

COMMUNITIES COMMITTEE

Wednesday 27 October 2004

Session 2

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COMMUNITIES COMMITTEE

26th Meeting 2004, Session 2

CONVENER

*Karen Whitefield (Airdrie and Shotts) (Lab)

DEPUTY CONVENER

*Donald Gorrie (Central Scotland) (LD)

COMMITTEE MEMBERS

*Scott Barrie (Dunfermline West) (Lab)
*Cathie Craigie (Cumbernauld and Kilsyth) (Lab)
*Linda Fabiani (Central Scotland) (SNP)
*Christine Grahame (South of Scotland) (SNP)
*Patrick Harvie (Glasgow) (Green)
*Mr John Home Robertson (East Lothian) (Lab)
*Mary Scanlon (Highlands and Islands) (Con)

COMMITTEE SUBSTITUTES

Shiona Baird (North East Scotland) (Green)
Christine May (Central Fife) (Lab)
Mike Rumbles (West Aberdeenshire and Kincardine) (LD)
John Scott (Ayr) (Con)
Ms Sandra White (Glasgow) (SNP)

*attended

THE FOLLOWING GAVE EVIDENCE:

Sue Bush (Scottish Association of Building Standards Managers)
Jeff Carter (Scottish Building Standards Agency)
Douglas Fergus (Scottish Building)
Adair Lewis (Fire Protection Association)
Angus Macdonald (Royal Incorporation of Architects in Scotland)
Charles McFadyen (Royal Institute of Chartered Surveyors)
Robert Renton (Scottish Association of Building Standards Managers)
Dr Paul Stollard (Scottish Building Standards Agency)
Ian Targett (Fire Protection Association)

CLERK TO THE COMMITTEE

Steve Farrell

SENIOR ASSISTANT CLERK

Katy Orr

ASSISTANT CLERK

Jenny Goldsmith

LOCATION

Committee Room 2

Scottish Parliament

Communities Committee

Wednesday 27 October 2004

[THE DEPUTY CONVENER *opened the meeting at 10:00*]

Interests

The Deputy Convener (Donald Gorrie): It seems to be 10 o'clock, so in my brief role as acting convener, I welcome members to the meeting. The first item of business is a declaration of interests. I welcome our new member, Karen Whitefield, to the committee and invite her to declare any relevant interests.

Karen Whitefield (Airdrie and Shotts) (Lab): I have no interests to declare.

Convener

10:00

The Deputy Convener: The next agenda item is choosing a convener. Under the Parliament's allocation of convenerhips, the convenerhip of the Communities Committee is held by the Labour Party. On that basis, I invite members to propose a convener.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): I propose Karen Whitefield.

The Deputy Convener: There are no other proposals.

Karen Whitefield was chosen as convener.

The Deputy Convener: I have great pleasure in saying that Karen Whitefield has been chosen as convener, and I hand over the chair to her. Good luck.

The Convener (Karen Whitefield): I thank the deputy convener for his warm words of endorsement and am delighted to have been given the convenerhip of the Communities Committee. In some ways, I feel that I have come home, as I had the privilege of serving on the committee for four years in its previous forms in the previous session.

I pass on the committee's best wishes to my predecessor, Johann Lamont, who was undoubtedly a formidable convener of the committee and who worked hard to shepherd through important legislation in the Parliament, particularly on antisocial behaviour. I am sure that she will also be determined and hard-working in her new ministerial role. I wish her well in the future and look forward to her coming back to the committee in her new role, when the tables will be turned a little, with the committee having the opportunity to question her.

I look forward to working with all members of the committee as we deal with issues such as affordable housing and the reviews of planning legislation and charity legislation. As in the past, the committee will have a key role to play in making progress on those important issues. I look forward to the hard work that lies ahead for us all.

Item in Private

10:03

The Convener: Agenda item 3 is consideration of whether to take agenda item 7 in private. We have been asked to consider in private matters relating to the budget. Do members agree to take item 7, which is the final agenda item, in private?

Members *indicated agreement.*

Subordinate Legislation

Fireworks (Scotland) Regulations 2004 (SSI 2004/393)

10:04

The Convener: The next item for consideration is the Fireworks (Scotland) Regulations 2004 (SSI 2004/393). Members have been provided with copies of the regulations and accompanying documents. Do members have any comments to make on the proposals?

Christine Grahame (South of Scotland) (SNP): The Subordinate Legislation Committee's comments on the Crown's role are interesting. The words in the regulations are unnecessary because, in fact, the Crown has immunity.

We keep seeing badly drafted instruments, an issue which the Subordinate Legislation Committee has picked up on. Just for the record, I state my hope that one day the problems will be resolved, so that we do not have badly drafted legislation.

The Convener: Christine Grahame makes an important point. I understand that the Subordinate Legislation Committee has raised the drafting matter with the Executive, which makes clear in a letter that it takes on board the Subordinate Legislation Committee's comments on the Crown immunity issue. The Executive indicates its willingness to introduce amending regulations to remove the relevant dispensation provision. That appears to be satisfactory to the Subordinate Legislation Committee and I hope that it also addresses Christine Grahame's concerns.

Christine Grahame: The point that I was making is that it is sad when we get an instrument that needs to be amended before it hits the statute book.

Mr John Home Robertson (East Lothian) (Lab): Surely that is the purpose of scrutiny.

Christine Grahame: It was a pretty obvious error.

The Convener: The error has been recognised and will be addressed. I assume that, having taken on board those matters, the committee has no further comments. Can we pass the matter to Parliament?

Members *indicated agreement.*

The Convener: I understand that I am obliged to say that the committee will not make any recommendation on the regulations in its report to Parliament, and I ask members to agree to report our decision on the regulations to Parliament. Are we agreed?

Members *indicated agreement.*

Building (Scotland) Regulations 2004 (SSI 2004/406)

Building (Procedure) (Scotland) Regulations 2004 (SSI 2204/428)

The Convener: The committee will now take evidence on two negative instruments: the Building (Scotland) Regulations 2004 (SSI 2004/406); and the Building (Procedure) (Scotland) Regulations 2004 (SSI 2204/428). I welcome the first panel of witnesses, which is composed of Douglas Fergus, the general manager of Scottish Building, Charles McFadyen, of the Royal Institute of Chartered Surveyors, and Angus Macdonald, of the Royal Incorporation of Architects in Scotland. I thank you for taking the time to come along to the meeting.

I will start by asking whether you have any concerns about the regulations. If so, how could they best be allayed?

