



OFFICIAL REPORT
AITHISG OIFIGEIL

Finance and Constitution Committee

Wednesday 29 May 2019

Session 5



The Scottish Parliament
Pàrlamaid na h-Alba

Wednesday 29 May 2019

CONTENTS

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ADDITIONAL DWELLING SUPPLEMENT	1
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FINANCE AND CONSTITUTION COMMITTEE
12th Meeting 2019, Session 5

CONVENER

*Bruce Crawford (Stirling) (SNP)

DEPUTY CONVENER

*Adam Tomkins (Glasgow) (Con)

COMMITTEE MEMBERS

*Tom Arthur (Renfrewshire South) (SNP)

*Neil Bibby (West Scotland) (Lab)

*Alexander Burnett (Aberdeenshire West) (Con)

*Willie Coffey (Kilmarnock and Irvine Valley) (SNP)

*Angela Constance (Almond Valley) (SNP)

*Murdo Fraser (Mid Scotland and Fife) (Con)

*Emma Harper (South Scotland) (SNP)

*Patrick Harvie (Glasgow) (Green)

*James Kelly (Glasgow) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Charlotte Barbour (Institute of Chartered Accountants of Scotland)

Tony Cain (Association of Local Authority Chief Housing Officers)

Mike Campbell (Scottish Association of Landlords)

Isobel d'Inverno (Law Society of Scotland)

Jo Joyce (Chartered Institute of Taxation)

Elaine Lorimer (Revenue Scotland)

Ross Mathie (Headon Developments)

Daryl McIntosh (ARLA Propertymark and NAEA Propertymark)

David Melhuish (Scottish Property Federation)

CLERK TO THE COMMITTEE

James Johnston

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Finance and Constitution Committee

Wednesday 29 May 2019

[The Convener opened the meeting at 10:00]

Additional Dwelling Supplement

The Convener (Bruce Crawford): Good morning and welcome to the 12th meeting in 2019 of the Finance and Constitution Committee. It is good to see everyone.

The first and only item on the agenda is a round-table evidence-taking session on the additional dwelling supplement, and I warmly welcome all our witnesses to the meeting. The intention of the round-table format is to create as free flowing a discussion as we can achieve, and if you want to contribute, please try to catch either my eye or the eye of the clerk and we will do our best to get you in at the right time.

The discussion will be based on four themes, with a separate member kicking off each to get us into the conversation. We might well cut across the themes as we go through, and we might have to change things, but that is the nature of a free-flowing discussion.

To begin with, we will consider the operation of ADS in practice. James Kelly will start the discussion.

James Kelly (Glasgow) (Lab): I welcome everyone to the meeting. Thank you for attending. It is helpful that our panel ranges widely from those who are charged with implementing the technical aspects of ADS to representatives of individuals and groups who are at the sharp end of things and who have expressed strong views on the matter.

Perhaps I can set the context for this morning's evidence session and get the discussion going by asking for your views and experiences of the implementation and operation of ADS in practice.

The Convener: Who would like to kick off for 10?

Elaine Lorimer (Revenue Scotland): Good morning. Perhaps I should introduce myself first. I am chief executive of Revenue Scotland, which is the tax authority that is charged with the operation and administration of land and buildings transaction tax and the additional dwelling supplement.

I will make one or two points that might be useful in setting the scene for this discussion. First, ADS as a tax is quite different from LBTT. Although both are taxes on land transactions, the complexity of ADS arises from the need to look at the taxpayer's personal circumstances to determine their entitlement to have the tax repaid.

That has made things considerably complex for taxpayers, who have to understand whether they are required to comply with and pay the tax, as well as for us from an operational perspective, and we have had to put significant new guidance on the tax on our website. For example, our website sets out more than 75 worked examples for ADS. We have tried to be comprehensive but, of course, we cannot possibly cover every set of circumstances.

Again, from an operational perspective, ADS accounts for around 24 per cent of incoming calls to our support desk, and most of those calls are from taxpayers wanting to know whether the tax applies to them. As for the revenues that are generated, in around 25 per cent of the transactions arising from ADS, taxpayers have said that they intend to reclaim the money, but in practice the figure for those who do is between 15 and 20 per cent. In other words, there is a small percentage of people who initially think that they might reclaim the money but who do not follow through on that, and there might be any number of reasons why that is the case.

You will also have seen from our evidence that between 25 to 30 per cent of our revenue from ADS is subsequently repaid. There is a time lag associated with that, as taxpayers have 18 months to dispose of their dwelling and be entitled to repayment and then five years to reclaim the money, and the table in our submission tries to show the committee that time lag with regard to repayments.

That was all I that wanted to say by way of introduction, convener. I hope that that was helpful.

The Convener: It has been helpful in setting some of the context, and I am sure that some of the people around the table will want to respond.

Isobel d'Inverno (Law Society of Scotland): I am from the Law Society of Scotland tax committee.

As I am sure everyone knows, the timescale on which ADS had to be introduced was very short but, as Elaine Lorimer has explained, it is a very complicated tax, and quite a few things have turned out not quite as people had perhaps intended. Putting a tax on second homes sounds very easy, but I should point out that that is not what this tax is—it can sometimes be on your first

home—and the complexities for individuals are quite mind-boggling.

