



OFFICIAL REPORT
AITHISG OIFIGEIL

Local Government and Communities Committee

Wednesday 18 November 2020

Session 5



The Scottish Parliament
Pàrlamaid na h-Alba

Wednesday 18 November 2020

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LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

29th 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:

Councillor Malcolm Bell (Shetland Islands Council)

Anouk Berthier (Scottish Government)

Councillor Alison Evison (Convention of Scottish Local Authorities)

Andrew Fraser (Society of Local Authority Lawyers and Administrators)

Professor Chris Himsworth (The University of Edinburgh)

Professor Richard Kerley (Queen Margaret University)

Ben Macpherson (Minister for Public Finance and Migration)

Alison Payne (Reform Scotland)

Ian Storrie (Scottish Government)

CLERK TO THE COMMITTEE

Peter McGrath

LOCATION

Virtual Meeting

Scottish Parliament

Local Government and Communities Committee

Wednesday 18 November 2020

[The Convener opened the meeting at 09:31]

Decision on Taking Business in Private

The Convener (James Dornan): Good morning and welcome, everyone, to the 29th meeting in 2020 of the Local Government and Communities Committee. Please ensure that your mobile devices are in silent mode. I remind everyone that broadcasting will operate your camera and microphone, as usual. After you are called to speak, please allow a short pause before speaking to allow them to do so.

Agenda item 1 is consideration of whether to take agenda items 6 and 7 in private. Item 6 is consideration of the evidence on the European Charter of Local Self-Government (Incorporation) Scotland Bill. Item 7 is consideration of an approach to scrutiny of a common framework on hazardous substances planning. 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.

As no members object, we agree to take items 6 and 7 in private.

Subordinate Legislation

Valuation (Postponement of Revaluation) (Coronavirus) (Scotland) Order 2020 [Draft]

09:33

The Convener: Under agenda item 2, the committee will take evidence on the draft Valuation (Postponement of Revaluation) (Coronavirus) (Scotland) Order 2020. I welcome Ben Macpherson, the Minister for Public Finance and Migration; and, from the Scottish Government, Ian Storrie, the head of non-domestic rates policy, and Anouk Berthier, the non-domestic rates team leader.

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

We have sought views on the instrument from interested bodies and the responses that were received are set out at annex B of committee paper LGC/S5/20/29/1. I remind everyone that Scottish Government officials can speak under this item but not in the debate that follows.

I invite the minister to make a short opening statement.

The Minister for Public Finance and Migration (Ben Macpherson): Good morning, colleagues. First, I thank the committee for the opportunity to give evidence and to make this statement. I hope that our written evidence provided helpful context. I was also grateful for the opportunity to discuss the Scottish Government's position with several members of the committee in recent weeks.

I highlight once again that we are not considering a party-political issue but a judgment about balancing risk for the benefit of businesses and public finances. Indeed, for context, I note that the Scottish Government's proposal to delay the revaluation date to 2023 has also been called for by the Conservative Government in Westminster and by the Labour Government in Wales. What is more, I remind members that Ruth Davidson requested the delay in the chamber on 1 September—the day on which we announced our proposal to do exactly that in the programme for government.

The decision that is before the committee today is ultimately a simple binary choice. If the committee supports the instrument in question, the next revaluation will take place in 2023 with a one-

year tone date of 1 April 2022. If the committee rejects the instrument, the next revaluation is scheduled in law to take place in 2022 with, I am concerned to say, a two-year tone date of 1 April 2020.

Despite the binary choice, I anticipate that the committee will wish to explore the Government's view on a third option of a 2022 revaluation with a 2021 tone date. However, I must emphasise that the Government has no intention to consider that option if the instrument is rejected.

The option of a 2022 revaluation with a 2021 tone date is, of course, one that we in Government carefully considered, but ultimately rejected. Our decision was based on risk. With respect, those arguing for a 2021 tone date appear to be doing so based primarily on following the word of the Barclay review while overlooking the spirit of the review.

I submit that their arguments do not adequately take into account the impact of the situation that we face as a result of the pandemic. I highlight that I have not seen evidence to justify a 2021 tone date. Furthermore, from an operational delivery perspective, I must point out that a 2021 tone date would require assessors, with only around 15 months' notice, essentially to deliver a six-month revaluation in order to inform the Scottish budget process. Therefore, although some may use the word "challenging" to describe a potential 2022 revaluation with a 2021 tone date, I argue that such a proposal runs the risk of compromising the entire revaluation exercise.

First, there are the operational impacts of the pandemic. It is a little more than four months until 1 April 2021, and, unfortunately, the number of Covid cases continues to increase. We know that the rating profession has appropriately taken up the Chancellor of the Exchequer's coronavirus job retention scheme and that the profession was subject to national lockdown for much of the summer. We also know that the private sector rating agents are typically city-based but often provide a national service. Conversely, assessors have local offices but often cover multiple local authorities.

We need to consider that, under the strategic framework, one third of local authorities are entering level 4 and are subject to travel restrictions. In addition, it is not inconceivable that some areas might be significantly restricted again between now and next April. Moreover, where businesses are open, we know that some have refused to allow strangers—including rating surveyors and assessors—on site to reduce the risks of Covid transmission.

Put simply, given all that disruption, there are temporarily fewer professionals to do the job of

revaluation, and, where they are available, there are legal and structural impediments preventing them from doing their jobs.

Secondly, we also need to consider the risk of a lack of evidence on which to base a potential 2022 revaluation with a 2021 tone date.

Since Covid, about 50,000 appeals have been lodged claiming a material change of circumstances. Some of those are believed to be duplicates, but every valid appeal is entitled to request an expedited hearing. However, despite the financial and economic challenges that are facing businesses, there has not been, to my knowledge, a single request for an expedited hearing. I think that that is a clear and compelling indication that appellants do not yet hold the evidence to support their case.

Furthermore, last Thursday, the Federation of Small Businesses published a poll that found that

"seven in 10 ... Scottish rent-paying businesses have been forced pay rent as normal throughout this crisis".

Colleagues, we may disagree on various things, but I am sure that we agree that 2020 has been far from normal, as the FSB has evidenced for almost 70 per cent of small businesses.

More fundamentally, I am not aware of any credible evidence having been provided to assessors to support a change in rateable value.

Those points are undoubtedly correlated. They point to a lack of robust evidence on which to base a revaluation without significant risk of unintended but utterly predictable consequences.

Revaluations are revenue neutral by design, in order to maintain the income stream that supports public services that we all rely on delivered through local government. Therefore, they inevitably create a situation in which those who see their rates liabilities increase are offset by those who see their liabilities fall.

The winners and losers—I use those phrases advisedly—are not a matter of political influence, but are determined on the basis of regional and sectoral rental evidence. I am not suggesting that that evidence cannot come forward in time for 1 April 2021, but, on the basis of the verifiable evidence available to ministers, we have no confidence that it will—and certainly not in a way that fully reflects the impact of Covid-19 or Brexit, nor in a way that reflects the volumes or sectoral and geographic coverage that is necessary to enable a stable revaluation.

I believe that it is important that we give the market time to stabilise, to allow the evidence to catch up with reality and identify the correct winners and losers, rather than risk using structurally deficient evidence.

Indeed, when it comes to considering the winners and losers of an upcoming revaluation, it is undeniably clear from the written evidence provided ahead of today's meeting that the overwhelming priority for the Scottish business community is certainty over the future of reliefs. That is where our focus should be after today's decision has been taken.

However, I must also reiterate that, as the Cabinet Secretary for Finance has previously emphasised, given the constraints of the fiscal framework, decisions on the future of Covid-19 reliefs can be taken only in the context of United Kingdom Government spending decisions. We therefore hope that the chancellor will provide that certainty in his statement next week, to allow us to reflect those decisions in the Scottish budget rather than awaiting his March budget, which is only weeks before the current relief is scheduled to expire.

There is no political or even financial benefit to the Scottish Government from delaying revaluation. However, there are significant unintended consequences if we do not and the values at revaluation are not accurate and robust.

Although nothing about 2020 has been ideal, delaying the revaluation is a prudent, pragmatic and practical measure that we can collectively take to respond appropriately to the consequences of the global pandemic. Delaying the revaluation is the majority view of business organisations in Scotland. I hope that the committee will appreciate our risk-based approach to the next revaluation. If the instrument does not proceed there will not, as I emphasised earlier, be a delay to the revaluation or a change of tone date. Therefore, I hope that members will support our proposal, which seeks to ensure fairness for Scottish ratepayers in aggregate, while maintaining the stability of public finances.

I look forward to any questions the committee may have.

The Convener: Thank you very much, minister, for that full explanation of your view.

So far, we have three members wanting to ask questions. If any other members have a question that they would like to ask, please put "R" in the chat box. I will start with Sarah Boyack, to be followed by Alexander Stewart and then Andy Wightman.

Sarah Boyack (Lothian) (Lab): I thank you, minister, for the opportunity to meet you in advance of this session.

You said that the majority of Scottish businesses support a delay in the tone date, but we have had evidence that they do not support the

tone date that you have proposed to us today. I would like you to address that specific issue.

In addition, you suggested that, if the tone date proposal was not passed, you would not bring forward the alternative tone date, which many businesses have been in touch with us to say that they would prefer.

Can you explain the economic assessment that you have carried out to date? You said in your introductory remarks that you have looked at the economy and assessed the risks. Can you specifically address the difference between a tone date of 2021 and a tone date of 2022, which is the key concern that we have heard from businesses? I accept what you say on the reliefs issue, but we will come back to that.

Ben Macpherson: There are three important questions there.

First, with regard to the considerations of the business community, we have not only read the submissions with interest; we also engaged significantly with the business community before the announcement in the programme for government. The engagement has been appropriate—we have, as the committee would expect, met a variety of business organisations and discussed the point that Sarah Boyack raised on several occasions since the Covid pandemic began.

It is not fair to say that the business community has a preferred position—there are differing positions. For example, the FSB, in its written submission, states:

"We ... broadly support the Scottish Government's decision to change their approach to the revaluation cycle, as they've done in Wales and England."

The Confederation of British Industry Scotland says:

"CBI ... understands the practical arguments in favour of postponing the non-domestic rates revaluation to 2023-24, in light of the impact the pandemic and its associated restrictions have had ... on individuals, businesses and the Scottish economy as a whole."

We appreciate that some business organisations do not agree with our proposition, but there is no unified position on the change to the tone and revaluation dates. Where there is a unified position, it is—from what I have seen in the submissions to the committee—that the dates should change from the current tone date of 1 April 2020 with a revaluation in 2022.

09:45

With regard to the proposal that we have brought forward today, it is fair to say that the preferred position of businesses is a change from the status quo—that is absolutely the shared view.

I note that the Scottish Property Federation made it clear in its submission that, although it would prefer the alternative position of a tone date in 2021 with a revaluation in 2022, it does not want the status quo to continue. The main point is that there are different positions.

Sarah Boyack's next point was on whether we have considered that the evidence base for 2021 will not be accurate. I refer back to my opening statement and the points that I made about a balance of risk. There is no easy answer to the question of what the correct tone date is. In that regard, our approach was risk based.

