations, whereas someone with just two, three, four or five properties presumably is not. However, we were also told that 15 is a pretty arbitrary number. I think that it comes from down south. Do you have any thoughts on those numbers?

12:15

John Swinney: There is a debate to be had about those numbers. The number is not a matter of perfect science; wherever it is set, it will be set arbitrarily. Ultimately, we have to make a judgment about the point at which something is a commercial proposition that is investing in the private rented housing supply sector and the point at which a mechanism is being designed to avoid the impact of the bill. That is why the question that the convener asked at the outset is important. What is the purpose of the bill and how can we construct legislation as robustly as possible, in order to avoid such circumstances prevailing?

Jackie Baillie: I would like to explore with you a possible exemption that was raised by a constituent who, for reasons of employment, lives in Aberdeen during the week. Their second home is clearly not a buy-to-let property or a holiday property; it is entirely related to their employment. Has any consideration given to exemptions in such circumstances?

John Swinney: The nature of this type of bill means that a multiplicity of scenarios will be put to us. I understand the circumstances that Jackie Baillie raised. My general response is that I am open to designing reliefs that can meet genuine circumstances that are legitimate in the process. However, as we go into that territory we must be very careful about the fine line between that intent and the creation of the loopholes that the convener questioned me about. I acknowledge those circumstances and, in the light of their being raised with me, I will look carefully at them, as I will look carefully at all the arguments that the committee puts to me during its evidence gathering.

Jackie Baillie: Thank you. In their written submission, one of our earlier witnesses questioned whether the bill's purpose was to raise revenue or to protect housing supply for first-time buyers. Clarity on that point would be helpful.

John Swinney: The bill's purpose is to protect the market for first-time buyers, but I cannot deny that a financial implication and benefit will arise from it.

Jackie Baillie: I will explore yield with you. I accept that there are limitations in data. What

steps are being taken to improve data collection? Data collection will be valuable to forecasting.

John Swinney: Forecasting in relation to what?

Jackie Baillie: Forecasting the likely yield.

John Swinney: We will monitor that very carefully in the financial year, when there will be actual practice. With the estimations that underpin the financial memorandum, we have tried to construct a picture based on available data that we have through Registers of Scotland transactions that give us the best available data that we can have on the annual volume of second-home purchases and applications for buy-to-let mortgages. Those two pretty substantial pieces of data underpin the assessments that we have made.

Because we are exercising these responsibilities in a Scotland-only scenario, we are able to see the pattern of our transactions. That applies across the whole LBTT area and to landfill tax, into the bargain. The quality of our data is improving with every transaction.

Although undoubtedly there will be a level of estimation, I am confident that the data that we are using is as robust as it can be. If Parliament passes the bill and the provisions come into force, data will emerge that will enhance the quality of information that we have at our disposal.

Jackie Baillie: The Finance Committee always likes to request data so that is pleasing to hear.

Without any unintended consequences, the estimate of yield was £45 million to £70 million. When you apply a series of assumptions about behavioural responses, that drops to £17 million to £29 million, which is a more realistic assessment. You then make an assumption that yield will rise in four years by 87 per cent. That is quite optimistic and I wonder what you base that assumption on.

John Swinney: Jackie Baillie's numbers are correct but there is a substantial explanatory factor, which is forestalling in year 1. The year 1 to year 4 comparison does not compare apples with apples.

If there is a forestalling effect in year 1, on that precious occasion the Scottish consolidated fund will be its beneficiary, which is always pleasing to the finance secretary. However that forestalling effect will only come in year 1. If we take that factor into account, the growth in the LBTT supplement follows the same assumptions base as the growth in LBTT in general and those assumptions have been tested and scrutinised by the Fiscal Commission.

Jackie Baillie: I am sure that you will take the opportunity to reflect on the evidence that we have heard today but it is interesting to note that,

anecdotally, people were not seeing evidence of forestalling and they noted that there might actually be a limited period before 1 April in which people could complete the transactions. That is interesting because it is different to the experience of LBTT. Will you bring forward a set of revisions on that basis? Anecdotally, there was no evidence of a rush to buy. There was uncertainty in the market because people were not aware of the proposals that were being brought forward.

John Swinney: It is early days. I announced this on 16 December and that will have given people only a few weeks to have considered the issues.