I am sure that everyone is aware of the change that has already been made to fix something that seemed to be extremely unfair, but there are a number of other issues to be addressed, even in the relief that was introduced. Murdo Fraser had a great deal of input into getting that amendment through, but it addresses only some of the difficult problems. For example, it addresses the issue of couples who live together in a house that only one of them owns and who then buy a new house in joint names, which is great; however, it does not address the issue of, say, couples who are planning to get married but who do not live together before they do and who have to sell a house that only one of them owns before they buy a house in joint names. Equally, it does not address the issue of people living together but in the wrong house, as it were. In other words, instead of their living in the house that they are going to sell, they live in the other house.

Those issues could not have been foreseen when the legislation was drafted, but they now need to be fixed, and there are other difficult areas that we feel quite strongly about, such as divorcing couples. Although the ADS legislation does not treat such couples as a unit any more, in general those who are married or are in a long-term relationship tend to own property in joint names; because that situation continues, they get clobbered for ADS if one of them departs and buys a new residence. All those areas probably need to be addressed to make things fairer, but they could not be addressed in the short time in which the initial legislation and then the relief were introduced. Quite a lot of areas need to be changed to make the legislation operate as the Government probably intended.

The Convener: I have a quick question on that. The Law Society has made a very useful and helpful submission that outlines quite a number of areas in that regard, but it has raised a question in my own head. Every time we try to change tax legislation, we can, if we are not careful with the drafting, create loopholes for other people. This might sound a bit blunt to those who are affected but, given the amount of effort that needs to be put in to amend the legislation for the small number of people who are affected, is this really an efficient way of dealing with specific issues with ADS? Perhaps we have to do this sort of thing, but is it the right approach to take?

Isobel d'Inverno: Our fix for the first problem involved a great deal of effort to produce a one-trick-pony ADS bill, but that is not the best way of dealing with the problem. Instead, it might be better to collect all these issues and have some mechanism for dealing with them perhaps

annually through a finance bill-type arrangement, which would involve a lot less effort per change.

When we heard that there was to be an ADS bill, we were delighted and thought, “Oh well—we can add all these things in,” but in fact its scope was very narrow. That was not, as I have said, the best way of dealing with the issue. In any case, the issue is to ensure that the right amount of tax is collected instead of being put off by the difficulties of changing the legislation.

It just does not seem right for the tax system to discriminate against couples who are separating—the situation is difficult enough. Most of the time, the system tries to be helpful. This is a deserving case, but not if we need to go through the process of having a separate act. I do not know how many issues we have highlighted in our submission, but if we were to address them on the same basis that we have addressed them up to now, we would need about eight ADS acts. That is not ideal.

The Convener: That is helpful.

Charlotte Barbour (Institute of Chartered Accountants of Scotland): On the point about—

The Convener: Will you first explain who you are? I am sorry—I should have said that.

Charlotte Barbour: I am director of tax at the Institute of Chartered Accountants of Scotland.

The question about boundaries is interesting. Wherever there is a tax, there will always be boundaries. Elaine Lorimer talked about one of the difficulties with ADS. There are two types of boundary. There is a tax on transactions and a tax on people's circumstances, and they do not and never will fit easily. There will always be boundary issues, no matter what is done.

Now that we have in place devolved taxes that have been up and running for a number of years, ICAS is very supportive of the projects that are on hand to consider bringing in more process so that there are better policy considerations of exactly what we want to tax, there is better consultation on the draft legislation so that it does what we want it to do, and there is a regular process thereafter in which to bring up these points. Tax is living and is always changing, and we will always be here.

The Convener: The point is that there is a trade-off between the drafting of tax legislation and anticipating any anomalies that might arise, and it will be impossible to do that in these circumstances. Perhaps some of the mechanisms that Isobel d'Inverno described might be a way to do that.

Elaine Lorimer: Obviously, from our perspective as the tax authority, how that is operationalised needs to be taken into account.

The Convener: What do you mean by that?

Elaine Lorimer: We would want the way in which we can collect the tax to be efficient. From our experience, getting clearly defined legislation that purely captures the policy issues that are at play is an incredibly difficult task.

Isobel d'Inverno: I will add a small point. One of the reasons for making the changes that we have suggested is that they might do away with some of the phone calls to Elaine Lorimer's people in Revenue Scotland in which people say, "Surely it can't apply to me." If the legislation is fixed for the cases where it seems absolutely counterintuitive and daft, that will be a benefit on the operational front.

David Melhuish (Scottish Property Federation): I am from the Scottish Property Federation.

I support the views that have been expressed, as well as the question. I will put a question out there. We estimated that 25 to 30 per cent of ADS is repaid to taxpayers on an annual tax year basis. Is it an efficient tax if there is that level of repayment over time?

We support the notion that some sort of annual finance bill is necessary, because society and personal circumstances change. The Law Society of Scotland's paper made the point that people were perhaps unsuspectingly liable for ADS if they inherited a share of a property. In an era in which the older generations will, I hope, devolve down properties to the next generations that have not yet got on to the property ladder, the situation might become more complicated.

I think that an annual finance bill will be needed to address those issues as they become more commonplace and as our demographics change. The Law Society's paper mentioned granny flats, for example. I do not think that any of that was envisaged in the six-week process to introduce the legislation.

