# COMMUNITIES COMMITTEE

Wednesday 16 March 2005

Session 2

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## COMMUNITIES COMMITTEE
**9th Meeting 2005, 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:**

Dave Cormack (Communities Scotland)
Neil Ferguson (Communities Scotland)
Roger Harris (Scottish Executive Development Department)
Andrew Robinson (Communities Scotland)
David Rogers (Scottish Executive Development Department)
Archie Stoddart (Scottish Executive Development Department)
Jean Waddie (Scottish Executive Development Department)
Katie Wood (Scottish Executive Legal and Parliamentary Services)

**CLERK TO THE COMMITTEE**

Steve Farrell

**SENIOR ASSISTANT CLERK**

Katy Orr

**ASSISTANT CLERK**

Jenny Goldsmith

**LOCATION**

Committee Room 1

# Scottish Parliament

## Communities Committee

*Wednesday 16 March 2005*

[THE CONVENER *opened the meeting at 09:32*]

## Housing (Scotland) Bill: Stage 1

**The Convener (Karen Whitefield):** I open the Communities Committee's ninth meeting of 2005. I remind everyone who is present to switch off their mobile phones; I will be grateful if members double check that their phones are switched off.

Item 1 on the agenda is the Housing (Scotland) Bill. The committee will hear evidence from the bill team and other Scottish Executive officials. I welcome David Rogers, Jean Waddie and Roger Harris from the private sector and affordable housing policy division in the Scottish Executive Development Department; Archie Stoddart from the Housing (Scotland) Bill team; Katie Wood from the office of the solicitor to the Scottish Executive; and Neil Ferguson from Communities Scotland.

I understand that David Rogers will make a brief introduction before we move on to questions. However, before that, I will allow Mr Home Robertson to make a declaration of interests.

**Mr John Home Robertson (East Lothian) (Lab):** I am sorry to delay proceedings but, for the purposes of our deliberations on the Housing (Scotland) Bill, I draw colleagues' attention to my declaration in the register of interests that I am a sleeping partner in a farming business, which—I have checked—includes three private rented houses.

**David Rogers (Scottish Executive Development Department):** Good morning. I will give a brief introduction to the bill and the issues that members of today's team of officials are able to cover.

The bill is mainly, but not exclusively, about private sector housing. It makes progress on the recommendations of the housing improvement task force—which were published in March 2003—and is concerned mainly with the physical quality of housing. Two statistics that we had in mind as headlines during preparation of the bill are the estimated £5 billion-worth of expected urgent repair work that the Scottish private sector housing stock will require in the next 10 years, and the fact that about a third of private housing requires some form of urgent repair. The bill's underpinning principle is that owners should take responsibility for dealing with disrepair, bearing in mind that disrepair ultimately affects neighbours, communities and the public purse, if repair work has to be subsidised.

The bill has four major themes and one minor one. The first major theme is modernisation of the tolerable standard below which houses are condemned. The bill will also give local authorities new and more flexible powers to enforce the application of that standard. Archie Stoddart will answer most of the questions on that theme. Secondly, the bill will reform local authorities' powers to give financial and other assistance to home owners and others to deal with disrepair. Jean Waddie and Roger Harris are the experts on that.

The third major theme is the introduction of enabling powers to set up a system that will require home sellers to provide information to prospective purchasers, including powers to introduce a system of single surveys, whereby home sellers will provide a full house-condition survey to prospective purchasers. Neil Ferguson from the single survey pilot team will deal with policy issues and the pilot, but Archie Stoddart is the expert on that.

The fourth major theme is measures to improve the quality of private rented housing, which include better rights for tenants to force repairs by their landlord, and changes to the licensing regime for houses in multiple occupation. Roger Harris and Jean Waddie are the experts on that. The minor theme, although it is important, is the introduction of better protection for owners of mobile homes who rent their stances. Roger Harris will deal with that.

**The Convener:** Thank you for keeping your opening remarks short, which will allow for maximum questioning.

Will you outline how the Executive consulted on the proposals in the bill?

**Archie Stoddart (Scottish Executive Development Department):** The bill is based on the principles of the housing improvement task force, the two reports of which involved consultation. Those principles informed the "Maintaining Houses—Preserving Homes" consultation paper that we issued in July last year. We issued 1,000 copies of the standard consultation paper and 10,000 summary versions, which included a proforma and a prepaid envelope in order to encourage responses. We received 314 responses, but to try to increase the number of respondents we held four consultation workshops throughout the country—in Aberdeen, Inverness, Dundee and Glasgow—which were free for organisations or members of the public and which were pretty successful. When we had received the responses and tested them against the proposed bill, we set up policy and technical reference

groups to consider the outline provisions for the bill with key stakeholders, which gave them a chance to input further.

**The Convener:** The Executive seems to have gone to considerable lengths to engage with stakeholders. Can you demonstrate how stakeholders' views have influenced and shaped the bill? What proposals were changed as a result of the process?

**Archie Stoddart:** For the most part, the organisations and individuals who responded broadly welcomed the bill, although there were key pressures on some issues, including adaptations and the single survey. I will give a couple of examples of where we changed direction.

First, as we will discuss later, we gave further consideration to how the needs of disabled owner-occupiers who require adaptations should be addressed. That is why we decided to introduce the provision on mandatory assistance for owner-occupiers who need adaptations. We also considered issues around loan finance and charging orders. In particular, we responded to information from the Council of Mortgage Lenders about how those should apply in practice, which led to some changes in the structure of the bill.

**Cathie Craigie (Cumbernauld and Kilsyth) (Lab):** Part 1 of the bill deals with housing standards. At the moment, local authorities can use housing action areas to improve the condition of housing stock and to regenerate areas. Why was the decision taken to replace housing action areas with housing renewal areas? What benefits will come from that change?

**Archie Stoddart:** Before I come to that, I must mention that an important theme that will run through today's evidence is the definition of substandard housing. In the context of the bill, a substandard house is one that fails to meet the tolerable standard or is in serious disrepair or is in disrepair that will either become serious or have an impact on neighbours and on the area. It is important that we hold on to that definition when we talk about substandard housing.

Housing action areas have been pretty successful, but the process for designating a housing action area can be triggered only when 50 per cent or more of the houses in an area fail to meet the tolerable standard. To be honest, housing action areas have pretty much run their course because they provide a very narrow definition of area intervention and there are perhaps only 20,000 below-tolerable-standard houses in Scotland—less than 1 per cent of the housing stock. In their responses to the consultation, local authorities agreed with the housing improvement task force that they needed broader-based powers to intervene in failing areas and there was a feeling that housing action areas were no longer the success that they had been.

Housing renewal areas will allow local authorities to intervene in two ways. First, if a significant number of houses are substandard—bearing in mind the definition to which I referred—the local authority will be able to designate the area as a housing renewal area in a draft designation order. A further ground for intervention is provided for situations in which the appearance or state of repair of houses affects the amenity of an area. Local authorities felt that those grounds would give them much broader powers to arrest decline in areas.

**Cathie Craigie:** When a local authority sets in motion the process that you have explained for designating a housing renewal area after it has identified that the area appears to be failing, what will be the timescale for that?

**Archie Stoddart:** The timescale is partly driven by the process but it is also shaped by the extent of the work that needs to be done. The process requires that the local authority first include criteria for designating housing renewal areas within its local housing strategy. Secondly, the authority must identify the area in a draft designation and action plan, which must be circulated to all the people in the area who would be affected by the designation. Within a certain timescale, those people will then be able to make representations on the proposed designation. The proposed designation can then be submitted to the Scottish Executive for approval.

One difference between housing renewal areas and housing action areas is that the Executive will be able to take soundings on a proposal to designate an area as a housing renewal area. Those soundings need not necessarily involve a full public inquiry, but the Executive will be able to consult and to ask for views on a proposal before it is signed off. An area can be designated as a housing renewal area only once the draft designation order has been approved by the Scottish Executive.

Once the housing renewal area has been designated, the actual timescale will be very much determined by local circumstances and by the nature of the work that is required.

**Cathie Craigie:** I agree that housing action areas have been successful throughout Scotland in dealing with problems but, in my experience, one difficulty with them was the length of time it took for the process to be completed. When the council of which I was a member was considering designating a housing action area, I remember throwing up my hands in horror when I was told at a meeting with an official from Glasgow that the process could take 15 years from start to finish. At

the time, I said that that would never happen, but the final timescale was not far off 15 years. Although it was right that we did things properly and spent the money wisely, that was a long time. Does the Executive intend to try to focus the minds of local authorities and communities on achieving shorter completion times for housing renewal areas than was the case with housing action areas?

