



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Local Government and Communities Committee

**Friday 4 September 2020**

**Session 5**



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**LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE**

**20<sup>th</sup> Meeting 2020, Session 5**

**CONVENER**

\*James Dornan (Glasgow Cathcart) (SNP)

**DEPUTY CONVENER**

\*Sarah Boyack (Lothian) (Lab)

**COMMITTEE MEMBERS**

\*Keith Brown (Clackmannanshire and Dunblane) (SNP)

Gail Ross (Caithness, Sutherland and Ross) (SNP)

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

Annie Wells (Glasgow) (Con)

\*Andy Wightman (Lothian) (Green)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Jeremy Balfour (Lothian) (Con) (Committee Substitute)

Stephen Garvin (Scottish Government)

Graham Simpson (Central Scotland) (Con)

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

**CLERK TO THE COMMITTEE**

Peter McGrath

**LOCATION**

Virtual Meeting



**Scottish Parliament**  
**Local Government and**  
**Communities Committee**

*Friday 4 September 2020*

*[The Convener opened the meeting at 10:00]*

**Interests**

**The Convener (James Dornan):** Good morning. I welcome everyone to the 20th meeting in 2020 of the Local Government and Communities Committee. Once again, I thank the broadcasting office for its work in helping to organise the meeting.

I ask everyone to ensure that their mobile phones are on silent. We have received apologies from Annie Wells and Gail Ross, who is a new addition to the committee. Jeremy Balfour is here as the Scottish Conservative and Unionist Party substitute. Welcome back, Jeremy.

Under agenda item 1, I welcome Keith Brown to the committee and take the opportunity to place on record my thanks to Annabelle Ewing and Kenneth Gibson, who have left the committee to take up different committee roles. Does Keith Brown have any relevant interests to declare?

**Keith Brown (Clackmannanshire and Dunblane) (SNP):** I have no relevant interests to declare.

**Decision on Taking Business in**  
**Private**

10:01

**The Convener:** Agenda item 2 is consideration of whether to take agenda items 6 and 7 in private. Item 6 is consideration of the evidence that we will hear during today's meeting, and item 7 is consideration of our work programme. As we are meeting remotely, rather than asking whether everyone agrees, I will instead ask whether anyone objects. If there is silence, I will assume that members are content. Does anyone object to taking those items in private?

Thank you. It is agreed that items 6 and 7 will be taken in private.

## Building Regulations and Fire Safety

10:01

**The Convener:** Agenda item 3 is an evidence session on building regulations and fire safety in Scotland. The session forms part of the committee's on-going work to monitor the Scottish Government's response to the tragic events that occurred in Grenfell in 2017 and related issues. Today's focus is mainly homes with external wall systems and cases of problems that have arisen in connection with those.

I welcome the Minister for Local Government, Housing and Planning, Kevin Stewart; Stephen Garvin, who is the head of building standards with the Scottish Government; and Ross Lindsay, from the Scottish Government's more homes division. I am grateful to you for taking time to answer our questions, and I thank you for your recent letter responding to questions that the committee raised in advance of the meeting. I put it on record that the committee has received a recent response from Local Authority Building Standards Scotland.

In a moment, I will invite the minister to make a short opening statement. I remind members that I will call them in a pre-arranged order that has been notified to me by the clerks. Each member will have about nine minutes to ask their questions. I will let you know when you have one minute of your time left. Please give broadcasting staff a few seconds to operate your microphones before you begin to ask a question or provide an answer.

For this agenda item, I also welcome Graham Simpson, who is a former member of the committee. I will allow Graham to ask questions after all the committee members have asked theirs and any possible supplementaries. Minister, if you would like Mr Garvin or Mr Lindsay to answer questions, I would be grateful if you could state that clearly for broadcasting staff's benefit.

I invite the minister to make a short opening statement.

**The Minister for Local Government, Housing and Planning (Kevin Stewart):** Thank you, convener. I am not sure whether I will be able to tell you anything clearly today, because I have been out in the garden and my hay fever is playing up a little. I apologise for any hoarseness.

Thank you for the invitation to attend the committee to update you on the progress of the Scottish Government's important work on buildings and fire safety. I will provide an update on where we are.

The pandemic has, of course, had a profound impact on the work of Parliament, Government and stakeholders. Like others, the Government rapidly and significantly reshaped our resources to deal with the pandemic, initially through the lockdown and now through our framework for coming out of it. I have worked closely with the construction industry to enable a safe restart and to develop a recovery plan, which was published last week.

I have instructed officials to bring together a fire safety review panel to examine how we can ban the highest-risk cladding materials from taller buildings and to look again at the role of BS 8414. The working group will be made up of appropriate experts and will use the most up-to-date evidence available to provide me with recommendations for further changes to building standards.

In March, I set up a technical working group to oversee the development of advice on external wall systems. The draft Scottish advice note is now out for consultation. To gain feedback, my officials are engaging with key organisations, and there are public webinars in which anyone can join the discussion.

The committee will remember that we introduced changes to building standards in October last year to make buildings in Scotland even safer. Further measures will be introduced early next year. Sprinklers will be required in all new social houses, all new flats and some new multi-occupancy homes.

I know that the committee will want to concentrate on cladding issues today. I make it clear that I remain very concerned about continuing issues in relation to mortgage lending and the difficulties that some people have experienced in selling their properties. I do not underestimate the personal impact on people and their families, and I understand the stress and anxiety that that will be causing.

The ministerial working group on mortgage lending and cladding was established earlier this year as a route to examine how Government and key stakeholders could examine solutions to those issues. The committee will understand the complexity and the varying interests involved—personal, professional, commercial and public—in finding resolution. Members are also very aware that not all the levers are in the hands of the Scottish Parliament.

The ministerial working group met on 28 April, and a full and frank discussion of all the issues took place. The outcome was the setting up of four sub-groups led by stakeholders to look at different stages in the process: obtaining the external wall system 1 form, using the report and the process after the form is completed, and the long-term

approach and legislative needs. The group will meet again later this month to consider proposed work plans and timescales for the various groups.