We take the view that the structural deficit between the economic reality and the market rental evidence will persist into 2021-22, because the number of Covid-19 cases is still rising and there is continued uncertainty around Brexit. As I mentioned in my opening statement, there will temporarily be fewer professionals available to do the job of revaluation. Where they are available, there are legal and structural impediments that may prevent them from doing their jobs.

For example, as I said, many private sector agents were furloughed and may still be on furlough; private sector agents are predominantly based in cities but operate nationally; and assessors are regional, so their work straddles local authority boundaries. Restrictions on non-essential movement were in place for much of the summer, and it appears that they are likely to return in some areas.

As I said in my opening statement, businesses are blocking access to their premises for those who are not staff, including rating surveyors and assessors. Record keeping is often still paper based and it is therefore more challenging for people to access records while they are working from home. We are advised that, in the coming months, access to offices will be prioritised for electoral staff rather than valuation staff. There are therefore practical and operational constraints and considerations in respect of gathering evidence ahead of next year. Further to that, there are considerations around whether the market will have adjusted.

Again, I point to my opening statement, in which I emphasised the results of the FSB's survey. It revealed that 70 per cent of those who were surveyed by the small business community said that there had been no renegotiation between tenants and landlords of commercial property. The lease arrangements between tenants and landlords, therefore, have not caught up with the realities of the current situation and the challenges that businesses face, which does not fit in with the idea that evidence could be gathered ahead of next year.

We have balanced all those practical and evidence-based considerations, and we think that setting a tone date of 2022 offers the chance that the evidence base will have caught up in order to make sure that there is a robust position on which to base the next three-year revaluation.

Perhaps Ian Storrie and Anouk Berthier could come in at this stage with some further points to substantiate what I have said.

Anouk Berthier (Scottish Government): On Sarah Boyack's final question regarding the impact assessment, that would require an accurate assessment of something that is essentially in the future. We would need different rents on different dates across 2020, 2021 or even 2022, if we are thinking ahead, to be translated into revaluation rateable values. That would also require an accurate estimate of the poundage in subsequent years, and it would have to take into account any public support that might be offered—for example, through relief. Businesses and Government would need have access to an assessment of all those parameters in order to form a full judgment.

As Ben Macpherson said, our concern is that the rental evidence will not be available in 2021, and that it will not be robust in reflecting revaluation. We have to remember that the Barclay review's recommendation on moving to regular revaluations, with a one-year period between the tone date and the revaluation date, was that rateable values should reflect the economic circumstances as at the time of revaluation. We are very much trying to deliver on the spirit of that recommendation by introducing a one-year tone period with a revaluation on the basis of stable, robust and reliable post-Covid values.

The Convener: Alexander Stewart will come in now. Minister, I ask you to try to keep your answers quite short—thank you.

Alexander Stewart (Mid Scotland and Fife) (Con): I thank the minister for our early discussions with him on the matter.

The Scottish Government is normally robust in its consultation and engagement, but organisations have made it clear that, on this occasion, that did not seem to be the case. The Scottish Chambers of Commerce, the Scottish Licensed Trade Association, the Scottish Property Federation and others did not feel that they were consulted in the normal manner by the Scottish Government.

Secondly, with regard to the differing regional situations across Scotland, I ask the minister to comment on the situation in the north east. In the current situation, given the economic downturn in the economic gas and oil industry, businesses in

that region find themselves potentially penalised under the process. When the Government is looking at making decisions on a revaluation tone date, that will have an impact on certain regions of Scotland.

Ben Macpherson: Again, those are important questions. As you would expect with a proposition such as this one, we have a duty to inform Parliament first. That is why the Scottish Government put forward its formal position on the matter in the programme for government. Of course, in the past year, we have all had to react more rapidly than normal, but we engaged with business on the proposition. In May, we had a conference call with UKHospitality and the FSB. In June, I took part in the Scottish Government's regular weekly call with all the business organisations and asked for their thoughts on both the revaluation date and the tone date.

In July, I had a meeting with the Scottish Retail Consortium. In August, I met a number of commercial property providers, the valuation appeal panels and the Scottish Property Federation. Since the announcement in the programme for government, there has been a lot of engagement with business organisations. For the sake of succinctness, I will not list them all, but I hope that that illustrates that there was significant and appropriate engagement with business.

Given the timeframe and the need to inform Parliament of our position first, which is why it was in the programme for government, we did not undertake a consultation exercise to the extent that we may have done in other times. However, it is not correct to say that there was no engagement with business organisations—there absolutely was, and that was done proactively.

With regard to the other important points that have been raised about considerations affecting different geographies and sectors, and the concerns of some stakeholders about a detachment between business rates and rental values as things stand, the Scottish Government recognises those points. That is why we are focusing on the consideration of reliefs in the coming period in particular, although that will be subject to Barnett consequentials. That is where our collective focus should be.

Those who are arguing for a 2021 tone date should recognise that, as I have stated, that would run the real risk that the evidence that assessors are legally obliged to follow simply would not reflect the reality. If those risks manifest themselves, the situation would exist for the full period of the next revaluation cycle.

The whole ethos behind our argument for a tone date of 2022 and a revaluation in 2023 is that we do not want to run the risk that the next period—

the next three years after that—will not reflect the reality. Those in the north-east argue that the current position does not reflect the reality of the situation for businesses there and that there is a detachment between business rates and rental values. The solution cannot, therefore, be to deal with a detachment between business rates and rental values in the here and now in some sectors and some places by taking a position that could create the same risk across the whole country.

It would be prudent to have a revaluation in 2023 with a 2022 tone date in order to give both the market and the evidence base the best chance to catch up. The valuation will then reflect reality in the subsequent three-year period. I hope that that answers Mr Stewart's question.

Andy Wightman (Lothian) (Green): For the sake of saving time, I should say that the substance of my questions has already been addressed in the responses to Alexander Stewart and Sarah Boyack, so I have no further questions.

The Convener: Thank you very much for that. Sarah Boyack, did you want to come back in?

Sarah Boyack: There is so much to ask. The minister said that if the committee did not support his proposals today, we would be stuck with a 2020 tone date. There is clearly no support for that and people welcomed the fact that the minister suggested an alternative tone date. If we rejected your proposals today, would you listen to the committee, or indeed the Parliament, come back with a different tone date and engage the business community in the discussions that many say they do not feel they have had?

Ben Macpherson: We are taking such a strong position that the binary choice for the committee today is the one that needs to be considered, rather than the other options that we considered, because we do not think that 2021 is any better than 2020 when it comes to a tone date. As I said in my opening statement, the pressured timescale that there would be for 2021 would be challenging for assessors with multiple structural and operational obstacles. That is strongly emphasised in the Scottish Assessors Association submission to the committee.

10:00

Again, pointing to the FSB survey in particular, evidence that the market is likely to have caught up in 2021 is significantly limited. Of course, there could be evidence—we are trying to be balanced here—but on the basis of what we have seen so far, that survey and other engagement we have had suggests to us that the evidence base in April next year will not have caught up with the reality of what businesses are facing. In particular, we have to be cognisant of the fact that the second wave of

the pandemic is under way, unfortunately, and that has meant significant further restrictions under the framework. We do not know how the next months will pan out. Obviously, we hope the levels of the virus will go down. We also do not yet know what the consequences of Brexit will be.

The likelihood of the evidence base next spring reflecting what the commercial property market is like is severely constrained and there are so many unknown factors. On the balance of risk, we do not think that a 2021 tone date would be any more advantageous in terms of a relative judgment on the evidence than a 2020 tone date.

Ian Storrie, could you come in on this point, please?

Ian Storrie (Scottish Government): Our view is that the evidence shows that the risks are broadly similar between 2020 and 2021, but the operational risks associated with 2021 are significantly greater for assessors. As Mr Macpherson has pointed out, there are 50,000 material change of circumstance appeals in the system, and assessors normally get 70,000 appeals to deal with over a three-year to five-year period. The workload and the human resource that they will need to devote to addressing 50,000 appeals is huge.

In many cases, we would like to know the outcome of those material change of circumstances appeals because they are likely to set some tone for the next revaluation. It is important to see the two of them in parallel. As Mr Macpherson said in his opening statement, when we talk about a one-year tone date, we are really talking about a six-month tone date from 1 April. By September or October, the Scottish Government needs the headline high-level outcomes from the revaluation to inform the budget process to meet the Parliament's budget timetable, so when we talk about a one-year tone date, it is not really a one-year timetable.

Ahead of the planned move to a one-year tone date in what would be 2025, assessors are starting to move towards more rolling collection of data. They are comfortable that they can probably get it in place with a delayed tone date of 2022, but there is no chance they would be able to get it in place across the country in time for a tone date of next year. The data collection obstacles are significant and doing that would undermine the long-term direction of travel of the Barclay review.

Finally—and this is a slightly anecdotal but hugely important point—a lot of the evidence held by assessors is held in their offices. They still use a largely paper-based system, so there are practical issues with accessing the data. That will also be the same for private agents. In the discussions I had with assessors yesterday ahead

of today's meeting, there is another consideration of restricting access to assessors' offices. At the moment, they have to give priority to their electoral registration officers ahead of the election. Access for valuation staff will be even more restricted than it currently is. For those operational reasons, and given that the evidence base is broadly comparable for the two tone dates, we have advised ministers that the risks of a 2021 tone date are significantly greater.

Keith Brown (Clackmannanshire and Dunblane) (SNP): I have some brief points and I am more than happy if the minister wants to respond with a one-word answer in the interests of brevity. I want to see if I have got my head around some of the points that have been made correctly. There is no evidence being led for doing other than what is proposed by the Scottish Government or to say what would be a better way to proceed. There are real problems with the assessors either going out to properties or even doing the office-based work necessary to bring the tone date forward. The evidence from the FSB, which has, by far, the largest number of members—small businesses are the backbone of the Scottish economy—supports what the Scottish Government intends to do. It is similar to what is being done in England and Wales, as I understand it. The Scottish Government is saying that it has no intention of coming forward with an alternative, as proposed, if the order is not successful. I just want to know whether I have got that right, because it seems a fairly straightforward case to me.

Ben Macpherson: In the interests of brevity, yes, Mr Brown is correct in all those points.

The Convener: All questions have been answered, so we will go on to item 3, which is formal consideration of motion S5M-23058, which calls for the committee to recommend the approval of the Draft Valuation (Postponement of Revaluation) (Coronavirus) (Scotland) Order 2020 on which we have just taken evidence. I invite the minister to move the motion and speak to it if he has anything to add.

Motion moved,

That the Local Government and Communities Committee recommends that the Valuation (Postponement of Revaluation) (Coronavirus) (Scotland) Order 2020 [draft] be approved.—[Ben Macpherson]

The Convener: Thank you. I invite contributions from members, who should type "R" in the box. Andy Wightman said that he would like to come in at this point.

Andy Wightman: I thank the minister for the engagement prior to today, and those who have submitted written evidence. This is an important issue, as the minister recognises.