I am just trying to recall the timescales around the explanation of the interaction of the LBTT changes that I proposed and the SDLT changes that the Chancellor of the Exchequer made. I must have announced the LBTT rates in October 2014 and the chancellor would have announced his SDLT changes in December 2014.

The chancellor therefore made the announcement that sparked off the forestalling at around about the same point as I made my announcements here, and we have clearly seen forestalling in the introduction of vanilla LBTT, if I can call it that. In our assumptions, we have made an assessment of and taken account of forestalling but if that forestalling does not materialise, the Scottish consolidated fund on vanilla LBTT will not get the benefit but we will see it coming through in the LBTT supplement if the pattern of property acquisitions takes the form that I estimate it will.

Jackie Baillie: Thank you.

Gavin Brown: Cabinet secretary, I have no inside information but, for the sake of argument, let us say that the UK Government had heard some of the concerns that we have heard this morning and decided to delay implementation of the SDLT supplement by six months, to pick a number at random. What would your response be to that? Would you follow suit or do you want to apply it on 1 April regardless?

John Swinney: I would apply it on 1 April.

Gavin Brown: Regardless of what the UK Government does.

John Swinney: Yes, assuming that the Parliament agrees. It is a minor assumption but that would be my plan.

Gavin Brown: Obviously, it is a devolved power and Parliament is perfectly at liberty to ignore what goes on south of the border, but in terms of the practical impact on the marketplace in Scotland I would caution against ignoring it entirely. Are you having discussions with the UK Government about the consequence of its consultation, to get a feel

for what it is doing, and are you giving the UK Government some idea of what your thought process is, so that nobody is hugely disadvantaged, or are you not discussing it?

John Swinney: We are looking carefully at what the UK Government has consulted on, of course. We have looked at the consultation document that the UK Government has produced and at the various issues that it has considered. There are discussions between officials. Although I am at the front of the queue to demand access to information from the UK Government, I accept that we are in the territory of tax provisions and tax regulations, and that it is difficult to have an open book on some of those questions. Nevertheless, we are having those discussions with the UK Government and looking at its announcements.

Gavin Brown: One issue that came up quite a lot this morning was the idea of somebody who does not want to become a second-home owner in any meaningful way. They may be selling a property that is their main residence and looking to buy a new property that will become their new residence, and they purchase a new main residence but, for whatever reason, the sale breaks down or they do not get a buyer. My understanding of the bill as it is drafted is that they would have to pay the 3 per cent up front, but would have the ability to claw it back on the day of sale of the main residence. Are you open to some sort of change to that, so that there does not have to be an up-front fee, or are you fixed in your view?

John Swinney: On that point, I have weighed up the arguments, because I do not think that it is an absolutely black and white case, and I think that the most efficient way to do it is to secure that up-front payment, given that there would be an outstanding liability that we would have to try to recover at a later stage, and it could be more challenging to the public purse to recover that. For reasons of tax collection efficiency, the argument is balanced in favour of the up-front payment with an opportunity for repayment.

Gavin Brown: Administratively, it is definitely simpler and poses less risk to the public purse. I presume that you are speaking to a stakeholder group at the moment; the policy memorandum explicitly mentions that.

John Swinney: We are.

Gavin Brown: If you get evidence in the coming weeks from stakeholders who have concerns about the economic impact of that, would you be open to dialogue?

John Swinney: I appreciate that the legislation that I am proposing is being considered in an expedited timescale, but I always try my level best to listen carefully to the feedback that I get from

stakeholders and particularly from committees, and I do not want in any way to suggest that my mind is closed to those questions or that I am unwilling to consider points put forward by the committee or by the stakeholder community. As I said, I am grateful to the stakeholder community for its input so far.

Gavin Brown: I am pleased to hear that. I am no expert at all, but I feel instinctively that a lot of buyers could become more cautious about taking the lead, and that if that is reflected in the marketplace as a whole there could be a slowdown, the magnitude of which is unclear. However, if you are open to stakeholder views, I can leave that issue there.

You are listening closely on the issue of reliefs and exemptions and you have not ruled them out; in the financial memorandum, you mention a couple that you are openly considering. The central projection in the financial memorandum is £23 million. Is that correct?

John Swinney: Yes.