**Archie Stoddart:** We will not prescribe that a housing renewal area can last for only a certain time, because we do not know what local circumstances will be. It may be an issue that we could consider in the context of appraising housing renewal area action plans, and it is possible that we could issue guidance on it. However, rather than commit to being definitive on that, it may be best for us to engage with stakeholders when we draw up the guidance, because there may be good arguments for being as flexible as possible. That is certainly a point that we will take away from today's discussion.

09:45

**The Convener:** One of the key principles of the bill is to modernise housing to the tolerable standard. Will you outline to the committee what impact the changes will have?

**Archie Stoddart:** As David Rogers said, the tolerable standard is the basic condemnatory standard below which we are saying that a house cannot be lived in. A number of powers kick in on that. The task force recommended three areas that we should consider in relation to the tolerable standard, two of which we have included in the bill. The first area is basic thermal insulation and the second is electrical safety. The third area that the task force referred to was lead in the water supply. That is not mentioned in the bill because the tolerable standard already includes a consideration about a supply of wholesome water. There is a recent European Union directive on water quality, which is transposed into the Scottish water regulations. That will measure what comes out of the tap and, as long as water does not exceed the thresholds, there is protection from lead.

In practice, some modelling work has been done under the housing condition survey and, depending on where it is pitched, we think that it could bring another 40,000 houses under the ambit of failing the tolerable standard. However, that depends on what is found out on the ground. The important point is where we pitch the standard. We envisage setting up a group of experts to advise us on the new provisions and on the existing ones to see whether they are fit for us to go ahead. I remind the committee that we are talking about the basic condemnatory standard, so any standard would be pitched at that level.

**The Convener:** I am struck that you have addressed the issue of lead in water, but some submissions to the housing improvement task force and to the Executive's consultation suggested that other areas should be included, particularly sound insulation and gas safety. Those seem to me to be just as important as some of the areas in which the Executive is proposing changes. Why has the Executive ruled them out?

**Archie Stoddart:** First, an overwhelming case has not been made for sound insulation and gas safety, although some suggestions were made about them. On gas safety, a significant gas safety regime is already in place, particularly for rented housing. Houses have to be inspected annually by a registered CORGI—Confederation for the Registration of Gas Installers—inspector. We feel that that meets most of the objectives. Sound insulation is a particularly tricky issue, on which the Executive—and the committee, I am sure—receives a great deal of correspondence. It is worth bearing in mind that if a house fails the tolerable standard it can be closed, it can be compulsorily purchased and it can be demolished. The powers go that far. Although sound insulation is a thorny issue, we feel that it does not lend itself to such powers.

**The Convener:** I am not sure whether you had a chance to see the Napier University study that was published yesterday, which received considerable coverage in the media. The study suggested that insufficient sound insulation in a property can have a serious effect on people's quality of life and can make living in a property intolerable. Insufficient sound insulation has proven health effects. Is there scope for it to be reconsidered?

**Archie Stoddart:** I have not read the study, although I saw the coverage of it. There is no doubt that transmitted noise is a major problem. I used to work on the housing management side and am aware that there are many complaints about noise but, again, the question is about what the appropriate vehicle is to address the issue. A condemnatory standard can lead to a house being demolished, so given the limitations of many types of house construction in relation to sound insulation, it strikes us that the tolerable standard is not the place to address that issue.

**The Convener:** How do you respond to the concerns of some local authorities that the national guidance on the tolerable standard might be too restrictive and inflexible?

**Archie Stoddart:** We want to draw up the guidance with reference to stakeholders and experts. It seems to be unfair that a house might

be condemned as being unfit to live in in one area, whereas in another area a house that is in the same condition could be regarded as being fit to live in. It strikes us that a condemnatory standard should have a consistent baseline throughout the country.

**Mary Scanlon (Highlands and Islands) (Con):** I look forward to the revised repairing standard. Will the witnesses describe the organisational structure of the proposed private rented housing committees? I understand that local authorities will operate the national registration scheme for private landlords. Local authorities are obviously also responsible for planning and housing. Will private rented housing committees be part of an organisation that is separate from local government?

**Roger Harris (Scottish Executive Development Department):** The provisions to which you refer address the interests of private tenants in order to ensure that landlords meet their obligations to maintain houses in reasonable repair. Currently, a repairing standard exists in statute, which tenants may enforce through the courts. In the interests of encouraging improvements in the private rented sector, the bill will provide for a different method of enforcement, which will operate through the private rented housing panel and committees. In answer to your question, the approach represents an expansion of the role of the existing rent assessment panel and committees, which are separate from local government. The rent assessment panel will be a non-departmental public body that has tribunal status.

We propose to build on the existing organisational structure, which comprises a central administrative operation with a president, a vice-president and a panel of about 30 members from throughout the country, from whom committees of three members will be selected according to the case and its location. The same general approach will be used in the future: a committee will comprise a chairperson—who will be a solicitor—a surveyor and a lay person.

**Mary Scanlon:** I am aware of the organisation, but is there potential for conflict with local authorities, given their enormous responsibilities in relation to housing planning and standards, which the bill will expand? For clarification, did you consider bringing the private rented housing committees into local government or did you always think that there should be a separate body?

**Roger Harris:** We thought that the body should remain separate, because it relates to the landlord-tenant relationship. In parallel, a local authority will have the various powers that part 1 of the bill will confer on it, should it want to act in relation to a particular house. However, if a tenant wants recourse to redress, the private rented housing committees will offer an appropriate mechanism that will obviate the need to involve the local authority in what is, in essence, a landlord-tenant arrangement, by operating as a tribunal that can help to sort out disputes if the two parties cannot agree.

**Mary Scanlon:** You touched on this, but will you briefly explain the changes to the repairing standard and landlords' obligations? How will the changes benefit tenants?

**Roger Harris:** The existing repairing standard is comprehensive; it requires that a house be fit for human habitation and includes a number of other requirements. We are modernising the standard and rationalising the various strands of legislation that make up the standard. We will include fixtures, fittings and appliances that are part of the let and we will require that furnishings that are provided as part of the let can be safely used for the purpose for which they are provided. The requirements will not impinge on matters such as quality and fashion.

The rationale behind expanding the elements that the repairing standard covers is that the new elements are all provided as part of the let by the landlord, so it is only reasonable to expect the landlord to keep them in reasonable condition and repair, as is normal good practice. That should be a step forward for tenants, because the law will reinforce tenants' expectation of what they have agreed with the landlord and what they pay for under a let to be kept in reasonable repair.

The other major benefit for the tenant is an easier route for redress, which will be less daunting and should be quicker. That should encourage more tenants to use the option, rather than say, "I won't bother; I'll move somewhere else."

**Mary Scanlon:** That is the crux of the bill. How will we ensure that landlords and tenants are aware of the new legislation and of the fact that their expectations should be realised and should not just remain expectations?

**Roger Harris:** That is a perennial problem. The housing improvement task force and other research identified poor knowledge of rights and obligations in the rented sector. In response to that, we have run the better renting Scotland publicity campaign in the past year, which grew out of that awareness and the need to spread more information about licensing of houses in multiple occupation. That has run for a while. We have a website that explains—in clear terms, we believe—what it means to be a tenant or a landlord and gives access to a range of information. We have run a publicity campaign

through the press—through editorials—and through buses and so on, which links up with what councils do locally. We do not yet have proposals for more activity, but we expect to continue with that exercise, which will be based on the existing materials and the existing website.

There are all sorts of ways to give tenants information, such as co-operation with university and college accommodation services and student unions to catch that part of the sector, and placing information at places to which people go to find out about letting property or to advertise property. Registration of landlords will mean that local authorities have a handle on who the landlords are in their areas. We expect a clear statement of their legal obligations to be presented to landlords in the registration process. A range of activities is in progress to help to spread awareness.

**Mary Scanlon:** Some respondents to the consultation felt that the private rented housing panel's remit should cover a wider range of issues and all tenures. What is your response to that?

**Roger Harris:** For the repairing standard in the social rented sector, a structure of regulation and the Scottish Public Services Ombudsman provide reassurance and backing for tenants.