The Convener: Although there was a six-week process, the bill went through the normal legislative cycle in Parliament. Obviously, it was a reaction to what the UK Government had done. Scotland had to react to that.

Murdo Fraser (Mid Scotland and Fife) (Con): Before I ask my question, I should remind colleagues of my entry in the register of members' interests on my personal property interests. I am also a member of the Law Society of Scotland.

I want to follow up the point about unintended consequences that Isobel d'Inverno made and the various examples that have been worked out. Individuals have approached the committee to highlight concerns, particularly about the issue of two people who are not currently living together, one of whom has property and one of whom does

not, buying a joint property and being unable to reclaim ADS. It seems that that does not comply with the spirit of the legislation. I wanted to ask Elaine Lorimer how many people get caught out by that. How many people expect that they will be able to reclaim ADS and then realise too late, once they have taken a decision to buy a property, that they have to pay it? Is everyone sufficiently forearmed? We have at least one example of that. If there is a group of people who are finding themselves inadvertently caught by the tax because they are not sufficiently aware of the consequence of their actions, it is a serious issue.

10:15

Elaine Lorimer: I do not have that statistic in front of me and I am not sure that we would be able to provide that information. It comes down to taxpayers being aware of the application of legislation to their particular transaction. The actions that we have taken in that respect have been to work closely with the Law Society of Scotland, ICAS and professional advisers and to share the information on our website, including the 70-odd worked examples.

I do not know whether people are being caught out in the way that Mr Fraser describes and discovering that they have to pay ADS when they did not think that they would. I am sorry, but I cannot give you information on that.

Murdo Fraser: Perhaps Charlotte Barbour or Isobel d'Inverno have thoughts on that.

Elaine Lorimer: The other thought that I have is that we know that there is a small percentage of people who tick the box to say that they wish to reclaim and then end up not reclaiming. We do not know the reasons for that. We think that some of that might be to do with compliance work that we have done. It may also be that some of that percentage are people who recognise that ADS applies, think that they might be able to reclaim it and then discover that they are not able to.

Murdo Fraser: Thank you.

Charlotte Barbour: Traditionally, accountants left stamp duty land tax to lawyers because it is a property tax, and it is interesting that—this is completely anecdotal—when I am out and about, I find that more of our members than I would expect, although certainly not all of them, are being asked about LBTT but not necessarily ADS. LBTT is considered to be quite expensive and a bit of a risk, where compliance needs to be checked. It might need more than conveyancing lawyers to do that.

Isobel d'Inverno: I echo that. For a conveyancing solicitor who is being paid to buy or sell a house, dealing with the complexities of ADS

is a heavy burden. Large firms have tax departments, but smaller firms do not have that luxury. Some solicitors say that it is too difficult and risky for them to deal with and that the client must ask their accountant. It is a sorry state of affairs if people cannot buy a house without asking an accountant how much it will cost—with all due respect to accountants.

Charlotte Barbour: Can I take that lying down? [*Laughter.*]

Isobel d’Inverno: That means that a normal member of the public cannot look at the 75 worked examples of ADS on Revenue Scotland’s website and think, “Aha! I know exactly what the position is.” It means that many people have to phone up and ask what the story is for them.

Many of our members have examples of where people assume that they will not have to pay ADS, but it turns out, when we look at the facts, they do have to pay. Many firms have a questionnaire that they give to clients to establish the facts that might lead to an understanding of whether ADS is payable.

To make the tax operate better, we need to look at those areas where taxpayers say, “You have to be joking—surely that does not apply in my circumstances,” to see whether that can be fixed. For example, people might say, “Surely it cannot be the case that I have to live with my partner before I get married in order not to have to pay ADS,” or, “We are a couple buying a house and selling another—why does it matter which house we live in?”

Jo Joyce (Chartered Institute of Taxation): I am here on behalf of the Chartered Institute of Taxation and I am a senior member of the KPMG stamp taxes team. I echo what Isobel d’Inverno and Charlotte Barbour have said. Prior to the introduction of ADS, we did not get many queries on straightforward residential purchases, but now, about 25 per cent of the queries that I get are about people buying houses, particularly when parents are buying with their children, when there are issues with divorce, or when couples are not married or are not living together beforehand. Historically, those cases were dealt with by conveyancing solicitors, because people’s personal circumstances were not really that relevant.

A bigger burden is being placed on both taxpayers and the conveyancing profession to get to the bottom of what tax people should be paying. People want to pay the right amount of tax. It is just that, sometimes, they do not know what that is.

As Isobel d’Inverno said, fixing some of the problems will really help. A lot of the time, the layperson will look at what the legislation was

meant to do and wonder whether they are covered by it. It can be a big shock when someone suddenly finds out that they have an extra 4 per cent to pay. It can be a chunky amount and the cash has to be paid outright.

Ross Mathie (Headon Developments): I am here representing Headon Developments, which is a house builder in St Andrews, but I can also speak from the perspective of small and medium-sized house builders on how LBTT and ADS apply. I made a brief submission. I am not sure how far it has been circulated, but if you are happy I can read through—

The Convener: It has been circulated to everyone, but if you want to pick out the main points, by all means do so.