My priorities through the working group are to be clear about the extent of the problem that needs to be solved, to get clarity on what is a moving situation, and to develop practical solutions. As I said, the group will meet again later this month to consider all those workstreams and to set timescales.

It is clear that no single body can solve the problem. We need all others to play their part and to act in line with their responsibilities. There is real willingness among those who are represented on the working group to come together on solutions, and we need to work towards agreement on what is needed from lenders and insurers for greater transparency for all. I want the working group to focus on that very quickly.

Finally, I remain concerned by the United Kingdom secretary of state's lack of engagement on the matter. As the committee will remember, I have written a number of times to ask to work together to resolve the issue, and I have had only a minimal response. It is clear that we must take cognisance of the complexity of devolved and reserved issues and that there must be a joint response. I hope that we will see co-operation from the secretary of state.

I am happy to take questions from the committee.

**The Convener:** Thank you very much, minister. I have a couple of questions.

One thing that comes across loud and clear is the issue that people are having with the EWS1 form. It is clear that it is confusing. Is there a set and agreed universal process, or are you looking to create one? At this stage, people do not seem to understand how the process works.

**Kevin Stewart:** There are difficulties for home owners across the UK in obtaining EWS1 forms—it is not a Scotland-only problem—but I will come back to some of the differences that there are here, if you do not mind.

The form was designed in the expectation that there would be a single form per building; it was also designed with England in mind. In England, the norm is to have a freehold system, in which somebody owns the building and leaseholders have ownership of individual flats on long leases. In such cases south of the border, a single person can be identified as the responsible person, and they have the authority to commission an EWS1 report.

Scotland has a different property tenure system, in which there can be many individual owners in a building. In that situation, an appropriate

proportion of the building owners—sometimes 100 per cent of them—need to agree to the introduction of the EWS form before it can be commissioned. However, there are instances that we know of in which some lenders are accepting forms that have been produced in respect of a single flat that also comment on the wider building. It is that lack of clarity and consistency that has led to the significant difficulties that home owners in Scotland are experiencing.

The system has been set up without any consultation with us or with the experts here in Scotland. As well as causing confusion here in Scotland, the lack of clarity and consistency in the system has created difficulties south of the border.

**The Convener:** We will do our best to get the relevant UK Government minister to speak to the committee at some stage.

You mentioned that some lenders are accepting EWS1 forms and some are not. Have lenders provided any clarity on when and how they apply the EWS1 process?

**Kevin Stewart:** I think that the problem is that there is no such clarity.

**The Convener:** I will reword the question. What is the minimum that lenders who are accepting EWS1 forms are looking for? Why are other lenders not accepting them?

**Kevin Stewart:** I really cannot answer that in any depth. One of the things that concern me most about the whole situation is that there is no universal process. I want the working group, with the Royal Institution of Chartered Surveyors, the lenders and the insurers—[*Inaudible.*]

I know of situations—as will many of my colleagues—in which lenders have asked for EWS1 forms for buildings that are below 18m, but we have not had clarity on why they asked for them in those situations. A universal process needs to be agreed that sets out what folk are looking for and then applies that. It is very difficult for us to even try to find a solution unless we know what the problems are and how we can solve them logically. We need everyone to be starting from the same position.

I hope that the working group can reach that point of clarity with a universal process, such that we can work together with the three other Governments across the UK, come to some agreement about all of that, and do our level best for those home owners here in Scotland—and also elsewhere—who are in real difficulty.

10:15

**The Convener:** In your view, who should decide what buildings should be subject to the form?

**Kevin Stewart:** I did not quite catch what you said there, convener.

**The Convener:** In your view, who should decide what buildings should be subject to the EWS1 form?

**Kevin Stewart:** The lenders and the insurance companies have said that there are difficulties. We need to know from them what difficulties there are and where they think those difficulties lie. The Scottish Parliament and the Scottish Government have no control over the lenders and the insurers; that is reserved to the UK Government. I do not know what influence the UK secretary of state has brought to bear in that regard. I would want to know how we can all work together—industry and Government—to determine exactly where the difficulties lie, what is required, and what universal process we can put in place to get things right and to get out of the current position, in which home owners find themselves in real difficulty.

**The Convener:** Let me get this clear, minister. Are you saying that the problem cannot be solved unless we get the UK minister to speak to the lenders and the insurance companies?

**Kevin Stewart:** I think that we can do a job of work through the ministerial working group and by talking to lenders and insurers to try to get things right. However, in order to get things absolutely spot on—not to do half a job, but to do the full job—we require the UK secretary of state to co-operate more and to help us to reach a solution that is workable for all.

**The Convener:** When do you expect the sub-groups and the ministerial groups respectively to come back with any kind of report?

**Kevin Stewart:** It is difficult to give timescales for all of that, but I would want to get resolution as soon as we possibly can. I have constituents, as have many other members, who find themselves at this time in really difficult situations in which they are unable to gain clarity about what is required to sell their property. I want those situations to be resolved for my constituents and for the constituents of all my colleagues. We need to get resolution on the matter as soon as we possibly can.

I add that we need full co-operation from others to get to that universal process. My ambition is to get the situation sorted as soon as we possibly can.

**Sarah Boyack (Lothian) (Lab):** First, I draw members' attention to my entry in the register of members' interests in relation to my former employment with the Scottish Federation of Housing Associations.

It has been good to read your response to us, minister, and to see the progress that is being

made with the working parties that you have set up. What knowledge do you have about the UK fund that was established, to which owners in England may now apply to get remedies for their properties? Have you made any progress in considering what would be relevant in Scotland, what the experience has been and whether that has helped to progress matters and break the logjam that you mentioned in your opening remarks?

**Kevin Stewart:** We will continue to look at what has happened with the UK fund, with which I know there have been difficulties.

I am sympathetic to the calls for Government funding, and I am open to that, but I would expect movement by others to help with costs, depending on the particular circumstances. I will give an example. The only two buildings in Scotland that are extensively clad with aluminium composite material containing polyethylene—ACM PE—are at Glasgow harbour, and the developer, which is Taylor Wimpey, has started remediation works on the buildings at its cost. There will be no cost to Government or to the owners. That is the right thing for developers to do, so plaudits to Taylor Wimpey for doing that.