On the broader question of whether the expanded panel should have tribunal roles in relation to other housing matters, we are aware that the Chartered Institute of Housing in Scotland has presented a case for a much broader housing tribunal, but that is a very big issue. The suggestion deserves consideration, but we would need to examine the extent to which the existing dispute resolution processes are unsatisfactory. If we found a case for the proposal, the question whether a new tribunal would provide a better and more cost-effective approach would have to be considered. Much work must be done to examine such issues more carefully. We have decided to review the evidence, but it would not be appropriate to insert such a measure in the bill at the drop of a hat.

**Christine Grahame (South of Scotland) (SNP):** Good morning. What will be the main advantages of a section 30 work notice—a single work notice as opposed to an improvement and repair notice?

10:00

**Archie Stoddart:** The housing improvement task force was concerned to consider house condition as a spectrum. The task force felt that the break between improvement and repair notices was artificial so, in the bill, we have attempted as far as possible to provide for all the work that is related to condition to be specified in a single notice. We have largely achieved that, although there are some areas in which we have not been able to do it—for example, the provisions on demolition are so specific that it would make little sense to try to shoehorn them into the work notice. In practice, it will mean that we will, as far as possible, have a single notice and a single procedure, which seems to us to be more straightforward.

**Christine Grahame:** It seems to me that a work notice can be served for a lesser state of disrepair than that for which a notice can be served under the existing position. Is that correct?

**Archie Stoddart:** The current position is that a notice can be served if a house is in serious disrepair.

**Christine Grahame:** Will you give me an example of serious disrepair and of the proposed situation so that I can understand the difference? Would it be serious disrepair if the roof was falling in?

**Archie Stoddart:** Serious disrepair would be, for example, a hole in the roof. Disrepair that is not serious but could become so might be a roof that is in such a condition that, if it was left, slates would come off, which would lead to there being a hole. It is simple as that. It is a matter of being able to identify work that, if it is not done, will lead to serious disrepair. The roof example is a great one. Another one would be a situation in which, if nothing was done to address the disrepair in the windows of a house, they would fall out, although they are not yet falling out.

Disrepair has been identified as a very important issue by local authorities, which feel hamstrung that they have to wait until reasonably good houses go bad before they can intervene. It is also of great concern to neighbours who watch the house next-door to them fall into disrepair, because when disrepair becomes serious, it can impact on other properties.

**Christine Grahame:** At the end of my row of houses, there is a property that is, at last, getting something done to it. It has not been properly occupied for 10 years. If, as you say, a work notice is for a roof that does not have a hole in it but might develop one or windows that, although they are not falling out, are 50 years old, have not been kept up and have wood that is looking a bit rotten, will there not be an awful lot of applications for work notices?

**Archie Stoddart:** That would depend on whether the work would be done under a work notice or a maintenance order, to which I am sure we will come. It will be for the local authority to issue the notice. I suspect that people will not apply to have notices served on them but that neighbours will contact the local authority and say that they are concerned about the property or

house. I am not sure whether the bill will lead to more applications, but there is certainly broader scope for the local authority to intervene, so it should lead to more intervention.

**Christine Grahame:** Will there be a standard that applies in all local authorities? One of the previous witnesses touched on the need for a standard throughout Scotland to ensure that one local authority is not more rigorous than another.

**Archie Stoddart:** That point was made on the tolerable standard, which relates to condemning houses.

**Christine Grahame:** That is correct, but what about disrepair? Will there be a standard for that?

**Archie Stoddart:** I think that it will be much more a case of local authority officials reaching a judgment. It is easy for us to prescribe the tolerable standard—if a house does not have an inside toilet, that is unarguable—but individual local authorities will have to exercise their professional judgment much more on disrepair. However, all work notices are underpinned by rights of appeal, so there is a due process if people feel aggrieved.

**Christine Grahame:** Would that right be used if, for example, one local authority was tougher than another?

**Archie Stoddart:** It might be used if one local authority was perceived to be more rigorous about disrepair.

**Christine Grahame:** The bill interacts with the provisions of the Building (Scotland) Act 2003. It also interacts with the Housing (Scotland) Act 2001, does it not?

**Archie Stoddart:** There is a little bit of interaction with the Tenements (Scotland) Act 2004.

**Christine Grahame:** Is it not a bit confusing that we have housing acts interacting all over the place? Will you explain how the bill interacts with other housing legislation?

**Archie Stoddart:** The Building (Scotland) Act 2003 is not a housing act, of course. It deals with all properties and tends to focus on dangerous or obstructive buildings. That act can capture domestic and non-domestic buildings, but the bill's powers are focused on residential buildings, although they can interact with non-domestic property if it is part of the building. A suite of powers is available. The bill's powers are tailored to housing, whereas those in the Building (Scotland) Act 2003 relate to buildings in general.

Another way in which the bill interacts with the Building (Scotland) Act 2003 is that the act sets up the building standards register that each local authority must hold. Building on those provisions, we propose that any local authority notices should be held in that register.

In developing our guidance with stakeholders, we could consider whether local authorities would find it helpful to have a steer as to where the appropriate powers are.

**Christine Grahame:** I was going to mention that. Which piece of legislation will authorities use? They will want to avoid ending up in court having used the wrong one. The Housing (Scotland) Act 1987 comes into it somewhere, too, because of the test of resources for repair work.

**Archie Stoddart:** The test of resources as set out in that act would still apply.

**Christine Grahame:** The policy memorandum states:

"the Executive has concluded that the benefits of"

giving local authorities

"the power to inspect the insurance policies relating to flats in tenements … would be limited".

I take it, then, that the Executive will not give them that power.

**Archie Stoddart:** That relates to the power that common owners currently have to inspect insurance policies. People can inspect them and satisfy themselves that someone has paid an insurance policy. We examined the matter of insurance because the task force had considered the possibility of requiring compulsory common insurance. That idea was rejected, on the grounds that it would be very difficult to achieve. We felt that if a local authority serving a statutory notice could inspect an insurance policy, that would reinforce the importance of buildings insurance. However, we encountered a number of difficulties with that. Although insurance is compulsory in these circumstances, there are occasions on which it is not required. For example, if people are—

**Christine Grahame:** Sorry—could you run that past me again? You say that insurance is compulsory.

**Archie Stoddart:** To be clear, this is about buildings insurance. In cases where there is shared, common ownership, for example in a tenement, an individual owner has the right to inspect their neighbour's policy.

**Christine Grahame:** I do not think that a lot of people know that.

**Archie Stoddart:** That is a fairly new thing, to be fair. We considered whether putting the local authority in the neighbouring owner's shoes—

**Christine Grahame:** You say that that right is "fairly new". Since when have co-owners in a

tenement been entitled to look at each other's buildings insurance?

**Archie Stoddart:** Since the Tenements (Scotland) Act 2004 came in, which was in November last year, I think.

**Christine Grahame:** That is interesting information for anybody currently living in a tenement flat.

**Archie Stoddart:** If it would be helpful, we could get the committee some background information on that.

**The Convener:** For your information, and to remind committee members—although they should also be aware of this—staff in the Tenements (Scotland) Bill team, who worked with the Justice 2 Committee, have said that they will make themselves available to give committee members a briefing on what is contained in the Tenements (Scotland) Act 2004, as that bill became. They will be going over some of this stuff.

**Christine Grahame:** That is important to know.

**Archie Stoddart:** Could I address the point about insurance?

**Christine Grahame:** Please do.

**Archie Stoddart:** We considered whether it would be useful to put the local authority in the shoes of a neighbouring owner to allow it, too, to inspect that owner's policy. When we investigated that matter, we discovered a number of difficulties. First, there are qualifications as to the requirement to have insurance, which I am sure that the Tenements (Scotland) Bill team will go into. That covers instances where insurance cannot be obtained on reasonable terms, for example. Secondly, there was a dilemma as to the practical enforcement. We reached a view that, although such a provision looked good, it would not do anything. We decided not to progress with it in the bill.

**Christine Grahame:** I want to move on quickly—I have lots of questions. Could you elaborate on local authorities' enforcement powers, for example in relation to how demolition and closure orders fit within the proposed new framework?

**Archie Stoddart:** One of the significant features of the proposed arrangements compared with the previous regime is that the local authority can have the power to go into a house and carry out work—that involves work notices—without necessarily having to purchase the property compulsorily, as it would previously have had to do. There remains the potential for local authorities serving demolition notices to purchase the property compulsorily and carry out the work.