Douglas Fergus (Scottish Building): Scottish Building does not have major concerns. The message that I bring is perhaps one of support. During the extensive consultation, we had the opportunity to make various comments, which have been considered and taken on board. Therefore, from the contracting side, we accept in principle the regulations as we have read them and as they are being presented to the committee.

Angus Macdonald (Royal Incorporation of Architects in Scotland): I generally agree with that. The regulations have been well consulted on and they are well thought out. They were considered over quite a time and they incorporate much of the advice or requests that the professional bodies, including ours, presented. Therefore, we are generally happy with the regulations, apart from minor bits and pieces here and there. In some respects, there are new provisions that have not been tried and it remains to be seen how they will work out in practice.

Charles McFadyen (Royal Institute of Chartered Surveyors): The RICS feels much the same. We were heavily involved in the consultations from day one and we welcome the legislation. One or two bits will, no doubt, bring change, but we look forward to that. We also look forward to receiving the other parts of the regulations, which will make the whole thing clearer for us and show us where we are going.

Donald Gorrie (Central Scotland) (LD): In a technical area such as this, we rely on people such as you, who know about it, to give us advice. We are pleased to hear that you have no major concerns. Can you suggest any positive improvements to the regulations that we could put to the Executive? We cannot alter the regulations, but we would welcome any advice that you could

give on how they will be used and on their future development, in particular in relation to enforcement. Those of us with local government experience know that enforcement is variable, to put it politely. Are you satisfied that the regulations will improve enforcement?

Angus Macdonald: Architects do not get especially involved in enforcement, which tends to be an issue for local authority building control departments and those who step out of line. In my experience, enforcement has not been necessary to make an architect comply with the current regulations. Usually the difficulty that arises is in interpreting what the regulations say to determine what can be done and whether a particular design complies, and one of the strengths of the new proposals is that they contain a facility for finding solutions to that problem. I do not know how familiar you are with the contents of the new regulations, but they contain provision for—what is the word that I am looking for?

Donald Gorrie: Is it mediation?

Angus Macdonald: No. The current regulations work in a prescriptive way. They say that, if one does things in a certain way, one will comply and will have approval. However, if someone comes along with a solution that does not comply strictly with what is stipulated but which may achieve the end result, such as life safety, they find it difficult to get a building control department to accept the solution. The new regulations contain a provision that would allow such solutions to be accepted, but we have reservations about it, because it introduces scope for argument. Because of the new provision, things are not as clear cut any more and, in some situations, considerable debate might develop about whether something complies technically. The new Scottish Building Standards Agency's role will be important in that respect. However, in general terms, we look forward to the new regulations.

Douglas Fergus: Although there is scope for flexibility, as Angus Macdonald described, contractors continually look for uniformity and a common standard throughout Scotland. The building control process works well—it is robust and we respect it—but we always like to ensure that a regulation that applies in Selkirk also applies in Stornoway. That tends to work, but there is scope for personal interpretation. That has advantages, but it can also have disadvantages, depending on how it is applied. The new Scottish Building Standards Agency could have control and could take overall responsibility. That will be needed and would be welcomed.

Mary Scanlon (Highlands and Islands) (Con): Is the construction industry ready for the introduction of the new building control system? Could anything be done to aid a smooth transition between the two systems?

Douglas Fergus: We do not think that the new system will change the industry, as you might fear. The industry is taking other steps to put in place control mechanisms that are separate from building regulations. Tomorrow evening, the Parliament will consider a members' business motion on the construction industry, and I hope that that debate will highlight the fact that the industry is developing more regulation itself. That is mentioned in the motion for tomorrow's members' business debate, the outcome of which we look forward to hearing.

Mary Scanlon: What are your views on verifiers and certifiers? The Building (Scotland) Act 2003 gives ministers the power to designate private companies, organisations and individuals as verifiers, but I understand that the Executive has given a commitment that local authorities will be the only organisations that will be appointed as verifiers. Do you have any concerns about that? Is it right that only local authorities should be verifiers?

10:15

Angus Macdonald: We do not have strong views on that. The issue of whether the system should be monitored solely by local authorities and Government agencies or whether it should be privatised—which the legislation makes possible—is really a political issue rather than an industry one. I have no strong views one way or the other. The system could work both ways.

Mary Scanlon: Would the system be improved if we opened it up to private companies, organisations and individuals?

Angus Macdonald: Potentially, yes. The question is the political one of whether monopolistic Government agencies do things better than the private sector. I suppose that the same arguments apply in this case as apply in other cases.

Mary Scanlon: What is the view of the Royal Institute of Chartered Surveyors?

Charles McFadyen: Within the RICS, there is a group that was known formerly as the Institute of Building Control, which consists mainly of chartered building control surveyors, who operate mainly in local authorities, although a few are in the private sector. We have always supported the use of verifiers from the private sector, so we are slightly disappointed that that will not happen immediately. We feel that such a move might improve standards, through competition and by allowing the guidance that comes from the new SBSA to be accepted uniformly in the private and public sectors.

Mr Home Robertson: We are sitting in a rather complicated building that gave rise to certain

difficulties. Because of Crown immunity, the City of Edinburgh Council could not—or would not—take responsibility for the building control certification, so it was done by a verifier or certifier. That was interesting for Linda Fabiani and me because we were directly involved in overseeing the process. I hope that it worked—touch wood—but the concept of private sector verifying or certifying raises the worrying possibility of a conflict of interests somewhere down the line. If such a system were introduced, unless we were careful, architects or structural engineers who were working for a client on a job could also act as the verifier or certifier. Do you agree that those roles should be kept completely separate if private sector verifying is introduced further down the line?

Angus Macdonald: The system could place a lot of pressure on people who take a dual role.

Mr Home Robertson: If, as is inevitable, something goes wrong and somebody is injured or a building is found to be defective, who would be liable?

Angus Macdonald: That issue arises from the proposals for certification. Certifiers will have some liability, although professionals generally carry professional indemnity insurance to cover against such events. Nobody has experience of the situation, but a claims record could develop and professional indemnity could become extremely expensive. At present, local authorities are almost bullet proof, but obviously mistakes are made. The people at local authorities are human—they do not always get things perfect, although I do not think that they are ever pursued in court for the results of their mistakes. If an outside agency got involved, it would be liable for its own mistakes. I hesitate to say how that would work in practice. Presumably, if the claims record was good, the premiums would be low: if there is no great risk, there is not an issue.