Gavin Brown: Does that assume that there are no reliefs and no exemptions, or have you factored into that £23 million the fact that there may be some exemptions?

12:30

John Swinney: We start off at a range of £45 million to £70 million and we come down to a range of £17 million to £29 million, so we are operating within a broad range of cost estimates. There is lots of scope for difference.

The proposition that I have put forward is based on the bill as it stands. I think that that is the standard that would be expected of me for the financial memorandum. No reliefs have been included in the headline assumptions, but I have erred on the side of caution in relation to the scale of factors that I have applied against the baseline proposition. I could have set up another baseline proposition of somewhere around £55 million. I am well away from that.

Of course, in any tax provision, reliefs must be at the margins. It is not the wisest of decisions if reliefs predominate in tax provisions.

Gavin Brown: Is it a fair comment that the figures in the financial memorandum reflect the bill as drafted?

John Swinney: Yes.

Gavin Brown: Today, a number of witnesses put forward the point that the bill as drafted could deter the development of new homes and properties. Do you dismiss that, or do you accept that there could be something in it and that you

should therefore try to amend the bill to minimise any deterrent?

John Swinney: It depends on what scale we are talking about. I do not think that there is a disincentive in the bill that would stop a development that involved more than a handful of new-build properties—I am talking about a development of more than about four or five new-build properties. However, I want to listen carefully to the feedback from the market to make sure that that is the case.

Gavin Brown: Finally, out of interest, do you view this as a new tax or an amendment to an existing tax?

John Swinney: It depends on who is asking the question and in what capacity they are asking it. If the question is being asked so that a Conservative website can tot up the new taxes that are being introduced, I would ca cannie, as they say. [Laughter.] It is a supplement to the existing tax arrangement.

Gavin Brown: Thank you.

Mark McDonald: One of the suggestions that has been made in the evidence that the committee has taken so far is that many new-build developments rely on the advance sale of properties, and that the buy-to-let market is a key component of that. However, when we probed witnesses for the numbers that lie behind that, those figures were not forthcoming.

The suggestion was made that the 3 per cent supplementary charge might act as a deterrent to investment in new builds and that it might therefore restrict the ability of companies to finance new-build developments. Have you been made aware of that concern? Did you consider it when you drafted the proposal?

John Swinney: In the evidence that has been put forward, a number of points have been advanced in that respect. We have to test those arguments and come to a conclusion about whether we consider that the evidence is valid. We will go through all the evidence that the committee has taken and the dialogue that we undertook with the stakeholder community to test how valid we consider all that evidence to be.

Mark McDonald: One of the other suggestions that was made this morning was that Scotland should step back and wait to see what happens as a result of the chancellor's introduction of a surcharge in the rest of the UK. However, I think that it is fair to say that PricewaterhouseCoopers agreed that there is an inherent risk that the surcharge could lead to significant market distortion in Scotland, which would already have taken place by the time we got round to doing anything. Is that one of the reasons why you think

that a supplement needs to be introduced here simultaneously? Is the intention to prevent that potential market distortion from occurring?

John Swinney: That is precisely my rationale, and it is also my rationale for the timescale.

Those judgments do not come in one neat little compartment. The Government looked at the question as part of our agenda on housing supply. It is clear that Parliament views the securing of opportunities for first-time buyers to gain access to the marketplace as important. We clearly need to act swiftly when an issue is a priority for Parliament and it reflects the Government's agenda on housing supply.

We have gone through a reform on LBTT that has improved accessibility to the marketplace for first-time buyers. I do not want that to be set back by a change that takes place in the rest of the UK that has implications in Scotland from which we do not have the opportunity to recover. That is exactly why I have taken the action that I have taken.

Mark McDonald: Earlier, we took evidence from the Law Society of Scotland, and Isobel d'Inverno put forward an issue that she felt should be probed, which concerns the role of trusts. You might not have information on that at your fingertips; you might have to come back to us on it.

When a trust that has no property portfolio and which has not previously owned properties makes a purchase and some of its corporate or individual trustees have property interests, would those be assessed against the purchase and therefore make the trust liable for the supplementary charge or would the trust be treated as an entity making its first purchase?

John Swinney: Off the top of my head, in that scenario the trust would be judged to be undertaking its first purchase, but I am a bit loth to give definitive responses on scenarios that are put to me at committee today. That is how it strikes me, but such a scenario will be one of a number that we will look at.