Ross Mathie: The main point is that, when a small house builder purchases a site that has on it a house that is going to be demolished and planning consent is in place to redevelop and improve the site and provide modern, energy-efficient homes, it is prejudiced by the system because it has to pay LBTT and ADS for a house that is just going to be demolished. When larger house builders purchase greenfield sites with no houses on them, the commercial LBTT rate applies. For us, it is almost like a double whammy, because we have LBTT plus ADS, and not the commercial rate.

I included a couple of tables in our submission to try to illustrate that, if we purchase a small brownfield site, the tax take for the Government will be higher, with LBTT plus ADS, than it would be on the commercial side. However, we need to look at the full picture. If the site was purchased on a commercial basis and new houses were built there, the tax take would be increased, because there would also be LBTT on the new house sales. If we compare the approaches purely from the point of view of tax take, that would result in a more positive tax take. However, the bigger picture for small builders is that we are trying to purchase smaller brownfield sites, redevelop and improve them and create energy-efficient homes, and we should not be prejudiced or penalised because of that.

We feel that, if a house builder can demonstrate that it has proper planning consent to redevelop and improve a site, that penalty should not exist. The house is not an additional dwelling, because the site was bought purely as a development site, but the consequence—it may be an unintended consequence—is that ADS comes into force because of the current rules.

The Convener: Alexander, is your question on that point?

Alexander Burnett (Aberdeenshire West) (Con): Yes.

The Convener: On you go.

Alexander Burnett: I note my interest in a small and medium-sized enterprise house builder.

Ross Mathie described one of the unintended consequences—namely, a lack of ability to get into brownfield sites to develop them. However, there is a wider issue as well, given the multiplier effect of house sales not happening. Every week, I hear from house builders about sales not happening because of the two taxes. Would Ross Mathie or anyone else like to comment on that?

Ross Mathie: Yes. We had a small site in Edinburgh and a reservation in place. I am not sure why the party did not realise at the time that there would be an ADS payment but, when it did realise that, the house sale fell through. That is one example on a small site. I dare say that there are a significant number of similar examples for large developers.

The Convener: I want to dig down to see how real the problem is. Do any other panel members involved in the house building sector have something to say about that?

David Melhuish: The SPF has members in that sector, and we feel that ADS adds a complication to LBTT. ADS is a slab tax, and we view it differently from LBTT, the introduction of which was broadly supported. Because ADS applies to the whole consideration, it is a much greater charge proportionately than would normally be the case on the usual residential LBTT scales, which, as Ross Mathie pointed out, are higher than the commercial ones.

The Convener: I hear that, but can we get underneath it and get evidence of numbers? I have heard about one site, but how big is the problem? How many sites are being prohibited from proceeding? I hear the general message, but it would be good to understand more about the actual impact.

David Melhuish: We would need to have a survey on that point and come back to the committee on it. I do not want to comment on it without doing that.

The Convener: Can Ross Mathie give us a bit more detail?

Ross Mathie: As far as numbers are concerned, possibly not. However, there are other consequences, as well. For example, if a site did not progress because of ADS, that would affect affordable housing provision. It is likely that a proportion of new houses to be built on a brownfield site would be affordable homes. If progress on that was held back because of LBTT and ADS, there would be a loss of affordable homes, as well.

The Convener: I accept that there are general issues, but the committee needs evidence of numbers to get a sense of the scale of the problem. So far, I have heard about one site and general issues, but we need more information, as David Melhuish has suggested, to get underneath that.

Elaine Lorimer: I have one statistic that might be useful for this discussion, which is the number of notifiable transactions that we have received since ADS was introduced. There has not been a drop in the number of notifiable property transactions since ADS was introduced. The number of property transactions averages around 103,000 a year.

Ross Mathie: We feel that ADS is prejudicial to small and medium house builders. I know that this is not just about house builders and the scale of house builders, but ADS is prejudicial. There might be certain numbers of house sales, but we feel that ADS is definitely holding back or is prejudicial to small and medium house builders, which typically look to take on smaller sites and brownfield sites and improve them. For us, that is where the problem is.

The Convener: Does anybody else want to contribute to this bit of the discussion? If not, we will move on to the next bit with Murdo Fraser, although we might have covered some of it already.

Murdo Fraser: I think that we have probably covered it.

The Convener: In that case, I will ask a question on the back of what would have been your question. What do people mean by a finance bill? Are we talking about a care and maintenance bill or a finance bill to deal with and sweep up unintended consequences?

Isobel d'Inverno: It does not matter what the bill is called. We refer to a finance bill because we are tax people and are accustomed to Westminster finance bills, the main purpose of which is to make changes to the tax legislation. We are talking about something that makes changes to the tax legislation, some of which could be about care and maintenance and some of which could go further than that and be about policy changes.

Charlotte Barbour: Like Isobel d'Inverno, I do not think that it really matters unduly what we call it, but we need a regular process. In other debates, we have talked about a finance bill, which has an annual connotation. Whether we want the process to be annual or every two years is being discussed in the policy consultation and the working group. The jury is out on whether we would want it to be every single year, but we need something regular so that there is always an

allocated space to pick up issues. Some of them are care and maintenance issues, some might relate to new taxes, and some might relate to a review of ADS or of penalties, for instance.

