



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Local Government and Communities Committee

**Wednesday 22 January 2020**

**Session 5**



The Scottish Parliament  
Pàrlamaid na h-Alba



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**LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE**

**3<sup>rd</sup> Meeting 2020, Session 5**

**CONVENER**

\*James Dornan (Glasgow Cathcart) (SNP)

**DEPUTY CONVENER**

\*Sarah Boyack (Lothian) (Lab)

**COMMITTEE MEMBERS**

\*Annabelle Ewing (Cowdenbeath) (SNP)

\*Kenneth Gibson (Cunninghame North) (SNP)

\*Graham Simpson (Central Scotland) (Con)

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

\*Andy Wightman (Lothian) (Green)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Chris Booth (Scottish Government)

Alison Fraser (Scottish Government)

Stephen Garvin (Scottish Government)

Angela O'Brien (Scottish Government)

Kevin Stewart (Minister for Local Government, Housing and Planning)

**CLERK TO THE COMMITTEE**

Peter McGrath

**LOCATION**

The James Clerk Maxwell Room (CR4)



## Scottish Parliament

### Local Government and Communities Committee

*Wednesday 22 January 2020*

*[The Convener opened the meeting at 09:45]*

### Decision on Taking Business in Private

**The Convener (James Dornan):** Good morning, and welcome to the third meeting of the Local Government and Communities Committee in 2020. I remind everyone present to turn off their mobile phones.

Agenda item 1 is consideration of whether to take agenda items 5 and 6 in private. Item 5 is consideration of evidence to be heard today on building regulations and fire safety, and item 6 is consideration of our work programme. The committee will also decide whether to take future consideration of its draft report on the Period Products (Free Provision) (Scotland) Bill in private. Are we agreed on that?

**Members** *indicated agreement.*

## Subordinate Legislation

### Relevant Adjustments to Common Parts (Disabled Persons) (Scotland) Regulations 2020 [Draft]

09:45

**The Convener:** Agenda item 2 is consideration of the draft Relevant Adjustments to Common Parts (Disabled Persons) (Scotland) Regulations 2020. The committee will first take evidence on the instrument. I welcome Kevin Stewart, the Minister for Local Government, Housing and Planning; Angela O'Brien, the Scottish Government's housing and independent living team leader; and Alison Fraser, a solicitor for the Scottish Government.

The draft instrument is laid under affirmative procedure, which means that Parliament must approve it before the provisions can come into force. Following this evidence session, at the next agenda item the committee will be invited to consider the motion to approve the instrument.

I invite the minister to make a short opening statement.

**The Minister for Local Government, Housing and Planning (Kevin Stewart):** Thank you, convener, and good morning.

I am pleased to present the draft Relevant Adjustments to Common Parts (Disabled Persons) (Scotland) Regulations 2020 for your scrutiny. If approved, the draft regulations will create a new right for disabled people who live in housing with common areas, such as communal access or a garden, to make the relevant adjustments to those areas. I am happy to advise the committee that the proposed legislation is the first of its kind in the United Kingdom.

At present, unless all owners in a development give their consent, a disabled person is unable to make any adaptations, even very minor ones, to common areas of their property. Section 37 of the Equality Act 2010 gives the Scottish ministers the right to make regulations allowing disabled people to make relevant adjustments—more usually known as adaptations—to the common parts of residential properties.

The draft regulations will allow disabled people to undertake adaptations to common areas with the support of a majority of the owners in a property, and they will prevent owners from unreasonably withholding consent. Where there is a dispute, there will be a right to request adjudication from a sheriff, whose decision will be final.

The project has been a complex one, and it has been of primary importance to me that the regulations will give disabled people a clear and workable method of securing the agreement of other owners to make reasonable adjustments within common areas.

A full consultation was conducted in 2011. At that time, 92 per cent of respondents agreed with the proposal to draft the regulations. Since then, my officials have worked with a range of key stakeholders—including the Convention of Scottish Local Authorities; disabled people's organisations and disability groups such as Inclusion Scotland and the Glasgow Centre for Inclusive Living; and expert housing organisations including the Care and Repair Forum Scotland and Housing Options Scotland—on the requirements for the draft regulations and for a practical guide for disabled people. Feedback from a wide range of stakeholders, including the Equality and Human Rights Commission, has been taken into account by officials in developing the draft regulations.

I am happy to answer any questions on the instrument.

**Annabelle Ewing (Cowdenbeath) (SNP):** The draft regulations represent a very welcome development. The current position requiring unanimity must prove pretty complex.

I note that,

"In the event of a dispute, either the disabled person or any of the owners may apply to the Sheriff for a final decision."

Could somebody clarify that?

**Kevin Stewart:** Hopefully, that situation will not arise now, and a majority of owners will agree to the adaptation. However, in the case of a dispute, it will be for a sheriff to adjudicate, and that will be the final port of call. I will bring in Ms O'Brien in a moment to go over some of that in more depth.

It has taken us a while to get to this stage. Although the Equality Act 2010 allowed us to make the changes, we had to gain permission from the UK Government to do so. It has to be said that that was not without its difficulties. At one point, I wrote to Amber Rudd, who was then the Minister for Women and Equalities, only to find that she was being replaced, and we had to rewrite a letter to the new minister to get final permission, to get over the final hurdle and to get us to this stage. We have worked through all this for a long while.

On the point about the sheriff, I wonder whether Ms O'Brien wishes to add to what I have said.

**Angela O'Brien (Scottish Government):** We have consulted the Scottish Courts and Tribunals Service, which advised that the route that has

been taken is the best one and is better than using the housing tribunal service, for example, because these matters are property related rather than tenancy related. The procedure should be fairly simple. As the minister has said, only in cases in which there had been no other way of mediating and resolving the issue would the sheriff's judgment be final.

**Andy Wightman (Lothian) (Green):** I wish to clarify something. Regulation 11 mentions the "right to adapt rented houses".

To be clear, will disabled people who live in rented houses be able to benefit from the regulations or will they require their landlord to take the relevant action?

**Angela O'Brien:** They will—sorry, minister.

**Kevin Stewart:** On you go, Angela. You have started, so you may as well finish.

**Angela O'Brien:** That provision is for people in the private rented sector, but they would still need their landlord's permission, in line with the provisions of the Housing (Scotland) Act 2006.

**Andy Wightman:** When a private tenant who requires some adaptations does not obtain the consent of their landlord, will they have the right to appeal to the sheriff?

**Angela O'Brien:** We will have to consider that. If the person's landlord does not give permission, it is unlikely that the adaptation will proceed. It will not proceed at the moment if the landlord does not give permission. *[Interruption.]*

**Andy Wightman:** I am sorry—I did not quite hear that answer. If a tenant with disabilities wishes to make any adaptations to common parts, will they be able to use the instrument that is before us?

**Angela O'Brien:** The instrument relates to the other owners in the property rather than the person's landlord. Existing legislation covers that situation: they require the permission of their landlord.

**Andy Wightman:** So, the draft regulations do not help a tenant with disabilities who wishes to adapt their property.

**Alison Fraser (Scottish Government):** Section 52 of the Housing (Scotland) Act 2006 provides the right for a tenant to adapt a rented house. As you rightly point out, regulation 11 sets out that work that is carried out under the draft regulations is not covered by that provision. The 2006 act applies to work within the house; the draft regulations apply to the work outside the house—the common parts.

**Andy Wightman:** So, if a person with disabilities who is a tenant wishes to make

adaptations to the common parts outside and their landlord refuses, they have no rights under the instrument that is before us.

**Alison Fraser:** Regulation 3 gives a disabled person who is a tenant the right to make relevant adjustments to common parts.

**Andy Wightman:** Tenants are covered just as much as landlords.

**Alison Fraser:** Yes.

**Kevin Stewart:** Yes.

**Andy Wightman:** That is all I was asking about. Thanks. The matter was first consulted on in 2011, and it has taken this amount of time to address due to its complexity, as you have hinted, minister. Is that correct?

**Kevin Stewart:** As I indicated, there was complexity in the fact that we were given the devolved powers to deal with the matter but had to seek permission to do so. That has added to the complexities. As I said, I wrote first to Amber Rudd, as the Minister for Women and Equalities, to say that we were seeking permission to introduce the regulations. Amber Rudd demitted office and we ended up having to write to her colleague—a baroness whose name escapes me at the moment—to get permission. In doing so, we moved as quickly as we possibly could.