Mr Home Robertson: Our understanding is that the Executive's intention is for the matter to remain one for local authorities, except in cases where there is Crown immunity. The statutory instrument before us creates the power for ministers to designate private sector verifiers and certifiers. The committee should pay attention to that.

Scott Barrie (Dunfermline West) (Lab): Do the witnesses have any concerns about the financial impact that the building regulations or the associated procedures might have on their members? Do you agree with the Executive that that should not be a concern?

Angus Macdonald: It is a cost-neutral exercise. There are always costs, but we do not see them as having a major impact.

Douglas Fergus: From the construction industry's point of view, there is no change at all.

Charles McFadyen: We agree with the Executive's viewpoint. In some ways the regulations might reduce costs, because of the innovative designs that could be used if we do not have prescriptive standards.

Cathie Craigie: The regulations introduce a new technical requirement in relation to fire sprinklers. Sprinklers are now required to be fitted in three additional categories of building: residential care buildings, high-rise domestic buildings and dwelling-houses that form part of a sheltered housing complex. What implications will there be for the construction industry? Will the regulations affect the development of those types of building?

Angus Macdonald: In a marginal sense, yes. Developers and clients will have to bear an extra cost. There are some technical issues around how precisely things are done. Is there water in the mains supply to run the sprinklers, for example? I take it that everybody has in mind the recent case involving an old folks' home, in which a lot of people were killed. Is it wise to douse old people with water in the middle of the night? There are technical considerations to bear in mind. Generally, we are quite supportive of the proposals. I am not a huge expert on the subject; those in a later panel of witnesses will know more about it than me.

The American approach to sprinkler systems is that installing such systems in buildings greatly reduces the need for passive fire precautions. It is about striking a balance. The Americans feel that sprinkler systems are a valuable contribution to firefighting.

I do not think that we have any real problem with the introduction of the regulations. They will have an immediate, but limited, impact. Sprinkler systems are fine for new buildings, and I do not think that anybody is suggesting that we should retrofit existing premises, which would be a seriously difficult thing to do. Aside from the obvious cost impact—although there are potential savings, too—I do not see there being too much of a problem.

Charles McFadyen: As far as sprinklers are concerned, it is a case of moving with the times. The old regulations were fairly prescriptive. In the modern design of buildings, developers or designers sometimes recognise the possibility of fire-engineering a building, which can include the installation of sprinklers as an added protection. There are two aspects: there is the life-safety aspect; and there is the facility to allow for design solutions that, although they are not totally in compliance with the guidance, still give us a safe building. The RICS certainly supports having sprinklers in buildings.

Douglas Fergus: From the contracting side, the issue is just to use specialists to carry out the

work. It is not an issue for us.

Linda Fabiani (Central Scotland) (SNP): I am interested in innovative design. The move from prescription to performance and so on has been mentioned a few times. The Executive has said clearly that the verifying role will be left with local authorities. Do local authorities have the expertise to promote and judge innovative design and to apply the standards to it? In the professional organisations' discussions with the Executive, have you received a steer on how long the Executive intends to keep that function with local authorities?

Angus Macdonald: I have no idea how long the Executive intends to keep that function with local authorities. I have not heard it discussed at all.

I have some reservations about local authorities' ability to handle innovative design. Under the traditional system, there was a set of regulations and if you did it like that, you got a pass and if you did not, you got a fail. A system is being introduced in which you can work to the old system and get a pass, but if you come up with a new proposal, you can still get a pass, provided that you can convince everyone that the solution is acceptable.

That takes us back to what I said at the beginning: the area will be one for discussion, argument and experts. You might be right to suggest that local authority staff do not have the expertise to make good decisions, because they probably receive presentations from all sorts of specialists who have experience and knowledge beyond theirs. I tend to agree with you that there is the potential—

Linda Fabiani: I thought that there was that potential. I was just asking for your opinion.

Angus Macdonald: I agree with you.

Douglas Fergus: We would prefer to have more rigid control and less flexibility. As an industry, we can be heavily criticised for our standards. Because of the nature of the industry, we think that the tighter the system and the less the scope for change from a contracting point of view, the better. We need to clean up our act. In general, we are uncomfortable about going along the road of regulating contractors to improve the industry's performance. More flexibility does not help the process.

Linda Fabiani: But if there is less flexibility, there is less innovative design, I guess.

Douglas Fergus: There is a balance somewhere.

Linda Fabiani: I hope to get some advice from you on the role of verifiers. I understand that if there is a dispute about the interpretation of

standards, it will end up in court. I also understand that Scottish ministers think that they might be in a position to provide a view on that. I am unsure whether that would happen through the Scottish Building Standards Agency, but I will check it out.

I note that

"Verifiers will have the power to impose continuing requirements on a building owner ... once the building is completed, to ensure the building regulations are not frustrated."

Reading behind that, I am worried that we will allow buildings to be certified that have not reached the standard and that we will have an open-ended system that states, "You can comply by such and such a time." Is that how you see it? If not, can you tell me what that means?

Charles McFadyen: That is not how we see it. A building would not be certified until it was completed, met the standards and was accepted by the local authority, as the verifier. That paragraph refers to an on-going standard and situations in which, for the benefit of users, a building requires to be kept up to a standard. For example, there are many instances in which people provide disabled access, have the final inspection, get their certification, then remove it. Another example is thermal insulation, which could be required to be maintained to a certain level.

Linda Fabiani: So in your view continuing requirements would be a tightening up, rather than a loosening of the system.

Charles McFadyen: Yes.

Angus Macdonald: Issues can also arise in respect of mechanical services. We talked about sprinklers. A sprinkler system can be installed during construction and certified as being okay, but it requires maintenance to be effective. The obligation is intended to ensure that such maintenance activities happen.

Linda Fabiani: Thank you. I appreciate that.

The Convener: That concludes questions from committee members. I thank the witnesses for coming along this morning. I understand that the committee wanted to take evidence on the regulations because the area is technical. Your helpful comments will prove useful to the committee in its final deliberations.

There will now be a short suspension to allow for the changeover of witnesses.

10:31

Meeting suspended.

10:43

On resuming—

The Convener: I call the committee to order after our short suspension. The delay was due to the unavoidable lateness of some of our panel members. Indeed, Harry Frew, the representative of the Union of Construction, Allied Trades and Technicians was supposed to be joining us but has not arrived yet. However, in an attempt to minimise delay to panels or committee members, it has been decided that we will go ahead.