I sense that the committee is in a rather unfortunate place, given that this was announced in the programme for Government. We have a binary choice and there is no scope for the committee to explore options. We might end up in the same place as the minister, but that option is not easily available. The process is not ideal, but we are where we are. I do not accept some of the suppositions and the premises that are set out in the Government's submission around, for example, revenue neutrality. Revenue neutrality depends on rates being set. It is important to have regular revaluations that reflect the state of the economy.

It is unfortunate that we are going to have to continue to live with an outdated valuation base from 2015 for the next two years under the proposal, but I found the minister's comments helpful, I found the Scottish Government's additional evidence helpful and I also found the evidence from witnesses extremely helpful. As a result of that, I am persuaded—at least on the balance of risk—that the Government's approach is the appropriate approach to take, and thus I will be supporting the instrument.

Sarah Boyack: I agree with Andy Wightman that the additional evidence that we have heard today has been helpful, but it does not address all the concerns that we have heard from businesses. The minister mentioned the FSB, which gave useful evidence and made additional points about its concerns about how reliefs work and how the business rates work for its members, many of whom do not get the benefit of reliefs because they are in the supply chain but do not operate out of premises. It has concerns about how reliefs will continue during the next couple of years because they are already impacted. I would have liked to have heard a bit more about the issue of resourcing for assessors, because every time there is a valuation there are tens of thousands of appeals and we have heard that the business community expects there to have been some test cases by January or February, when there will be more clarity.

I still have reservations. I welcome the additional information, but it emphasises the fact that the minister is giving us a binary choice; it is his choice to frame it in that way and I do not think that it is the best choice. Some businesses are concerned about 2022 rather than 2021, given that they are either partner businesses or competitors in other parts of the UK. I still think there are outstanding concerns and I am keen to get as much as we can on support for businesses, because it will not just be about our vote today, there will be the issue of future rates relief and huge concerns that it will be tapered.

There was a comment by one of your colleagues that it is important we do not undermine the Barclay review, but ironically that is precisely one of the concerns that businesses have put to us. They are worried that, even under the Government's proposals, there might be a delay with a 2023 revaluation, so there is a real issue about certainty. You have correctly mentioned Brexit, and we have the pandemic, but there are fears that, even if the committee votes for the instrument and Parliament supports it, it is not a done deal. There are major concerns about the future of businesses and the need for effective Scottish Government support for the future.

Finally, I want to talk about assessors. Businesses have to face the concerns that you raise across the country every day, whether they are doing work, or whether it is the organisations that have had to keep going. In thinking about how we restart and kick-start our economy, support for assessors will be vital in the future. That could mean financial support to enable them to have staff. Many businesses and public sector agencies have had to recruit additional staff to deal with the pandemic; surely Scottish Government ministers should also be considering that.

Alexander Stewart: It has been useful to hear some of the responses this morning from the minister and his officials. I still have serious concerns that we are not supporting the business community as the business community would like. I acknowledge the fact that the FSB has made some representations, but is not it the case that maybe 80 per cent of its members are not paying rates because of the small business bonus scheme? The strong representation that we have heard from Scottish Chambers of Commerce and the Scottish Licensed Trade Association that we are not taking on board their main issues gives me cause for concern. We should be supporting the business sector, protecting jobs and ensuring that we can help them through this crisis that we face.

I still have some strong views. I am unhappy that we are being given this binary choice this morning by the minister, because I still think that the introduction of a revaluation in 2022 and a tone date of 2021 is what the majority of business communities appear to want and we are not respecting that. I will not support the minister's proposal this morning.

The Convener: Minister, would you like to sum up?

Ben Macpherson: Briefly, I appreciate the points that have been raised and the indication of Mr Wightman's support, in particular. I note the points that Sarah Boyack has raised, which of course are all important. As you would expect, we are considering the points that she raised, as well as what communication would be appropriate to

use with the committee to follow up on those points.

As I say, this is a balance of risk. There is strong support in the business community for our proposal. We want to support the business community and that is why we are taking this position. We appreciate that there is a difference of opinion out there, but we are determined to work with the business community after today's decision to continue to consider reliefs, which I know the committee is rightly concerned about, as are we, and which are subject to Barnett consequentials. After today's decision, we will work proactively and constructively with the business community on considerations around reliefs and how we move forward towards a robust revaluation as we all work together to come through this crisis.

The Convener: The question is, that motion S5M-23058 in the name of the Minister for Public Finance and Migration be approved. Are we all agreed?

We are not agreed. In that case, we will move to a division, and I will do it by roll call. I will do that in alphabetical order and I will vote at the end.

For

Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Ross, Gail (Highlands and Islands) (SNP)
Wightman, Andy (Lothian) (Green)

Against

Boyack, Sarah (Lothian) (Lab)
Stewart, Alexander (Mid Scotland and Fife) (Con)
Wells, Annie (Glasgow) (Con)

The Convener: The result of the division is: For 4, Against 3.

Motion agreed to,

That the Local Government and Communities Committee recommends that the Valuation (Postponement of Revaluation) (Coronavirus) (Scotland) Order 2020 [draft] be approved.

The Convener: I thank the minister. The committee will report on the order in due course and I invite the committee to delegate authority to me as convener to approve a draft of the report for publication.

I thank the ministers and his officials for taking part in the meeting. I now suspend briefly to allow a change of witnesses. Thank you, minister.

10:15

Meeting suspended.

10:18

On resuming—

European Charter of Local Self-Government (Incorporation) (Scotland) Bill

The Convener: Item 4 is our first day of evidence on the European Charter of Local Self-Government (Incorporation) (Scotland) Bill. I welcome the following, who are all attending remotely: Professor Chris Himsworth is emeritus professor of administrative law at the University of Edinburgh, Professor Richard Kerley is professor of management at Queen Margaret University, and Alison Payne is research director at Reform Scotland. Thank you all for being here today and for your written submissions.

For your information, I point out that we have allocated an hour or thereabouts for this session, and have a number of issues to discuss with you, so I ask you to keep your answers as succinct as possible.

Andy Wightman, who is the member in charge of the bill, is also a committee member. Under Parliament's standing orders he will, in effect, take part in the evidence session as a non-committee member. In practice, that means that I will allow him to come in for questions to panellists only at the end, if time allows.

Before we start, I offer some brief technical information. There is a prearranged questioning order, so I will call members in turn to ask their questions for a block of up to nine minutes. It would help broadcasting staff if members could indicate to whom in the panel the questions are addressed. We might have a short amount of time for supplementary questions at the end.

As there are three people on the panel, witnesses should please indicate clearly when they wish to answer a question—for example, by raising your hand. Do not feel that you need to answer every question fully if your views are generally in line with points that have already been made. Please give broadcasting staff a second to operate the microphones before you speak. Thank you.

We now move on to questions; this question is for all the witnesses. To what extent and how does the bill support further devolution of local government, and what legislative barriers remain?

Alison Payne (Reform Scotland): Thank you very much, convener, for this opportunity.

Reform Scotland sees the bill as being a good first step on a long-awaited journey towards greater decentralisation. It represents important recognition of the value of local government. We

come at it from the point of view that this has to be just the first step—that we are recognising the value of local government, which will lead to decentralisation of additional powers and responsibilities and to a balancing of the relationship between Holyrood and local government.

The Convener: Thank you. Professor Kerley?

Professor Richard Kerley (Queen Margaret University): I am not getting any—*[Inaudible.]*

The Convener: Okay. I ask broadcasting colleagues to mute Professor Kerley, and I will bring in Professor Himsworth.

Professor Chris Himsworth (The University of Edinburgh): Thank you very much for the invitation to be here today. My answer to the question is that the bill forms part of the future, as I see it. It must be broadly accepted—it has been accepted for many years—that there is an issue in relation to the strength and capacity of local authorities in other European countries to do what they need to do. In Scotland, that has been a familiar weekly refrain, in my experience, since the end of the 60s into the 70s and the reorganisations of that time. The call has been sustained throughout the calls for devolution, of course, through the McIntosh commission and into the existence of the devolved Parliament and devolved Government in Scotland. There has been the constant theme about the adoption within the working constitution of means to support the autonomy of local authorities.

As to the bill's particular response to the problem, although one has inevitably to take a somewhat pragmatic view, it seems to me that incorporation of the charter is currently at the top of the pile, for various reasons on which I could elaborate. It has the advantage of already being there; it contains obligations that are already binding on all the relevant bodies within the UK—certainly, within Scotland. The text has been available since 1985 and has been available within the UK since 1998. The bill is, to my mind, a good route forward. I am sure that there will be more to say about that, as we proceed.

The Convener: I am sure that you are right. Does the bill leave any other legislative barriers in the way of further devolution to local government?

Professor Himsworth: If I have interpreted the question correctly, I say that the bill opens the way, as is necessary, to more legislation going in the direction of further empowerment—I am hesitant to call it “liberation”—and of increases in the autonomy of local government. It stands to encourage all moves in that direction.

The Convener: Thank you for that. I have another question. South Lanarkshire Council

referred to challenging historical decisions on local government financing. Is the bill an opportunity to challenge past Scottish Government decisions on council funding? Do you think that that is what it should be for? I will stay with you, Professor Himsworth, as you are on screen.

Professor Himsworth: I must pause a moment to say that the device that is adopted in the bill is to make the articles of the charter available in Scotland. They would become schedules to the act, were the bill to be passed. The consequence of that—we could expand on this—will be the obligation that will be placed on the Scottish Government to ensure that it acts compatibly with the principles that are laid down in the charter. The bill would go further by making failures to act compatibly challengeable, ultimately, in court.

Of course, decisions by Scottish ministers are challengeable in court on other grounds, including on human rights grounds and all the other familiar grounds for judicial review in the Scottish system. The bill would add to the grounds for challenge.

Connected to that are questions about how likely challenges are, whether challenges would be successful, whether challenges would be a good thing for the system overall and, in particular, whether they would cost undue amounts. Those are all questions that should rightly be taken into account. I see that they are, in the first instance, addressed very fully in the policy memorandum that accompanies the bill.

Those are thoughts that anyone would have around the creation of new obligations on public bodies, including on the Scottish ministers.

The Convener: I will bring in Professor Kerley—I think that he is back—and then come back to Alison Payne. I am sorry. Professor Kerley does not sound any better.

I will ask Alison Payne the same question about South Lanarkshire Council input on being able to challenge historical funding decisions. Should that be what the bill is for? How would that work, where there are existing protocols? It is not just the Government that decides; it works alongside the Convention of Scottish Local Authorities, and so on.

10:30

Alison Payne: We hope that it would be more the start of a new relationship. I would think it would help to improve the relationship. There have definitely been issues in terms of how we manage things and how things have been in the past. There have been considerable disagreements over a range of matters, including finance, as the convener mentioned, in relation to South Lanarkshire.

I hope that the bill would help to create a new relationship and a new balance. If it ends up becoming clogged up in previous grievances, that will not lead to a new and better relationship that looks from the start at what powers can be devolved, and how we can move towards proper decentralisation. That is what we want the journey to be, rather than there being so much looking backwards.

The Convener: I appreciate that.

We will move on. Professor Kerley says that he thinks that he can be heard now. Sarah Boyack is the next member to ask questions, so perhaps she could ask Professor Kerley one.