I have not seen many relevant cases cross my desk, but those cases that I have seen—from MSPs such as Linda Fabiani—were causing great grief for folks who were unable to secure the agreement of everyone in their property to deal with the common parts. The regulations are the logical way forward to deal with such difficulties, and I hope that we will not see such issues arise again.

We are the first in the UK to move forward on this front. It is entirely logical and, I hope, will do much to alleviate some of the difficulties that a small number of folks have faced over the years.

**Graham Simpson (Central Scotland) (Con):** I have a few questions, and I want to follow up on what Andy Wightman asked about. I am a bit confused about why a disabled tenant would have rights under the regulations yet a majority of owners would be needed to vote changes through.

**Kevin Stewart:** We found that, previously, everybody in a building had to agree to changes to the common parts. I will give the example that I have seen myself. A person requires an adaptation to their building. Their landlord and most folks in the building have no problem with the change, but just one person withholds their permission, which means that the change cannot proceed. The regulations mean that the majority

vote would allow the adaptation to proceed, and they build in the final decision being for the sheriff.

I know that it is sometimes difficult for us to understand why certain folk would withhold permission for changes such as that, but, unfortunately, that is the way that the world works. The regulations are intended to iron out such a situation and to get to a point of logic, so that common adaptations can be made.

**Graham Simpson:** I completely understand that and that the decision has to be made by a majority of the owners. What I am trying to get at is whether, if a disabled tenant wanted changes made to common parts, they would still require the go-ahead from their landlord.

**Kevin Stewart:** Yes, they would.

**Graham Simpson:** So, the request has to come from the landlord.

**Kevin Stewart:** Let me expand on this. Many properties are in shared ownership. As you and other members are well aware, from your days as councillors, some properties that were previously local authority or housing association properties are now in shared ownership. There will be examples of housing in which a council still has the majority ownership and wants to proceed with work for a tenant who is in a council property. In the past, one owner-occupier in the building could have prevented that work from being carried out, to the detriment of all, but the regulations will iron out such situations.

**The Convener:** Can I just clarify something? The regulations are about the owners. The tenant is, to some extent, superfluous—although that is the wrong word to use. The issue is the owner's permission. Would a tenant who has disabilities first have to get the permission of their landlord, as they do now? Would it then come down to the owner to make the decision before the matter would go to a sheriff, if it had to go to a sheriff? Is that it in a nutshell?

10:00

**Kevin Stewart:** Yes. If it would be helpful for the committee, we can give you a summary of the existing legislation that covers those aspects. Would that be useful to you, convener?

**The Convener:** That would be great. Thank you.

**Graham Simpson:** I will move on from that issue. Let us say that there is a proposal from a tenant or an owner who is disabled, which then goes to a vote. That vote, in itself, could be difficult to arrange, as perhaps not enough owners would be traceable. That problem exists already, regardless of the regulations. However, let us say

that a majority votes in favour of the proposal. Who pays for the adjustments?

**Kevin Stewart:** The adaptations may be paid for by the person or, as may be the case in many situations, the integration joint board that is responsible for adaptations would pay for them. In some cases, as Mr Simpson is well aware, the landlords themselves may pay for the adaptations.

**Graham Simpson:** Let us say that, in a private block of flats, a proposal for an adaptation is made and gets the support of the majority of owners. I do not know what kind of adaptations you have in mind, but let us say that the proposal is for grab rails up the stairs. That adaptation would have to be paid for. Surely, there must be something written down that says who pays for it.

**Kevin Stewart:** Liability for costs is covered by regulation 9(1), which states:

“Unless the disabled person has entered into an agreement with the other owners of the common parts in relation to sharing the costs of the relevant adjustments, the disabled person will be solely liable for the costs.”

Regulation 9(2) states:

“The costs of the relevant adjustments include the costs of maintenance and reinstatement.”

However, as the committee will be well aware, integration joint boards will often pay for adaptations. The disabled person may well have entered into an agreement with the integration joint board or the health and social care partnership whereby one of those bodies pays for them. The other owners would pick up any of the costs only if they had entered into an agreement with the disabled person.

In most cases, the adaptation is likely to be paid for either directly by the disabled person or, more likely, by the integration joint board, the council or the other body that would normally do such a thing.

**Graham Simpson:** That is clear enough. The disabled person would pay for it unless other owners had agreed to chip in. Just so that we are clear, can you give us any examples of the kind of adjustments that might be used?

**Kevin Stewart:** I think that it would be unwise for me to speculate on what kind of adjustment there could be. We have all come across different cases. It may be a ramp to access the property, handrails or something more complex.

**The Convener:** Does the instrument include any descriptions of new types of adaptation, or is it just a different way of dealing with the existing adaptations that we all know about?

**Kevin Stewart:** No. It has nothing to do with any new adaptations.

**Graham Simpson:** Finally, let us go back to the delay. The consultation was in 2011 and it has taken until now to introduce the regulations. Amber Rudd changing jobs does not explain that eight-year delay. Perhaps you could expand on that a bit, because that is quite a long time.

**Kevin Stewart:** There has been a lot of to-ing and fro-ing over the piece, much of it prior to my becoming a minister. We have moved on the issue and have continued to engage with organisations across the board. We asked the UK Government to allow us to move forward, and we have eventually got to this point.

I hope that the committee will recommend approval of the instrument, so that we can get on with the job of dealing with the small number of cases in which there are difficulties, because many folks have suffered due to the inability to move forward.

**Graham Simpson:** Thank you.

**Sarah Boyack (Lothian) (Lab):** I welcome the regulations. I have a similar question to one that was asked earlier. What is included as a relevant adjustment and where is that set out, so that people who want such adjustments know where they stand and what is possible? To what extent are the definitions future proofed? What we consider to be a relevant adjustment might have changed from what we thought a decade ago, due to people's changing aspirations, needs or opportunities. I am thinking of things such as wheelchair access and storage and about electric wheelchairs or even electric bicycles. There have been changes in what people want.

How will the changes be publicised, so that people know what they are legally allowed to do, and who they might get to support them in the process?

**Kevin Stewart:** Ms Boyack makes a fair point about people's expectations nowadays, but the instrument does not cover all aspects of people's expectations. Regulation 4 sets out that

“Relevant adjustments include an alteration or addition ... to any common parts which affords a means of access to the premises tenanted, owned or occupied by a disabled person, or ... to make the premises suitable for the accommodation or welfare of a disabled person.”

We have been specific that the regulations are about allowing entry. From my mailbag, I know that in certain properties there are tensions around things such as where disabled buggies are parked and all the rest of it. Adaptations in that regard might not be necessary to provide access, so that is a different matter.

We need to look carefully at what future requirements will be, and we are doing so in our “Housing to 2040” consultation. Technology



changes, as does people's use of things, so we have to ensure that what we build is future proofed to allow for that. The SSI does not cover all aspects of the issue; it is about access to and egress from a property, to which everyone should have a right, using whatever means are possible, such as handrails, ramps or whatever.

**Sarah Boyack:** That is a helpful clarification.

The number 1 issue for people is getting in and out of their home but, once they are outside their home, how do they get anywhere else? Will that be picked up in subsequent regulations? Is the Government working on that?

**Kevin Stewart:** I am here to talk about the regulations that are before the committee—

**The Convener:** Yes. Let us stick to the SSI.

**Kevin Stewart:** Obviously, the Government continues to look at all aspects of equality. That is why, in recent times, so much effort has been put into producing plans for how we deal with some of the difficulties that disabled people face.

**Alexander Stewart (Mid Scotland and Fife) (Con):** As others have said, the SSI is welcome. We have discussed the potential to ensure that individuals have good quality of life and can enter and leave their premises. That is a step in the right direction. You indicated that integration joint boards would fund some of the adaptations that individuals require, which will have implications for the boards and their budgetary situation. When adaptations are requested for individuals, that would go forward in line with normal procedure: the IJB would decide whether the application was acceptable, and then the individual would get a rail or an adaptation to the garden, or something along those lines. What financial implications do you anticipate that boards will then have to endure in order to ensure that the adaptations are taken forward and supported?

**Kevin Stewart:** As I have said to the committee previously, the best thing that integration joint boards can do to save money and prevent the human costs that occur when adaptations are not put in is to deal with all of that as preventative spend. I have made no bones about that at the committee and elsewhere. At times, I have been frustrated in my constituency when I have had to argue with the health and social care partnership that, by doing a certain thing, it is likely to save a lot of money. Before we reach the point when a person is using an adaptation, it is likely that an occupational therapist will have agreed what is required to meet that person's needs. One would hope that, once an OT has made a recommendation, the resource would be found to do it.