I am quite sure that no one will want us to spend Government money on anything if we believe that others are responsible for remediation. I urge developers, in circumstances where home owners find themselves in difficulty, to consider their responsibility and follow Taylor Wimpey's lead.

Of course, those two buildings are nothing compared with the extensive use of ACM PE south of the border. It is important that I remind the committee that that material should not have been used since changes were made to regulations in 2005.

I reiterate that I am sympathetic to calls for Government funding, and I am open to that. However, we must look at all that is required, which means looking beyond that and at those who are responsible for some of this getting their hands in their ain pooches and paying for remediation works.

**Sarah Boyack:** I do not disagree with the point that, where builders have an obligation, they should make that contribution. However, I was wondering whether we can cut to the chase and break the logjam. From the evidence that we have taken in committee, I know of the difficulties with the EWS1 form: home owners must pay for it, and there are difficulties with the ability to get an all-building approach and professional indemnity. There is clearly a logjam. What can we in Scotland do to try to break that?

I am trying to think what the solutions might be. We have a Scottish solution to tenement repairs,

which the Government came up with, and that has an ownership aspect, too. Could thinking along those lines at least allow us to cut to the chase so that we can get the buildings analysed, home owners and potential buyers will at least know where they are, and we can focus on where remediation works are needed?

You have made progress in analysing buildings and their condition, but the issue is how we pull all of that together—that appears to be the logjam. I wonder whether we could make progress on that with some fresh thinking, minister.

**Kevin Stewart:** That is one of the areas that the working group will look at. Key in all of this is identifying the difficulties and the solutions. I am more than willing to look at almost anything. Some aspects might require a legislative solution, although I hope that that will not be the case. Some folk are already calling for legislative solutions in order to move some of how we do things towards how they do things south of the border. I think that that would be unwise and would have a huge number of unintended consequences.

The last thing that I want—I am sure that most, if not all, members of the committee do not want this either—is a move to a freehold and leasehold system, which is full of problems for folk. Those are just some of the things that folk have suggested.

We need to know which buildings are subject to EWS1 forms, because only then will we know the extent of the problem. We also need to help to remove the logjam, which is why I come back to the point that I made to the convener about finding a universal process that will work for all. I hope that we can see what we can do about shaping that universal process as swiftly as possible through the working group and the sub-groups. I reiterate that, in doing so, we will require co-operation from a lot of people.

**Sarah Boyack:** I very much agree that we do not want to do anything that would make things worse, but we need to get everyone to think through what the solutions might be. One suggestion that has been made is that we could use the inventory that the Government has put together to make sure that the EWS1 form information is available to everybody by being fed through that. Are you considering that suggestion?

It is a question of breaking the logjam and getting all those who are involved in the process to recognise that everybody has an interest in finding a solution. That would enable owners to move forward, and would avoid people being stuck in their homes for ever.

**Kevin Stewart:** We have offered to share information with stakeholders on the whole area.

We decided at a very early stage to take the step of putting together an inventory. That has not been an easy job, so I record my thanks to local authorities, in particular, for their efforts. That register will be updated annually, which I think will be useful.

The simple answer to Ms Boyack's question is that we have offered to share information from the inventory with stakeholders.

**Sarah Boyack:** Do I have time to ask another brief question, convener?

**The Convener:** Yes, if you are very brief.

**Sarah Boyack:** It is clear that there is an issue with the number of qualified staff who are available to undertake the EWS1 work. Is there a way in which the Scottish Government can help to kick-start that process, or help to fund it?

**Kevin Stewart:** Again, I am open to looking at that. The present situation highlights the difficulty of introducing something without consultation. The fact that the EWS1 form was introduced without it first being checked that there were enough qualified people to carry out the required checks shows that the process has not been particularly well thought out. That lack of co-operation has led to significant difficulties.

For that reason, in my opinion, there needs to be a four-Governments approach. One Government might try to implement a solution to the problem only to find that there are no personnel to carry out the work that is required. I ask that the UK Government secretary of state get together with all of us to sort out what is a problem for us all.

My officials have regular talks with their colleagues across the other Governments with a view to building co-operation, and we need to do that at ministerial level, too. In addition, we are reliant on the likes of RICS in showing determination to address the issue of qualification. We will continue to talk to RICS, which is part of the working group and the sub-groups. I hope that we can make progress there, too.

10:30

**Alexander Stewart (Mid Scotland and Fife) (Con):** Good morning, minister. I want to follow up on the EWS work. You have identified that there seems to be a lack of qualified staff with knowledge and training who are able to deal with cladding. Witnesses have told the committee that, and the Scottish Government has identified that as an issue. What is the Scottish Government doing to ensure that there is full access to the experience and expertise that are needed across the construction industry in Scotland?

**Kevin Stewart:** As I pointed out in my earlier answer to Ms Boyack, the number of professionals who are appropriately qualified to produce the EWS1 form is low across the UK. There is no central register of consultants who are able to do that work. In my opinion, given the different designations that are used by the different professional bodies, work is required to determine who is competent to do the inspections of external walls.

As I said to Ms Boyack, the question of who is competent to do those inspections is being considered in the RICS review. RICS is working on that with other professional bodies, and I thank it for doing that work. There is a job for Governments beyond that—beyond what we are doing in our working group—and we need co-operation on that with the UK Government, the Welsh Government and the Northern Ireland Executive in order to get it absolutely right.

I know that Mr Stewart's colleagues have previously tried to be helpful in getting the UK Government to engage on that, and I would appreciate it very much if Mr Stewart and his colleagues would do so once again. It is in the interests of all of us in Scotland, England, Northern Ireland and Wales to get this right for folks who are currently suffering and in limbo because they cannot move on from properties.

**Alexander Stewart:** Now that I am in this new local government role, I give you an assurance that I will certainly do that, and engage with you and my counterparts.

I want to move on to zero-valued homes. Lots of issues have been occurring with owners of zero-valued homes who are seeking to develop solutions. They have fed into what is going on, but they do not appear to be part of the working group. How has the Scottish Government acted on the suggestions—if there have been any—from owners of zero-valued properties? How have you responded to them?