Sarah Boyack: I thank the three witnesses for providing evidence in advance; it has been really helpful to us. I have some brief follow-up questions about those submissions, on which I hope that Richard Kerley might be able to come in.

In a section of your submission, you talk about dilemmas. How could the bill be improved? You talk about areas in which you think that improvements could be made. Could you set out how the bill could be strengthened to make it more effective?

The Convener: Professor Kerley? No.

Sarah Boyack: Convener, I was also going to ask Chris Himsworth that question, because he, too, mentioned the need to improve the bill in a number of ways. Perhaps he could comment on that while we wait for Professor Kerley to come back in.

Professor Himsworth: Thank you for that question, which probably principally addresses the points that I made in my submission. Perhaps inappropriately, I talked about the notion of expanding the “scope” of the bill; by that, I meant the coverage of the bill.

I will explain where I was coming from when I made those observations. The job in hand is to give effect to the charter in broad terms. Some people have called it a charter of rights for local authorities. The charter speaks in positive terms about the things that should be achieved on behalf of local government, but it is largely silent on which bodies are the principal threats to local authorities’ autonomy and powers, and how those threats should be addressed. It is simply the manner of presentation of the charter.

It is pretty clear in all the documents associated with the charter that the principal threats—I do not mean this in a deeply unpleasant way—to local autonomy inevitably come from central Government, however that is defined. There is no doubt that, in very large measure, it is central Government, however that is defined, that must be the body that has the principal responsibilities in

this area. In Scotland, inevitably, we think of the Scottish Government and the Scottish ministers.

What has to be borne in mind is that the charter is anxious to preserve the autonomy of local government, and therefore to repel any threats to that autonomy, wherever they come from. I will give an example from the charter. At a couple of points, it refers specifically to the requirement that local authorities should be consulted on matters that affect them. There is such an obligation in relation to their financial arrangements and their financing, as well as a more general obligation to consult on their functions and the discharge of those functions. It seems inevitable to me that not just the Scottish Government or the Scottish ministers but other bodies that are close to central Government in Scotland, or even bodies that are a little bit more distant but which nevertheless have dealings with local authorities, would be expected to respect those obligations under the charter. That is what the charter would seek.

For instance, there are, of course, health authorities in Scotland. There are bodies such as Police Scotland and the Scottish Police Authority, among many others. It is a perfectly familiar idea that, when they do things, they should consult local authorities as necessary. The charter would reinforce those obligations.

The approach that is taken in the bill—which I think is a perfectly legitimate one—is to focus almost exclusively on the obligations of the Scottish ministers. I think that that is right, because it is they who have the principal responsibilities in this field. There is no doubt about that. The whole structure of the bill is about imposing obligations on them and their response; to an extent, it is also about enforcing that response. I was simply inviting discussion of whether that coverage of the bill could be expanded to cover the obligations of other public authorities in Scotland. That is what the little questions in my submission were inviting discussion of.

I understand that one or two of the suggestions that I made—perhaps I was just flying kites a little—raise questions about the legislative competence of the Parliament. There may be a lot of very good prudential reasons for avoiding any difficulties in those areas, and I can well understand that the Parliament would wish to avoid inviting completely unnecessary—to my mind—challenge on competence grounds. I am not at all pressing for that.

On the other hand, if other public bodies that are completely within the competence of the Scottish Parliament were to be brought within the embrace of the bill, I think that that would not be a wholly bad thing, for the reasons that I have given. Of

course, I can see that that would complicate the bill in some measure.

The Convener: Sarah, Professor Kerley is on audio only. Do you want to try him?

Sarah Boyack: Yes. I appreciate Professor Himsworth's comments. My question was about how the bill could be improved. I get the sense from Professor Kerley and Alison Payne that they strongly support the bill; I would simply like to know what strengthening elements they think should be added to it.

Professor Kerley: I am hoping that people can hear me now.

Sarah Boyack: Yes, we can hear you.

Professor Kerley: Thank you. If I break up, I will be happy to write down the response.

I had not previously considered the case that Professor Himsworth made in his written evidence and just now about the incorporation of other Government agencies and bodies within the bill. That makes a lot of sense to me, but my starting point was simply that the adoption of the charter would be a marvellous way of showing respect and the long-sought-for parity of esteem in terms of the elected position of local authorities throughout Scotland. I think that it would be a reminder to members of the Parliament and Government ministers that decisions that are made and legislation that is created must take account of those different spheres of elected democratic legitimacy.

Personally, I would not go for a much longer, more complex bill. If what Chris Himsworth said could be captured in a clause, that would make a great deal of sense to me, but I would not go for a long detailed addition to the bill, or the use of schedules, that would attempt to delineate every possible agency. His point about bodies such as Police Scotland, the health boards and Education Scotland—which has recently got itself into a tangle with regard to what different local authorities are doing—is a very powerful one.

Sarah Boyack: Thank you.

The issue is whether the bill delivers what Chris Himsworth suggested that it needs to deliver. Alison Payne, do you think that it needs to be amended or is it strong enough as it is?

Alison Payne: Reform Scotland would agree with what Professor Kerley said about the importance of the bill creating a platform for respect and parity of esteem. We would certainly agree with Professor Himsworth—indeed, Reform Scotland has previously talked about the issues to do with health boards or Police Scotland and the overlap with local government, and how local

government has gradually been squeezed out of other areas.

Those are definitely important issues that need to be considered. However, I would be concerned about anything that would overly complicate the bill. The bill is a good starting platform, and our priority would be to get the bill through. It would then be a question of what comes next and how we build those new relationships.

Sarah Boyack: Thank you.

Alexander Stewart: I know that time is tight, so I will ask two questions in one and the panel can then respond. My first question is about the strengthening of the bill. Would it be strengthened by the appointment of an overseeing commissioner? Also, what are your views on potential sanctions? To what extent might they be needed and what form might they take?

Professor Kerley: That is a very interesting question, which was raised in your earlier consideration of the bill. I do not favour the appointment of a commissioner, because I think that it would impede the simple direct measure of access to the legal process. We might refer a matter to a commissioner, the person concerned would then say yes or no, and the local authorities or other agencies concerned might then say, "We wish to challenge that as we believe we have a right to do". Direct access to the legal system is a more powerful mechanism.

I have very little enthusiasm for sanctions of any kind to be levied against public bodies, whether it be the Parliament or the Government. The nuclear form of sanctions is debarment from office, and we abandoned that a while ago, apart from in exceptional cases. What would we do—fine a public agency? If we did, we would simply be removing moneys from one agency to lodge, I presume, somewhere else.

So, neither commissioner nor sanction for me.

10:45

Alison Payne: We would largely agree with what Professor Kerley said. The importance is the symbolism of the legislation. We are trying to build a new relationship and, if it descends into sanctions and tit for tat, that is not where we want to go. It is about building a new respect agenda.

Professor Himsworth: I think that I follow those remarks. As to a commissioner, I think that the offering of complaints systems—which is what that might become, in a way—across public authorities in Scotland has become something of an industry in recent years. Perhaps at the centre of this is the Scottish Public Services Ombudsman as a channel for entertaining complaints from different sources across the public services in Scotland.

However, first and foremost, I would say that this is not appropriate business for the ombudsman, even though a general stance has been taken in recent years that, rather than further clutter the administrative environment, one should use the known resources available. I do not think that this is ombudsman work. I could elaborate on that, but that is my view.

Otherwise, I think that the directness of the imposition of the requirements and the compatibility obligations that the bill places on the principal target, the Scottish ministers, is the best thing.

As to sanctions, I am not quite sure what that means. Yes, of course, it could ultimately mean that steps taken by the Scottish ministers are incompatible with the charter and that something would need to be done about that. The courts could make what the bill calls a “declaration of incompatibility”, which would impose sanctions or obligations on ministers. It would not do so in a personal sense; they would simply, as ever, be institutional obligations on ministers.

I failed to mention historical challenges earlier. It is most unlikely that deeply historical challenges would ever be competent under the bill for various reasons. Access to the courts and access to judicial review to enforce the bill would be most unlikely to penetrate deep into the history of financial allocations but would have to be triggered pretty promptly if there were a complaint.

Keith Brown: I have one question for each of the witnesses. Each of the questions is about whether the bill will have the effect that those who support it would like it to have.

Professor Himsworth made an interesting point about whether other bodies should be captured by this as well, for example if a city deal is signed by the UK Government, the Scottish Government and a local authority, and the local authority feels very aggrieved that the UK Government, for example, has failed to take into account the interests and the views of that local authority in which projects it will support. That is not a far-fetched example. Where would the bill help? The Scottish Government would be bound by the same agreement. Would it be the case that the only action that can be taken by an aggrieved local authority would be against the Scottish Government, even though in its view the fault would lie with the UK Government?

Professor Himsworth: Those are, of course, difficult areas. My whole expanded talk about embracing, for instance, obligations on UK ministers raises the questions of competence that I raised earlier, and whether they were covered at all by the bill would depend on the bill’s terms. At the moment, they are plainly not and, therefore,

the bill would make no direct contribution in that area.

In any event, it sounds to me as though the sorts of complaints that might be raised under city deal arrangements would be better dealt with under other forms. The only way in which the charter could be used to add anything directly to that would be by invoking its requirements that authorities are adequately funded and, for instance, that there are systems of equalisation and so on in place within the financing system. I suppose that there is an outside chance, but I would rate it no more highly than that, that notions of equalisation might enter into that debate.

I am not sure whether I have wholly answered the question, but I am happy to come back.

Keith Brown: I think that it is about the legal jeopardy of the aggrieved action being undertaken by one public body but the only people that local authorities could take action against would be the public body that is bound in the law.

Leaving that to one side, I put a couple of questions in the chat bar to Professor Kerley when I was not sure whether he was going to get the audio. Obviously, Professor Kerley has answered the first of those by saying that he would not support a commissioner, and I would certainly agree with that.

My second question, for the benefit of the public record, is about the comment in Professor Kerley’s evidence—I am paraphrasing, so he should feel free to contradict me—that some of the language in the charter allows the Government to escape, by reference to national economic frameworks or other such phrases, from any real accountability. If that is his view, how does this become anything more than just a dead letter?

Professor Kerley: I have answered the first question orally, as you have just acknowledged. In relation to the second one, the point that I was hoping to make is that the systems of local government and, indeed, the democratic accountability, as we would understand it in the various parts of the UK, are very varied, given the number of countries that have signed up to the charter. The charter had to accommodate that in many different ways.

As I read it and as we see from experience in other countries, there is nothing to prevent a nation-state Government from taking action to change local governments or to vary the amount of responsibility or, indeed, the resources that are transferred through various financial schemes to different local governments, as long as they are done properly and legally under the legal framework in that particular country. I give the example of the reduction of local authorities in Sweden over a number of decades. Nothing

freezes in aspic the current arrangements that exist.

I would not say that the charter is a dead letter. The point that I would want to make is that a course of action has to be justified, it has to be legislated for within the terms of the law, and preferably it has to be discussed and agreed with the variety of interests concerned with both local self-government and the totality of government and decision making in Scotland.