To a degree, we might be overcomplicating the issue. I am always glad to be scrutinised but, in all honesty, I cannot answer every question today about every aspect of health and social care partnerships and how they resource such things, when I am dealing only with the regulations. However, I reiterate that spending money on adaptations saves health and social care partnerships a lot of money, and it saves a lot of grief for the folks who need the adaptations.

**The Convener:** It is fair to ask about the knock-on effects, but we are here to discuss the SSI.

**Andy Wightman:** Minister, you mentioned in your opening remarks that you had sought the permission of the UK Government. Section 37(3) of the Equality Act 2010 requires you to consult a minister of the Crown. I assume that the UK Government never implied that it could withhold permission—surely your statutory duty was merely to consult.

**Kevin Stewart:** I will get back to Mr Wightman and the committee about the full detail of that. Such issues are never easy, and logic sometimes goes out the window. I am more than willing to share the timeline of my communication with UK ministers on the issue.

**Andy Wightman:** That would be interesting, because there is a wide range of powers that ministers have and on which they are required to consult. It would be useful to get to the bottom of what that consultation is. I am interested in your experience of that.

**Kevin Stewart:** I am more than willing to share that with the committee.

**Annabelle Ewing:** I would like to go back to an earlier issue. Alterations on the part of a tenant are governed by their lease agreement with the landlord. If the tenant is disabled, I imagine that there would be a provision requiring the landlord to grant consent, and that the consent should not be unreasonably withheld. That would be the normal legal position in Scots law.

**The Convener:** I think that we have exhausted the questions—although not the minister, I hope.

We move on to agenda item 3, which is the formal consideration of motion S5M-20243.

*Motion moved,*

That the Local Government and Communities Committee recommends that the Relevant Adjustments to Common Parts (Disabled Persons) (Scotland) Regulations 2020 [draft] be approved.—[Kevin Stewart]

**The Convener:** As members have no comments, I have one follow-up question that I should have asked earlier. Sarah Boyack spoke about publicity. Will you ensure that the public know about the change to the law?

**Kevin Stewart:** I will have discussions with officials about how to move forward on that. We will make good use of bodies such as Housing Options Scotland, which is good at getting the word out when there is a change in the law. We will consider not only what we can do but what help we can get from other bodies that make contact with a lot of disabled people.

**The Convener:** Thank you. *[Interruption.]* I hope that that is not my phone ringing. Oh! It is. *[Laughter.]*

The question is, that motion S5M-20243, in the name of the Minister for Local Government, Housing and Planning, be agreed to.

*Motion agreed to,*

That the Local Government and Communities Committee recommends that the Relevant Adjustments to Common Parts (Disabled Persons) (Scotland) Regulations 2020 [draft] be approved.

**The Convener:** The committee will report on the instrument in due course. Do members agree to delegate authority to me, as convener, to approve a draft of the report for publication?

**Members indicated agreement.**

**The Convener:** I suspend the meeting briefly to allow a changeover of officials.

10:15

*Meeting suspended.*

10:18

*On resuming—*

## **Building Regulations and Fire Safety**

**The Convener:** Under agenda item 4, the committee will take evidence on building regulations and fire safety in Scotland. The committee concluded an inquiry into the matter earlier this session, but we agreed to maintain a watching brief on it, as policy and practice continue to evolve in the light of lessons learned from the Grenfell Tower tragedy. In today's session, we will also consider issues relevant to petition PE1719, concerning the stay-put fire safety policy in tall residential buildings, which was referred to the committee in November 2019.

I again welcome Kevin Stewart, the Minister for Local Government, Housing and Planning, who is accompanied by Scottish Government officials: Stephen Garvin, head of the building standards division; and Chris Booth, a policy officer in the fire rescue unit.

I invite the minister to make a short opening statement.

**Kevin Stewart:** Thank you for giving me the opportunity to update the committee on the work of the Scottish Government's ministerial working group on building and fire safety, which was formed by the First Minister immediately after the Grenfell tragedy. We have made significant progress since I last appeared before the committee, in September 2018, to talk about this issue.

On 1 October 2019, we published revised fire safety standards and guidance. That includes measures to improve the safety of external cladding on high-rise buildings. It is now a requirement that any cladding system on a building over 11m in height must be non-combustible or have passed a large-scale test. The requirement has also been extended to all hospitals, residential care homes and entertainment and assembly buildings, regardless of height.

Retaining the BS 8414 testing route has raised questions from the committee and certain industry parties. In retaining the BS 8414 alternative test, I have followed the recommendations of the Scottish Government's fire safety review panel, which is chaired by Dr Paul Stollard, who provided evidence to the committee in 2018.

Cladding performance is only part of managing fire in buildings, which is why we have also introduced requirements for two flights of escape stairs, evacuation sounders on floors and dwelling

indicator signs in new high-rise buildings. We will introduce further requirements for sprinklers from 2021, which will extend to all flats and new social housing. In addition, we have introduced further fire safety measures through legislation to require all homes to have smoke, heat and carbon monoxide alarms with effect from February 2021. To assist, we have made interest-free loans available to housing associations, and so far over £4.5 million has been loaned.

We have also produced practical fire safety guidance, which is aimed at those who are responsible for high-rise housing, and we have produced fire safety leaflets for residents, which are being delivered to all high-rise homes. We have updated the compliance guidance, in particular to raise awareness of the checks that are needed on safety-critical elements. Last year, the building standards futures board was formed to oversee a programme that is intended to deliver greater levels of compliance and a better performing system.

I am acutely aware of the issues with mortgage lending on high-rise properties with cladding, and I recognise the anxiety that that is causing to home owners. I have been clear that I want swift action to be taken to resolve those issues. We cautiously welcome the launch of the new assessment process—the EWS1 form, which was announced by the industry last month—and we hope that that will help to resolve the issues. My officials have held discussions with the United Kingdom Government, UK Finance, the Royal Institution of Chartered Surveyors, the Property Managers Association, MSPs and others, and we will continue to do so until we arrive at a satisfactory resolution.

We acknowledge the phase 1 report on the Grenfell inquiry, which was published late last year. I have met with officials who are reviewing its recommendations, and there will be a report to the ministerial working group on 4 February.

I hope that that short overview demonstrates the Scottish Government's commitment to taking any necessary action to make Scotland's buildings even safer than they currently are.

**The Convener:** Thank you very much.

Witnesses who have appeared before the committee told us about two different approaches to fire safety in complex buildings such as high-rise flats. One is based on increasing the competence or regulation of those involved in fire safety and the other is based on removing the scope for human failure through stricter regulation and the use of safety factors. Which approach does the Scottish Government favour in developing the building standards system and why?

**Kevin Stewart:** We have to look at all aspects of that. I have closely followed some of the evidence that has been given to the committee and, like the committee, I have received communications from various bodies on what they think is the best way forward.

In some cases, the folks who are writing to us obviously have an interest in moving one way rather than another, and we have to take cognisance of that as we move forward. In all that we have done, I have been clear that we will look carefully at everything that is presented to us. At an early stage, we took the bold step of putting together the groups to consider fire safety and building standards. On those groups, we had experts who are not only known nationally but are internationally renowned.

We will continue to listen to the views of people as we move forward, because I do not want us to take rash decisions in certain areas based on evidence from perhaps just one or two parties. We have to listen to all, consider closely and analyse what is being said, and move forward on that basis. That is what we have done thus far in implementing the recommendations from those who considered fire safety and from those who considered building standards.

**The Convener:** What would you say to those who raise concerns about the fire safety expertise being concentrated on value engineering, with a view to minimising the costs that are incurred in relation to fire safety standards, rather than on producing the safest of buildings?

**Kevin Stewart:** I will bring in Mr Garvin to comment first, because he has greater expertise on those matters than I do.

**Stephen Garvin (Scottish Government):** The building standards system is pre-emptive, and so the designs, specifications and so on are approved in relation to the building standards regulations. Any value management or value engineering exercise cannot compromise that, and any changes that occur either after the approval is given or during the construction should be subject to amendments to warrant.

Any design or construction work that is done has to be compliant with the regulations. That way, we require that the building is safe once it is completed. Any exercises that are carried out around value management should not compromise safety.

**The Convener:** That suggests that we have to build according to the standards that have been set. However, what if the standards have been set in such a way that they take into account both cost and safety? That happens in almost everything that we do, and so my question is: what is the balance? Is making it safer more important than

having it safe but not as safe as it possibly could be?