**Jean Waddie (Scottish Executive Development Department):** Under the current system of repair notices and improvement orders, local authorities can go in and do the work if it is a repair. If it is an improvement, however, they must compulsorily purchase the property. With a single work notice, authorities will be able to go in and do the work and claim the money back on any—

**Christine Grahame:** Here is a daft-lassie question coming your way: could you give me an example of a repair and an example of an improvement?

**Jean Waddie:** There is an example coming up in Glasgow. Fixing a roof is a repair, but putting cladding on a building that has not had it before is an improvement.

**Cathie Craigie:** I think that Christine Grahame has succeeded in making the provisions seem more confusing than they are. I am happy to see the measures contained in the bill. One of the things that concern me, however, is something that other members will have dealt with during the past few years. An example might be a four-in-the-block flatted property that has three tenants and one owner-occupier on the ground floor who has not got water coming in and who refuses to be part of the local authority scheme to repair the roof. The provisions will protect the tenants in the block and give powers to local authorities so that they can take action against an owner who is refusing to maintain or repair their property.

**Archie Stoddart:** One of the main themes that runs through the bill is the protection of individual neighbours and the wider public. If a notice is served, it might have to be enforced, which could mean the authority going into the flat and doing the work.

**Cathie Craigie:** The exercise of local authority powers under current legislation can take a long time and if a case has to be taken through the courts, it can drag on for a long time. Will the bill provide a faster process for getting a new roof, for example?

**Archie Stoddart:** The process is still underpinned by appeals procedures, which are detailed in various parts of the bill. Of course, it depends on the nature of the problem. If there is an emergency, the local authority has the power to intervene much sooner.

I cannot guarantee that the new process will be quicker, but the local authority might be more willing to act because the powers will be more flexible and the system will be less rigid. However, I cannot guarantee that the procedures in all cases will necessarily be quicker.

**Donald Gorrie (Central Scotland) (LD):** I will focus on section 42 and the following sections,

which are about maintenance orders. There is a lot of good stuff in those sections, but I still have one or two questions. Section 42(2)(b) says that a maintenance order may be made if

"the house has not been, or is unlikely to be, maintained to a reasonable standard."

How do you decide that a house is "unlikely" to be so maintained? Is it merely that the house has a history of not being maintained or do you say, "This guy Donald Gorrie is pretty vague; he probably won't look after his house properly, so we'll put an order on him." There is a slight element of putting the guy in jail because you think that he might commit a murder.

**Archie Stoddart:** The provisions will be enforced largely because of complaints to the local authorities that common owners have not been able to secure maintenance. Ultimately, the local authority will take a view and it might well be that the history of a property is the best predictor of what will happen in future. We think that neighbours who cannot secure common repairs will apply to the local authority for assistance. Although the maintenance orders can be appealed, lack of co-operation is quite a strong indicator. One of the task force's major objectives was to try to ensure co-operation between owners because that is one of the major problems in getting day-to-day repairs and maintenance done.

**Donald Gorrie:** I will pursue that point. If an owner says, "My windows are perfectly okay," and the council says that they are not and that unless they are repaired soon, they will be up the creek completely, who wins and how is that decided?

**Archie Stoddart:** The local authority will serve a maintenance order. That lasts for a year and can require the preparation of a maintenance plan that might last for up to five years. If the owner does not think that that is fair, they can appeal to the sheriff and ultimately the sheriff will determine the case.

**Donald Gorrie:** Some of the councils that we visited in urban areas, such as Glasgow, and rural areas, such as Perth and Kinross, made the point that problems might arise because of people who have become landlords almost by accident. They are not professional landlords, but they are not Rachman landlords although they do not fully understand their duties or the technicalities of the law. How could that be dealt with if it is all to be done by agreement? If people are well meaning but not entirely on the ball, how can they be brought on board?

**Archie Stoddart:** There are two parts to that question. The maintenance order is the device whereby if people want to do something but are not quite sure what it is, they can get assistance from the local authority to decide. The order will spell out timescales, how the money should be contributed and the key tasks. We are talking about things such as the cleaning of gutters, the painting of windows and the servicing of the door entry system—almost factoring-type work.

Landlords would also have duties under the repairing standard. My colleague may want to add his comments.

10:15

**Roger Harris:** We have already discussed the repairing standard and, as Archie Stoddart says, landlords have duties. There are means of enforcing them.

We will no doubt be discussing the scheme of assistance, under which there is scope for practical assistance. We want local authorities to help people to understand what is needed and how to go about it, and to help them to overcome a range of barriers. Those barriers might not be financial but might be simply the practical difficulties of organising contractors.

We will expect greater subtlety from local authorities when they are dealing with particular situations. We intend that they should assist people, in a variety of ways, to understand how to go about things.

**Donald Gorrie:** I want to ask about what I call a sinking fund and you call a maintenance plan. Will virtually every flat-dweller in Scotland be involved in some sort of joint sinking fund or maintenance plan?

**Archie Stoddart:** The Executive regards sinking funds as a good way of securing the funding of maintenance, but we do not require a sinking fund—although, under a maintenance plan, a local authority could require one. There would therefore be a requirement only as part of a maintenance order or when the local authority places such a requirement. I do not think that that will capture the majority of tenants.

**Donald Gorrie:** What happens if somebody sells their flat? Would it be part of the deal that the new person would have to start paying into the sinking fund? Does the outgoing person's money stay in the sinking fund?

**Archie Stoddart:** We are not prescribing that in the bill. Local authorities will be able to support residents in the setting up of a sinking fund—not to put money into maintenance but to do things such as drawing up a constitution, a memorandum and articles, and agreeing the principles of the management of the fund. However, it would be a matter for the owners.

**Scott Barrie (Dunfermline West) (Lab):** I want to turn to chapter 7, on adaptations arising from

disability. Have you considered the impact of the bill on landlords' willingness to let to disabled tenants? Given that section 52 lists the reasons that a landlord may give to refuse tenants' requests to adapt property, do you think many requests will be granted in the first place?

**Roger Harris:** We do not have firm information on either of those questions. The provision is based on principles and it would be difficult to make confident predictions on how many people would be affected. We think that around 18,000 people in the private rented sector have some physical disability. However, it would be going several steps beyond our level of knowledge if we tried to take that statistic and predict how many people would need an adaptation and how many of those would have a landlord whose initial reaction would be to refuse.

On whether there will be a reduction in supply, we have to bear in mind that discrimination issues arise, and they are dealt with at Westminster. A landlord who refuses to consider a prospective tenant because of their disability would be running great risks. The provision in the bill is likely to be used mainly in connection with people who become disabled while they are tenants. It therefore should not affect supply but should help those people to remain in their homes rather than having to move elsewhere.

The number of cases is very difficult to predict. However, the provision is based on principles and it was widely welcomed during the consultation stage. We feel that although it may not be possible to point to a large number of cases in which the provision would have to be used, the fact that there is such a provision will no doubt help to influence landlords. That goes back to what we talked about earlier. The registration provisions and wide publicity will bring to landlords' attention their obligations. We think that that will help to change the climate and will ensure that landlords are more prepared to be reasonable about allowing their tenants to make adaptations so that they can continue to use the house that they rent.

**Scott Barrie:** I do not think that anyone has any difficulty with the principle; people are interested in the detail of how the provision will work in practice.

If a tenant said that they wished to carry out some sort of adaptation and the landlord refused, what process would be followed? Would there be an appeals mechanism? Would a tenant be able to argue that their landlord was acting unreasonably and that they should be allowed to do the work in question? What would that mechanism consist of?

**Roger Harris:** The bill will allow the tenant to appeal to the sheriff court. In making a decision on whether the landlord had been reasonable, the sheriff would no doubt take account of the grounds that were listed in the statutory provisions.

In light of the recent discussions at Westminster on the Disability Discrimination Bill, which contains a similar provision, we are exploring possible means of support that would make the process easier for tenants. We will discuss that issue with the Department for Work and Pensions and the Disability Rights Commission. The basic provision is that there is a right of appeal, but we are thinking about how we could help people to make use of that right.

**Scott Barrie:** Although that gives me a bit of comfort, I am not totally convinced, because as soon as we mention that someone has to go to court to do something, that brings up considerations such as the cost of legal representation and the whole way in which civil cases are heard in our courts. That proposal certainly needs to be examined; we will perhaps return to it at a later date.