Keith Brown: My scepticism about how effective it might be is probably informed by the last time I studied these things in the 1980s and the various challenges that there were between local government and the UK Government at that time about powers and changes.

My last question is for Alison Payne. If there is scepticism among people in local government about the impact that the charter would have, would it not be the case that other things—for example, the proposed full-time, properly remunerated posts for councillors—would be far more effective in enhancing parity of esteem and the effectiveness of local government to withstand the predations of national Government?

Alison Payne: I do not think that it is one or the other. We would undoubtedly not say that the bill on its own is enough. It has to be a first step. It is an important signal. We feel that, over the course of devolution, powers have been centralised at Holyrood and we need more devolution. We need to look at local government and we need to value it more highly. There are a number of issues that you have highlighted, such as having full-time, remunerated councillors. How we strengthen local government certainly goes beyond just the bill. We would agree that the bill on its own is not enough. In our evidence, we said that this has to be only the first step.

There are a lot of things that we would like the Scottish Government to do, and Reform Scotland has for a long time called for looking at local taxation and other areas of power and how we give local government a far greater say in health and policing. Those issues all still need to be dealt with, but we still welcome the bill as an important first step.

Gail Ross (Caithness, Sutherland and Ross) (SNP): That leads to my question, as I was going to ask Alison Payne about centralisation and how she saw the next steps. I will drill down a little bit further into that.

Alison, you talked about non-domestic rates and tax in your submission and you spoke about that just now. Are the reforms that you are looking for possible without the bill? How does the bill act as a springboard for local government to go on and have more parity of esteem, as I think Professor

Kerley said? Professor Himsworth said that it is a stepping stone on a journey. Where does it fit in and would that journey take place without this bill?

Alison Payne: I think that those reforms could certainly take place without the bill. At Reform Scotland, we have been calling for them pretty much since our creation back in 2008. However, the bill is certainly important as a stepping stone to reset the relationship between central and local government. The fact that it calls on the Scottish Government to report on its relationship, and how it has taken local government into account, is an important reminder of the importance of that relationship and the fact that local government should not just be put to the side. I hope that it will help to be a springboard.

There are issues that we need to consider, and the current pandemic has reminded us of that. We have the different levels. The current situation, both in health and in economic output, has been affected differently throughout the country, and we need our local authorities to be able to respond to that. The current economic climate also means that, together with this bill, hopefully we can begin to have a reset of that relationship between local and central Government in Scotland. The next stage that we would like to see is reviewing local government finance, for example, and properly looking to start decentralising powers.

Gail Ross: Are there any specific powers, apart from non-domestic rates and tax powers, which you spoke about, that you would also like to see come to local government?

I apologise, convener, as I am going to get a little parochial here. What is your opinion on the size of some local authorities, such as mine, Highland Council? How can it be close to the people when it covers a landmass of more than half of Scotland?

Alison Payne: Undoubtedly, there is a huge variance across the country, from Clackmannanshire to the Highlands, covering hugely different geographies and population levels. There are definitely a lot of different issues that can be considered and we are beginning to see that small local authorities are choosing to work together. We want to see things changing from the bottom up.

In areas where there is huge geography, the question is how we can bring decisions beyond the local government area. Whether it involves area committees or strengthened community councils, the question is how we can bring decisions closer to the people so that decision making does not stop at local government but goes beyond that. We need to have a full national conversation on how we re-engage people in local government.

11:00

On your question about powers, we specifically mentioned in our evidence tax powers over council tax and business rates, but we would also look at how we can reinject a greater level of localism into policing. We now have just the one police body covering Scotland. How do we improve local government representation there? We have said before that there are things that we can do with health boards. We can at least pilot initiatives. Where health boards and local government cover the same areas, we can look at doing things and bringing things closer together.

There are a lot of things that we should be looking at to improve the structure of local government and make it more accountable to individuals and better engage the communities they serve. There can be a disconnect as to where responsibility lies and who is the person who should be accountable for decision making. Whose fault it is or who is to be congratulated on a policy is getting a wee bit lost. We need to have a broad conversation about local government in Scotland.

Professor Himsworth: I endorse those sentiments. I have always seen the charter as making a principal contribution to the environment within which these issues inevitably arise, as they always have, between local authorities as represented by COSLA and central Government. It contributes to the debate by providing the standards. The charter embarks on a standard-setting exercise according to which the debate should be conducted. I suppose that it is a cliché nowadays to say that individual pieces of legislation or policy are never magic bullets. Nobody will claim that the incorporation of this charter is a magic bullet or the solution to all problems to do with local government in Scotland—of course not.

Potentially, the contribution that the charter makes to framing that environment goes well beyond being merely symbolic and visible only as utter generalities. For instance, to re-engage with the financial debate, article 9(3) of the charter insists on local government having available a source of revenue over which it has the power to determine the rate. The present arrangements are pretty precarious when measured against that test. Business rates have long since been taken out of the hands of the local authorities. As long as we have measures taken to suppress the freedom of local authorities to make council tax decisions at will, the power to determine the rate is in effect removed from them. Therefore, that shows that the charter seeks to provide a framework in which that familiar debate will continue to be conducted.

Professor Kerley: Gail Ross has raised some very interesting questions, some of which have, to

my mind, long been quite hard to reconcile. Either you have one local authority for a very large geographical area that is sparsely populated—if you think that Highland is big, you should see some of the local authority areas in Australia, Canada and parts of the United States—or you have a number of small local authorities with very few people. The reality of that is that, in any collective discussion within the policy community in the broadest sense, Glasgow, Edinburgh, Aberdeen and Fife completely outweigh Nairn or wherever it might be.

There is a hard-to-reconcile balance in some of that, but I would hope that the committee will focus on this particular piece of legislation at the moment. There are many other things that we could do and I might suggest we do in relation to local government, but I think that the point that is being made by Alison Payne and Chris Himsworth is that we are helping to create more of a climate of a working relationship between central and local government if this bill is approved by the Parliament. I do not think that that stops us arguing for alternative courses of action on, for example, non-domestic rates and the forms of local taxation that we have for citizens and—I think that it is inescapable in some shape or form—for residential property, but I would like you to focus on this bill rather than on what we might otherwise do in a far larger bill, which arguably would be the province of the Government rather than a private member, with respect to Andy Wightman, to introduce. This strikes me as a member's bill. It focuses on a particular aspect. I am moving my hands, convener, to show the wider context, and I think that that is in the spirit of such legislation.

The Convener: Thank you. Gail, do you have a very brief question to ask?

Gail Ross: I have a very small question for Professor Himsworth. On the back of the conversation about taxation, council tax and councils being given the freedom to set their own rates, how would the Scottish Government's council tax freeze fit into that, if councils that want to set their own rates are then told that they have to adhere to a national policy?

Professor Himsworth: That is one aspect of the constraints on local authorities that are operative now. The charter looks beyond issues such as the simple terms of national legislation when judging whether the standards have been met. In other words, it is far from sufficient simply to say that a particular section of the Local Government Finance Act 1992 authorises local authorities to decide freely on the level of the council tax rate. What is being looked for is the practical implementation of the charter. That has always been in mind when the other, international means for the scrutiny of the charter and its

implementation has been undertaken from Strasbourg by the Council of Europe through the Congress of Local and Regional Authorities. It is looking all the time not merely at statutory frameworks for freedom but at the practical operation.

My observation was simply that the practical conclusion of arrangements, at the minute, leaves individual authorities without much wriggle room at all in the setting of their levels of funding. They have other charges available to them, of course, with which they may have greater freedom, but not much is there for the principal sources of revenue. It seems to me that the charter has always been there. This charter, even if not incorporated, has been available to be invoked by local authorities and COSLA and they have done so over the years. Incorporation would strengthen the ability for recourse to that principle in the charter, which would contribute to the framing of the debate about funding levels.

Professor Kerley: I have two points in relation to that specific question. The first echoes the point that I was trying to make earlier, which is that, if you look at the full list of signatories to the charter and those aspects of the charter to which they have committed themselves, you will find that there is considerable variation. Some of the signatories in the list are fairly interesting places, including Armenia, Azerbaijan and Andorra—you just start at A and find yourself looking at places very different from Scotland or the rest of the UK or France or wherever.

The second point is that I have always argued that the standstill on council tax—incidentally, I did not agree with it in many ways—was not technically a freeze. Rather, local authorities consented—unwisely in my view—to financial incentives to keep the council tax at a standstill level. That is why the amount of increase was fairly consistent with previous legal judgments. If local authorities collectively agree to something with the Government, it is questionable whether it can be said to have been imposed. In its latter stages, it became unpopular with local authorities and imposed, but I do not think it was ever initially a complete imposition. It was an agreement—historically, the word “concordat” does not have a lot to recommend it, but there you go. I will end there, convener.

Annie Wells: Good morning, everyone. I have one short question, as I know that we are tight on time. What impact would the bill have on human rights and what may be needed to ensure positive outcomes?

Alison Payne: The human rights side of things is very short. We do not see any problems with that. It is not something that we have looked into, so we have nothing to add on that bit.

Professor Kerley: I do not see that the bill has any negative impact on human rights at all. If we have greater clarity of relationships between different spheres of governance in the country, we enhance human rights, because we enable people to be clear about what powers and authority and responsibilities different bodies have. Then they have a greater sense of whether that is impacting on them lawfully and properly as opposed to just negatively or positively.

Professor Himsworth: I agree with that. I referred a little loosely to this charter as a charter of rights for local authorities. I would see it in that respect as entirely complementary to the other rights instruments that are available internationally. There is an overlapping element if one were seeking one, and that is that you do not have to go far into the European convention on human rights to get to a right to vote. The notion that local authorities are, of course, locally elected authorities and that they secure their mandate, their legitimacy and their difference from all the other, appointed bodies through the right to vote is a parallel between the two systems, which I think is worth noting.

The Convener: That allows Andy Wightman to come in with a question.

Andy Wightman: I have no questions, convener.

The Convener: Thank you very much. Today we have seen a first. On that note, thank you very much for taking part. That completes the end of our questions for the first panel. Members of the panel can leave the meeting by pressing the red telephone icon. Thank you all very much for your participation this morning. I suspend the meeting for a panel changeover.

11:14

Meeting suspended.

11:16

On resuming—

The Convener: I am pleased to welcome our second panel of witnesses, who are attending remotely. Andrew Fraser is head of democratic services at North Ayrshire Council, and is representing the Society of Local Authority Lawyers and Administrators; Councillor Alison Evison is president of the Convention of Scottish Local Authorities; and Councillor Malcolm Bell is the convener of Shetland Islands Council. Thank you for attending today and for your written evidence.

We have allocated about an hour for this session. You may have heard my remarks to the

previous panel: if you agree with what another panellist has already said, please feel free simply to confirm that rather than give a full answer.

Members will ask their questions in a prearranged order, with any supplementaries at the end if time allows. It helps broadcasting if members could indicate which panellists their questions are addressed to. Please give broadcasting staff a second to operate your microphones before you speak.

Councillor Evison, I believe that you have some brief opening remarks.

Councillor Alison Evison (Convention of Scottish Local Authorities): Thank you, convener.