**Kevin Stewart:** I will go into zero valuation in some depth, but let me talk first of all about owners.

My officials are now back working on the issue. People have been moved during the pandemic, and one of my key people was off with Covid for a long period of time. However, we are now strengthening the team in order to move forward on that front. Officials—*[Inaudible.]*—with owners in the past few weeks, and I have asked owners to give evidence in the next meeting of the working group.

Beyond that, I have agreed with officials that I will meet the chair of the High Rise Scotland Action Group in the near future. I am also aware that a number of groups that have been affected

have sent me their ideas for possible solutions. I assure the committee that my officials and I, as well as the working group, will look at all those ideas—some of them are comprehensive and folk have put a fair bit of work into them—and the practicality of the solutions that have been put forward.

I take the matter very seriously and I want to see exactly what is being said in response to owners. I am signing off on every letter from owners who are writing to me about the difficulties that they have and the solutions that they suggest. I assure the committee that we will bring owners into the process and look at the solutions that they put forward.

I turn to the zero-valuation aspect. First, it might be helpful to clarify that, according to the RICS,

“Nil valuations’ are used in the process of valuing a property for mortgage lending purposes, where a valuer is unable to provide a value at that moment in time i.e. when the valuers’ inspection takes place due to insufficient information being available. Often a nil valuation signals that the lender requires further information before a valuation can be made, rather than a property being unsellable.”

In cases where properties have external wall cladding, a satisfactory report on the cladding in the form of an EWS1 form is required in order to provide the additional information. If that form cannot be provided, lenders will not provide mortgage lending for the property, which acts as a barrier to most purchasers.

There have been questions about how that is affecting the market. It is difficult to gauge that at the moment, because we do not have evidence due to the shutdown in the market during the pandemic and because it is still early in the inception of the process. The matter is a priority for me, and I have asked that we get evidence on it as soon as possible and that that evidence is brought to the next meeting of the working group.

**Alexander Stewart:** That shows that you are taking the matter very seriously. It is important to give that assurance to the industry and to stakeholders and home owners who are in that situation.

How are you dealing with and supporting people who bought properties in good faith but are now not in a position to get their EWS1 certificates because of the way that the process has moved forward? Those people used the process in good faith because it was the assurance that the building standards system provided at the time when their homes were purchased.

**Kevin Stewart:** I am very sympathetic to the plight of home owners at this time. The key thing in order for us to do what we need to do to help them out is to get the whole process sorted—to

get a universal process in place that everybody understands so that they know where they stand, and to see what additional help might be required to get people out of what are very difficult circumstances.

My assurance to the committee is that we will continue to listen to home owners. People have sent us proposals for possible solutions, and we will look at all of them. Having brought all that together, we will next need to consider how to remediate and what needs to be done in that respect. As I have said, although I would prefer not to do this if we do not have to, we will consider legislation if we need to do that to provide the comfort that is required.

**Andy Wightman (Lothian) (Green):** I thank the minister for coming along. As the minister knows, I have been convening a group of experts who have been looking into the matter. We are now a year into it, and it is clear that the EWS1 form process is working well for many building owners, who are securing lending and are able to sell property. It is important to say that.

I am a little bemused, however, by the minister's constant focus on the UK Government—a pattern that he has established over his appearances at the committee. The EWS1 form is a private arrangement between insurers and surveyors, and it is fundamentally about risk. Lenders do not know whether the buildings are safe, and they therefore want some assurance that they are safe before lending—and likewise for insurers. Given that lenders and insurers are perfectly entitled to choose to whom they give lending and insurance, can the minister give us a little bit more clarity about what he thinks the UK Government can do about that, given that it is not really minded to tell or force people to lend if they do not want to lend and if they think that the risk is too great?

**Kevin Stewart:** The simple answer is that, at this moment in time, insurance regulation and lending regulation are reserved—[*Inaudible.*]—directly influence the industries, whereby the UK Government can. The UK Government has taken a number of steps in recent times to satisfy its interests in getting the process right.

My understanding is that there was no one from the devolved Governments at the round-table meeting that the minister, Lord Greenhalgh, recently held with industry representatives. I think it would be useful for us to have knowledge of what is going on across the board.

I want to have good relationships in order to resolve the situation, because my key interest in all this is not to pick political fights or anything like that, but to help those folks who find themselves stuck at this moment. Mr Wightman is right that some folk have managed to get out of all this but,

as he and other committee members and other MSPs know, there are a number of folks in real difficulties, including some of my constituents.

I do not want a situation where we find half a solution but not the whole one, because we have not had the co-operation of others. I want good relationships with the UK Government and the other devolved Governments in resolving the situation, but I also wish to ensure that we have the best possible relations with the professional groups. I want to find out where their sticking points are, so that we can do what we can to resolve the difficulties.

10:45

I appreciate the involvement of Mr Wightman and other committee members who have engaged on the matter. Mr Wightman mentioned the group that he has convened. My officials have been to some of its meetings, and we will continue to co-operate in that regard. I am not interested in the party or the constitutional politics of this matter; I just want a solution for those folks who find themselves in real trouble at this moment in time.

**Andy Wightman:** That is helpful. The group is grateful that the minister's officials have engaged with it.

We have now had a year of the current arrangements, and a lot of building inspections have been going on. Information has been given to me from surveyors who have surveyed hundreds of buildings: having been commissioned by a particular owner, they have looked at whole buildings, as the whole building is essentially one unit. They have identified 20 to 30 buildings in Scotland that they say are fundamentally not compliant with the building standards that were in place at the time of construction. They found that EWS1 forms were being signed off with an option A1—a complete green light—for buildings that they described as fundamentally dangerous properties. They have identified quite a number of fraudulent EWS1 forms in circulation.

Given that we know—or that individuals in the industry know—which buildings have been identified as dangerous, what is the Government's response to that, and how will it ensure that all owners and everyone in those buildings know that they are living in buildings that are fundamentally not compliant with building standards and that may be fundamentally dangerous?