10:30

The Convener: If we do it that way, would there not be a tension between the need for scrutiny and the speed that is required to introduce tax changes in such a bill? Consultation might be required beforehand, and there might be unintended consequences if we have either an annual or a biennial process. There would be an issue with making sure that we can scrutinise the proposals. Those bills would probably land at this committee, and they could contain a dozen or two dozen changes. The bills would not relate only to ADS, so who knows how many changes there would be? How do we ensure that that is all scrutinised properly and that proper consultation is undertaken? Those are devil's advocate questions—I am doing that intentionally.

Charlotte Barbour: That is part of the discussions that are taking place in the policy consultation that the Scottish Government is running, and work on that is happening elsewhere. If we had an annual process or a regular process, we would build consultation into that. I am not sure that tax measures have to be brought in really quickly. All the ADS issues that we are talking about are not being dealt with at the moment so, if they were dealt with in one or two years, that would be better than just not doing it. Also, I would like to think that, if there was better consultation up front on new measures, we might tackle some of the issues before they arise.

The Convener: Thank you. It is important to get that on the record.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): Can we put a figure on the scale of the anomalies at the edges of the policy? I think that Elaine Lorimer said that there have been 103,000 transactions, which is not a drop since ADS came in. Isobel d'Inverno described some examples of ridiculous scenarios emerging. What is the scale of that? I have had two inquiries on ADS in my constituency office, which is not a lot out of 61,000 constituents. I want to get a flavour of the scale of the issue.

Isobel d'Inverno: Elaine Lorimer mentioned that around 25 per cent of inquiries to Revenue Scotland relate to ADS, so perhaps the tax system is creaking a bit. The same issues arise in relation to SDLT. The issues are partly because of anomalies and partly because of the nature of the tax—it sounds like a good idea to tax second homes but, in reality, it is difficult. It places a strain on the resources of the tax authority to deal with

so many queries, not just from agents but from members of the public. For members of the public, it leaves a bit of a bad taste in the mouth if they cannot figure out what situation applies to them and if they need to go to the tax authority. That is the context in which we have to consider the matter.

As Charlotte Barbour said, changes do not need to be made hurriedly. The process could span a couple of years—the question whether we should have an annual finance bill or a biennial one is another issue for discussion—but it would be helpful to have a regular vehicle to deal with such issues, rather than having to get agreement on a particular bit of legislation. A regular process would help everybody who is involved, because people would know that, if they wanted to make a fuss about the ADS charge for developers buying land, that would be the time to make the point and fit it in. If much of the consultation and scrutiny was done in advance not by the Parliament but by stakeholders, when it came to the parliamentary scrutiny, the measures would, I hope, be in a better state and would be better thought through.

Willie Coffey: The 24 per cent of calls that Elaine Lorimer's support desk receives in relation to ADS are surely not all about anomalous situations that would require resolution through policy change.

Elaine Lorimer: No—you are absolutely right. I do not have before me figures that give a breakdown of the types of inquiry, but I know, anecdotally, that the vast majority of the inquiries that we get are straightforward ADS inquiries rather than ones that involve the technical and detailed issues that the Law Society has presented to us. I am not saying that those issues are not real ones, but they are by no means regular occurrences for my support desk or my mailbox inquiry team to deal with.

The Convener: Tony Cain, do you want to come in?

Tony Cain (Association of Local Authority Chief Housing Officers): I am not sure whether we are moving on to the next part of the conversation.

The Convener: Let us do that.

Tony Cain: I will comment on some of the wider issues. I work for the Association of Local Authority Chief Housing Officers, so my background is in public sector housing. I do not think that our members are seeing any evidence of smaller sites being sterilised as a consequence of ADS, but we would be concerned if there was any real evidence that small or medium-sized builders were struggling in the market. There is a big gap in the structure of the house building industry in Scotland, and there are all sorts of conversations

to be had about how we can encourage and develop it. I have not seen any evidence of a problem arising because of the tax in that regard but, if that is happening, we would be concerned about it, because of the impact that it would have on the overall shape of the construction sector.

At this stage of the conversation, before we get to the strategic and market impacts, I must engage in a simple piece of special pleading. In my defence, it is the same case of special pleading that I have been making for the past two or three years. The tax applies to local authorities, but I do not think that it was intended to. It is costing the sector significant amounts of money, and local authorities are now very active in the process of acquiring individual properties to support strategic and operational housing objectives.

I provided a paper yesterday—I apologise for being so late—that was based on a limited survey of our members. It gives an idea of the scale of activity and of costs. It contains figures from eight local authorities that, over the past three years, have acquired close to 1,100 properties in the open market and have spent over a couple of million pounds on ADS. Behind that, there is substantial expenditure on LBTT in the acquisition of sites and properties for the affordable housing supply programme. Councils pay that, but housing associations do not, because they have an exemption as charities. There is no such exemption for local authorities, despite the lack of clarity on that in the Local Government and Communities Committee's report from a couple of years ago.