In the case of a disabled tenant who had made an adaptation, would a local authority assistance grant cover the costs of reinstatement, to restore the property back to its original condition? Am I right in thinking that such costs would not be covered? Might that not put someone off the idea of getting an adaptation done?

**Roger Harris:** In light of the bill's provisions on adaptation, we modified our proposals on the range of work that would be covered under the scheme of assistance to include reinstatement in cases in which an adaptation has been carried out under the bill. Just as a local authority could provide assistance for the adaptation, it could provide assistance for the reinstatement to which the tenant might be committed.

**Scott Barrie:** I have one further question, provided that the convener will indulge me. Was consideration given to offering tenants the right to request adaptations to common areas? In other words, will tenants be able to have adaptations carried out to enable them to access a property?

**Roger Harris:** That is clearly an issue, because it does not make much sense to allow someone to improve a property if they cannot get into it.

The provision in the bill is about the relationship between the tenant and the landlord. It will work by inserting a provision in their contractual relationship. According to the definitions in the bill, a house includes its common parts. As far as the tenant-landlord relationship is concerned, the bill means that the landlord has the same obligations in respect of the common parts as they do in respect of the property that they own. However, it is clear that other owners have an interest in the common parts. The bill does not impose a requirement on other owners to refuse to give

consent to an adaptation only on reasonable grounds. That is a much broader issue in that it is to do with ownership rather than the relationship between the landlord and the tenant.

Of course, the same problem applies to owner-occupiers who need to carry out adaptations to common parts. How do they ensure that other owners on the stair do not refuse unreasonably? That question relates to wider issues of property law, and we were unable to deal with it in the bill because of the complexity of the issues. It is also an issue for the equivalent rights in the Disability Discrimination Bill at Westminster. We are discussing the matter with the Department for Work and Pensions, which has set up a working group because there is no provision for common parts in its bill either. We need careful discussion about what the issues are, how they impinge on general property rights and how we can resolve them.

In the meantime, the provision on the landlord-tenant relationship is a step forward and it will deal with many circumstances that arise in relation to common parts.

**Christine Grahame:** I have a couple of technical questions on section 60, on service of documents. Section 60(2) gives a list of the people on whom documents must be served, and it includes the catch-all

"any other person appearing to the local authority to have an interest in that house".

Whom do you have in mind?

**Archie Stoddart:** It could be a trustee or a guardian of someone who is incapacitated—anyone who has an interest and a role in the property.

**Christine Grahame:** Secondly, how will the local authority know that the document has been served appropriately? There is no guidance in the bill about the manner of service.

**Archie Stoddart:** When you say "served appropriately"—

**Christine Grahame:** If someone appeals against a notice, we have to know that it has been served properly. There will be a substantial amount of work in the service of documents and the method of service will be important, but the bill does not detail how it must be carried out.

**Katie Wood (Scottish Executive Legal and Parliamentary Services):** In the general and supplementary provisions in part 8 of the bill, section 161 is on formal communications, including the service of a notice. It sets out fairly fully what effective—

**Christine Grahame:** Sorry, what section is that?

**Katie Wood:** Section 161.

**Christine Grahame:** Is the communication to be served by recorded delivery?

**Katie Wood:** Section 161 covers that as an option. It explains that the communication can be served according to the usual gamut of options for service.

**Christine Grahame:** That clarifies the matter.

I want to know more about the provisions on

"rights of appeal to the sheriff against work notices, maintenance orders and other measures."

Will you explain and develop that a little? Also, you may not be able to answer this, but will legal aid be available to anyone who goes to appeal?

**Archie Stoddart:** I do not know the position on legal aid, I am afraid.

**Katie Wood:** We do not have any specific provisions on legal aid.

**Christine Grahame:** From your inquiries, do you know whether that will be the case?

**Katie Wood:** We have not investigated that, but I am more than happy to take that question back.

**Patrick Harvie (Glasgow) (Green):** Part 2 of the bill is on the scheme of assistance for housing purposes. Will you explain the rationale for moving from mandatory grants to a range of forms of assistance?

**Jean Waddie:** The scheme of assistance is not only to do with statutory notices, but obviously there is a clear link. One of the things that the task force identified was that it is not always just a lack of money that prevents people from carrying out works. In tenements, it is often the difficulty of getting everyone to agree or nervousness about dealing with builders that makes people freeze and do nothing. It may be that people have sufficient funding and equity but cannot get a commercial loan for one reason or another. The idea behind the scheme of assistance is that it gives local authorities a much wider range of options to help people in an appropriate way and to give them the right form of assistance to overcome the particular barriers that they face.

Another issue is the fact that statutory notices trigger mandatory grants in all cases. In some cases, statutory notices are issued to help people to get all their neighbours to work together, but in other cases they are issued because someone has not fulfilled their obligations and has not done the maintenance that they should have done. It did not seem appropriate that that should trigger a payment to them to carry out that work and, in some cases, that discouraged local authorities from taking action. The need to have a wider scheme that helps local authorities to give more

appropriate assistance is the reason behind the move.

10:30

**Patrick Harvie:** Glasgow City Council has highlighted the low average incomes and high amount of disrepair in the city. Does the Executive think that the alternative forms of assistance that are available will be realistic in an area such as Glasgow?

**Jean Waddie:** It will be up to the local authority to use the most appropriate and cost-effective form of assistance to get the work done. There is no point in giving a form of assistance that does not achieve its aim. Grants will still be available if that is what is needed. If there are other problems and other forms of assistance are more appropriate, they will be available. However, if grant is what is needed, that will still be an option.

**Patrick Harvie:** Does the Executive expect the same level of take-up of assistance as there currently is of grants? Will we see the same amount of repair being done as a result of the provisions?

**David Rogers:** The intention behind the provisions is to enable more work to be done by targeting financial assistance where it is needed most. If local authorities have a menu of forms of assistance available to them, including loans and advice as well as grants, the existing resources should stretch further.

**Patrick Harvie:** If, a few years down the road, after the bill is enacted, we do not see an increase in the amount of repair work that is taking place, that will be a time to reconsider what is being done through the legislation.

**David Rogers:** Yes. It will also be an issue to be considered in future spending reviews.

**Roger Harris:** There is provision in the bill for ministers to give guidance or directions on the use of the assistance powers, if necessary. If, further down the road, there was evidence that the legislation was not producing a significant increase in the amount of repair in certain authorities, the powers would exist to impose the use of good practice as demonstrated elsewhere to tune how things were done and to ensure a bigger impact, in terms of numbers across the board, on housing quality in any given area or across Scotland as a whole.

**Patrick Harvie:** That is helpful. Thank you. Concern has also been expressed about local authorities' capacity to develop financial services or what the committee paper calls "loan products"—I have difficulty in bringing myself to use that phrase. Do you recognise any strength in the argument that local authorities may have difficulty in providing some of the forms of assistance?

**Jean Waddie:** Some local authorities are already moving in that direction. There is no need for specific powers to offer advice and assistance, and some local authorities are working those things up. Some authorities are also showing an interest in developing loan products.

We recognise that new skills will be introduced and the Executive will assist, as far as it can, with the provision of guidance and networks through which the local authorities can share good practice. Local authorities do not necessarily have to make the loans; they can support non-profit-making lending organisations that will make the loans on their behalf. A fair number of such approaches are being developed in England and we are interested in spreading that practice in Scotland.

**Patrick Harvie:** I expect that, if local authorities decide to provide the forms of assistance through another organisation, that would be a non-profit-making organisation rather than a commercial bank.

**Jean Waddie:** Yes. Local authorities may be able to help people to access loans through commercial banks, through the use of independent financial advisers and so on, but there is provision in the bill for local authorities to give funding to a non-profit-making lending organisation to do those things for them.

**Patrick Harvie:** Which section is that provision in?

**Jean Waddie:** It is in section 88.

**Patrick Harvie:** Glasgow City Council also expressed concern about the means test for the grant system. Do you see any strength in the argument that a local authority with, for example, a large student population might need to change the means test in its area?

**Jean Waddie:** Obviously, the detail of the means test will be in secondary legislation. If there are arguments about the detail, we can go into them when we get to that stage. We would be looking for consistency across the country. The intention is to have a national means test. However, there is a need for some flexibility to deal with local circumstances. The bill allows one form of flexibility by enabling the local authority to reduce the applicant's contribution, in certain circumstances and with ministers' consent. The regulations relating to the means test would set out the kind of categories that that could be used for and the local authority would come to ministers with a proposal for exactly how it would use that flexibility.