I welcome those witnesses who have been able to join us this morning to make up our second panel. Sue Bush and Robert Renton are from the Scottish Association of Building Standards Managers, and Adair Lewis and Ian Targett are from the Fire Protection Association. We hope that UCATT's representative will be able to join us later in the proceedings. Thank you all for attending.

How effectively do you think that existing building regulations have been transposed into the new regulations that are being proposed by the Scottish Executive?

Robert Renton (Scottish Association of Building Standards Managers): You have to consider the history of building control since 1964, when it was vested in local authorities. There is no debate about the fact that that arrangement has provided safe buildings. The basis for the new system already existed, but the new system certainly builds on current practice and procedures and tries to look at future options for innovative design by the designers and proper evaluation and decision making by the verifiers, particularly within building control, which is the current proposal.

Generally we support the new system. We have been heavily involved in the consultation since day one, as well as in the basic wording and setting up of the new system. Our only concern is about the various transitional arrangements that must be in place during the interim period. As local authority verifiers, we will have a responsibility to deal with both the new system and the remnants of the old system because they will run concurrently for five years. That represents quite a task in the short term, but it is one for which we are reasonably geared up, given our involvement in the development of the new system. Although we also have some concerns about various other aspects on which we could elaborate later, our concern about the transitional arrangements is probably the only one that we have about the principles of the new system.

The Convener: Are you discussing your concerns about the transition period with the Scottish Executive? How should those concerns be addressed?

Robert Renton: Yes, indeed. We have been in some detailed discussions about various aspects. For example, the approved certification of design

and construction is a new system. There is an allowance for certification of design under the current building regulations to certify structural design, but it does not have the same criteria as the new system has so, after 1 May, what do we do for designers who are not part of the approved scheme? Our view is that there must be a transitional period in which what we currently do, possibly augmented to reflect the new scheme, is accepted. Whatever we do must not undermine the principles of approved certifier status. That could also be argued in relation to the approved certification of construction under which, for example, for the first time there will be a requirement for electrical work to be certified by approved certifiers. At the moment, electrical work can be certified without the involvement of experts in the field.

There are various issues to do with certification. None of the problems is insurmountable, but we ask that it be recognised that verifiers and developers face those difficulties. There must be some agreement between the verifiers and the developers on the best way to support the new system.

Donald Gorrie: Can you reassure us that the public will be safer under the new system? Do the occasional failures of electrical work and plumbing, for example, have more chance of being found out under the new system? What about things such as roofing? It is quite difficult for the ordinary householder to have any idea of whether a roofer is doing a decent job, but if he is not, a whole tenement might have a lot of problems. Will the new regulations help to tackle public safety and the electrical aspect, which is obviously the most dangerous?

Adair Lewis (Fire Protection Association): I cannot speak about roofing, but the success of building regulations tends to be measured in terms of the number of deaths in building fires. Until recent years, those deaths in Scotland were mainly associated with the way in which the buildings were being used and the conduct of the people in the buildings, rather than with any failure of the buildings themselves. Last year, a major fire in a care home showed that such building use and conduct could be improved.

Some measures in the proposed regulations—the installation of sprinkler systems in particular—will go some way to adding to life safety. Transferring the old regulations to a new system is one measure, but we need to take things forward. Adopting sprinkler systems and perhaps even going as far as adding mains-powered smoke alarms in all homes would be a good step forward.

Robert Renton: The installation of smoke alarms is already a requirement of the building regulations for dwellings. We support the sprinkler

proposal as it is currently framed, although it should be introduced in a phased manner rather than trying to hit everywhere at once. As regards new build, that proposal is a major step forward. There have been discussions in the past about retro fit. Building regulations cover new build or conversions predominantly and that is the correct way to proceed at this stage, given the level of knowledge of the product as well as the impact on the industry.

Sue Bush (Scottish Association of Building Standards Managers): You mentioned roofing in particular. Roof repairs are not often subject to a building warrant and there is no requirement for a building warrant if people simply replace like with like. Unless the quality of the workmanship contributes to the achievement of the minimum standards, it is not an area that building standards officers are charged with checking.

Donald Gorrie: Would you advise the committee in future to look at the inspection of the quality of work in addition to those areas that are to be inspected under the regulations, or is that such a prickly issue that we should not pursue it?

Sue Bush: That matter was considered throughout the consultation. The opinion of most parties was that it was an extremely difficult matter to legislate for because quality is such a subjective issue. It is fairly easy to regulate the quality of the fitting of something that contributes to safety in a building, such as a fire door. However, if the finish of woodwork or plasterwork is questioned, it can be terribly subjective.

Adair Lewis: The three issues in this area are the quality of the design, the quality of the construction and the quality of the management of the building thereafter, although that is obviously outside the scope of today's discussions. As regards the quality of the design of the building, many new buildings are innovative in design and have fire engineered solutions. There needs to be some measure of consistency and a verification of the design at an early stage. When it comes to the quality of the construction, there is a need for third-party approval of the installers of the various fire protection systems so that they are not only designed properly and consistently but installed properly to the correct standards. For example, a sprinkler system would not only be installed but be installed in such a way that it worked properly.

Donald Gorrie: Thank you. That was helpful.

Linda Fabiani: My questions are directed to Mr Renton and Ms Bush. I return to the point about local authorities verifying and moving towards innovative standards. Do your members have enough resources to be able to deal with the change in the way that building regulations will be applied? I refer to resources of staff and expertise as well as financial resources.

Sue Bush: The association is currently working with the universities, the Scottish Building Standards Agency, the RICS, the Association of Building Engineers and the Chartered Institute of Building to look at the continuing training of our members and at introducing more qualifications into the building control profession. There was a time when building control officers tended to come through the tools. Those days have gone now, and it is very much a degree-based career with opportunities to take further degrees in, for example, fire engineering. I do not think that any local authority would say that it has all the resources that it wants all the time. There are employment issues in Scotland, as well as in England and Wales; however, in partnership with the various bodies, the association is seeking to move things forward.

Linda Fabiani: Have your members expressed concern about the potential for the verification function to be taken away from local authority departments and put into the private sector?

Robert Renton: Yes, that is a worry. However, our members are professional chartered surveyors and will always have the option to go into the private sector if that occurs. The concern that has been expressed is more to do with the local authorities' independence. If the verification process goes out to the private sector, our members are concerned about the potential for conflict of interest. That is not to say that privatisation of the verification process is not achievable, but—as we heard earlier—there are constraints, one of which is professional indemnity cover. That is the main thinking of building control surveyors in local government. It is a changing world, and there is no question but that building control professionals in local government are as prepared as building control professionals elsewhere. They are used to the system and the constraints and pressures that it brings. The professionalism and expertise in local government should not be underestimated.