Almost three decades ago, the UK ratified the European Charter of Local Self-Government, which is an international treaty of the Council of Europe. COSLA has been urging the UK Government and, since devolution, the Scottish Government and Scottish Parliament, to put the charter into domestic legislation so that it enters into force. Scotland, Wales and England are the only countries in Europe, other than Hungary, that do not recognise the right to local self-government in their domestic legal frameworks. That is what incorporating the charter is all about.

It is a rare oddity that Scotland, with more than 600 years of uninterrupted local government history, has not yet held itself to the same standard as other countries in Europe. Furthermore, at time when the UK has left the European Union, passing the bill will ensure that Scotland keeps pace with the standards of the other European organisation, the Council of Europe, of which the UK was one of the founders.

Incorporating the charter would bring about a new level of partnership working on shared issues, with a positive impact on outcomes—as with legislation on equalities, with the law being a legal backstop for Governments. Next year, the Congress of Local and Regional Authorities of the Council of Europe, which is responsible for monitoring the application of the charter and at which Councillor Heather Brannan-McVey and Angela Constance MSP represent Scotland, will come to Scotland to examine the state of our local democracy. What better sign than to welcome the congress with the bill already on the statute book?

The Convener: I will begin by asking the panel the same questions that I asked the first panel. To what extent and in what way does the bill support the process of further devolution to local government, and what legislative barriers remain? Councillor Evison, do you want to kick off on that?

Councillor Evison: Yes, thank you. The bill is about a really important culture change. It is about

ensuring that the relationship between the Scottish Government and local government is on a firm partnership footing and empowering local government to have that role. At the moment, when the Scottish Government wants to introduce a new piece of legislation, an awful lot of thinking goes on before local government is consulted. In practice, the bill would mean that local government would be involved in decision making, with better outcomes and better results for the communities that we all serve.

This is an important stage in moving us on to the important next step of devolution—the next step of democracy in Scotland—which was first established with the Scottish Parliament. It is about making sure that our communities are more empowered to take part in decision making and that we take democracy right down to the lowest level in our communities and encourage people to feel empowered and get involved. By encouraging more participative democracy, which the bill would do, we would enhance work in our local communities and we would all get the better outcomes that we seek.

Andrew Fraser (Society of Local Authority Lawyers and Administrators): There is a slight danger that we exaggerate what the bill would actually do. It is important to recognise that the charter came into effect in 1998. I understand that the Government has committed to comply with it, so in theory the duties in the bill should be being complied with already.

I agree with the submissions from Alison Evison and Alison Payne that this is very much about culture change and building on the new relationship. It feeds into the overall debate about the sort of country that we want Scotland to be: do we want it to be a rights-based society that takes its international obligations seriously and where all organisations work in partnership towards a common aim? That is unfinished business, and the bill is part of the starting point of building more consensus.

The corollary of that—in some ways, it is the opposite—is that, if Parliament does not support the bill, it will send out a bad message about the commitment to subsidiarity, the forthcoming review of local governance and the degree to which there is a commitment to depart from the command-and-control, centralising model. I suppose that being bedfellows with Hungary is not a good place to be, given that the charter will be subject to review next year.

The bill is a starting point. It is one of the important points of the journey down the road, and it is a good first win in the local governance review. Many of the issues that have been raised by the committee are wider issues about the local governance review. Those issues are extremely

important, but I do not think that the charter will answer them at this stage.

Councillor Malcolm Bell (Shetland Islands Council): Thank you, convener, for the opportunity to appear before the committee today.

I echo what the previous speakers have said. In itself, the bill will not be transformative, but it is a very important first step along the road and a change in the direction of travel that we have been on for decades now. That is not a party-political point in any sense.

My question is: why would we not adopt the bill? Scotland likes to think of itself as a very European nation, which is an aspiration that I agree with. However, in terms of its centralisation habits, Scotland is a very British nation. I think that the adoption of the bill would go a long way towards changing that perception.

The Convener: Can I ask you to clarify that? Are you saying that the bill would go a long way towards changing the perception of Scotland as being a British nation, or the perception that we are a European nation?

Councillor Bell: No. I am saying that we like to think of ourselves as a European nation—rightly so; I agree with that aspiration. However, given the centralisation habits of Scotland as a nation—of taking things into the centre and being very top down—it acts in a very British way.

The Convener: Thank you very much for that. I was looking for that clarification—that was all.

I have a question about where the bill could clear up some of the ambiguity in charter articles. Does Andrew Fraser want to come in on that?

Andrew Fraser: Inevitably, the charter articles are set out in broad terms. The bill is about building the culture and ensuring that people have regard to the charter as a starting point.

A good example might be the charter obligation that relates to ring fencing, which is in article 9(7). It says:

“As far as possible, grants to local authorities shall not be earmarked for the financing of specific projects.”

That is not a bar to ring fencing; it just means that the “as far as possible” test has to be addressed and considered. That is a good example. It is a bit like what happens with equalities: it asks for the charter to be considered before consultation. I hope that that helps.

The Convener: Yes—that is fair. Does Councillor Evison want to come in?

Councillor Evison: I echo Andrew Fraser’s comments. It is about making sure that local government is consulted and that the interests of local government are considered. It is not about

saying either that local government shall do this or that local government shall not do that; it is about consultation and thinking together. Local government delivers 61 per cent of the national performance framework, so you can see the importance of having that consultation, involvement and participation. The charter makes sure that we can have that discussion and that local government is considered before decisions are made—that is the important thing. It is about refocusing the relationship between central and local government for better outcomes for our communities. The bottom line is that we all serve the same communities.

The Convener: That is definitely true.

According to Councillor Bell and Andrew Fraser, it appears that the purpose of the bill is really to send out the message that we have already been doing for a number of decades the stuff that we are being asked to do under the bill. Is that the case? Is the bill really just about sending out a message, or does it have real, practical application?

Councillor Bell: I do not think that I said, and I certainly did not mean to say, that we have been doing things right for decades; I may have worded it wrongly. Certainly, for decades the power and the influence of local government have been eroded and chipped away. As I said, that is not a party-political statement. It has happened under Governments of all hues in Edinburgh and Westminster. For example, over the past four or five decades, we have lost power over public health, water and sewerage and police and fire services, and education is now largely directed from Edinburgh. It looks as if we could well lose—*[Inaudible.]*

The Convener: How would the bill bring any of those services back into local government control?

Councillor Bell: It would not do that in itself, but it would send out a signal that the Government takes its relationship with local government seriously, which we do not feel that it does at the moment. We feel undervalued, underfunded and very much under the authority of Holyrood, as opposed to being a partner.

Things started off well in 2007 when we had the concordat. We had a real feeling that we were entering a partnership, and for a number of years that worked well. That probably links back to what previous speakers have said about the council tax freeze, for example, which was readily accepted because at the time we had what felt like a real partnership. However, over the years, that feeling has eroded—and the Covid situation has accelerated that.

The Convener: This discussion could go on, but I have run out of time. I hope that somebody else will pick up on some of those issues.

11:30

Sarah Boyack: I thank the witnesses for submitting written evidence in advance of our committee meeting.

A member of the previous panel suggested that the bill will reset the relationship between the Scottish Government and local government 20 years on from the establishment of the Parliament. What are the witnesses' views on whether the bill will have a transformative effect on partnership working between the Scottish Government and local government? Is all the written evidence that makes that assumption correct? I ask Alison Evison to kick off first.

Councillor Evison: I think that the bill has the potential to be transformative, in the sense that it is the first step on a transformative journey. It makes it possible to rephrase the relationship between the Scottish Government and local government. It will give a sense of confidence that local government's voice will be heard. That will encourage local democracy by encouraging people to come forward and participate in that democracy.

As a result of that, I think that we will see a more diverse range of people wanting to get involved in local government and to serve their communities. That will be of huge benefit for us as a system of government across the two spheres of government in Scotland. I think that the bill has huge potential to do something that is great and to be the first step on the journey.

To pick up on a point that has just been made, this is not about what the current Scottish Government might do or not do, or about what its wishes or aspirations might be. It is about enshrining something in law so that it is always there. It is not about particular policies that might come in. It is about making sure that the relationship is set up and is always there as something that we can hold on to; it is about making sure that we know that we can have those conversations and have that security and confidence. In that way, people will feel more empowered to get involved and we will have better outcomes for all our communities.

Sarah Boyack: Thank you.

Councillor Bell, you think that we need that reset of relationships. Does the bill do that for us?

Councillor Bell: I agree very much with what Councillor Evison said and do not have much more to add. I do not think that, if you pass the bill, the world will change overnight. The bill will send a

signal, and local government and national Government will have to work on the relationship. I think that the bill will benefit both parties and the communities that we serve.

What I really want to see is an improvement in the esteem of local government. At the last election in 2017, three out of seven seats in Shetland were effectively uncontested. That is the first time that that has happened, and it is a real concern. If that trend continues, we may struggle to fill seats, never mind have uncontested seats. There may be a lot of reasons for that, but I am sure that one reason is that people do not see the value of local government. I think the passing of the bill would send out a very clear signal that local government is valued as a partner in the overall governance of Scotland.

Sarah Boyack: Andrew Fraser, people quite often ask what the point is, given that the Government sets the finance. Do you think that the bill will be a game changer?

Andrew Fraser: Yes, I think that the bill will be transformative for a couple of reasons. As I have said, it will not impose new duties. However, I think that, in both the local government community and central Government, awareness of the charter duties is very poor. Once the bill comes through, awareness of the duties will mean that they will be treated seriously and will become a reality, which can only help.

Similarly, if the Parliament does not agree to pass the bill, there is a danger that will be equally transformative, as it will send out a message that there is a lack of commitment to the charter. If the charter is something that Governments should have been implementing anyway, it should be no big deal to implement the bill. As I say, it fits very well with the rights-based framework.

Sarah Boyack: Alison Evison, are there changes that COSLA feels should be made to the bill to make it as effective as it needs to be? I refer to your thoughts about how it could be amended and about the wording in the charter. Are there any changes that you would like to make to the bill as introduced?

Councillor Evison: No. COSLA and local government are happy with the bill as it is. It is really important that we do not complicate matters. The charter was written and ratified three decades ago, and ratification was accepted at that point. It is important that we move on with this journey. The charter is there; let us enshrine it in our law, move forward with it and be able to look positively at local democracy across Scotland. The bill is fine as it is.

Annie Wells: Good morning, everyone. South Lanarkshire Council refers to challenging historical decisions around local government funding. Might

the bill be seen as an opportunity to challenge past Scottish Governments on decisions on council funding? That is probably one for Alison Evison first.

Councillor Evison: As someone on the previous panel said, the bill is about recalibrating the relationship between the Scottish Government and local government. It is about moving forward. We are looking at something ahead of us, not something behind us, and I think that that is the important point about the bill.

Things could have been challenged in the past, such as through judicial review and so on, but this is about being forward looking—it is about the future. The onus is on all of us to take responsibility for the relationship and to move forward together in partnership to do something that enhances the role of local government and, therefore, enhances our communities. We are not looking back; we are looking forward.