**Patrick Harvie:** Can you explain in more detail how disabled adaptations will be dealt with under the new system?

**Jean Waddie:** Do you mean what forms of assistance will be available?

**Patrick Harvie:** Yes.

**Jean Waddie:** At the moment, there are two parts to disabled applications. For standard amenities—it is easiest to think of them as being bathroom facilities—there is, at present, a mandatory grant. That is being kept; there will still be a mandatory grant for standard amenities. For all other forms of adaptations, there is a discretionary grant, which means that the local authority can simply say, "We don't do that kind of adaptation. Sorry, go away." The bill will introduce mandatory assistance for all forms of disabled adaptations. Councils will have to provide grant, loan or another form of assistance. Again, the decision will depend on what is appropriate for the individual.

That fits in with the joint future agenda. The Executive's agenda is to get social work, health and housing to work together to ensure that people come up with the most effective solution for the individual's needs. The flexibility will ensure that the scheme of assistance can work alongside money that might be available from other sources.

**Patrick Harvie:** The policy memorandum mentions issues around some minority ethnic groups, particularly some Muslims who consider it wrong to pay interest on loans. The memorandum says that work is on-going in that regard. Has there been any progress towards developing alternative approaches?

**Archie Stoddart:** The important issue is whether Sharia-compliant loan products are available. The Council of Mortgage Lenders has assured us that they are. However, we need to engage with the council and Islamic groups to ensure that the guidance specifies clearly the criteria that would make such products Sharia compliant.

**Patrick Harvie:** Is the Executive already in dialogue with Muslim organisations?

**Archie Stoddart:** We sought their views through the consultation process but did not hear much from that. We are arranging to meet some Islamic finance experts to ensure that we are clear about the exact terms of what we should be asking in order to get the appropriate answers.

**Mr Home Robertson:** Part 3 of the bill relates to the provision of information on the sale of a house. I think that that means that it deals with the single survey. Lawyers and surveyors have expressed some scepticism about that initiative, which is not altogether surprising. Most of us, however, recognise that the proposal has the potential greatly to benefit sellers and buyers, which is no doubt why it is in the bill. One of the policy objectives behind the provisions has been to improve the condition of private sector housing stock. How will that happen?

**David Rogers:** The idea behind the single survey is to give information about the house's condition to the seller before they put the house on the market and to give information to all prospective buyers. There are three legs to the survey's purpose, one of which you have identified—to provide information about the condition of houses as a market mechanism to deliver improvements in Scotland's housing stock. The background is that most people rely on a valuation report when they buy a house and they do not get much information about the condition of the house. Many people face big repair bills after they have bought. The single survey will expose such information and the repairs that are likely to be required before there is a bid, so it will influence purchase decisions. Therefore, it is a market driver for better house maintenance and repair.

**Mr Home Robertson:** So you see the provision as a useful way of compelling people to take stock and to face the facts about the property that they want to sell or buy.

**David Rogers:** The information will be available.

**Mr Home Robertson:** The pilot has not been terribly encouraging. We are told that there were only 74 such surveys in seven months—there were 65 in Glasgow, five in Inverness, three in Dundee and one in Edinburgh. Those figures may not be up to date, but they still represent a very low proportion of the number of sales that took place. Given the poor response to the pilot, how do you hope to make the scheme work?

**David Rogers:** The pilot had two purposes, one of which was to test the single survey concept. We will have to look closely at the pilot's results to inform the details of the scheme's design. The other key purpose was to test the market's ability to deliver single surveys on a voluntary basis. The Executive believes that it is abundantly clear from the pilot that that cannot be done. The feedback from people who have participated indicates that the big disincentive to sellers is the cost of paying up front for a survey. We envisaged that there could be marketing advantages for some sellers in providing information about their houses, but it appears that the incentives for most sellers are insufficient to make them want to participate voluntarily in the scheme.

**Mr Home Robertson:** Or for their agents to do so, perhaps.

**David Rogers:** We will look closely at the pilot's results, but the bottom line is that, in most cases, there are insufficient incentives for sellers.

**Mr Home Robertson:** The policy memorandum notes that there has been further research on the contents of a purchaser's information pack. Can you give more information about that research and about what evaluation will be carried out of the model that was used in the pilot?

**David Rogers:** I must distinguish between the purchaser's information pack and the single survey. The housing improvement task force recommended that we should have, as well as a single survey system, a system in which the seller provides a pack of information that includes, for example, building warrants or Coal Authority reports up front to prospective purchasers. I am talking about information that a buyer would seek under the current system after making a bid. The purchaser's information pack and the single survey are separate things. Neil Ferguson might want to talk about the research that has been carried out.

**Neil Ferguson (Communities Scotland):** The research has been completed and the steering group still has to meet to discuss the outcomes of that research. It will probably come as no surprise that the conclusion was that information packs were unlikely to be successful if a scheme was market led. The situation is similar to that of the single survey. A test would probably have to be funded by the Executive to iron out any creases. If a scheme were to be introduced thereafter, that would have to be done on a mandatory basis, as such a scheme would not be market led. We are reaching the point of arranging a test and, obviously, we are consulting stakeholders to progress matters.

**Mr Home Robertson:** I take your point about the distinction between the purchaser's information pack and the single survey, although I would think that there would be some overlap. Will there be any further consultations on the single survey before regulations are prepared?

**Neil Ferguson:** Yes. We have been working with stakeholders all the way along the line since the task force recommended the single survey pilot. The steering group consists of representatives of the Royal Institution of Chartered Surveyors, the Council of Mortgage Lenders and the Law Society of Scotland, for example—all the interested parties. We will continue to work with the group, because we have expressed a desire to do so, in working up the final mandatory scheme.

10:45

**Mr Home Robertson:** Has anything arisen from the survey that you would like to change, or are you not ready to comment on that?

**Neil Ferguson:** Can you expand on what you mean?

**Mr Home Robertson:** The pilot scheme has been progressing, albeit rather disappointingly. I wondered whether anything has emerged that you are likely to take out of or add to the single survey package.

**Neil Ferguson:** The steering group discussed a number of issues at length before the pilot, which need to be revisited in the light of the evaluation. One is the inclusion or otherwise of the valuation in the single survey report. That impacts on the shelf-life of the report more than does the condition information. That is one of the issues that might emerge in the report.

**Mr Home Robertson:** Finally, why have right-to-buy sales been exempted from the single survey?

**David Rogers:** The transaction with the right to buy is different. The occupant is there already and there is no competition—there are no people bidding for the house. Therefore, some of the issues that we have not mentioned, but are reasons behind the single survey, will not necessarily apply, such as multiple valuations and the upset price. We have addressed the situation with the right to buy differently. We thought it important that with right-to-buy purchases, like other purchases, there is better information about the house condition. The bill therefore includes provisions to require the selling landlord to provide better information up front. Archie Stoddart can talk about the detail.

**Mr Home Robertson:** I would like to know more about that. I am sure that we have all heard experiences of constituents who have exercised their right to buy and discovered that they were taking on liabilities and responsibilities of which they were simply not aware. That is an important area.

**Archie Stoddart:** In practice, there are two approaches to the issue. The first, which we are exploring, is that the Executive pays for almost all right-to-buy valuations. We envisage—there is provision in the bill to allow us to do this—identifying key elements in the house, such as boilers or bathrooms, and estimating their length of life and how much they would cost to replace. That will build up a picture of obligation that any householder would have, which would be made available to the potential right-to-buy purchaser.

The second element, which causes a lot of concern among landlords, is that where an improvement programme is being carried out and

the owner cannot meet their share, we would identify any programmed works where an owner would be likely to contribute a share and how much that share would be. We hope that, as part of the information provision, owners will have a clear pounds, shillings and pence statement of obligations that they would be likely to face. That does not preclude their buying the house, but it provides them with a much clearer picture of what to expect. If we get the provisions right, nobody should be under any illusion about what they should have to pay.

**Mary Scanlon:** In the consultation paper, you mention exemptions for new-build houses. I have not found anything on this—perhaps it is in the bill or the additional information—but is there not a good case for exempting new houses, given that they come under the National House-Building Council guarantee for 10 years?