**Kevin Stewart:** We have looked at safety. For example, there was debate on the fire safety review panel about the requirement for two staircases. If I remember rightly, the majority of the panel came out in favour of two staircases, but there was dispute about whether that was entirely necessary. In formulating the new regulations, I said that we require the two-staircase solution. I want to ensure that people in Scotland are as safe as possible and that our buildings are as safe possible.

Various things have been said to the committee about aspects of BS 8414, and some people have raised questions about that fire testing. However, we took the evidence from the fire safety review panel, which was led by Dr Stollard, and which supported the continued use of BS 8414 as an option. During the course of the evidence that the committee took, there was discussion by some about desktop exercises, and that term has commonly been used to describe an assessment in lieu of a fire test. However, that has never been recognised or supported as a route to compliance with Scottish building regulations. We all want to get to a place where we can make folk as safe and secure as possible.

10:30

**The Convener:** That is encouraging.

This follows on from my previous question. Some concerns were raised about fire safety and building standards being focused on ensuring evacuation before collapse when they should be focused on minimising the impact of a fire in a building. Are you saying that, particularly with public buildings that serve important social functions, there is now a change in focus to ensure that the impact of a fire in a building is minimised and that such a thing as happened at Grenfell cannot happen again?

**Kevin Stewart:** We have always sought to minimise fire spread, particularly in high-rise properties. They were built, or should have been built, with compartmentalisation—that is not a word that I am very good at saying—such that, if a fire breaks out, it is contained in that area of the building.

**The Convener:** So, you would not recognise that description of “evacuation before collapse”.

**Kevin Stewart:** I do not know who has used that phrase.

**The Convener:** It was one of our previous witnesses.

**Kevin Stewart:** Okay. It is not one that I have seen.

One thing that we will probably cover in depth is the situation of stay put versus evacuation. The Scottish Fire and Rescue Service still advocates the stay-put approach, whereby evacuation should take place only when folk are instructed to evacuate, because the integrity of the high-rise building should be such as to stop the spread.

I know that we saw something different in the tragedy at Grenfell. However, as we move forward, we will get to grips with and realise exactly what the circumstances and the difficulties were there, compared with what the standards have been here in Scotland.

I will now bring in Mr Garvin, as much of this is obviously technical.

**Stephen Garvin:** The minister has set out the situation for high-rise housing or blocks of flats generally, with compartmentation and ensuring that the fire is contained in the area of origin as much as possible. In that respect, evacuation is an issue only once the compartmentation is breached—and that is a matter for the fire service in tackling the fire.

In other types of buildings, such as schools, it is a matter of getting the people occupying the building out, first and foremost, and we also set requirements for sprinklers in schools, which should help to contain any fire outbreak.

**Sarah Boyack:** Up to this point, we have focused a lot on the design of buildings and materials. I want to pick up on an issue raised in Professor Torero's evidence about the skills and knowledge of those involved in the process. I particularly wish to address the issue of building industry fire safety professionals. Should they be certified and regulated, as happens in many other professions? I am keen to hear the views of the minister or Mr Garvin on that. Where is the Scottish Government on that issue?

**Kevin Stewart:** I will let Mr Garvin come in first, then I will follow up.

**Stephen Garvin:** We recognise the points that Professor Torero made. The recommendations that were made in Dame Judith Hackett's report for England following the Grenfell Tower fire cover issues around both people and construction products. Those issues apply across the UK.

We are conscious of the work that is going on, and we are monitoring and liaising on that work with regard to the licensing of contractors and the skills and competence of the profession. It is important for us to understand how we deal with those things in the building standards system, and use that to best effect, so that we ensure that

people with the right skills and competence are carrying out the work.

There are professional routes for both the design and the construction side. Training, such as Scottish vocational qualifications, is available for installers. We need to ensure that construction clients control things, including through contracts, so that people who are coming on site to work are competent to do that work. For example, they should make sure that the subcontractors who they appoint have experience in the systems that they are installing, and that the proper supervision and checks are carried out. Some of that sits within the building standards system; other aspects sit within the responsibility of clients and others to get the job right.

**Kevin Stewart:** Further to what Mr Garvin has just said, we also need to look at the workforce that is itself involved in building standards. I hope I will be excused for saying that it is an older workforce. We need to bring new folk into play, and to ensure that we build resilience into that particular area of business. Local Authority Building Standards Scotland is currently developing and testing a new competency assessment system, to assess the skills of every relevant member of staff, and to identify gaps.

Beyond that, we are looking at how we can attract more folk into that area of business. There have been difficulties in recruitment over the years. We want to show folks that it is the kind of career that they should consider. We also need to get the right folks involved in the verification processes.

The committee is already aware that the Government is looking at skills within the construction sector as a whole. We had Professor Sean Smith from Edinburgh Napier University report to us recently on a number of those issues.

**Sarah Boyack:** That is useful. The issues include the commissioning of the work, clients, designers, construction and the inspection of the construction. The challenge is to be confident, at every stage in the process, that people are qualified and skilled. I have listened to partial answers that take us through some of those issues. Will Professor Smith's report be publicly available?

The question is about whether we are going through all the aspects of all the people involved, and it is also about the accountability process. What more needs to be done about the skills of those who are involved in the process? What more needs to be done on how work is checked to ensure that it has been done properly, in terms of meeting building standards, with an awareness of how they have been changed, in a way that makes sure that the certification is clear?

What changes have you made since Grenfell, particularly in terms of compartmentation? For example, an owner might change a door and have no idea that they have made a whole floor vulnerable. There is an issue about awareness.

The committee previously recommended the greater use of clerks of works. The issue is about trying to think through all those different stages and possibilities, so that everyone involved knows what they are meant to be doing, and does not do something inadvertently.

**Kevin Stewart:** There were a lot of questions in there. I will cover as many of them as I can. If I miss anything, Ms Boyack might want to come back in.

Let us first deal with the latter questions. With regard to compartment—I should not have attempted to say that again. Let us talk about fire doors. Compared to south of the border, we have a different regime for fire doors. What is the correct terminology for the 60 minutes?

**Stephen Garvin:** It is “60 minutes of fire resistance”.

**Kevin Stewart:** That is simple. I should have said what I thought it was. A fire door has to have 60 minutes of fire resistance here, compared to 30 minutes south of the border.

Since the Grenfell tragedy, we get an overview by going to high-rise buildings across the country to see what they have, and we have also relied on partners to do that. We have had co-operation from many local authorities and housing associations in doing all that.

In my home patch, folk have moaned at me that they were having to pay for replacement doors, because they had removed doors without permission, so I am confident that those checks are being carried out. However, again, we cannot be complacent in that. One of the reasons why we are putting together the inventory of high-rise buildings is so that, on an annual basis, we can do that overall check of what changes have been made to a building and what effect they might have. I am confident on that.

As well as thanking housing associations and local authorities for all that work, I thank the Scottish Fire and Rescue Service for the work that it does to make folks in high-rise buildings aware of the situation. We are sending out a leaflet to every resident in high-rise buildings across Scotland, to make them aware of fire safety issues. That exercise, which started at the beginning of this month, is almost complete. Earlier, Chris Booth gave me a number of how many buildings still had to receive leaflets.

**Chris Booth (Scottish Government):** About 100 are still to receive them, and they will do so by the end of the month.

**Kevin Stewart:** There are 100 still to do; that will be completed by the end of the month.

As we move forward and make changes, it is essential that we continue to liaise with residents' groups and folks who live in high rises. We must listen to what they have to say.

In her questions, Ms Boyack mentioned Professor Smith's report. That is already public, but we will send the committee all the details of that. The Government will look through all its recommendations and move forward appropriately.

Ms Boyack also touched on construction. We are looking at our construction handbooks and trying to ensure that we get all that spot on.

Beyond that, Ms Boyack talked about procurement. Again, we are looking at our procurement handbooks and at how we will procure as we move forward. Using procurement and our construction handbooks, there are ways and means through which we can set a course for improvement. In all that we do on that front, we will continue to talk to partners and move towards improvement.

My final point is around clerks of works. The committee is aware of my opinion; when I am out and about, talking to folk, I find that, where a clerk of works has been in place—whether that is in a housing project or any other project—things have gone more smoothly. That is the case even when there are not any big issues. If a clerk of works is on site, even the small snagging issues lessen.

10:45

**Sarah Boyack:** That is really useful. I welcome leaflets going out to people in high-rise buildings, which will enable local community groups to come together to read them and promote awareness. That is incredibly important, alongside all the official work that is going on. It is useful for us, as MSPs, to know that those leaflets are going out.