The association has been dealing with innovation for 40 years. Construction and the building profession are always changing, and we have always dealt adequately with that fact. There will always be pressures because of new products, new methods and new tests. However, we work in partnership with, for example, the British Board of Agrément to assess new products—we are a consultee of that body—and with the British Standards Institute on European standards. We also have contacts with the Building Research Establishment, and we look at new products, systems, and whatever. We have developed the Scottish type approval scheme, which allows developers to apply for national type approval and which aids consistency throughout all authorities. We work closely with the Scottish Executive,

through the Scottish building standards forum, and we engage in benchmarking between authorities to determine best practice and best value. As an association, we fully support best practice; that is the whole ethos of the association.

Sue Bush: We are also members of the Consortium of European Building Controls, so we benefit from the experience of colleagues in Scandinavian countries, which are regarded as being ahead of us in thermal insulation. Some consortium members come from Cyprus and from across the European Union.

Linda Fabiani: I have one further, general comment. You touched on the issue of benchmarking across authorities. People in the industry are generally frustrated at the lack of uniformity across authorities. I hope that that can be addressed in some way. I know that the association does not work for or represent any particular local authority. We have been told about the cost neutrality of the Building (Procedure) (Scotland) Regulations 2004 for local authorities, yet the regulations include additional requirements with regard to the keeping and updating of registers. Do you think that it is possible that the regulations will be cost neutral?

Sue Bush: We already keep registers. There is a statutory register, which was previously kept in ledger form although most local authorities have now moved to an electronic format. There will be an alteration to some of the information that is kept on the register but, with the forward movement of technology, I do not see that the register is going to be an issue for us.

Cathie Craigie: I will address my questions mainly to the witnesses from the Fire Protection Association, but I would welcome comments from other panel members. The regulations will require verifiers to consult fire authorities on certain types of applications for building warrants. Do the regulations gauge the appropriate level of consultation? If not, how could consultation be improved?

11:00

Ian Targett (Fire Protection Association): We might have to come back to you on the detail. It is obviously sensible that there should be dialogue between the verifier and the fire authority. We can review the documentation and write to the committee on the specifics, if that is acceptable.

Cathie Craigie: That would be fine. If you want me to provide more detail in the question, I will be happy to do so.

The regulations define additional types of building that will require sprinklers. Again, has the approach been properly gauged, or should the

regulations go further and include other types of buildings?

Adair Lewis: The current list reflects high-risk areas where loss of life occurs. Obviously, we must protect areas where there are sleeping risks or where there are people who are less able to escape because they are not as agile or able to respond as quickly as other people. Care homes, homes for people with psychiatric problems and children's homes are good and appropriate places to start.

Mr Home Robertson: I put a general question to the witnesses from the Scottish Association of Building Standards Managers. For obvious reasons, we have tended to concentrate on the dangers of bad building standards—fire risks and so on—but over the years building regulations have been a useful vehicle for trying to ensure better housing standards for the people of Scotland, on matters such as space requirements, daylight, ventilation and insulation. However, under a previous, unmentionable Government, space standards were cut. Are we missing an opportunity to try to ratchet standards up in the right direction again? Should the committee seek opportunities to raise housing standards so that new houses will offer people better living conditions?

Sue Bush: The minimum safe space standards were removed some years ago. However, since then housing requirements in relation to access for all have been introduced and houses have tended to become slightly larger to accommodate a toilet on the ground floor. I do not have strong views about the reintroduction of space standards. The housing associations that build social housing tend to go well beyond the minimum standards.

Mr Home Robertson: As a constituency member of the Scottish Parliament, I have fairly strong views on the matter. Pressure on housing and overcrowding lead to serious problems such as condensation. When we focus on building regulations, we should seek every opportunity to try to improve standards for the future—I realise that I was trying to feed the witnesses a soft question.

Robert Renton: The space standard is an obvious example of a standard that was lost. However, over the years, the regulations have addressed the need to improve quality and building use, in particular in relation to thermal insulation. There is no reason why standards cannot be developed in the future to address perceived weaknesses in the system.

Mr Home Robertson: Right. Let us do that.

The Convener: If there are no further questions from committee members, do the witnesses want to draw the committee's attention to further matters?

Robert Renton: There has been a concentration on the verification role within building control in local government, but our responsibilities under the Building (Scotland) Act 2003 also extend to the enforcement of building control, which covers issues such as enforcing compliance with standards and dealing with dangerous buildings. A new element under the act is that we will be given the ability to address defects in buildings. We will also be involved as a consultee in the licensing process for houses in multiple occupation and in safety at sports grounds and so on. It is important that our responsibilities under the new system are recognised and properly addressed.

The building standards system is not simply for building control in local government but for designers and developers. They must address the needs of building standards. Architects, surveyors, developers and designers have a significant role in improving the quality of submissions and, therefore, the quality of buildings. Although we can address minimum standards, the aspirational side of those standards lies very much with the developers and designers, who have a significant role to play.

Sue Bush: It would be useful if the building standards system was seen as part of the design process rather than as an issue that must be addressed once all the decisions on what is to be built and how that is to be done have been made.

Ian Targett: We have considered specific buildings that will be required to have sprinklers, but those will become increasingly applicable as fire prevention is given greater emphasis under the changes to the fire services that have already occurred in England and Wales and which are currently taking place in Scotland.

Sprinkler systems and suppression systems are important, but we should not neglect the other elements of fire protection within buildings, such as good compartmentation, fire doors and fire-resistant glazing. As with sprinkler systems, the proper installation of quality products is equally important. Those standards should not be watered down because of a feeling that the sprinklers will do everything. We need a partnership approach between the active and passive systems. In many respects, the regulations will go a long way towards supporting that approach, but the issue needs to be watched for the future. With the advent of fire-safety engineering, we should not go too far down the road of, for example, increasing compartment sizes.

The Convener: Do you agree that the Fire (Scotland) Bill, which is currently before the Justice 2 Committee for stage 1 scrutiny, will provide the fire service with an increased role in fire prevention so that, rather than just respond to

fires when they happen, the service can engage with organisations, communities and builders to ensure that we all take a responsibility to prevent fires from occurring in the first place?