Andrew Fraser: This is probably not the answer that you would expect from a local government lawyer, but I think that the chance of a successful court challenge is minimal. SOLAR said in its written submission that that is very much the “nuclear option” that nobody wants to take. The chances of success would be relatively poor as long as the Scottish Government could show that it had due regard to the principles in the charter in weighing up the options. Nobody wants to get to that place, so I think the amount of legal action would be minimal.

Annie Wells: Thanks very much for that answer. I like Councillor Evison’s point that this is about moving forward.

The other thing that I want to ask about is what you see as being the role of the Scottish Parliament and the Local Government and Communities Committee. Would it be just to scrutinise five-yearly reports under section 3, or could it go further, as some submissions suggest? With the bill enacted, is there a possibility that the Local Government and Communities Committee would become less central in examining the role of local government in Scotland, with that role passing more to the courts?

Councillor Bell: No, not at all. The courts would have a minimal role. They would be there as an option, but it would be very much a nuclear option. It is an option that we have already, in any event, and it is used sometimes but very rarely. I do not see that changing. As I and previous witnesses have commented, this is very much about working in partnership for the benefit of our communities.

Andrew Fraser: I agree entirely. The most that the courts would do in a particular case is probably provide a bit of clarity around the meaning of one of the charter obligations. I do not see them in any

way usurping or taking away from the role of the committee or the working relationship between COSLA and the Government, which I think will improve.

The Convener: If you are trying to get us to pass the bill, it is not a good selling point to suggest that we do away with the Local Government and Communities Committee.

Gail Ross: What a time to come in.

A lot has been made of the relationship between central Government and local government. In local government, the issue probably goes further, to the relationship between officers and elected members and then to the relationship with community councils and communities. It has been mentioned that the bill will go some way towards improving those relationships, given the consultation aspect for policy and legislation. Could the panel explain a bit more about how that consultation will look in practice? We all want to be able to consult our constituents as much as we can, and we know that the Scottish Government has in place statutory consultation periods for its legislation. Alison Evison, how do you see that working with COSLA? Would COSLA take a lead on that, or would the consultation be with local authorities themselves—with elected members or with chief executives or officers? How do you see that working?

Councillor Evison: This is about the relationship between the Scottish Government and local government, for the most part. It is about establishing that relationship and supporting the engagement with parliamentary committees and the different bodies that we liaise and discuss matters with before policy is developed, to make it the most appropriate for our communities. That is what the charter is about. The other issues are additional to the charter and are not part of the bill at all. They are things that would happen in addition to that, and I do not think we need to get diverted by something that may be a side issue.

The really important thing is that, by enhancing the role of local government and by creating confidence in the importance of local government as the voice of communities the length and breadth of Scotland, we would be encouraging more people to come forward to stand and represent their local communities. We would have more of a voice from women, ethnic minorities, disabled people and those with other protected characteristics, because they would have the confidence to come forward in a participatory democracy locally to be that voice.

The charter is not about how we would consult at a local level; it is about the relationship between the Scottish Government and local government. It is about creating confidence in the role of local

government, enhancing its role and showing the value and esteem in which local government is held. Doing that would encourage people to step up and be part of it. When we have those voices at the table in local government, we have a stronger democracy and we have on-going consultation happening without needing something to be set up by which to do it.

Gail Ross: Putting a European charter into legislation is not going to encourage more women into local politics. Improving the terms and conditions, putting up the wages, having consideration for childcare and, as you say, improving the confidence of women to stand for elected positions will help women to stand for election. Maybe you can help me out here, because I do not see how we can get the message across that a European charter will encourage gender balance in local authorities.

11:45

Councillor Evison: There are lots of reasons why people do not get involved in politics. The fact that one method of adjusting the balance does not cover everything does not mean we should not do it. The fact that one thing does not do everything does not mean we should not do anything. It is an important stage.

One reason why people do not get involved—as well as all the other reasons you have pointed out—is that they feel that their voice is not heard. They feel that they are not able to make a difference, that local government is not held in the esteem it should be held in and that decisions are being made somewhere else. As Andrew Fraser has said, the onus needs to be on asking why people do not come forward and what that shows about the esteem and voice of local government. By enshrining the charter in legislation, we are saying that local government does have a voice.

It is important to have consultation between local government and the Scottish Government. We acknowledge that and accept the journey that we are on, moving forward with democracy in Scotland, and this is part of that picture. Yes, it does not solve every problem—I would be the first to agree with that—but it does go some of the way, and we should take the steps that we can take. The bill is an easy way of showing the esteem in which local government is held.

Gail Ross: I suppose that I am looking for the practical differences that it will make rather than just sending a signal that we hold local government in high esteem—which we should be doing already, as has been said before. It should not take a new piece of legislation to do that. Does either of our other witnesses have an opinion on that?

Councillor Bell: I very much agree with what Alison Evison said. Gail Ross is correct: we continually hear about the esteem in which local government is held at Holyrood. Unfortunately, in my experience that does not play out in the day to day. It does not feel that way. In comparison to other European local government models, our model does not feel local and it certainly does not feel like government. I think Andrew Fraser made the point about the signal that would be sent out if we did not adopt the charter. It would not fix all the issues that Gail Ross has raised—for example, around gender equality—but it would go some way.

We need to engender enthusiasm for local government. People need to see that, by standing for election, being elected and getting involved, they can make a real difference. As we move towards to elections in 18 months' time, people say to me, "Give me a reason for standing," but it is sometimes difficult, because, to be perfectly honest, I struggle to say what areas I have real influence over. The bill is a step along the way. It is about turning around decades of erosion of the influence and power that local government has.

Andrew Fraser: Gail Ross makes an important point: ultimately, what difference will the bill make to overall community empowerment? That is a very serious issue for the local governance review, and the bill is just one of the tools in the box. It fits within the overall framework of subsidiarity whereby power should go down to the lowest level. Whether you think of government in spheres or tiers, local government is closer to the people and is better able to achieve outcomes that are targeted at individual communities. From that point of view, if you pass a bill that supports charter obligations that empower local government, that should, in turn, feed down to local government being able to support its communities and achieve solutions that are targeted at the needs of individual communities.

I agree totally that there is a much wider issue, which is very much tied up with the local governance review, about how we can get to the point where community organisations, communities, community planning partners, councils and the Scottish Government identify shared priorities and everyone works towards achieving them. That is a much wider issue, but I think that the bill helps with that.

The Convener: The majority of this panel have been councillors, and I am a bit surprised to hear a councillor say that he could not explain to people why they should be councillors. I doubt that there is an ex-councillor on the committee who could not say what they managed to do as a councillor or how being a councillor was beneficial to their communities and themselves. I accept that there

are issues and that local authorities might have issues with the Government, but I do not think that we should be painting the picture that everything is doom and gloom and that being a councillor is such a terrible job that we do not know why anybody would want to take it. That is the message that is coming across—certainly to me, anyway.

Keith Brown, follow that, please.

Keith Brown: I agree with you, convener, but also with Councillor Bell, for various reasons.

I have two questions. One of the witnesses said that we do not want to be bedfellows with Hungary by not putting the charter into law. However, we are currently bedfellows with Wales and England. Councillor Evison mentioned that COSLA had also previously tried to convince the UK Government to put the charter into law and had not succeeded. I assume that that was in concert with the Local Government Association. Is she aware of the reasons that were given by England and Wales for not putting the charter into law as we are now being asked to do?

Councillor Evison: Those negotiations with the UK Government obviously took place in the days before the Scottish Parliament. The work with COSLA over the past decades has been done by the Scottish Parliament, because this is a law that we can enact in Scotland. That is where our focus is, and it is what we need to do.

Why has it not been enacted? I do not know. The onus is on the Government to say why it has not wanted to enact it, because it fits in with the human rights portfolio of work that the Scottish Government is currently doing. It is very much compatible with that work. It also fits in with our international obligations. We have ratified an international treaty, and enacting the law is the next stage. It is important to fulfil our international obligations if we want to have the place on the international stage that we feel we should have. Also, it is the right thing to do for democracy.

I live here, in a royal burgh. Royal burghs have been part of the system of local government in Scotland for centuries, and this is the next stage on a journey that has been going on for all that time. It is important that we seek that perspective and ask what we need to do now to move our democracy on, to take things forward to the next step, to empower our communities and to deliver as we wish to in a democratic country.

Keith Brown: That was not my question. Obviously, there is a commonality between England, Wales and Scotland under UK law. If you cannot say why England and Wales would not do it, is there no co-ordination across the UK between COSLA and the Local Government Association on these issues?

Councillor Evison: We are working on the issue in Scotland. We are working with our partners in the Scottish Parliament and the Scottish Government to get the charter ratified in Scotland because this is where we can make a difference. It has not been on the agenda with the LGA—we have been talking with the LGA about other issues: Covid, Brexit and EU transition issues. Our current concern is in Scotland because this is where we can make a difference. This is where Andy Wightman has introduced the bill, and it is where we have a chance to put it on the statute book and make a difference.

We are taking the lead on this. I do not think that we want to go down the line that we should not do it because no one else in the UK has done it. It is important that we do what is right here. We have a bill in front of us, and we have a chance to enshrine the charter in law for all the right reasons—for local democracy and the journey that we are on in Scotland.

Keith Brown: Can I try with Councillor Bell? His point was about centralisation over the decades. In my view, centralisation has tended to follow times of economic crisis. Prior to the 1980s, councils were running energy companies, airports and all sorts of things, but then we had the economic downturn of the 1980s. I remember, as a council leader in the early 2000s, trying to convince the then Scottish Government that the level of funding that was given to local authorities was an indicator of parity of esteem, and it was following the level of funding that was provided by the Scottish Executive to local authorities. You mentioned 2007. Of course, after that, we had 2008 and the crash. If it is the case—I think it is, but I am not putting words in your mouth—that centralisation tends to be a factor of Governments trying to respond to economic crises or pressures, how would the adoption of the charter help to provide a safeguard? The point has been made that, where the charter has already been adopted, Governments can use phrases like “within national economic policy” to not do certain things. How would the charter help when centralisation was being accelerated by economic crisis?

Councillor Bell: That is a really interesting point. Local government's power has been eroded over a number of decades but there have been key stages, and I think that is probably a good point. We have seen it happen again with Covid. The difficulty is that we are not resetting once we come out of such crises. We should not be using the crises as an excuse to suck powers into the centre and keep them there.

If I may, I will touch on the points that the convener made. It is becoming more difficult for me, as a councillor, to explain to people in simple terms the differences we can make, because 60

per cent of our revenue budget goes on delivering national outcomes. In that sense, we are becoming very much like health boards.

In Scotland, in comparison with most of the other countries in Europe, we have a very weak system of local government. I believe that the bill would act as a check and as a reminder to ministers that local government is here, that it is important and that it is a key partner. We want to be a key partner. We want to work together to deliver excellent services for our communities and for people across Scotland.

The Convener: I do not want to take any of Keith Brown's time, so I will not respond to that.

Keith Brown: With apologies to Andrew Fraser, that is enough for me, convener. I am happy to move on, given the time.

The Convener: Okay. Thank you very much.