**Kevin Stewart:** Ms Boyack is absolutely right. We need to continue to have discussions with folks who live in high-rise buildings about their hopes and aspirations, and, perhaps, their fears. We need to take cognisance of what they have to say. I have met a number of residents groups from many high-rise buildings across the country, and their comments and ideas have led to some of the Government's work moving forward. My expectation is that we will continue to have those discussions with folk and that local authorities and landlords will do the same. In all that we do on that front, listening is essential.

**The Convener:** Has the Government had any interaction with Local Authority Building Standards Scotland?

**Kevin Stewart:** Mr Garvin is nodding vigorously, so I will let him come in in a second. We talk to LABSS a lot. I meet people from LABSS fairly regularly, although it has been a while since I last spoke to them. I have attended, and faced questioning at, its conferences, which I think was appreciated. There is constant communication with building standards, LABSS and local authorities.

As the committee is well aware, I decided that we would do things somewhat differently by giving councils verification powers for different numbers of years, depending on the standard that they were at. There is constant monitoring and communication among building standards, local authorities and, of course, LABSS.

Beyond that, during the summer—when some folk might think that I have a little more time on my hands, which is not always the case—I visited building standards folks in Stirling to see work that was going on on site. I also spent a fair amount of time in Inverclyde looking at new builds and at what building standards were doing there, which included the refurbishment of a building. I tried to gather up the knowledge from the experts on the ground so that I had in my head information about some of the things that I was not so sure about.

Does Stephen Garvin want to add to that?

**Stephen Garvin:** The minister has covered most things. We work with LABSS pretty much on a day-to-day basis, and it is fully involved in the initiatives that are under way, such as the building standards futures board's programme. LABSS has already done a lot of work on workforce training and qualifications, and we are supporting it in developing that work. The development of a building standards workforce strategy is very much part of the futures board's programme, and we expect and hope that the minister will be able to launch the strategy in the spring. That will set a way forward for the profession and the workforce and for getting more people into the system and trained.

**Kevin Stewart:** If the convener will indulge me, I will say one other thing, because we sometimes concentrate on the negative. One of the local authorities that was not performing well on building standards was Stirling Council, but its performance has improved greatly. That is one reason why I wanted to go and see what it was up to. Stirling Council is in a fairly good position because it is attracting young folk into building standards, and some of the work that it has done could be emulated elsewhere.

**The Convener:** That suggests that LABSS has an important role to play. It would have been nice to have had representatives from LABSS in front of the committee. We have invited them a few times, but they have not responded. If we have another session, we will try our hardest to get them to come.

**Graham Simpson:** LABSS has been before the committee, I think, once before, when we produced our original report on the issue.

I will follow up on a couple of questions that have already been asked. Are there any councils that, in your view, are still not performing well enough on verification?

**Kevin Stewart:** We continue to monitor all such issues. The committee will be aware that, when I was not so happy about what was going on, we reduced the amount of time for which local authorities had verification powers. Beyond that, we had an agreement with the City of Edinburgh Council that we would provide a number of experts to give it a helping hand to ensure that it got back on track. If anybody feels that there are any difficulties, we are more than happy to help them with additional expertise over the piece.

In the main, there have been improvements. I cannot remember all the details off the top of my head, but some of the councils that had the powers for less time have had that time increased. We increased the time for which Stirling Council and Glasgow City Council have the powers to three years, and we increased the time to two years for the City of Edinburgh Council.

**Graham Simpson:** Those were the three councils that I was thinking about.

**Kevin Stewart:** Stirling Council and Glasgow City Council have made fairly substantial improvements. We have given the City of Edinburgh Council a helping hand, and it is on the road to improvement. When I am out and about in Edinburgh, I get a lot fewer complaints about the situation than I got previously.

We get regular updates on councils' performance, which is not based entirely on the time that is taken, because we can get fixated on that. We will continue to monitor performance.

**Graham Simpson:** Perhaps you could write to us with a bit more detail on that, rather than giving a further answer now.

**Kevin Stewart:** That is not a bother.

**Graham Simpson:** I do not want to focus on the leaflets too much, but Mr Booth said that just 100 more high-rise buildings are still to receive them. Are those housing association and council properties?

**Chris Booth:** The majority are housing association properties.

**Graham Simpson:** They are not private blocks.

**Chris Booth:** Some of them are private blocks.

**Graham Simpson:** But not all private blocks are included.

**Chris Booth:** No.

**Graham Simpson:** That means that a large number of high-rise blocks in Scotland will not get the leaflets.

**Chris Booth:** No—I am sorry. A huge number of leaflets were sent out in December, based on the partially completed inventory of high-rise buildings. More buildings—the 100 that have been mentioned—were identified in late December, and we are sending out leaflets to those buildings this month. About 43,000 leaflets were delivered before the end of last year, and a further 4,000 to 5,000 will be delivered this month. They should be delivered to every flat and high-rise building in Scotland by the end of this month.

**Kevin Stewart:** That includes private buildings.

**Graham Simpson:** Does that include private buildings?

**Chris Booth:** That includes all tenures.

**Graham Simpson:** What is your definition of a high rise?

**Chris Booth:** Any building over 18m—I am sorry—it is any domestic building over 18m.

**Graham Simpson:** I look forward to receiving a leaflet.

**Chris Booth:** We are commissioning research to make sure that the leaflets have been received. People will also be asked how they feel about the information in the leaflet.

**Graham Simpson:** If you want to ask me at the end of the month whether I have received it, I will be happy to feed back to you.

**The Convener:** I am sure that you will tell us if you do not receive it.

**Graham Simpson:** Yes.

**Kevin Stewart:** I am sure that you search everything as it comes through the letterbox. You dinna want to say you hinna got it when it was hidden in a pizza leaflet; hopefully, that winna be the case.

**Graham Simpson:** Absolutely, minister. I am meticulous about that sort of thing.

**Kevin Stewart:** Good.

**Graham Simpson:** I will take us back to what I think that we are here to talk about and ask you

about cladding and the BS 8414 test that you mentioned earlier.

On 13 January, an absolute ban on combustible cladding materials came into force in Wales. That applies to all blocks of flats, including care homes and hospitals, over 18m. The Minister for Housing and Local Government in Wales, your counterpart, Julie James, said that the ban

“leaves no room for doubt as to what is suitable”

in those properties. The ban there applies to all new buildings and to existing buildings that are being refurbished. In England, a similar ban on all combustible cladding materials came into force in December 2018. That does not appear to be the case in Scotland. Why is that?

**Kevin Stewart:** As I said earlier, we put together a panel of experts, chaired by Dr Paul Stollard, to look at all aspects of fire safety. That panel supported the continued use of BS 8414 as an option to inhibit fire spread in compliance with building regulations, and we have followed their expert advice. The requirement for cladding on high-rise buildings in Scotland is that it meets European classification A1 or A2—in effect that it is non-combustible or does not contribute to fire growth—or that it passes the large-scale fire test known as BS 8414.

In retaining the option to test cladding systems, we have followed the recommendations made by those fire experts. As was set out by witnesses at your meeting on 20 November, although cladding is clearly important, there are more fire risks to a building than just that one element. However, I recognise that whatever route to compliance we take, there also needs to be robust verification, hence the on-going work to reinforce the roles and responsibilities of those involved in delivering buildings, as well as how all that is evidenced. My officials can provide more information on that work if the committee wants it.

That is where we are; we followed the recommendations of the expert panel. I recognise that, during the course of your deliberations with other witnesses, some folks agreed with that and others did not, but the BS 8414 test is globally respected and the European Commission is adopting it as the basis for a large-scale fire exposure condition in the harmonised European fire test standard.

11:00

The committee will also be aware that the British Standards Institution put out a call for evidence on BS 8414 in summer 2019. The committee that is responsible for all that, the members of which are experts and independent of Government, is considering 200 pages of public comments. We

obviously want to look at any revised standard that it comes up with.

We will continue to look at all that and take cognisance of the views of experts as we move forward.

**Graham Simpson:** Do you accept that the ban that exists in England and Wales is stricter than what exists in Scotland?

**Kevin Stewart:** I do not necessarily accept that there is a stricter regime, for the simple reason that, when using BS 8414, an entire system is tested, whereas the emphasis in other places has been on one aspect of the system. Perhaps I will bring in Mr Garvin, because he has more expertise than I have on that front.

**Stephen Garvin:** The BS 8414 test is a large-scale test of all aspects of a cladding system. It is internationally recognised that the severity of that test is greater than other similar, large-scale tests. It is a step up from intermediate-scale tests.