**Kevin Stewart:** I would be very grateful for any evidence on the matter that Mr Wightman wishes to pass on to me and my officials. There have been 1,100 EWS1 forms across the UK. We have asked UK Finance for a Scottish breakdown of those forms, but we do not have that at this moment in time. If Mr Wightman has managed to

gather evidence around some of the issues, we will closely examine what are serious allegations. I reiterate that, at this moment, we do not even have a Scottish breakdown from UK Finance about the EWS1 forms.

**Andy Wightman:** Thank you, that is helpful. I will certainly be in touch in that regard. I should point out that my understanding is that the Scottish Fire and Rescue Service has been notified.

I am sure that the working group will look at the Title Conditions (Scotland) Act 2003, and in particular the Title Conditions (Scotland) Act 2003 (Development Management Scheme) Order 2009, which created a default management scheme for developments. That scheme enables factors to instruct works, without consent, for health and safety reasons. Many of the properties concerned have been constructed since the 2003 act and the management scheme order were passed. However, there seems to be a problem with the code of conduct under the Property Factors (Scotland) Act 2011, as factors are saying that it is difficult to instruct works in that way.

I ask the minister to urgently consider that matter. It seems that a remedy already exists in law, but there is a little bit of confusion about factors' powers to instruct those works. When I say "instruct those works," I am talking about instructing a survey of the whole building. There may still be problems as a consequence of that survey, but at least a survey will have been instructed, we will have information, and that information will—critically—be available to all building owners, which will be a major step forward. I urge the minister to have a look at that as a matter of priority. If we can deal with some of the issue under existing legislation, we should not be continuing to explore what further legislation might be required.

**Kevin Stewart:** Officials have been going through previous legislation with a fine-toothed comb to find solutions and remedies. I will ask officials to explore Mr Wightman's suggestions to see whether his belief is the reality. I reiterate that if anyone thinks that solutions exist in current legislation, I am willing to look at that. However, I assure Mr Wightman and the committee that my officials have already gone through a lot of existing legislation to find possible remedies. We will write back to the committee, though, on the point that Mr Wightman made and will definitely look at it.

**The Convener:** Thank you. Mr Wightman, I will have to move on to Keith Brown. Welcome to the committee, Mr Brown.

**Keith Brown:** Thank you, convener. Obviously, I am new to the issue, but I know from other committees with which I am involved that there is a pattern involving the UK Government's non-

responsiveness to requests from Scottish Parliament committees or the Scottish ministers. It really is the limit when we cannot get responses or co-operation from the UK Government. I am surprised by Andy Wightman's eagerness to absolve the UK Government, but that is obviously his concern.

The minister mentioned previously that the committee has been discussing calls for possible legislation to fix the need to obtain an EWS1 and he expressed some concerns about going down that route. What challenges does he believe are presented by trying to introduce such legislation?

**Kevin Stewart:** I agree with Mr Brown about the UK Government's lack of co-operation. In fairness, I had one decent-ish response from Robert Jenrick, the UK Secretary of State for Housing, Communities and Local Government, which came after the prompting of Mr Graham Simpson, for which I am grateful. I hope that Mr Alexander Stewart, Mr Simpson and Mr Balfour, who are all here today, will once again use their influence to help us find solutions. Co-operation is essential, because there are difficulties not just in Scotland, but across the UK. Surely it is in everybody's interest to get it right.

Legislation is sometimes seen as a quick and easy fix, but it also sometimes has huge unintended consequences. It has been suggested to me that we should look at the English system of freehold and leasehold for building owners. We all know of the horror stories south of the border because of that system, but some folks see it as a simple solution for the particular problem that we face. The unintended consequences of moving along that line would be horrendous for all.

The other possible scenario is Mr Wightman's suggestion of using factors, which might be a solution if we changed the current legislation, perhaps by some tweaks. However, there are risks in that as well, in terms of people who do not have or who lose a factor, which could leave gaps.

If legislative solutions are required, although they might not be, we must be careful about catching all cases and also setting up a solution that will not cause unintended consequences that would create further problems to deal with. However, we will look at all that.

**Keith Brown:** I understand the minister's frustration, which comes across in his response, at the different interactions from two different Governments, one of which seems to wish to stand back from the process, and the issues around lending and insurers. I understand how problematic it is that all those elements are coming together.

Does the minister believe that legislation is essential? To the extent that he does not—I hear

some of his reservations in that regard—what does he think that the solution might be? Can a solution be reached that would not involve an unwilling participant such as the UK Government? Are there potential solutions through such a route, or would the UK Government's active assistance and input be required?

**Kevin Stewart:** As I mentioned earlier, the UK minister Lord Greenhalgh held a round-table meeting with lenders at which no one from the devolved Governments was present. I know about the meeting only from a parliamentary answer and through discussions between my officials and UK Government officials, rather than through any direct communication.

In order to look at all this in the round, which would allow me to balance what we need to do, we first need to get an idea of what can be done on insurance and lending, which are reserved areas. A good first step would be a four-nations approach, with discussions on the nature of the problems that we all face, the issues that we need to resolve and the shared action that we could take to resolve them.

I reiterate that insurance and lending are both UK-wide issues and are reserved areas, but we have a shared interest in ensuring safety and protecting people's lives, homes and investments. At the very least, let us all sit down together to see what our shared interests are and what we can do to resolve some of those difficulties.

**Keith Brown:** Having listened to this stuff for many months, and having heard the minister say, for example, that the ESW1 form was brought in without any consultation and does not allow for people with expertise to carry out the inspections that are required, and that UK Government ministers are having meetings from which the devolved Administrations are excluded, I am a wee bit sceptical about what will happen. We might end up in six months' time in exactly the same place, saying, "Where is the UK in all this?"

Setting that to one side, if there was to be a legislative process, does the minister have any idea how long that might take?

**Kevin Stewart:** How long is a piece of a string? First, we would have to consult on any legislative proposals, if that was what was required. It may well be that, during the process, we would find that there were other unintended consequences of legislating. The best approach would involve making combined efforts to find a solution, before jumping to legislation.