**David Rogers:** There are powers in the bill for ministers to make exemptions. Ministers will need to decide what they include in the scope of the scheme. New-build houses are a likely candidate for exemption. The issue whether we should exempt houses that are relatively new but are being sold on the second-hand market is probably more difficult and we will have to consider it carefully. The working assumption is that they would be included in the single survey requirement.

**Mary Scanlon:** Even if they are sold on within the 10-year guarantee period? The guarantee stays with the house.

**David Rogers:** We will have to consider the extent to which the guarantees cover the nature of repairs across the board that owners are likely to face.

**Mary Scanlon:** Have you asked whether the single survey is acceptable to all lenders?

**David Rogers:** During the housing improvement task force discussion of the issue, the Council of Mortgage Lenders took the view that the vast majority of lenders in most cases would accept the valuation provided as part of the single survey. We are aware of only one instance during the pilot scheme when there was a problem. Neil Ferguson can go into the particular circumstances of that case. The Council of Mortgage Lenders is still taking the line that it expects the valuation to be acceptable in most cases, but its members reserve the right to require a different valuation if, for some reason, they have an issue with a particular surveyor or circumstance.

**Mary Scanlon:** Neil Ferguson gave us a presentation in Glasgow, which I found most interesting. He also gave us a sample single seller survey, which contained various category 3 repairs, which are urgent repairs, and category 2 repairs, which are not urgent but for which estimates are required. You mentioned disincentives to sellers. Three estimates are needed for every repair. Sellers could have 39 people coming to the door looking for estimates. While I welcome the provision of such information, is not the system incredibly bureaucratic?

**Neil Ferguson:** Category 1 repairs are those that are urgent and need to be done immediately. Category 2 repairs are less urgent, but will need attention—the recommendation is for estimates to be sought, which is good practice. I imagine that most purchasers would be looking at category 2 repairs as those that could be done further down the line, so they would probably deal with them once they moved in, rather than immediately on buying a property.

**Mary Scanlon:** The problem is that it might be difficult to sell many old houses. The Law Society of Scotland raised the question—as did Archie Stoddart—of how long the single seller survey should stand. I understand that dry rot spreads at a rate of a metre a month. If a single seller survey is six months old, the damage could be considerably more extensive than when the survey was produced. Given that it is likely to take longer to sell older houses, does that concern you? Will new surveys be required to keep pace with the deterioration of the fabric of the property?

**David Rogers:** That is one of the issues that we will have to go into in detail in designing the scheme. The powers are flexible enough to allow different approaches to be taken. The housing improvement task force took the view that the survey should not have a prescribed shelf-life. We need to revisit that and to check whether it makes sense in light of the information from the pilot and from further discussions.

**The Convener:** Cathie Craigie has a short question, but it must be short.

**Cathie Craigie:** In response to Mary Scanlon's questions, it was suggested that we could have exemptions for new houses. My experience is that the guarantee that buyers of new properties receive in many cases is not worth the paper that it is written on. How could a second owner get building companies to honour a guarantee? I would like the Executive to consider that. In addition, I support the principle of a single seller survey, but there seems to be universal support for a valuation survey. Why do you feel it necessary to go beyond the valuation-type survey?

**David Rogers:** On the first point, I can provide the reassurance that you seek. The point that you raise is precisely the sort of issue that we need to look at in designing the detail of the scheme and how it relates to new-build or nearly new houses.

On the second point, of the three purposes that lie behind the single survey, the key purpose is to provide buyers and prospective purchasers with better information about house condition. If the survey was simply a compulsory valuation survey, it would not meet that purpose. The vast majority of purchasers already commission a valuation survey. The problem is that, although a valuation survey is relatively cheap, it does not give detailed information about house condition.

The single seller survey would get over the disincentive to prospective purchasers of having to pay out for a number of full-condition surveys on houses before they bid for them. The core of the proposal is that purchasers should have a full house condition survey; the proposal is analogous to the present homebuyer scheme.

**The Convener:** Part 4 of the bill proposes to re-enact HMO licensing in primary legislation. Why is the change needed? What effect will it have?

**Jean Waddie:** Ever since HMO licensing was introduced, there have been calls for it to be re-enacted in primary legislation. The current system under the Civic Government (Scotland) Act 1982 is very general—it applies to licensing for all sorts of activities, many of which are not even located in premises and which certainly do not relate to housing. It is difficult to tailor the current provisions to a housing situation. The present provision also gives ministers very little flexibility. The 1982 act says that the activity must be licensed but, after that, all the decisions are at the discretion of the local authority.

Bringing HMO licensing under specific housing legislation will make it easier to customise the provisions and make them appropriate for a housing situation. It will also make it easier to link HMO licensing with other housing issues, in particular those that relate to renting, tenancy law and local housing strategies. The bill includes powers for ministers to prescribe measures that will make HMO licensing consistent across the country.

**The Convener:** Although I understand the need to have consistency across the country, I am also aware that some parts of the country have higher concentrations of houses in multiple occupation than other areas do. What discussions have you had with the Convention of Scottish Local Authorities and the local authorities that have high numbers of HMOs about the local authorities' loss of flexibility and discretion in the process? The local authorities have considerable expertise in the field: they are responsible for ensuring that the HMO licensing scheme operates effectively and that it provides protection to those who rent HMO properties.

**Jean Waddie:** The Executive has a lot of contact with local authorities; I am involved in a lot of informal contact about licensing. Local authorities have welcomed the change in relation to primary legislation. The Executive does not propose to impose things on local authorities that the authorities do not want to do. There are issues, particularly with regard to fees, and ministers will be able to prescribe perhaps not how much the fee should be, but how it should be calculated and how the fee scale should look. They will be able to impose the licensing conditions that should be included in all cases.

However, there will continue to be a lot of flexibility for local authorities to make provision for the situation of individual properties. In general, the change will mean that we can make guidance to which everyone will refer. We are looking not to impose things but to develop best practice; we want to ensure that everybody uses the good-practice model.

**The Convener:** Having made the case for why we should include the regulations in primary legislation, I am interested to know why the Executive has chosen to ensure that implementation will not take place in 2007. Why is there a delay in implementation? If the changes are necessary and need to be done, why will they not be implemented when the rest of the legislation is implemented?

11:00

**Jean Waddie:** I appreciate that point. Local authorities have very much welcomed the movement of the provisions into primary legislation, but they have also said that they do not want too much upheaval now. Licensing is just getting to the point of settling down—people have their procedures in place and the system has started to work effectively. Many other provisions on renting are coming in and the idea is to get landlord registration sorted and up and running. There will be general local authority engagement with the private sector and accreditation schemes. We want to give local authorities a long look at what the new legislation provides so that they can make changes in an orderly manner and move across gradually. There are not many changes that local authorities could not implement if they wanted to do so, so they will be able to make gradual changes and we will be able to switch the legislation when we are ready.

**Christine Grahame:** I will ask a few questions about mobile homes. People in mobile homes have been a very vulnerable section of the community. I want to check what a mobile home is. The policy memorandum states that it is a

"movable structure which is placed on a stance on a defined site."

I take it that that refers to the large, fixed mobile homes on wheels and excludes caravans, camper vans and all those other things, but that is not stated in the bill, which does not contain a definition.

**Roger Harris:** The definitions are contained in the legislation that the bill amends, which includes the Caravan Sites Act 1968 and the Caravan Sites and Control of Development Act 1960.

**Christine Grahame:** The definitions are in that legislation.

**Roger Harris:** Yes. Essentially, a mobile home is a caravan for long-term residential use. The term "mobile home" has been adopted in Scotland to clarify that it does not have to be a touring caravan. It is a structure that is capable of being moved.

**Christine Grahame:** I picture it as being large with a living room and so on. It is parked for quite a long time and it is used instead of a property rather than for touring.

What are the key changes in the bill that will protect people who are in mobile homes?

**Roger Harris:** This is a complex area of the law.

**Christine Grahame:** That is why I am asking about it.

**Roger Harris:** The changes in the bill focus on the relationship between the owner of a mobile home and the site operator who lets a stance to them. The key point is the balance between those two people. The bill contains what we think are some core, self-evident improvements in that relationship. Some are in connection with the Mobile Homes Act 1983 and some are in connection with the Caravan Sites Act 1968.