Ian Targett: I am slightly more familiar with the detail that is unfolding for English fire authorities, but I understand that Scotland will use a similar model, with a move towards what is termed integrated risk management planning. The key emphasis needs to be on prevention. With the shift away from rigid intervention, there can be more flexible fire service response times and much more emphasis on engaging with communities and vulnerable groups to stop fires happening. If we are to reduce the number of fire deaths, prevention is probably the most effective way to do that. "Prevention rather than cure" is the phrase that is often used.

Robert Renton: Let me respond to two issues that have been raised. I suggest that adequacy of installation will be covered because the new building standards system provides for the ability to appoint approved certifiers of construction. That is a major step forward in the prevention issues that you raise, convener, and will ensure quality of installation. It will be up to the professions in the trade to seek approved certifier status, which will address many of the issues to which Ian Targett referred.

I would not want the Fire (Scotland) Bill to undermine in any way the role of the fire brigade in fire prevention. However, I suggest that the fire brigade should include building standards and control in its assessment of the adequacy of the building fabric—when the fire brigade considers, in terms of active fire precautions, the use of the building, the users of the building and the maintenance of the building. Building standards should include fundamental passive fire precautions in the fabric of the building; the Fire (Scotland) Bill should address that and take account of the role of building control.

Ian Targett: We would echo those comments completely. I would add that it is very important to have proper publicity of approved certifier status and the value that it brings. The public has to be made aware of the quality that is available and has to be able to distinguish that quality from what we call the cowboys. The public authorities should certainly consider having that sort of publicity.

The Convener: I thank all the panel members for attending this morning. We look forward to receiving further information on consultation from the Fire Protection Association.

I suggest to committee members that we write to the Justice 2 Committee with the points that Mr Renton made about the Fire (Scotland) Bill. We should ask the committee to consider those points in its scrutiny of the bill.

11:11

Meeting suspended.

11:18

On resuming—

The Convener: I call the committee back to order. I welcome our final panel of the morning: Dr Paul Stollard, the Scottish Building Standards Agency's chief executive and Jeff Carter, its head of legislation. I thank them for joining us today.

When will the regulations covering fees and forms be laid before Parliament?

Dr Paul Stollard (Scottish Building Standards Agency): The regulations covering fees will be laid within the next two weeks. The regulations that relate to forms will follow slightly later; we are still discussing them with interested parties.

The Convener: Can you give the committee an indication of the reason for the delays? Why were those regulations not laid at the same time as the regulations that we are considering today? If that had been done, we could have considered all the regulations as a whole.

Dr Stollard: The package that was required for the introduction of a completely new system needed to be phased. That simply had to be the case in terms of resources and the work load on our staff. The building regulations had to come out first because they required the greatest amount of consultation with Europe and the industry. The guidance that supports the regulations also had to be prepared because, although the regulations have the legal force, most people use the guidance. We will issue it as soon as the regulations are—we hope—approved.

The Building (Scotland) Regulations 2004 were first on our list along with the Building (Procedure) (Scotland) Regulations 2004. Again, if all goes well, we hope to issue a procedural handbook to set out in layman's terms exactly what has to be done. Two or three weeks on from that, we will lay the fees regulations. It would have been nice to do all of them simultaneously, but, as a new agency with limited staff, we had to prioritise.

Mary Scanlon: The new building regulations specify four categories of building that will need to be fitted with a sprinkler system. Why were those four categories of building chosen? Will further categories of building be designated in future?

Dr Stollard: For about the past three years, we have been looking at the role of sprinklers in life safety. If I may, I will differentiate between sprinklers for protecting property and those that specifically address life safety. Sprinklers for property protection have been in place for quite a long time in warehouses and that sort of premises.

Jointly with the Office of the Deputy Prime Minister, we commissioned research from the fire research station on the cost effectiveness of sprinklers. In the research, which we received in February, it was recommended that the installation of sprinklers be concentrated on three categories of building: residential care homes, high-rise blocks of flats and places in which there were vulnerable people. The fourth category covers the implicit requirement in the existing building standards that, if a large shopping centre is to be constructed with large open spaces, sprinklers must be installed as a compensatory measure.

The question whether to extend the categories of building is something that we have under review. With research contracts and the like, we are trying to identify where sprinklers could be most effective. The issue has a lot to do with fire risk statistics and how to target the most vulnerable groups of people. Relatively few of the people who die in fires die in public buildings; sadly, most of them die in their own homes. It is also unfortunate that the fires that happen in public buildings often do not happen in new buildings. The difficulty that we face therefore is of retrofitting sprinklers. The simple answer is that, although the matter is under review, I do not have any particular building types to suggest at this stage.

Scott Barrie: My understanding is that the technical handbooks are due to be issued next week. Are they substantially different from the current technical standards? What form of consultation has been undertaken on the handbooks?

Dr Stollard: Over the past two or three years, in discussions with the industry, we have said that, because of the large procedural change, we should try to minimise technical change. In technical terms therefore, if someone could build a building this summer, they ought to be able to build the same building next summer. We attempted to ensure a level transposition from the old to the new standard. We have also attempted to ensure that the new standard comes with more guidance, advice and—hopefully—a less legal form of explanation.

The draft handbooks were issued for public consultation early last summer.

Jeff Carter (Scottish Building Standards Agency): It was July 2003.

Dr Stollard: The consultation period lasted for three months after which we made changes before sending the handbooks to Europe where, under the construction products directive, they were required to sit for three months. Following their return, we had a further review, after which we put the books into a final form over the summer.

Christine Grahame: I apologise, I have had to borrow a pair of glasses. I will take a run at the

question. The regulatory impact assessment states:

“there are a number of technical issues where it is important to increase the required standards ... therefore it is intended to consider amendments to the Regulations in due course”.

Surely it is not good practice to introduce regulations only to have to amend them? Why did the Executive not wait?

Jeff Carter: What we should make clear is that, at the present time, it usually takes two years to amend building regulations. Under the new system, we hope that it will take less time—perhaps one year—but we are still talking about consulting on the changes in 2005, after the new system has been introduced. Substantial changes to the regulations will probably not be made until 2007, because of the process that we have to go through, which involves consultation, having the proposals checked by Europe and giving the industry sufficient time to make changes in construction methods. I will give an example of what we are concerned about. When the regulations were changed in 2002, we had to give the industry at least six months, because the people making windows had to change their production lines. We face such problems every time we make a major change in the building regulations.

Christine Grahame: That is interesting; I did not appreciate that. One tends to assume that delays are caused by bureaucracy, but I can see that, in this case, there are substantial technical reasons behind the delays. How have you managed to accelerate the amendment process from two years to one year? What has made that easier?