I am quite sure that ministers across these islands want to find a solution to these issues. Let us work together to see what we can do to co-operate and find a process that works. That process may not be universal—it may have to take

account of different legislation in different parts of the UK. I have talked about a universal process for Scotland, but the process may not be universal for the whole of the UK. Nonetheless, let us see whether we can find a process that works for all in order to take the matter forward.

It is in all our interests to help the folks out there, whether they are in Scotland, England, Northern Ireland or Wales, who are currently experiencing difficulties in selling on their properties. It should be a priority for us all to find a solution for people, or we may find that, as we move on, there will be other impacts on the housing market and on the buying and selling of homes.

11:00

**Jeremy Balfour (Lothian) (Con):** Good morning. It is nice to be back.

Minister, I would like you to respond on a slightly different point: buildings that have already been built and are up for sale. From a number of conversations that I have had, I understand that, even today, buildings are being built that could fall into the trap that has been created by the issue that we have been discussing. What action is the Government taking, particularly in relation to regulations and building standards, to prevent buildings that have not yet been completed from falling into a similar trap?

**Kevin Stewart:** Convener, I will bring in Mr Garvin first, on the technicalities of the act and the regulation changes, then I will come back to answer other aspects of Mr Balfour's question.

**Stephen Garvin (Scottish Government):** As members will probably remember, last year, we brought in new requirements on the fire performance of cladding, so that any building above 11m should have cladding that is either non-combustible or approved through the BS 8414 route. That was a significant step in reducing the trigger height from 18m to 11m.

As the minister said in his opening remarks, we will set up an additional review panel to consider the most high-risk materials—in particular, metal composites—and how we might ensure that they are not used in the cladding of buildings. As part of that work, we will also consider the role of BS 8414. It has recently been updated, and the latest version has been published by the British Standards Institution. It should include improvements to the previous standard, but we will consider it in the light of the test evidence that has emerged in the area.

**Kevin Stewart:** I thought that Mr Garvin was going to say a little more about the act. The act enables us in Scotland to make regular changes to the regulations. That has not happened south of

the border. We will continue to review everything in the light of the evidence that comes to us. As I said earlier, and as Mr Garvin has just reiterated, I put back in place an independent review panel that will consider all metal composite materials.

As for changes that we will introduce, on Monday I will sign the statutory instrument that will bring into play regulations on use of fire sprinkler systems in many other types of homes, including all new-build social housing, from next year. That approach came out of a proposal that David Stewart MSP made. Therefore, we continue to adapt our strategy.

Mr Balfour said that he understands that some buildings that are being built now might fall into a trap. It would be inappropriate for me to ask for details here, but I would be interested in hearing from him exactly where he has obtained such information and what it is, so that the Government can consider it and respond to him accordingly. Like Mr Balfour, and everybody else, I do not want anybody falling into any traps, as he put it.

**Jeremy Balfour:** I will come back to you with that information, minister. I want to push you, or your officials, a wee bit. Are you confident that all flats that are being built today are not being built with particular cladding materials?

**Kevin Stewart:** Builders should be complying with building regulations. Building regulations, of course, are not retrospective, but buildings that are being built should be complying with building regulations.

Homes for Scotland is on the working group. My understanding is that, at the previous session, Nicola Barclay, who is the chief executive of Homes for Scotland, said that builders are cognisant of all that is going on and are adapting accordingly. I reiterate this again: every single building that is currently being built in Scotland should comply with building regulations from when that building was signed off. Again, I say that the regulations are not retrospective.

I can also assure the committee that my officials and I will continue to look at the evidence and take the necessary steps to scrutinise what is going on. We will use independent expertise and adapt our building regulations accordingly.

**Jeremy Balfour:** Time is against me, but I have one quick question about the trigger height of 18m or 11m before my time comes to an end. I have been contacted by at least two or three constituents in Lothian who are having problems selling their properties, which are below 11m in height. I appreciate that that is an issue for the lenders and insurers, but is the remit in any review that you carry out, or that of any working group, to look at all properties, or are you simply looking at properties over 11m or 18m? There is a danger

that we get a resolution for taller buildings, but we fall back into a situation in which under 11m are unable to sell.

**Kevin Stewart:** I am concerned about all buildings, no matter how high or low they may be. Like Mr Balfour, I have had situations in my constituency where folk who are in buildings that are below 18m in height have been told that they require the EWS1 form. In one of the cases, the matter has been resolved.

We should look at what EWS1 said to begin with: it referred to “over 18m”; that was what was put in play. Again, it is up to the lenders how they deal with all that. The difficulty is that lenders are taking individual decisions, which is why I have said that a universal agreement about the process is required. Mr Balfour can be assured that that will form part of the discussions in the working group, because clarity about when that form is used is required.

**The Convener:** This is tangential from what Jeremy Balfour spoke about. You will have seen the letter that we received from LABSS. What role do you think that building standards officers have to play in preventing houses being built with the wrong cladding? Are you satisfied that that is happening across Scotland?

**Kevin Stewart:** Obviously, building standards have a part to play in the verification of all—*[Inaudible.]* I have told the committee previously that we will continue to review the role of building standards.

We are looking closely at the new draft building safety bill from south of the border, some of which will have an impact on what we do. I am more than willing to keep the committee up to speed on that. Also, we will continue to examine what comes out of the Grenfell inquiry. In Scotland, we moved swiftly to change how we do things and to change regulation in the light of the Grenfell tragedy. We will continue to look at evidence and take appropriate action.

I recognise that the committee received a fairly comprehensive letter from LABSS. I think that I was helpful in garnering that response—I wrote to LABSS, because the body had not responded to you. If there are any aspects of that highly detailed response on which the committee has questions, I am more than willing to answer in writing.

**The Convener:** I appreciate that. Thank you. Graham—do you have any questions?

**Graham Simpson (Central Scotland) (Con):** I have a few. How long have I got?

**The Convener:** About 30 seconds. Start. *[Laughter.]* You have four or five minutes.

**Graham Simpson:** I appreciate that. I heard what the minister said about the need for a four-nations approach, and I can see why it would be useful, in that we have movement between countries and a housing market operates across the UK. However, we have a separate Scottish housing system. Therefore, fixes could be made here.