Mark McDonald: I appreciate that answer. The point was made to the committee on the record, so I wanted to put it to you.

You responded to the convener on the way in which we approach budgeting in the Parliament. Another example of what I see as an inflexibility of approach compared to that which is afforded to Westminster is on our ability to make changes in relation to tax policy.

Could the way in which we approach tax policy implications be improved, or is it for the Finance Committee to consider in our legacy paper how the budget process works with the tax powers that

we now have and the greater tax powers that we might have in the future?

John Swinney: We need to look at that issue. I encourage the Finance Committee—which observes the same issues and challenges that I do on the process—to reflect on those. I would welcome the committee's thoughts and deliberations, and I am sure that its reflections would be considered by ministers after the election in May.

Our experience is that the approach that we have taken to the exercise of taxation powers over the past couple of years has generally worked satisfactorily, but it has thrown up some significant issues and challenges on timescale. There is a question to be considered here, and the Finance Committee is best placed to do that.

Jean Urquhart: I will follow a familiar theme. Did you consider not introducing this tax?

John Swinney: I actively considered whether to introduce it, so I suppose that I thought about not introducing it.

Jean Urquhart: In your opening remarks and in answer to members' questions, you have said that the feeling that first-time buyers are being disadvantaged is part of the principle behind the introduction of the new tax. Is that your biggest concern?

John Swinney: My biggest concern was Parliament turning round to me—quite reasonably—in light of the chancellor's announcement and asking, "Given what the chancellor has done in England, what are you doing to protect first-time buyers and their access to properties?" That would, as I have said, have been a pretty reasonable question for Parliament to ask me.

When I heard the chancellor's announcement, I began to think about the implications, because I have to think about the comparative impact of taxation decisions in other parts of the United Kingdom now that I exercise some of those taxation responsibilities. As I work my way through the very difficult issues of the fiscal framework, it becomes ever clearer to me that we need to be mindful of the implications of decisions taken elsewhere and their potential impact on our policy objectives here in Scotland. When I looked at what the chancellor set out, it became clear to me that the policy objectives that I would wish to pursue with regard to first-time buyers and access to the market might be constrained by his decisions and that I had to look at this particular proposition.

Jean Urquhart: You might not agree, but it seems to me that there are other ways of protecting first-time buyers. If first-time buyers

were the principal reason for bringing in the tax, did you look at any alternatives in that respect?

John Swinney: I have to look at the implications of this definitive proposition for the marketplace and for market conditions and at what I think will be the most focused and targeted measure to address all that, and that is what I have done.

Jean Urquhart: A couple of questions have been raised about larger rather than smaller developments. Do you agree that, because larger developments might be eligible for different forms of finance, they should be seen in a different light from, say, a one-bedroom flat that someone might rent out or a small flat that might be made available to an aged parent? What is the fairness in that system?

John Swinney: We have to look at very different scenarios in considering whether any exemptions should be put in place. The fairness in the system is that, as the bill is currently written, the measure applies across the board—that is how equity is delivered. When we get into the territory of exemptions and reliefs and consider such questions, we have to be acutely aware of the issues of fairness and equity and be mindful of a whole range of different scenarios. Jackie Baillie has already highlighted one such scenario, and the committee will have heard about other scenarios such as people who are already living in a property creating an extra property for an elderly parent or disabled child or sibling. When we consider any exemptions that might be put in place, we have to work our way through all those scenarios, including any major buy-to-let schemes that might exist, and think about a range of different issues as we go through that process.

Jean Urquhart: So we can take it from what you are saying that the two basic principles behind this measure are, first, protection of, encouragement for and availability of properties to first-time buyers so that they can get on the ladder and, secondly, fairness.

John Swinney: Yes.

Jean Urquhart: You said that when a lot of time is allowed for legislation, it sometimes turns out to be no better than legislation that is just rushed through. I hear what you say, but comments have been made on the matter. I presume that, in an ideal world, you would have given more time to it.