Our concern is that the financial impact of those factors is reducing the effectiveness and the impact of the overall affordable housing supply programme. It might also, on some occasions, result in transactions under the Government's mortgage-to-rent scheme—the homeowner support scheme—not proceeding because the overall cost of the transaction, with ADS, becomes unviable within the terms of that scheme or is just too expensive for the authority to proceed with. Councils are paying quite a lot of money through ADS and LBTT, which is constraining their ability to meet local strategic operational objectives and deliver the Scottish Government's affordable supply programme targets.

The Convener: You have confirmed that nobody likes paying tax. I get that flavour pretty clearly from the comments from around the room.

Tony Cain: Our concern is that housing associations do not pay it but councils do, and I do not think that that was intended.

The Convener: If the Government or the committee were to recommend that all the bids that people are making to have no taxation in the

area should be agreed to, there would be an issue. I understand that, between 2016 and 2019, this particular tax took in about £284 million. I suspect that a lot of that is supporting the Government's house building programme, which has a target of 50,000 homes by the end of this parliamentary session. The issue cuts both ways, does it not?

Tony Cain: I acknowledged in my opening statement that this is a piece of special pleading. My point is that we are talking about unintended consequences. The officials who I spoke to at the time were clear: they had no idea that councils were involved in the acquisition of houses or that housing associations were fully exempt from the tax and councils were not. It is an uneven set of burdens and, to be clear, those burdens are falling on council rents. It is people who pay rent to councils who pay the additional money. Housing associations do not charge their tenants for ADS because they do not have to. Local authorities are carrying additional costs. That impacts on rents and on the outputs of the affordable housing supply programme. We do not think that that was intended.

The Convener: Daryl McIntosh is interested in the issue of rents. Would you like to flush out some of your concerns in that regard, now that Tony Cain has raised it?

Daryl McIntosh (ARLA Propertymark and NAEA Propertymark): I am from Propertymark, which is the National Association of Estate Agents and the Association of Residential Letting Agents.

We are talking about rents and supply, and the number of landlords who are threatening to leave the sector altogether. Recently, we had a survey done for the tenancy schemes, which showed that 27 per cent of landlords were ready to leave the sector within five years.

There is a lack of stock, which means that rents are increasing. I was at a crisis meeting on Friday and heard that, although 24 per cent of the stock should be social housing, the figure is only 15 per cent in Edinburgh. There is a lack of properties, but people need to be housed and there is a knock-on effect on the private rented sector, which, along with this tax and all the other implications that landlords or second home owners are facing, is also affecting rents.

The Convener: I have been pushing back on quite a few folk, so I might as well push back on you, Daryl, just because I can and because I want to make sure that we are getting the right stuff on the record. Are you saying that, if the tax was not applicable to the rented sector in the way in which you have described it, the people who you represent would look to reduce rents?

Daryl McIntosh: I would say that there would be more properties on the market, meaning more availability and choice for tenants. At the moment, some properties in certain areas are getting five, six or seven applicants. If more properties are available, it should ultimately bring down rents.

Patrick Harvie (Glasgow) (Green): I would like to explore that a bit further. There is a danger that the conversation drifts towards basic housing policy and the significant growth of the private rented sector and significant reduction in the social rented sector over a number of decades. Some people would be comfortable with that choice; others would not. However, this is a discussion about one element of one tax rather than overall housing policy and how comfortable we are with the growth of the private sector as opposed to a different balance of tenures.

Can any of those who are advocating for the abolition or reduction of the tax in relation to the private rented sector on the basis that it will benefit tenants hazard a guess about why tenants organisations, which are not represented here today, are not campaigning for a reduction in the tax that their landlords pay? Many tenants organisations are much more motivated to take action against on-going illegal fees and charges being paid by tenants to landlords and letting agents. If the real desire is to reduce rents, it does not seem to me that a reduction in the tax that is paid by landlords will achieve that.

Daryl McIntosh: As I say, from the figures that we have, it seems that more landlords would enter the market if there was less tax to pay. I would hope that there would be more and better stock for tenants or potential tenants.

Patrick Harvie: Several of the written submissions make the claim that, if there was more private rented accommodation, that would mean an increase in the housing stock, and if landlords come out of the private rented sector, that will mean a reduction. It would not be a reduction in the housing stock; people who cease to be landlords do not knock down their properties.

The Convener: I see that quizzical look, Patrick.

Tony Cain: I agree. I do not think that there is any evidence that the tax is pushing up rents in the private rented sector. There might be some evidence that it is discouraging new investors on the buy-to-let side, but that is a wholly different question that speaks to what the Scottish Government wants to achieve with the market overall. That is a later part of the conversation. However, the evidence on buy-to-let investment has been made more difficult to interpret by all the other changes to the taxation of the private rented sector that have taken place over the past three or

four years, which may well have had a similar dampening impact on the market.

I am told, by people who know, that buy-to-let investment in Edinburgh, for example, is now probably flat and the sector is not growing. That is a change in the way that the market has been operating. The key point is that that probably has nothing to do with ADS.

10:45

The Convener: We should get on to that wider question. Emma Harper, do you want to kick off?

Emma Harper (South Scotland) (SNP): We have talked about the personal impact of ADS, which is drifting into impacts on the rental sector. Our briefing paper states:

"The impact of tax changes should rarely, if ever, be seen in isolation. There are many other factors which influence the markets and ADS is no exception to this premise."