I was not clear what the minister meant when he spoke about the remedial fund that was set up by the UK Government. Was he asking for that fund to be extended to Scotland, or was he saying that he would need to set up a separate fund here?

**Kevin Stewart:** What I said—I do not think that I could have been much plainer, to be honest—is that I am sympathetic to those who have called for the Scottish Government to set up a fund. I am open to that. However, as I quite clearly stated, my expectation is that those who have a responsibility to put their hands in their pooches—their pockets—first will do so, as Taylor Wimpey did with Glasgow harbour.

As I mentioned, Glasgow harbour homes are the only domestic properties in Scotland that were extensively clad with ACM PE. Twenty-three other domestic buildings have some ACM PE, and my expectation is that the developers of those will follow Taylor Wimpey and sort that out.

Beyond that, we will consider the best use of taxpayers' money. We want to target money effectively to help people where that is required. Of course, we need to find out the circumstances in some of those cases, anyway.

11:15

**Graham Simpson:** One issue that the committee has picked up on is that we do not know whether buildings have been built in accordance with building regulations. That is an historical issue that you will be well aware of. Would it not be better to have a comprehensive inventory of all buildings in Scotland so that we know exactly what is on them? Is there a role for councils and LABSS in that work? At the moment, we just do not know what is on every building.

**Kevin Stewart:** We have, for the first time ever, produced a comprehensive high-rise inventory. That was not easy in any way, shape or form. That work led to the discovery of another two buildings that have partial ACM PE. Of course, the inventory will be updated annually to take into account change.

I do not know what Mr Simpson is driving at in asking about a more comprehensive inventory, but I am more than willing to hear suggestions on that front, or for Mr Simpson—or other members—to

get a briefing on the work that we have done with the co-operation of the local authorities.

**Graham Simpson:** I will not question you further on that, but it would be useful to hear how the inventory was produced and whether it was a paper-based exercise or involved people going out and looking at buildings.

There is a ban on combustible materials in building cladding in England and Wales, and now it seems that a ban is being introduced in Northern Ireland. I have asked you about this issue before. Scotland is an outlier on the issue. You hinted earlier that you might be prepared to reconsider that. Is there a timescale for that work?

**Kevin Stewart:** I never hint, or I am not prone to hinting. I should correct Mr Simpson, because what has happened south of the border is that combustible material is not allowed on buildings that are over 18m in height—they have moved to allowing class A1 or A2 materials. Our independent fire safety review panel's recommendation was not for a full-scale ban in relation to buildings over 18m; it was for a situation whereby, if a BS 8414 full-scale fire test has been carried out to test all the system, that can proceed. That BS 8414 full-scale test, which is being improved, is extremely important.

On the hint that was not a hint, more expert advice has come to my attention on metal composite materials other than ACM. Because I have caught sight of that, I have asked for the fire safety review group to come into play again to look at all aspects of that.

One worrying thing that I have heard is that some materials might be okay but are prone to discolouration quite quickly and if, for example, they are repainted, that can cause real difficulties. In light of some of what I have heard and other evidence that I have seen, I have asked for the panel to be reconvened to look carefully at all those issues.

As I have said, we need to look at the whole system. In the Grenfell inquiry, huge emphasis was put on the panelling, although other big mistakes had been made that caused real difficulty. We need to look at all the issues in the round. That is why the BS 8414 full-scale fire tests are more important than many of the other individual aspects. However, that is not to say that we will not look at individual aspects. I am sure that the committee recognises that we have progressed further and faster on most things, taking independent advice and being careful in all that we do. I want people to be as safe as possible in their homes.

**The Convener:** It was nice to see the Simpson and minister double act back again.

I have one question to finish off. We have talked throughout the meeting about the EWS1 form, and it has come across from the minister that the crux of the matter is that the decisions are made by companies that can profit from the process. Is there any suggestion at all that some people might be benefiting from the EWS1 process at the expense of householders?

**Kevin Stewart:** I have no evidence of that. I am more than willing to look at any evidence that anybody has or even—[*Inaudible.*—]—evidence of that. We can explore the issue as we move forward, but I have no evidence of that.

**The Convener:** That completes our questions and concludes the evidence session. I thank the minister and his officials for taking part.

I will suspend the meeting briefly—that means for two minutes—to allow a change of witnesses.

11:23

*Meeting suspended.*

11:26

*On resuming—*

## Subordinate Legislation

### Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 [Draft]

**The Convener:** Agenda item 4 is consideration of the draft Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. The committee will first take evidence on the regulations, for which I welcome Kevin Stewart, the Minister for Local Government, Housing and Planning, and Scottish Government officials Yvette Sheppard, who is the team leader for better homes, and James Hamilton, who is a solicitor for housing and local government.

The instrument has been laid under affirmative procedure, which means that Parliament must approve it before the provisions can come into force. Following this evidence session, the committee will be invited at the next agenda item 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. I thank you, too, for allowing me to do this today as part of the committee's consideration of our draft regulations to bring in pre-action protocols that will apply in rent arrears cases in the private rented sector.

The past few months have been challenging, with the coronavirus outbreak having significant implications for everyone, including the many people in rented accommodation. In responding to the outbreak, we have been clear that taking eviction action against a tenant because they have suffered financial hardship due to the coronavirus outbreak should always be a last resort. We want landlords, instead of doing that, to be flexible with their tenants and to signpost them to the range of financial support that is available to prevent rent arrears, working with them to manage any arrears that occur.

We introduced legislation to prevent renters from facing eviction and have made most grounds for eviction discretionary, to ensure that a tribunal considers the reasonableness of granting an eviction order at this time. We have now confirmed our intention to lay regulations that will, subject to their approval by Parliament, extend those protections to the end of March 2021.

We also want to strengthen further protection for tenants who find themselves in rent arrears at this

time by ensuring that landlords work with them to manage those arrears before taking steps to seek eviction. For that reason, we have introduced legislation that will allow pre-action requirements to be brought in that will apply to a private landlord who is seeking to evict a tenant for rent arrears. Compliance with those pre-actions will form part of the discretionary consideration of the tribunal in such cases.