Alexander Stewart: I have a question about the financial memorandum. How accurate are the projected costs of the bill?

Andrew Fraser: That depends very much on the extent to which the principles of the charter are already embedded in the Scottish Government. In other words, is there a need for substantial training of Government officers and, if regard is not currently given to those principles, what is the likelihood of challenge?

A relatively modest sum has been suggested, which is not particularly unreasonable. There might be £100,000 per annum involved in training, certainly initially. Thereafter, once the principles were embedded and everyone knew what they were doing, the chance of challenge would be nil and the costs would be relatively modest. The benefits of better working relationships would far outweigh any costs, which I think are pretty modest in comparison with those for most bills.

12:00

Councillor Evison: I agree with that entirely. I think that the costs will be modest, if there are any costs at all. On the need for training and guidance, we are talking about people who are already used to working in the world of the Scottish Government and local government, so I would be surprised if a great deal of training and awareness-raising was needed. I assume that the training costs would be negligible and I do not believe that those costs feature in the financial memorandum. That is important, because they are not necessary.

Andrew Fraser's last point is crucial. What outcomes and benefits will we get from the bill? What are the benefits of being able to develop policies that are more appropriate from the beginning? In recent years, we have had

experience of policies being developed without local government that are later seen not to work. We have had to revisit those and, as soon as local government has been involved, things have gone forward in partnership and have been highly successful.

For example, on the 1,140 hours of early learning and childcare, since local government was brought round the table, the system has worked and has brought huge benefits across Scotland. We need to look at the beneficial outcomes from enshrining the charter in law and ensuring better partnership working, so that we have better policy and therefore move on in a better way. The financial gains will far outweigh any costs that people might fear.

The Convener: Councillor Bell, do you have any comments?

Councillor Bell: No, thank you. I agree entirely with my colleagues so, in the interests of brevity, I will not repeat what they said.

The Convener: Mr Wightman, do you have any questions for the witnesses?

Andy Wightman: No. I just thank the witnesses—I have no questions.

The Convener: In that case, that completes our evidence session. I thank the witnesses for attending and for their helpful contributions. Our next evidence session on the bill, which will be with the Scottish Government, is on 2 December. I thank our witnesses for identifying some key issues to follow up at that meeting.

Public Petitions

Pre-1989 Scottish Secure Tenants (Rights) (PE1743)

12:03

The Convener: Agenda item 5 is consideration of two public petitions. PE1743 is an on-going petition and PE1778 is one that the committee is considering for the first time.

PE1743, which is from John Foster on behalf of Govan community council, calls on the Scottish Parliament to urge the Scottish Government to amend the Rent (Scotland) Act 1984 to prevent disproportionate rent increases from being set for Scottish secure tenants. We last considered the petition on 21 August 2020 and agreed to write to the Scottish Government, the Scottish Federation of Housing Associations, the Glasgow and West of Scotland Forum of Housing Associations, Living Rent and the Scottish Courts and Tribunals Service to seek information or views on the issues that are raised in the petition. The responses can be found at paragraph 9 of paper 4, along with an update from the petitioner. A late response from the SFHA has also been provided by the clerks.

I invite comments from members to consider the next steps in light of the responses that we have received.

Andy Wightman: As I said in our previous discussion on the petition, the petitioner has a valid point. The question of what constitutes comparative rents is a vital legal question, particularly given that, since the 1984 act was passed, we have seen huge growth in the private rented market, huge changes to property tenure—for example, tens of thousands of council houses have become owner occupied—and much greater diversity in housing tenure in local communities. The provisions that were established in 1984 were particular to the tenure and rental markets that existed in 1984, which was almost 40 years ago, so I disagree with the Government's view that no change is merited.

I understand the Government's reluctance to introduce primary legislation that seeks to amend, update or reform rental conditions that cover a relatively small number of what we might call legacy tenants—people who are on tenancies that by and large have now disappeared. Nevertheless, that is still a really important role for Parliament. If people are on such tenancies and the provisions governing their rental reviews are out of date, it is incumbent on Parliament at least to consider remedying the situation, even if it affects only a relatively small number of people. It

is not their fault that they are in a very small number.

The committee should agree with the petitioner and recommend to the Government that the 1984 act be amended.

Sarah Boyack: I note my former employment with the SFHA.

Basically, I agree with Andy. As our papers set out, there is in effect a loophole for a small number of tenants. We need to act on that, because their rents should not be compared with private sector rents in determining future rent rises. I know that it is not a huge issue for the whole of the social rented sector, but the issue needs to be tidied up. I agree that we should recommend to the Scottish Government that it have a proper look at the issue.

The Convener: As no other members have any views, are we happy to write to the Scottish Government to say that there is a small group of people who are affected by an anomaly in the 1984 act and to ask the Government to consider how it can remedy that situation? Would that meet with everybody's approval, including yours, Andy?

Andy Wightman: Self-evidently, it meets with my approval—I am recommending that course of action.

The Convener: I was just making sure that I was going in the right direction based on what you were asking.

As it seems that we agree, I will ask the clerks to draft a letter and send it to members for approval.

Scottish Landlord Register (Review) (PE1778)

The Convener: PE1778, by David Findleton, calls on the Scottish Parliament to urge the Scottish Government to review the effectiveness of the Scottish landlord register scheme. Mr Findleton's view is that councils do not appear to be policing the register and in particular are not applying the fit and proper person test in the rigorous way that was intended when the legislation was drawn up.

I invite members to give their views on the petition, with reference to the options that are set out in paragraph 18 of page 4.

Sarah Boyack: The issue is worth further investigation, and the clerks have provided a useful set of suggestions. It would be useful to refer the petition to the Scottish ministers and ask them to take a look at it. It would be worth giving the issue a bit more thought.

I note that the UK Collaborative Centre for Housing Evidence has pulled together research

that reveals issues, and some of the feedback from local authorities suggests that the issue needs to be looked at. The report states:

“Scottish authorities ... reported a lack of clear guidelines to inform enforcement decisions, particularly in relation to the application of the ‘fit and proper person’ test”.

I am keen to get the Scottish Government's views on whether guidance would be helpful. Landlords are represented by the Scottish Association of Landlords. We are not saying that all landlords are not good, but we are identifying that there might be gaps in how the issue is addressed and that could have an impact on tenants.

The Convener: I have had a number of constituency cases in which the issue has been raised, and I would be happy for us to write to the Government, or take whatever other action we think is appropriate. We certainly should not let the matter slide.

Does anybody else have any other views or want to comment?

Alexander Stewart: I concur with the comments that you and Sarah Boyack have made. The area certainly needs to be looked at, because a number of constituents have had issues in this regard. The local authorities manage the situation mostly through the licensing teams, which check the register and that the regulations are actively being enforced. That is important and should be looked at. I agree that we should raise the issue with ministers so that they can consider the options.

Andy Wightman: The petitioner raises valid concerns. Some of them relate to how the law is applied by local authorities and some relate to whether the law could be clearer, stricter or more flexible and so on.

I was taken by the report from the UK Collaborative Centre for Housing Evidence, which highlighted various issues. It said that the relevant legislation was “hastily assembled” and that

“Scottish authorities ... reported a lack of clear guidelines to inform enforcement decisions”.

Therefore, there is a bit of a disconnect between what the Government thinks should be the case, what is actually the case on the ground and, importantly, what tenants feel should be the case, which will be about a mixture of enforcement and implementation, and the legislation.

I suggest that we seek evidence from witnesses as to the particular concerns that the petitioner has raised and on the broader question of whether the landlord registration scheme is deemed to be fit for purpose. I do not think that we will have time to take oral evidence, given that dissolution is a matter of months away, but it would be useful to

be informed by written evidence. Obviously, we might have to close the petition at dissolution, if that is what happens to petitions at dissolution, but we could do so by writing to the Government after we have taken written evidence. Probably—this would of course remain to be determined—we could refer in our legacy report to any outstanding issues.

12:15

Keith Brown: I do not support taking evidence. We have to have a look at our workload. We are nearly three hours into this meeting, and we still have a fair bit to go, and most of our meetings that are coming up will probably be similar.

On the point about who is responsible, sometimes the inclination is to always go back to the Government. If the regulations are unclear, that is the right place to go, and I have no problem with that. However, if local authorities are not enforcing the regulations in the way that people expect, that is a question for the local authorities.

If we do not acknowledge that, we will once again be in the position of saying that the Scottish Government must legislate, take action and issue guidance to force local authorities to do this, that and the other. We should have a balance. Maybe we need to take up with COSLA some of the issues that are rightly for local authorities.

I have no problem with taking further action but, to be honest, I just do not think that we have time to take more evidence.

The Convener: I note that COSLA and the Scottish Association of Landlords failed to reply to the Public Petitions Committee when they were asked to give evidence, which does not bode well.

I tend to agree with Keith Brown. We should probably write to the minister, but I am not sure who else we would write to. I certainly do not think that we should let it lie, because there is an issue. I can speak only for my area, but local authorities use the Government as an excuse to get out of doing what they should be doing, because they find it difficult. We have had a number of cases involving the issue.

If no other members want to comment, we will move on. The suggestion is that we could refer the petition to the Scottish ministers or to another committee or person or body for them to take such actions as they consider appropriate. Alternatively, we could report to the Parliamentary Bureau or to the Parliament, or take any other action that the committee considers appropriate, which was basically what Andy Wightman said. It is pretty clear that we will not close the petition.

I think that we should write to the minister to outline our concerns and see what response we

get, because there is no time to take evidence and, even if we got written evidence, that would be another thing that we would have to try to fit into our busy schedule. My suggestion is that we write to the minister and outline the petitioner's concerns and our concerns. Are members happy to go along with that?

Andy Wightman: My only concern about that is that the Public Petitions Committee has already written to the minister and the minister has replied. I am not sure what the minister would say differently to this committee.

I understand members' concerns about the pressures on time. I suggested that we take written evidence. I know that that would involve us then considering the evidence, but if the committee feels that we do not have time, that is perfectly fair.

The Convener: Perhaps the one thing that we can do that the Public Petitions Committee did not do is to say that we recognise that the issue should be looked at. I do not know what the Public Petitions Committee said, but we could say that we recognise that there is an issue and that local authorities might have a case to answer, or perhaps that the Scottish Government should tighten up the regulations. If we wrote a firmer letter than the Public Petitions Committee wrote, we might get the response that we are looking for. Although COSLA did not respond to the Public Petitions Committee, it might respond to us, so I suggest that we write to the Scottish Government and to COSLA.

Sarah Boyack: I agree with you on that, convener.

We do not have a lot of time. We need to say that there is clearly evidence that needs to be looked at and that action is required. It is not about fobbing off the petition; it is about saying that we want a proper response from the Scottish Government. That pulls together your thoughts, convener, and Andy Wightman's thoughts. It would be helpful if we also made COSLA and the Scottish Association of Landlords aware of what we are doing.

The Convener: Yes. Let us hope that they both respond to this committee, given that they did not bother to respond to the Public Petitions Committee. I think that we are clear on what we are going to do on the petition.

That concludes the public part of the meeting.

12:19

Meeting continued in private until 12:42.

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