What are your thoughts on the other contributing factors to the impact on the housing market? There are certain times of the year when more folk will move house or choose to buy. Factors others than ADS obviously contribute.

The Convener: To add to that question, in effect, the legislation was introduced to prevent distortion in the market after the UK Government acted. Had Scotland not done something similar, would that have led to distortion in the market as a result of people from south of the border coming to Scotland to buy as many homes as possible? I throw that in as another element to add to the general discussion on contributing factors. The panel can push back on that to me, if they want to.

David Melhuish: The measure was introduced swiftly after George Osborne made his proposals. We will never know now whether those proposals could have led to a real distortion, because the tax was introduced here at the time. Obviously, since that time, the tax has also recently been increased in Scotland, and we will see what impact that will have on potential buy-to-let investors.

However, there is a wider picture. I agree with the idea that we should not look in isolation at the tax's impact on the market. There have been controls on affordability for buy-to-let investors, and such investment has gradually fallen as a proportion of the lending that has been going out. Private rented sector legislation has changed the procedures for landlords and tenants, and perhaps the balance of risk has been shifted. There have been several changes to the environment for buy-to-let landlords in particular that have mushroomed from the 1990s onwards.

I am not surprised to hear that new buy-to-let investment is now flat, even in Edinburgh, where it

was traditionally so strong. ADS is one element that is adding to the obstacles for landlords—or new landlords, at least. If those landlords are selling into the private for-sale market, there is a question about what the potential consequences of that might be. However, the Scottish Government has other policies that support first-time buyers that will affect that.

The Convener: Mike Campbell, you represent the Scottish Association of Landlords and the council of letting agents. Do you want to reflect on some of what you have heard?

Mike Campbell (Scottish Association of Landlords): We are not calling for the abolition of the tax; we are just interested in providing evidence on the potential impact. The Scottish Association of Landlords is, by definition, a landlord organisation. We have concerns about every change in legislation, although those concerns do not always play out.

For me, the issue with ADS is its application in a uniform way across the country, from hot-spot markets in Edinburgh—which in my view is still a hot-spot market—to small-town Scotland, where the markets are not as hot and the impact is likely to be more significant.

I am not convinced about the linkage to rents; we would need to look at that in detail. We have lots of anecdotal evidence from our members, who we meet regularly around the country through our branch meeting network and, at the moment, the UK tax changes, rather than ADS, are top of their list of concerns. Concerns about how they will finance energy efficiency measures are second on the list. Therefore, it is too early for us to dig ourselves into a position of saying that private renting will come to an end over the ADS issue.

The Convener: For context, because I do not know, what changes are being made by Westminster? There may be consequences for Scotland.

Mike Campbell: Other people in the room will be able to answer the question better than I can but, essentially, mortgage tax relief for buy-to-let mortgages was removed previously and rental income, rather than rental profit, is now taxed. That is a brief summary.

The Convener: That is helpful. Do you expect those changes to impact on rents as well?

Mike Campbell: Ultimately, they would if there was a decrease in private rented stock, but the biggest impact would be landlords leaving the sector. Landlords will always leave the sector at some point—they have a life cycle to some degree, so some will leave with every piece of legislation—but the UK tax is the number 1 consideration.

Charlotte Barbour: We get a lot of feedback from accountants that their clients who have buy-to-let businesses are finding that profits are tighter as tax is higher because of the restriction in the interest relief. Measures that are coming through on capital gains tax will also impact on the buy-to-let sector.

Isobel d'Inverno: I reiterate that the UK tax changes affect landlords in Scotland as well, and many landlords may decide that their after-tax results are such that it is not worth continuing, or they may incorporate the business because they will pay a lower tax rate if they run the income through a company. It is worth going back to why the tax was introduced. I wonder whether it was introduced entirely to stop landlords south of the border rushing up and buying the entire housing stock in Kirkintilloch or wherever.

The Convener: More likely in Dumfries.

Isobel d'Inverno: Yes, I suppose they would get there first. It is very complicated, and I do not pretend to understand it, but was it not the case that, if we had not introduced ADS, there would have been a big hole in Scottish finances because of the impact of the fiscal framework?

The Convener: That was one of the issues. Murdo Fraser is nodding sagely.

Murdo Fraser: I am pretending to understand.

The Convener: I will pretend to understand and agree with you.

Isobel d'Inverno: There would have been an impact on block grant adjustments because Westminster introduced a 3 per cent supplementary SDLT charge, so we were almost forced into it under the devolution-with-strings arrangements. We should bear in mind that the devolved taxes are here to stay and other tax measures will happen, so when we ask for different procedures we will have to keep reacting to what is going on in Westminster, either in relation to SDLT or other taxes.

Tony Cain: The impact on individual landlords is important. Most landlords own and rent out their properties on a personal basis, rather than on a business basis, and taking the full rental income into consideration for tax purposes often pushes them into a higher tax band, which is one of the impacts that is pushing landlords to incorporate and set up a business. To the extent that that is driving professionalisation and discouraging amateurs, we would regard it as a good thing, but I do not think that there is any evidence that that is the case.