The regulations that the committee is considering today set out those pre-action requirements, giving clear direction to landlords on the steps that they must take in advance when seeking an eviction order for rent arrears. They have been drafted with input from stakeholders and will inform our approach as we move forward. The introduction of the requirements is welcomed across all sectors and there is agreement that they will play a role in sustaining tenancies at this time, which will benefit tenants and landlords.

I look forward to the committee's questions.

11:30

**The Convener:** There are a number of questions from members. Perhaps Sarah Boyack would like to kick off.

**Sarah Boyack:** I welcome the regulations, but I have a couple of questions about clarity. We have had a briefing from Shelter Scotland—I do not know whether the minister has seen it—that asks about the information that would be available to tenants in advance of the First-tier Tribunal for Scotland housing and property chamber hearing, which sounds like a reasonable request. It is about being able to test the reasonableness of a decision by a landlord. Given that the regulations are in front of us today and we cannot amend them, is there any way in which the minister could communicate that reasonable request both to landlords, perhaps through the Scottish Association of Landlords, and to the First-tier Tribunal? That would help us to ensure that there is maximum support for tenants and that they will have clarity if they have to go to the First-tier Tribunal.

**Kevin Stewart:** I have not seen the briefing from Shelter—I assure the committee that I will look at it and consider what is in it.

It would be dishonest of me not to mention that I would be unable to direct a tribunal, and I am always a bit sweirt of anything that might look like instruction, which I cannot give to a tribunal. However, I will look at what Shelter has submitted and consider what is being said, and I will write back to the committee with a decision and the reason for that decision.

In general, I have tried my best, throughout all of this, to let tenants know exactly what their rights are. I have written to every tenant in the private rented sector in Scotland on their rights, signposting them to help. I want to do as much as I can to ensure that tenants know their rights as we move forward.

**Sarah Boyack:** Am I allowed to ask another question, convener?

**The Convener:** You can ask one supplementary.

**Sarah Boyack:** I welcome the minister's response. A key element would be monitoring the implementation and effectiveness of pre-action requests. If he could commit to that, it would be much appreciated.

**Kevin Stewart:** I will commit to monitoring all this as we move forward. It is essential that we gather as much data as possible as we move forward, in order to see what the impacts on people's lives actually are.

**The Convener:** Andy Wightman has a number of questions for the minister. It would be good if you could put a couple of them together, if that is possible.

**Andy Wightman:** I will do my best, convener.

Minister, at stage 3 of the bill that became the Coronavirus (Scotland) (No 2) Act 2020, you said:

"To ensure that the regulations will be effective and workable, we will work with stakeholders—including Mr Wightman, and representatives of landlords and tenants—to develop them."—[*Official Report*, 20 May 2020; c 51.]

In the policy note on the instrument before us, you say:

"The ... Government has consulted with a range of stakeholders".

Have you consulted private tenants?

**Kevin Stewart:** We have consulted the private rented sector resilience group, which was established to inform the Government during the pandemic. As I said to Mr Wightman in an answer in the chamber—if I remember rightly; it might, in fact, have been in committee—we have folks there who are private rented sector tenants.

**Andy Wightman:** In response to a question from Sarah Boyack, you talked about the importance of monitoring. Shelter has been monitoring evictions in the social sector for some years. In its 2016 report "Evictions by social landlords" it found:

"Despite the policy intention and broad buy-in across the sector, pre-action requirements have not had a sustained, long-term impact in reducing evictions."

What makes you think that introducing pre-action requirements in the private sector will make any difference?

**Kevin Stewart:** As you can imagine, I do not have Shelter's report from 2016 in front of me. Many people across the public sector see pre-action protocols as the right way to move forward and communicate with tenants. The protocols have prevented a large amount of evictions, which I think is extremely important. I could look at Shelter's 2016 report, but it is now four years old. From anecdotal evidence and discussions that I have had, as well as from constituency cases, it seems that pre-action protocols work in many instances. I will discuss the matter further with Mr Wightman offline if he would like to, but that report is four years old.

**Andy Wightman:** I will wrap my final questions into one. First, the minister said at stage 2 of the Coronavirus (Scotland) (No 2) Bill that he would consider making pre-action requirements permanent in the private sector. Has his thinking developed from that?

Secondly, in the social sector, the Housing (Scotland) Act 2001, as amended by the Housing (Scotland) Act 2010, says that,

"in complying with the pre-action requirements, the landlord must have regard to any guidance issued by the Scottish ministers"

on the social side. There is no requirement for any statutory guidance in the private sector in the instruments that are before us today. Is there a reason for that?

**Kevin Stewart:** I do not think that there is any reason for that. At stage 2 of the Coronavirus (Scotland) (No 2) Bill, I said to the member that we would be looking to make pre-action protocols permanent, and officials are working on that. If we decide to do that—it is likely that we will—we will also take cognisance of what he has said about guidance.

**Jeremy Balfour:** My question is at a slight tangent. One of the consequences of what we have introduced is that a number of my constituents who were hoping to carry out work to their properties and who have the appropriate warrants in place have, because of the restrictions against evicting tenants, been unable to do that and will need to reapply for the relevant permission. If the non-eviction approach is going to continue for several months, a number of people who had planned to do work will now not be able to do that work. Will the minister look at that and see whether anything can be done?

**Kevin Stewart:** If any member wants to send me casework that they have in order to resolve such situations, I will look at it. However, we have put these protections in place to protect people

and I am quite sure that solutions can be found by looking at building warrants, for example. In order that I can look into these cases, which may be anomalies, I have to see the details first. I have not had any such matters cross my desk so far, and there has been a lot of communication on that front.

**The Convener:** Jeremy Balfour has raised an interesting point. Thank you very much, minister. There are no more questions.

*Motion moved,*

That the Local Government and Communities Committee recommends that the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 [draft] be approved.—[Kevin Stewart]

*Motion agreed to.*

**The Convener:** The committee will report on the draft Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 in due course. I invite the committee to delegate authority to me, as the convener, to approve a draft of the report for publication. That is agreed.

That concludes the public part of the meeting.

11:39

*Meeting continued in private until 12:22.*

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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