Jeff Carter: One of the reasons for having the new regulations is the requirement to adopt European standards rather than British standards. The Commission has decided to introduce the new European standards for building materials and for tests of those materials by having a rolling programme. It has also reduced the time that we have in which to adopt those standards before we are threatened with proceedings. We hope that annual updating of the regulations will enable us to make minor changes, such as the incorporation of a reference to a revised standard, within the time limit that the Commission sets.

Christine Grahame: Does amending the regulations cause difficulties as regards the ability of the trade and the professions to know that they are acting within legal requirements?

Dr Stollard: There are two types of amendment. The first category consists of highly technical amendments that are to do with a change in British standards or the discovery of an improved product definition. Such amendments probably just

recognise what the industry was going to do, authorise it to make the necessary change and give it legal protection for doing so.

The second type of amendment is the result of a desire on the part of the Executive and Scottish ministers to improve or change standards. We must give the industry more time with such amendments, which require a statutory instrument. Over the past five years we have made significant changes in a number of areas: for example, in disabled access to housing and higher energy standards. We now have higher energy standards than any other jurisdiction in the United Kingdom. Sprinklers were of serious concern to ministers and they asked us to do something about that.

Linda Fabiani: I have two quick questions, the first of which is about verification and verifiers. I remember asking the minister why it was felt that private verifiers were necessary in addition to building control departments; I do not think that I got an answer. When do you foresee that private verifiers will be used?

Dr Stollard: The Building (Scotland) Act 2003 makes provision for Scottish ministers to appoint whoever they like as verifiers. That was the result of lengthy discussion on what the basic principle should be. England and Wales have private sector verification, whereas Scotland has never had it. The decision on who should be appointed is a policy decision for ministers. They have said that they have complete confidence in local authority work and that they wish the 32 local authorities to continue to act as the sole verifiers of non-Crown buildings for the foreseeable future.

I cannot answer your question, because we have no plans and have had no instructions in that regard. I am not competent to answer on what is a policy issue.

Linda Fabiani: As regards the cost neutrality of the regulations for local authorities, everyone knows that regulations are never cost neutral and that they always end up costing something. Have you been instructed to put aside a notional figure that could be used to give financial help to local authorities if it turns out that implementing the regulations costs them money?

11:30

Dr Stollard: I do not wish to talk too much about what will come before the Parliament in two weeks' time in the fees regulations. In the consultation, which was in the public domain in the summer and which we have since discussed with many of the panel members to whom you have spoken this morning, we estimated that there may be an increment of perhaps 10 or 11 per cent in local authorities' income from fees, which will go up. However, there will also be increased costs.

From the Building (Scotland) Regulations 2004, you will see that we have exempted a percentage of the very minor works, which will no longer have to go through a warrant process. For example, someone who makes a tiny alteration to their house will no longer have to go through a warrant process. We estimate that that will take out perhaps as much as 7 to 9 per cent of warrants. Because of the fees involved, the processing of those warrants was not economic; therefore, as well as trying to give local authorities a little more money through fees income, we have removed some of the least important and most cost-inefficient of their responsibilities.

Linda Fabiani: So, under the regulations, building warrants will not be necessary for some minor works. If a local authority still chooses to require building warrants for such things, although it does not have to, can it be challenged?

Dr Stollard: Local authorities cannot require a warrant for such works. The regulations set out what a warrant must be sought for, what is completely exempt and what is exempt provided that the regulations are complied with. Local authorities do not have any choice in that.

Donald Gorrie: I would like to raise two of the concerns that our previous witnesses raised. They gave you very high marks in general—you got a sort of A-plus. I wonder how you would respond if either of these concerns actually materialised.

First, I understand that you have tried to strike a balance between the regulations' being flexible and their being sufficiently clear-cut that there is not a muddle. If events prove that you have got it wrong in one direction or the other—if the regulations are either too strict, without enough flexibility, or so flexible that there is uncertainty and people do not understand their operation—how would you deal with that? Could you deal with that within the system, or would you need a new set of building regulations? Secondly, if the five-year run-in of having both the old and new systems in operation causes great problems for local councils, could you deal with that in some way?

Dr Stollard: The regulations are now couched as functional standards, setting out how a building must perform and what it should achieve. The guidance gives suggestions on how that can be done. If we find that the guidance is insufficient, we can just produce more guidance, which will not require further regulation. We have much greater flexibility than we had under the old system, in which the technical standards were set by statutory instrument.

To encourage consistency without compromising flexibility, the 2003 act contains a provision for ministers to give views when there is

not a dispute, but a lack of clarity or confusion between an applicant and a verifier as to whether something complies. In such instances they will be able to seek the view of Scottish ministers. That will not be a binding view, but it will have the status of guidance and would, therefore, be significant if the matter came to a court decision. The agency is planning to facilitate that exchange via fax and e-mail, as we are aware that one of the problems in the construction industry is lack of time. We do not wish to delay the process, so we are setting up a system for ministers to give views on request.

Your second question relates to the transitional period. The building control system is funded in two ways: first, there is the warrant income, which comes from the verifier role; secondly, there is an element of local authority finance, which covers the enforcement role. Mr Renton referred to the fact that local authorities are not just verifiers; they have many responsibilities, such as dealing with dangerous buildings. The Scottish ministers have the flexibility to react to some problems. I can go no further than that.

Mr Home Robertson: I will return briefly to private sector certification and verification. Dr Stollard just assured us that the intention is that responsibility for certification and verification should remain with local authorities, except when Crown immunity applies—we will leave that aside for the time being. However, the fact remains that the regulations create scope for private sector verifiers and certifiers to enter the system somewhere down the line. You may have heard me and other members expressing concern about the implications of that and in particular about the possibility of a close relationship between a private sector certifier or verifier and a developer, architect or whoever it may be. It is not impossible to envisage big developers having in-house verifiers or certifiers. However professional people may be, a conflict of interest must be a risk in that scenario. I accept that it is hypothetical at this stage, but I suspect that I speak for many committee members when I say that if we ever reach that stage, it will be imperative for the Executive to make regulations that require arm's-length separation of verifiers and certifiers from developers and designers.

Dr Stollard: I will talk about verifiers and certifiers separately, because they have different powers under the 2003 act. The Scottish ministers have said that the verifier role should remain with local authorities for the foreseeable future. I can go no further on that, because that is a policy issue.