We have no evidence that systems that have demonstrably passed the test and been certified have failed in practice. Testing was carried out at the Building Research Establishment on the same type of materials that were installed at Grenfell, and the materials failed those tests quickly. Any system that fails a test should not be used in Scotland on any building that is above 11m; previously, up until last October, such a system could not be used on buildings from 18m up.

As well as for high-rise housing, we have already made changes to address cladding issues for other types of buildings, including entertainment and assembly buildings, care homes and hospitals.

**Kevin Stewart:** I want to put it on the record—although Mr Garvin has covered it up to a point—that my officials are not aware of any external wall cladding system tested to BS 8414 that has failed in a fire incident.

Others who are looking at bringing in new standards are basing them on BS 8414. I reiterate what I was saying about the European harmonised fire test standard; they are moving forward with it on the basis of BS 8414. The standard is respected globally.

I know, as always, that there are differing views, but we should wait and see what the findings of the British Standards Institution are. However, I cannot repeat often enough that we are not aware of any external cladding system that has been tested to BS 8414 and has failed in a fire incident.

**Graham Simpson:** We are getting technical here, but the reason for the test no longer being used in the rest of mainland Britain is that allows materials with limited combustibility to be used in



systems. Would it not be sensible, despite all that you have said, to at least put a pause on its use until we can be absolutely certain that it is safe?

**Kevin Stewart:** I want to—and I will—do everything possible to make sure that folk are safe in their homes. However, I do not want to ban anything in a knee-jerk reaction, when the clear evidence in relation to that full-scale fire test is that we have not seen any incidents. I cannot repeat enough that we are unaware of any incident in any system that conforms to BS 8414.

Beyond that, we have to recognise that experts elsewhere are looking to build their own regime on the back of BS 8414. If the situation was that nobody recognised that that test was of value, I would have looked at doing something different in terms of the advice being given. However, the independent review panel has backed BS 8414 and the European Commission is looking at building on BS 8414, using it as the basis for harmonisation. There is also, rightly, an on-going review of the standard by the British Standards Institution, to see whether further improvement is required. I am not averse to making change, but we need to find out from the experts what is required.

**Graham Simpson:** Okay.

I have one further quick question, which flows from what Professor Torero told us in relation to that test. His concern was not necessarily about the test itself, but about the people who use the test and whether they sometimes lack skill. How do we ensure that the people who use the test have the right skills to carry it out and to interpret the results?

**Kevin Stewart:** Whether in relation to fire safety or any other construction area, we have to make sure that the right people carry out the work that is required. That is one of the reasons why we continue to look at every aspect of the topic. We have to co-operate, cajole and maybe even go further to get everyone in the construction business to a place where we have the level of reliability that we all expect.

I will bring in Mr Garvin for some of the technical aspects; I might then come back in.

**Stephen Garvin:** The right skills are a prerequisite, whether in design or installation work. As I mentioned, work is on-going to look at skills, licensing, contractors and so on in the construction industry. We monitor and liaise on that as we go. The question is how we use that work in the building standards system. That is important. That is not to say that people are not already skilled in the design of façades of all types. It is about getting the right people to carry out the design work.

There is a range of approaches in the industry. No single profession is in charge of the cladding or the façade of a building; it involves a mixture of architecture, engineering, surveying and so on—

**Graham Simpson:** Mr Garvin, I am going to stop you there. My question was about the test and the people who use it. How can we be absolutely certain that they have the right skills to use the test and to interpret its results? If we cannot be certain, please just say so, and then perhaps we can find a way to do what is required.

**Stephen Garvin:** As we have said, responsibility for ensuring that their contractors, subcontractors and designers have the expertise to carry out such work is placed on the people who instruct it—the clients and their advisers.

**Kevin Stewart:** Perhaps Mr Garvin has not quite answered Mr Simpson's question because the question itself is based on the test.

If it would be useful to the committee, we could provide information on the BRE testing and other aspects. Perhaps Mr Garvin could comment on that.

**Stephen Garvin:** It is clear that a system that is tested to BS 8414 should form the basis of what is put on a building during its design and construction stages. Veering too far from that should not be allowed.

Under BS 8414, there are rules for application of the BS 8414 test, which should be followed in addition to using the system that has been tested.

**Graham Simpson:** I am sorry, but my question is not being answered. Perhaps you do not have the answer today, but you could have a look at how testing is monitored. You could also have a look at the evidence that the committee has taken—especially that of Professor Torero. That was his main concern, and it is also mine. There are differing views on whether the test is any good, so if we are going to carry on using it in Scotland we need to be sure that the people who are it and interpreting its results are properly skilled.

**Kevin Stewart:** If I could—

**The Convener:** Excuse me a second, minister. I think that the straightforward question to which Graham Simpson wants an answer is this: who ensures that the people who are doing the test can carry it out appropriately and properly?

**Stephen Garvin:** The tests themselves should carry accreditation in relation to both the test rigs and those who are carrying out the work. Accreditation is provided by the United Kingdom Accreditation Service, which publishes details of the laboratories, such as BRE, that are accredited to carry out tests.

**The Convener:** If you could send us—

**Kevin Stewart:** I think that the committee will have seen some of this information before, but we could look out material on the testing that is done—for example, at BRE—so that you have an indication of what the accreditation is and what those people do.

**The Convener:** We want an assurance that only people who have such accreditation carry out those tests. I think that having that assurance would answer our questions.

**Kevin Stewart:** We will send you those details, convener.

**The Convener:** Thank you. Andy Wightman has a question.

**Andy Wightman:** Welcome, minister. I want to talk about an issue that you mentioned in your opening remarks. It involves cladding and property owners and is a wider question than the ones that we have discussed so far. Fundamentally, it is about risks and the extent to which lenders, in particular, are prepared to take them on.

The publication of the EWS1 form at the end of December was welcome. It was created under an agreement between the Building Societies Association, RICS and UK Finance, and is a form that is intended for recording, consistently, assessments made of external wall constructions. If an assessment has been made and everything is tickety-boo, that is fine. However, further problems will arise where an assessment has been made and everything is not in order and further work is required. Further investigation may prove that things are okay, or it may show that remediation is required.

In a note that it published just before Christmas, the Law Society of Scotland highlighted a number of problems. It said that professional indemnity insurers—in other words, the people who insure solicitors and surveyors—

“will not provide cover for a report addressed to all co-owners.”

Therefore, any report is only to be relied upon by the owner of that particular bit of the external wall and by the lender in question. Can you assist with that work—for example, by underwriting any of it?

Many members have constituents who are unable to sell their flat because they cannot afford to get that assessment done, or because an assessment has been done and their building requires remedial works. Anybody else who wants to sell a flat in the same building would be required to get the assessment done again, with all the associated costs. What are you able to do in that regard?

11:15

**Kevin Stewart:** As Mr Wightman knows, I am aware of the situation, which sprang up in autumn last year.

As I have told the Parliament, I have written to the UK Government about the issue. In particular, I have written to the Secretary of State for Housing, Communities and Local Government, Robert Jenrick, a number of times, but I am yet to receive a response from him. The mortgage-lending aspect is a reserved matter and, at the very least, I thought that we would have had the courtesy of a response to some of the concerns that we have put forward. It is not for me to tell the committee what it should do, but it might want to add its voice. I know that a number of colleagues in both the Scottish Parliament and the UK Parliament—including Deirdre Brock MP—have tried to raise the issue with Mr Jenrick. I am yet to find anyone who has received a response.

As I said in my opening remarks, I hope that the EWS1 form will make a difference and allow us to move forward. However, a solution that works for all is required, so we will continue our discussions with UK Finance, RICS and others in deciding how to move forward. We will also continue to engage with the likes of the Property Managers Association.

I have told Mr Wightman previously that my intention is to bring together a number of folk to brainstorm how we can get through some of the difficulties. However, the key thing is to get a response from the UK Government so that we know exactly what we can do within the limits of our devolved powers.

I have responded to every single person who has written to me on the subject, so I have an idea of the difficulties that folk are facing and where those difficulties arise—that is how seriously I am taking the issue.

As we progress, the committee can be assured that I will continue to keep it updated as to how we can move forward.

**Andy Wightman:** I am sure that there are issues that the UK Government can assist with. However, I do not think that one is that of telling mortgage lenders that they must lend to people whom they do not want to lend to.

On the Scottish Government's responsibilities, does one issue not relate to the law of the tenement? If it is deemed that remedial works are required to remedy defects in cladding, for example, those are as difficult to remedy as any maintenance that a tenement required would be. Indeed, we discussed adaptation of common parts under an earlier agenda item. That question is in the devolved space, is it not?