I always thought the argument that large numbers of buyers from the south would move north was spurious, to be honest. If you are used to the English legal system, renting in the Scottish

context would be quite tough. I do not think that there was any evidence that that would happen. The other objective of the measure was to protect market space for first-time buyers, which was stated in the related policy note.

My understanding is that there is some evidence that first-time buyers have returned to the housing market in Scotland in numbers over the past two years or so. How much of that is down to ADS is another matter, but there is evidence that first-time buyers are more strongly represented, certainly in the mortgage market.

The Convener: Do you have any information on that, Elaine?

Elaine Lorimer: I do not have any with me today. There were changes to legislation to encourage first-time buyers, on which we will have information in the office, so if it is useful to the committee we will send that in.

The Convener: Thank you.

Emma Harper: I want to ask a wee supplementary, given that the word “Dumfries” was mentioned.

The Convener: I knew that that was a mistake.

Emma Harper: There is a big variation in house prices in Scotland. In Edinburgh you can buy a house for £280,000, whereas the equivalent property will be about £121,000 in Dumfries and about £130,000 in Ayr. Does the wide difference in property value across Scotland impact on where landlords might choose to purchase, such as in Kirkcudbright for instance?

Mike Campbell: Very much so. I will use our letting agency business in Falkirk as an illustration. The rents were always low and stable, which fitted in with the average wage in the area and so forth, so when buy-to-let investors were buying property, they were at market prices, which were sensible. There will be a similar situation in lots of small towns. Although, in pound-note terms, 4 per cent of a property price in Edinburgh will be higher than in Falkirk, that 4 per cent has a greater impact in a small town market, given the average price in the market. There are buoyant private rented sector markets in every small town in Scotland that function perfectly well and do a good job.

The Convener: Does anybody want to raise any points that have not come out so far? I have a couple of questions, but they take us back a bit. Are there any issues that representatives want to make sure that they have had the chance to tell us about?

Ross Mathie: I am beating the drum for the small builder, but I have one point to make on ADS.

The Convener: Quite right, and keep beating it.

Ross Mathie: If I have picked up the legislation correctly, a relief is available for a purchase of six or more properties, whether they are purchased separately or as a linked transaction. I just want to highlight that that disadvantages the smaller builder. If you buy six or more, you will get relief from the ADS.

Isobel d’Inverno: Just for the record, that does not apply to linked transactions; it has to be part of a single transaction.

Ross Mathie: The way that I read it, the relief applies if there is a linked transaction.

Isobel d’Inverno: It applies to six or more as part of a single transaction. Does everybody else agree? I do not want that to be on the record wrong.

Jo Joyce: There is a bit of an issue, because “single transaction” has not been defined in the legislation, so one issue is whether there could be different completion dates.

Isobel d’Inverno: “Linked transactions” is a technical term, which means any transactions between the same seller and purchaser or persons connected with them. As Jo Joyce said, a “single transaction” is not defined, but it is a bit like an elephant—you can recognise it. If you are buying six at once and it is the same deal, there is no ADS, but it does not work across linked transactions.

The Convener: That will save Headon Developments any lawyer costs, now that you have told us. You will get complaints from whoever its lawyers are, Isobel. *[Laughter.]*

I have a question about what is happening at Westminster. We are picking up anomalies in Scotland, but there will be people here who have a UK perspective. How are such anomalies being addressed at Westminster? Are they being taken forward in a finance bill or in any process? The same things must be happening with regard to the legislation south of the border. Does anyone have any knowledge of that?

11:00

Isobel d’Inverno: I am sure that Jo Joyce can also comment, but similar issues have been addressed in legislation south of the border. For example, the granny flat exemption or relief—whatever you want to call it—was introduced into the higher rates for additional dwellings for SDLT through a finance bill.

Attempts are also being made to address the issues through improvements to the guidance or by looking at other ways of framing guidance. Clearly, this is not Westminster, but another tax authority that we can pay attention to is the Welsh

Revenue Authority, which is trying to design an interactive tool that will help taxpayers to put things in. The tool will ask questions and will hopefully throw out the same answers. That is an example of trying to deal with the issue through guidance. However, a lot of the perceived anomalies with the higher rates for additional dwellings would have been addressed through the annual finance bill process by being raised by stakeholders and discussed with Her Majesty's Revenue and Customs and so on.

Jo Joyce: I agree. The issues have been raised more as we have gone along. Over the past 12 months or so, it has been harder to get anything changed, because the UK Government has been otherwise engaged. South of the border, we are seeing the same level of complexity and a similar number of queries from taxpayers. We have the same issue with SDLT, with people accidentally falling into the additional dwelling supplement, as we do with LBTT.

Isobel d'Inverno: The point about the Westminster process is that, because of the annual finance bill mechanism, it is a lot easier to get things changed. I cannot remember exactly when the granny flat issue was thought of, but because of the finance bill process it is quite easy to get things like that put into legislation. If you cannot get something in one year's finance bill, it can go in the next year's.

The Convener: This session has helped us to understand the anomalies and tensions in the ADS process. I suspect that the committee will want to agree to an evidence session with the minister responsible for ADS, which will give us a chance to probe some of the questions with him or her—I cannot remember which minister it is.

I thank our panel members for helping us in our deliberations. We are very grateful.

Meeting closed at 11:02.

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