The reason why the powers were included in the Building (Scotland) Act 2003 was discussed at length during the bill process. Should ministers

ever decide to appoint private sector verifiers, new building regulations and building procedure regulations would be needed. I agree, and it was said in the reports to the committee that considered the bill, that the issues of accountability, impartiality and professionalism that members have discussed would have to be enshrined and protected. I agree with all the concerns.

Under the 2003 act, certifiers have a slightly different role that is a new creation. We say that professional groups can be allowed to sign off designated parts of a building or aspects of a design. The difference is that those groups will be subject to a robust form of auditing by the national agency.

Mr Home Robertson: You are talking about self-certification.

Dr Stollard: We would not use that term. For example, structural engineers are likely to be announced next week as the first set of certifiers. At the moment, anyone can self-certify. We were concerned about that and wished to remove such self-certification, so we have been in negotiation with the Institution of Structural Engineers and the Institution of Civil Engineers about their establishing a scheme that is stricter than their current membership requirements and over which we have powers of audit and control. We will have greater influence over membership of the scheme, how members are vetted and their reviews and assessment. From 1 May 2005, a far more rigorous checking system will apply to a certifier of structural design.

Similarly, on electrical installations, which have been mentioned, we have been in discussion with SELECT—Scotland's trade association for the electrical, electronics and communications systems industry—which may well be appointed to run an electrical installations scheme. A queue is developing of other organisations that would like to gain such status and for which the national agency would become the checker, if you like. We will check that the individuals concerned are competent. I would not use the term "self-certification".

Mr Home Robertson: If anything, the certification situation will be made stronger.

Dr Stollard: Yes—it will be much stronger.

Mr Home Robertson: We are not yet in the same situation with verification, but the problem is that the new regulations and powers are being created.

Dr Stollard: The power to do something similar with verification is in the 2003 act, but the present regulations will not work for private verifiers. Ministers would have to come back to Parliament

with fresh regulations because, as written, the procedural regulations are couched around public sector verifiers only. Regulations for private sector verifiers would be much more complex.

Christine Grahame: I want to follow up the interesting point that you made about ministers' views. To paraphrase, you say that the interpretation of the standards is the responsibility of verifiers and, ultimately, the courts, but that, if there is doubt, ministers may give a view. That is an interesting concept of legal challenge. Does a similar thing happen under other legislation, either primary or secondary? If ministers give a view, will it be put in the public domain, given that it will have become interpretation, which is part of the quasi-regulations or guidance?

Dr Stollard: A view will have the same status as guidance. The act specifies what weight the court should give to the view. It will be put in the public domain by the agency, which will publish the views on its website. One of the reasons for that is to encourage consistency. If we are asked whether a certain sealant is acceptable in Clackmannanshire and decide that it is, it will be acceptable in Moray as well. There is great interest in such matters. However, the process is totally optional—no one has to do it—and it is for people who would like additional specific guidance.

One problem that we have had in the past five years is that, when local authorities or applicants who have an unusual product, building or design have asked for our opinion on it, we have had to say that we cannot give an opinion because we have no authority to do so. The measure is to enable the agency's technical expertise to be made available, but the views will have the status of guidance, not regulation.

Christine Grahame: Do ministers give a view on interpretation under any other legislation? That is a curious concept.

Dr Stollard: It will not be a view on the interpretation of the regulations, it will be guidance. As such, ministers will not interpret the regulations, but say what might constitute a suitable door lobby arrangement or sprinkler system.

Christine Grahame: Does that happen under any other legislation?

Dr Stollard: I am not aware that it does.

Christine Grahame: That is what I was trying to get at. I have never heard of the concept. Is it novel?

Jeff Carter: I am not aware of such a provision being used previously.

Dr Stollard: It is new.

Christine Grahame: Okay.

Mary Scanlon: I do not have the problem that my colleagues have with verifiers or certifiers from the private sector, provided that the people are technically competent and qualified and trained to the highest standards. The regulations specify that the Scottish ministers, in deciding whether to appoint someone as an approved certifier must have regard to public accountability and impartiality. My colleagues have mentioned those issues. How could you ensure that private sector certifiers and verifiers were publicly accountable and impartial?

Dr Stollard: The requirements for impartiality and public accountability are for verifiers, which is why verifying will be done through local authorities. With certifiers, we are trying to achieve the aim through professional institutions and schemes that we will monitor. For instance, we have asked whether the institutions have disciplinary codes and suitable representation on their disciplinary panels. They need to have processes that are similar to those through which most professions regulate themselves.

Mary Scanlon: So you feel that a system of checks and balances is in place that would allay some of the fears that have been raised this morning.

Jeff Carter: One of the most important features of the certification scheme is that the people who are involved will have had specific training in building regulations, whereas at present many people have not had that. It will be new for some plumbers and electricians to look at the building regulations rather than wiring or plumbing-specific information. We feel that the certification scheme will help to improve public accountability because the certifiers will be fully aware of the building regulations. They will sign a certificate that states that the work complies with the regulations.

11:45

The Convener: On behalf of the committee, I thank Mr Carter and Dr Stollard for attending. I also thank all the witnesses who have given evidence and thoughts on the Executive's building regulations.

Do members want to raise any issues in the committee's report on the regulations? The Subordinate Legislation Committee reported that the drafting of the Building (Scotland) Regulations 2004 could have been better, which we may wish to reflect in our report. We should also note that the Subordinate Legislation Committee had nothing to report on the Building (Procedure) (Scotland) Regulations 2004.

I take it from members' silence that they are satisfied with the regulations. Is that agreed?

Members indicated agreement.

**Antisocial Behaviour etc
(Scotland) Act 2004
(Draft Guidance)**

11:47

*Meeting suspended until 11:49 and thereafter
continued in private until 11:57.*

11:46

The Convener: Agenda item 6 concerns the letter that we received from the Scottish Executive in response to a letter that was sent by the former convener to raise members' concerns about the draft guidance on parts of the Antisocial Behaviour etc (Scotland) Act 2004. The committee is invited to note the content of the letter. Do members have any comments?

Scott Barrie: Some members were not committee members when we discussed the draft guidance briefly at our first meeting after the summer recess, in September. From Mr McIntosh's letter, the Executive seems to have taken on board the points that we raised, although we will have to wait until the guidance is published to see whether our points have been fully incorporated.

The Convener: I understand from the clerk that additional guidance on the act has been received in the past few days, which the clerk will circulate to members shortly.

I suspend the meeting for a tight two minutes, after which we will move into private session.

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