**Kevin Stewart:** We cannot separate all those things out. The main difficulty is around mortgage lending. I have no powers over mortgage lending—that rests with the UK secretary of state. Mr Wightman asked whether we can underwrite this, that or the other, but I am not in a position at the moment to say what we can or cannot do in that regard. One of the things that frustrates me greatly is when the Parliament attempts to do half a job rather than resolve the full job, and in order to resolve the full job here, we need some co-operation from the UK Government in relation to how we can move forward.

**Andy Wightman:** I am still not clear what role the UK Government has. I understand that mortgage finance is a reserved matter, but UK Finance and the building societies have got together with RICS to agree a common form of assessment. Questions have arisen about taking that forward, but the questions that I have are about people who find themselves in a position where, for example, the assessor signs off on part B2 or part B1 of the EWS1 form when further work or remedial work is required. The problem is associated with the fact that no one else can rely on the work and inspections that are done, which are nothing to do with UK Finance. We are talking about a situation in which mortgage lenders are happy to lend if certain requirements are met. However, if you have nothing further to say on that, that is fine.

**Kevin Stewart:** Mr Wightman said at committee the other week—and I paraphrase—“Let’s leave the world of reality.” However, I cannot leave the world of reality in trying to find the required solutions here.

I would be grateful if the committee would add to the pressure that has been put on the UK Government by others for its role in this issue. I wrote comprehensive letters to Mr Jenrick in October and December, with a lot of follow-ups, including one this week. In order to get this issue absolutely right for all involved, we require co-operation, because it is not worth doing half the job. Otherwise, we could end up having to mitigate—completely and utterly—situations that the UK Government has responsibility for and which it seems unwilling to help us to deal with.

**Andy Wightman:** I do not recognise the minister’s paraphrasing of my words in committee, but—

**Kevin Stewart:** I think that it was during the course of consideration of the Period Products (Free Provision) (Scotland) Bill.

**The Convener:** Let us leave that aside.

**Andy Wightman:** The Law Society has drawn attention to the fact that there is a big difficulty in Scotland that relates to how a block is owned. For

example, factors do not have the power to commission a report without the approval of the majority of co-owners. I agree that we should not be doing “half a job”. I perfectly agree with you that, to the extent to which the UK Government can help here, it should do so, and it should do so pronto. However, the other half of the job—I do not know if it is a half, a quarter or two thirds—also needs to be attended to.

How a block is owned and whether factors have the power to commission a report without the approval of a majority of co-owners is up to us, is it not?

**Kevin Stewart:** The way that EWS1 was put together is not necessarily the way that I would have done so. As Mr Wightman is well aware, in relation to how we deal with co-ownership of tenements, the working group that has done a job of work in Parliament put forward a number of recommendations, which I have responded to. Mr Wightman recognises, as I am sure others in that group do, that simplistic solutions to some of these issues cannot be found.

We have a job of work to do on that front, which we have said that we will do, and we will use the Scottish Law Commission and others to get us to a place where we can resolve some of the ownership difficulties that there have been.

**Andy Wightman:** Another issue in the devolved space is the additional dwelling supplement and the fact that we have constituents who have paid it but cannot reclaim it, because they will not be able to sell their property within the required 18 months. Are you considering any legislative adjustments to those arrangements?

**Kevin Stewart:** I have not seen any such situation. If Mr Wightman wants to send me details about that, I will certainly look at the issue and talk to colleagues about it.

**Andy Wightman:** I also want to ask a question about the inventory of high-rise buildings. When you were here in September 2018, you expected it

“to be complete within the next few weeks.”—[*Official Report, Local Government and Communities Committee*, 5 September 2018; c 6.]

That should have been at the end of 2018. You intimated in Parliament in November 2019 that there had been difficulty in completing it. Will you give us an update?

**Kevin Stewart:** The inventory task was much bigger than most folk anticipated. The inventory is being developed to provide a central source of information and an overview of all the domestic high-rise buildings in Scotland, including all their fire safety features. The data-gathering exercise has been undertaken, and local authority building standards departments were contacted just before

Christmas as a final opportunity to address any outstanding data and to verify the data that had already been provided. The deadline for all the checks is the end of this month, and the inventory will be considered at the next meeting of the ministerial working group, which will take place on 4 February.

**Andy Wightman:** I presume that when you sent out the fire safety leaflets, you used the draft results from the inventory.

**Kevin Stewart:** Yes.

**Andy Wightman:** Is it an inventory of buildings over 11m or 18m in height?

**Kevin Stewart:** Over 18m.

**The Convener:** Will you send us a copy of the letter that you sent to the minister? That would be helpful to us for drafting purposes.

**Kevin Stewart:** I am happy to share with the committee the communications that I have had with Mr Jenrick, including the follow-up emails.

**The Convener:** For the record, we invited UK Finance—the old Council of Mortgage Lenders—to the committee, but it said that it could not attend, for a reason that we do not recognise.

**Kevin Stewart:** I cannot speak for UK Finance but, to resolve issues as we move forward, folk should be willing to talk and to be open and transparent.

**The Convener:** Will you provide an update on the action that has been taken to implement the recommendations of the Hackitt, Cole and Stollard reports?

**Kevin Stewart:** Oh, gosh!

**The Convener:** Perhaps you could just send us your response on the recommendations.

**Kevin Stewart:** It would much better if we outlined exactly how we have moved forward in all this work.

We have obviously paid due attention to Dame Judith Hackitt's report, as well as to our independent reviews. Officials here continue to talk to Dame Judith, because we want to ensure that we do everything we possibly can, which might ensure that her "golden thread"—the phrase that she used quite a lot—is the way we go forward.

We will send you details of every element, rather than going through what might be 20 pages.

**The Convener:** Yes—please send us those details.

11:30

**Sarah Boyack:** From our perspective, that would be useful, because one or two of us are probably getting letters from our constituents, particularly about mortgages and what happens next. Any feedback that we get on what progress is being made and on the timescales will be useful, because some people are not able to move or to sell their flats.

**Kevin Stewart:** If Ms Boyack writes me a note, I will be more than happy to get back to her. A number of colleagues have been in touch, mainly from Aberdeen, Edinburgh and Glasgow. As I say, I have responded to every letter that we have received from individuals, because I felt that it was important that I did so. The number of such letters are in the tens. I am more than willing to chat to folk about what might be difficulties in their patch. People are suffering at the moment because they canna move, so it is key that we resolve the issue.

**Alexander Stewart:** In your opening statement, you talked about properties being as safe as they can be, which we all want to ensure. I will go back to the issues relating to the stay-put policy and evacuation. The "Grenfell Tower Inquiry: Phase 1 Report" says:

"in the case of some high-rise buildings it will be necessary for building owners and fire and rescue services to provide a greater range of responses, including full or partial evacuation."

The report also says that policies should be developed for

"managing a transition from 'stay put' to 'get out',

when that is deemed necessary. Do you intend to sponsor research into the effectiveness of the stay-put guidance that has been issued by the Scottish Fire and Rescue Service to people who live in high-rise properties?

**Kevin Stewart:** I can touch on operational questions about the Scottish Fire and Rescue Service, but I might get the SFRS to write to the committee if I do not have the details. The National Fire Chiefs Council is working with the UK Ministry of Housing, Communities and Local Government to formulate a research programme on the stay-put policy. The Scottish Fire and Rescue Service is sighted on that work through its participation in the NFCC's workstreams, which is the norm. The Scottish Government will keep abreast of all that research, so that we can quickly consider and act on any learning that comes from the on-going examination of the stay-put policy.

**Alexander Stewart:** We have already discussed the modifications to buildings that have taken place and the policy to remain in those buildings. We have also discussed compartmentation, which could compromise

individuals in that process. It would be useful to get your views on that.

**Kevin Stewart:** As I said earlier, we have had co-operation from local authorities, housing associations and the Scottish Fire and Rescue Service to see whether doors have been replaced that should not have been replaced and so on. From my mailbox, I know that that work has been comprehensive. A number of folk who replaced their front doors without a by your leave are now faced with a bill for removal and for the installation of doors that meet the building standards requirements. Councils, housing associations and the Scottish Fire and Rescue Service have all been reporting such instances, and we are seeing differences.

The inventory will provide the ability to carry out checks as folk make any changes and to make additional entries. The Fire and Rescue Service carries out such checks on buildings on a daily basis. Although I am not an expert on everything that the service does, I know that it picks up on a huge number of things as part of that process, and I expect local authorities, housing associations and others to do the same.