John Swinney: I suppose that more time is always nice to have, but I have a problem that will start to crystallise on 1 April and I want to be able to act to deal with that and to protect the market for first-time buyers. I would be leaving myself open to a problem crystallising that would not be beneficial to the market in Scotland. I come back to my answer to the convener on the issue: we

have to be sure. This is our opportunity to test the parameters of the bill and the preparation that my officials and I have done to ensure that we make it as effective as possible.

12:45

Jean Urquhart: It is also a test of legislation being made at Westminster and how we react to it. Potentially, legislation could be made within months of a new tax year and there would simply not be time for us to respond. We need to be prepared for that kind of scenario in any case, do we not?

John Swinney: Absolutely, which is why the committee needs to look at the issues raised by Mr McDonald.

Lesley Brennan: I support the principle of protecting first-time buyers. Ensuring that we get the solution right is always in the detail. Today, we have heard about the concerns of the Law Society of Scotland, KPMG and PricewaterhouseCoopers. In the written responses to the consultation, we have read about people's concerns about unintended consequences and the fact that it may not be until the legislation is in place that any small technical details will come to light.

You have mentioned the lack of data and the potential for crowding out first-time buyers if you do not put the supplement in place. What evidence do you have of that?

John Swinney: This is my first opportunity to welcome Lesley Brennan to Parliament. I wish her well in her time in Parliament.

The holy grail of legislation is how to avoid unintended consequences. This bill is no different from any other bill that Parliament wrestles with. We have had the benefit of input from a wide range of stakeholders. The benefit of having such conversations is that they throw up scenario after scenario and we have to think about how the proposed legislation relates to those scenarios. I do not question any of the scenarios of the type that Jackie Baillie raised. We have got to think, "How does the legislation capture that? Is that what we really want to do?" We must be mindful of that and take it seriously. That is why we have taken seriously the feedback from the stakeholder community, and it is why we will take seriously the evidence that the Finance Committee has heard.

On the issue of the evidence, I have to assess the implications of the legislation south of the border for the market in Scotland. The conclusion that I have come to is that there would be an incentive for people who would incur a charge south of the border to come to Scotland and not incur a charge. That is most likely to happen in the market that first-time buyers are trying to get

access to, which is properties that currently attract no LBTT—properties below £145,000.

As in all such situations, I cannot definitively prove that we will have an upsurge of cases, but I can foresee the circumstance emerging in which that will be the case. It is therefore necessary to act to ensure that we do not find that the market is skewed by that factor.

Lesley Brennan: I would like to ask about second homes. Part 6 of the bill refers to “Dwellings situated outside Scotland”. Will you talk us through how you see those provisions being enforced?

John Swinney: When a transaction is undertaken, Revenue Scotland will require a declaration to be made, as part of the return, about whether the individual owns a property elsewhere. That will be part of the administrative process when a solicitor undertakes a transaction. If somebody lives outside Scotland and has a Scottish solicitor acting for them to purchase a property, the solicitor will have to ensure that the information that we require to substantiate a Revenue Scotland return is made available. One of the points that will require to be confirmed is whether that person who lives outside Scotland owns a residence elsewhere. The reason why solicitors are involved and professional standards are required is to ensure that those questions are answered properly and effectively.

Lesley Brennan: A couple of today’s witnesses suggested a main residence test. Do you think that such a test is needed?

John Swinney: There will be one that will have to be passed in terms of the information that will be required in the return to Revenue Scotland.

Let me consider that point further. It is clear that we will require individuals to disclose whether they have a main residence. That will be the trigger for the supplement. If we require to do any further scrutiny on that point, we will certainly do it.

Lesley Brennan: I have one last point, which goes back to something that Gavin Brown mentioned. If someone has a second home accidentally, because they cannot sell the other one, would you consider introducing a grace period? A period of 30 days or 90 days has been suggested.

John Swinney: I am quite open to the issue of a grace period. We then come back to how long the grace period should be. I have heard that evidence and I would certainly not want to close the door on it at this stage.

The Convener: I thank all my colleagues who have asked questions today. Cabinet secretary, do you have anything further to add?

John Swinney: No, other than to reinforce my appreciation to the committee for its willingness to consider the bill on an expedited basis in what I know is a very congested timetable for the committee.

The Convener: Thank you. Before we wind up, I give my particular thanks to Professor Gavin McEwen for his briefing, which has been provided to members today. It is an excellent and extremely detailed piece of work.

Meeting closed at 12:53.

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