**Alexander Stewart:** That is a very valid point. I want to ask about the campaign that has been launched with housing associations, councils and the Fire and Rescue Service to inform people and keep them abreast of the situation. You have mentioned some of the literature that you have been sending out to ensure that everybody is captured and is aware of what the campaign is about and the common threads within it. By highlighting some of the safety concerns that exist and what people should do about them, the campaign is taking away some of the anxiety and difficulties that people have experienced.

You have given us an idea of the number of leaflets that have gone out as part of the campaign, which is welcome. How is the feedback that you are receiving being processed?

**Kevin Stewart:** I will hand over to Mr Booth to answer that.

**Chris Booth:** So far, the feedback that we have had has been only anecdotal. As you will appreciate, not all the leaflets have gone out, but we are commissioning research on the issue at the end of the month that will involve interviews being carried out with residents in a number of buildings. They will be asked whether they received the leaflet, what they think about the information in it, whether they feel safer now that they have read the information, whether they continue to have concerns and, if we were to amend or update the leaflet in the future, what information they think it would be helpful for it to include.

The leaflet is largely to provide public reassurance. Following the Grenfell fire, we heard that there had been people who had lived in that building for 20 years who had never received fire safety information. The information in our leaflet has come from responses to our public consultation and engagement events that we have had with members of the public and our tenants and residents panel, which is made up of a number of people who live in high-rise flats of mixed tenure.

It is hoped that the leaflet will be as helpful as possible. It contains information on how to prevent fires and what to do in the event of a fire. People said to us that, although they understood the stay-put advice, they did not understand why it was safe for them to stay in their flat. The leaflet sets out what compartmentation is about and why it should work, if the building has been built correctly. It also provides contact information for the Fire and Rescue Service.

**Alexander Stewart:** That is backed up by the fire safety visits that members of the fire service carry out to look at what goes on in buildings and flats. As the committee has said previously, people sometimes fly-tip in common areas or leave things that create a safety risk. It is not just the physical aspects of a building that need to be looked at—what has been added to it or left inside it needs to be addressed as part of the process. I think that you are looking at that as part of your efforts to ensure that consultation takes place.

**Chris Booth:** Yes.

**Kevin Stewart:** With regard to Alexander Stewart's point about fire safety visits, we should give plaudits where they are due. The Fire and Rescue Service did a huge number of fire safety visits to high-rise buildings directly after the tragedy at Grenfell. I know that Ms Ewing, as the former Minister for Community Safety and Legal Affairs, will be well aware that there was a phenomenal level of co-operation. There were people out there who had concerns, and the fire and safety teams across the country did a sterling job of work to give folk the right advice. In some cases, all that was required was reassurance.

**The Convener:** Further to that, are there any plans for the Scottish Government to ask the Scottish Fire and Rescue Service to change its fire safety guidance for tenants in high-rise flats?

**Kevin Stewart:** We look at guidance on a regular basis. Does Chris Booth have an answer to the question?

**Chris Booth:** In what respect do you mean, convener?

**The Convener:** Is particular guidance required for residents of high-rise flats that was not required

before—now that we know about what happened at Grenfell and other things—or is there particular guidance that is required for high-rise residents that is not required for other properties?

**Kevin Stewart:** This is not my area, but I know that there have been some changes to guidance in recent times. If you will bear with me, I will have to read some of this—

**The Convener:** You could always send it to us if that would be easier.

**Kevin Stewart:** I am more than happy to cover this. A number of things have come from the ministerial working group and have been agreed. They include specific fire safety guidance that is aimed at all residents under the programme. All that guidance is now out. The Scottish guidance concerning fire safety in purpose-built blocks of flats was published in December, as was guidance concerning fire risk assessments. Consistent positions regarding the storage, removal and enforced prohibition of combustible materials in common areas have also been considered—again in December. The on-going campaign will be followed by another one, which is scheduled for February this year. In addition, Scottish guidance concerning fire safety in specialised housing is due to be published in the early part of this year.

**The Convener:** Who has control over the guidance? Is it the Government or the Fire and Rescue Service?

**Kevin Stewart:** I would bow to Mr Booth on that.

**Chris Booth:** Do you mean the guidance for people who manage or own high-rise domestic buildings?

**The Convener:** Yes. I am referring to the stay-put guidance. Would that be under the control of the SFRS?

**Kevin Stewart:** We will need to get back to you on that. That would come under the operational jurisdiction of the SFRS. I see Ms Ewing nodding, so perhaps I am right. I would say that that is an operational point. As I said to Mr Stewart, we are, together with others, examining research on stay-put, but I would rather that you got a more robust answer on that from the SFRS, rather than having me going off on one that might not be quite right.

**The Convener:** I appreciate that.

**Annabelle Ewing:** The minister went on to list a number of things that I had recalled were in play by way of further guidance. The point has been well made that we need to hear from the SFRS. We have reached that point a number of times now, and we need the answer from the service.

**The Convener:** Thank you for that. Do you have a further question?

**Annabelle Ewing:** Yes, I do, thank you. Turning to the issue of smoke, heat and carbon monoxide detectors and the requirement to have an integrated system in place from February 2021, I know that the committee considered a Scottish statutory instrument on the matter—not so far back in the dim and distant past—but I wish to pick up on a few points. The minister said in his opening remarks that an interest-free loan system is in place to help social landlords—

**Kevin Stewart:** Housing associations.

**Annabelle Ewing:** Social housing associations—thank you. The drawdown thus far has been £4.5 million. Is that the level that the minister expected? It is certainly encouraging that people are ahead of the curve and are preparing, but is that the level of drawdown that the minister expected at this stage?

11:45

**Kevin Stewart:** That is difficult for me to judge. A number of housing associations were already doing things to that standard. Other housing associations will pay for it from their resources.

A number of housing associations thought that there might be some stickiness in getting to that point within the resource that they had available at the time, and that is why we put the loan scheme in place. It seems that that has worked; we will continue to review it and see exactly where it leads us. If required, we may have to find some additional resource to top up the loan scheme.

**Annabelle Ewing:** To whom are the interest-free loans available?

**Kevin Stewart:** They are available to housing associations.

**Annabelle Ewing:** For owners other than housing associations, what information has been promulgated to ensure that everyone is aware that there is a deadline of February 2021? How is that information campaign going?

**Kevin Stewart:** We will do our best, as always, to ensure that information gets out there.

Just the other day in my constituency, someone highlighted to me a sales leaflet that they had picked up about fire and smoke detectors, and I was questioned as to whether the products that were being sold complied with the legislation. We have a job of work to do to make sure that no one out there is unscrupulously trying to sell products that dinna comply with the legislation. It is not just a case of highlighting what needs to be done; we also have to make sure that folks out there know what product is required in order to comply. It is not just about the new legislation; it is also about

making sure that no unscrupulous people take advantage of folk as we make the changes.

**Annabelle Ewing:** That is good to know.

In the committee's evidence session in November, which has already been referred to, an issue arose that relates to your comment about products having to comply exactly with the legislation. There was a concern that, without high-quality, smart detectors, there could be a lot of false positives. I do not know what might solve that; I imagine that the legislation does not go as far as requiring a very high-spec product that avoids the constant triggering of alarms where there is no fire or gas incident.

**Kevin Stewart:** That is so. The products that we have outlined would be high spec anyway. I know exactly where Ms Ewing is coming from; with older smoke detectors, I was often given into trouble for my cooking skills—or lack of them—because, every time I cooked anything, I set off the smoke detectors in our house. However, things are much more advanced now. In my rented flat in Edinburgh, where I continue to burn things while I am cooking, the smoke detectors dinna go off, because they are better than detectors were previously.

**The Convener:** Is the minister suggesting that there should be a “Kevin” setting?

**Kevin Stewart:** No; I am just saying that smoke alarms are much better than they once were.

Nobody will want to marry me now that I have said that I am such a bad cook; I am not really that bad.

**The Convener:** This meeting is not dial-a-date.  
[Laughter.]

**Annabelle Ewing:** I suggest perhaps a cookery book for the minister next Christmas, convener.

I also say that I was very reassured by the technical information that was provided among the burnt cooking.

**The Convener:** That is probably the perfect place to stop, with the minister asking for a partner.

**Kevin Stewart:** I was not begging for a proposal there, convener.

**The Convener:** On that note, I thank Kevin Stewart and his supporting officials for attending today's session.

That concludes the public part of the meeting, and we now move into private session.

11:50

*Meeting continued in private until 12:41.*





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