The main changes relate to the contract between the owner and the operator. There are already implied terms, in other words statutory requirements for how the contract should operate and what should be in the contract, which are taken to be part of the contract whether or not they have been agreed by the individuals concerned. The first of the main changes in the bill is that the site operator should give the mobile home owner a written statement of the terms on which a stance is let before the person buys the home. If a person buys a mobile home direct from a site operator, which is a fairly standard arrangement, they could pay £30,000 for the mobile home and, as the law currently stands, then find that the terms on which the stance for that home is let are not revealed or sorted out until they have paid the money over. They are over a barrel. The change that we propose will ensure that people know the terms of letting the stance before they commit to buying a mobile home.

**Christine Grahame:** What if the site operator fails to inform the person of the terms?

**Roger Harris:** In that case, the terms will be ineffective and it will not be possible to enforce them.

The bill also provides for a clear six months, starting from when a written agreement is made, in which both parties to the agreement may apply to the court for a variation in what are called the express terms—the terms that have been agreed between the parties. At present, a person who has an agreement has six months to go to court for a variation, but they might not get the agreement in writing until the fifth month, so they are stuck. The bill will change the time limit in order to solve such problems.

**Christine Grahame:** I do not like to put words in your mouth, but the bill puts the balance more in favour of mobile home owners, who have been vulnerable in the past. If the bill becomes law, either in its present form or with amendments, how will people know their rights? Probably, they will not read the bill, so will guidance or information about what they are entitled to be made available in an ordinary form, rather than in legalistic language?

**Roger Harris:** The parties will have a written agreement. We will deal with the issue in more detail as the process continues, but I expect that the agreement will have to set out the implied terms as well as the express terms.

**Christine Grahame:** It would be useful for people to know what their rights are and what they are entitled to before they have an agreement.

**Roger Harris:** That links to the general issue that was mentioned earlier of people's awareness of the measures. People will do deals on the shake of a hand, but it is incumbent on us to publicise the measures as widely as possible.

**Christine Grahame:** Some respondents to the consultation felt that the bill could have gone further in the interests of mobile home owners. What requests were not included in the bill?

**Roger Harris:** A number of provisions in the 1983 act govern the relationship between mobile home owners and site owners and the implied terms. The improvements to those provisions that were suggested but not included in the bill were much more open to debate and were not self-evidently required. We need to be sure that we do not introduce measures that make it uneconomic for a site operator to run a site, the result of which would be the disappearance of the site and 30 or 40 homeless people. That is why we are seeking powers for ministers to vary the implied terms further after consultation. A carefully considered package of rights and responsibilities between

both parties is required that protects mobile home owners effectively, but does not undermine the prospect of their having the mobile home stance in the future.

**Christine Grahame:** Run that past me again. Are you saying that, when the bill becomes law, ministers will be able to issue regulations that vary the provisions if they do not operate as expected?

**Roger Harris:** The bill will change some aspects of the relationship; other aspects, such as the information that the site owner should give to the mobile home owner, will be open to variation if the powers that we seek for ministers are approved. After consultation, we would introduce a package of measures in relation to rights and responsibilities for owners and site operators.

**Christine Grahame:** Would that package be introduced through regulations?

**Roger Harris:** Yes.

**Cathie Craigie:** Through section 155, in part 6, the Scottish Executive will amend the Antisocial Behaviour etc (Scotland) Act 2004 to give the Scottish ministers the power to issue a letting code. A large number of the people who responded to the consultation on the bill said that they wanted the costs and the administrative burden placed on local authorities to be kept to a minimum. Does this part of the bill address that concern?

**Roger Harris:** We are dealing with costs through our work on implementation of the landlord registration scheme in the Antisocial Behaviour etc (Scotland) Act 2004. In developing the details of implementation, one basic objective is to provide an effective tool for dealing with the worst landlords that has the minimum impact on local authorities and on landlords. I would not want to pre-empt the package that the working group comes up with, but the landlord could be required to make a statement during the application process to say that he is aware of the existing legal obligations and will comply with them—there is quite a wide range of such obligations, including the repairing standard. That would help to short-circuit much of the process, because it would be clear where the landlord is starting from.

On how best to administer the process, we are considering technological fixes, for example using web-based approaches. That is how we would try to keep down the bureaucratic burden and the costs both for local authorities and, through fees, for landlords. In that sense, the particular provisions in the bill that you mention will not have a significant impact. What they will do is to reinforce provisions in relation to the fit-and-proper-person test, which is at the core of registration. The test is wide and local authorities, as well as the matters specified in the Antisocial Behaviour etc (Scotland) Act 2004, can take into account what in their view are relevant matters. We are strengthening the test by making it clear that it is proper to consider a landlord's relationship with an agent and compliance with a letting code, if and when ministers establish such a code. The costs involved will be affected by how the local authority considers its decision on the fit-and-proper-person test.

**Cathie Craigie:** I suppose that what a landlord would require to do when they were applying for registration would be to tick a box to say that they were aware of the legal obligations.

**Roger Harris:** And possibly sign on a dotted line.

**Cathie Craigie:** I think that the City of Edinburgh Council is one of the areas that have been operating a pilot code and accreditation scheme. Do you have any experience of how that has gone?

**Roger Harris:** Do you mean voluntary accreditation?

**Cathie Craigie:** Yes.

**Roger Harris:** Those pilots are still in progress. Their purpose is to find out how best to provide an incentive to landlords to enter the scheme to demonstrate that they let to high standards. We were pleased with the level of enthusiasm when we invited local authorities to get involved with pilots, and with the enthusiasm from landlord organisations. One of those organisations is leading one of the pilots, and another is a partner in a pilot. It is early days. We are not at the stage of being able to see what take-up there will be among landlords, particularly small landlords, at the grass-roots level, but the work has been progressing well and there has been an enthusiastic response.

**Cathie Craigie:** Earlier, Donald Gorrie mentioned committee members' visit to Perth. During that visit, the fact that someone who has no professional qualifications or proper training as a landlord might find themselves owning three properties was mentioned. Should the Executive give local authorities a duty to provide training, or should that be organised by the professional organisations that represent landlords?

11:15

**Roger Harris:** The various organisations are a resource that is available to landlords, but the key point is that, through registration, the local authority is making contact with the landlord and making clear the legal obligations and the standards that are regarded as normal good practice. Recently, we have done much to encourage local authorities to engage with the

private sector, in particular the private rented sector. Accreditation is a key aspect of that approach, but any voluntary accreditation must sit within a framework of much closer engagement with the private rented sector. Moreover, local housing strategies are now cross-tenure, and local authorities are expected to engage with a potentially important part of their housing supply.

It might be helpful to clarify how accreditation relates to the letting code. The powers that the bill gives ministers to make a letting code are subject to their providing an assessment of the effectiveness of the existing range of legal obligations and of voluntary accreditation. We would not want to undermine accreditation's potential success by apparently producing another set of standards while accreditation is still at the pilot stage and while we are trying to establish whether it will blossom. For a start, landlords might think it sufficient simply to comply with one set of standards. We need to bring together a package that allows different ways of engaging with the private sector. Accreditation is an important part of that, because it harnesses the market and incentives. In many ways, registration, as modified in the bill, complements that.

**Cathie Craigie:** The majority of private landlords organise their business well and care about the person who is renting from them. However, a minority do not do that. During the passage of the Antisocial Behaviour etc (Scotland) Bill, a number of members were keen that action should be taken to stop rent that is paid through housing benefit. At the time, the Scottish Executive and the Department for Work and Pensions were discussing the matter. Has any progress been made on that? Given that discussions are still on-going, would it be appropriate to cover that in this bill if ministers might need powers in future to deal with the situation?

**Roger Harris:** I believe that you are referring to the reserved matter of making payment of housing benefit conditional on the landlord being licensed. As that is a matter for Westminster, it is not appropriate to cover it in this bill. The issue remains on the agenda for discussion between us and the DWP, but I have nothing specific to report at the moment.

**Donald Gorrie:** I want to ask about rights of entry, which are covered in sections 156 to 159. It is fair enough that there should be a way of enforcing improvements where a person's conduct or neglect of a property causes problems for their tenant or for the neighbouring flats. However, if an owner-occupier is neglecting his detached property and the council decides that, although the situation is bringing the whole area down, it is not doing anyone any harm, could the council proceed down the route of grants or enforcement as outlined in the bill?

**Archie Stoddart:** I will outline what the rights of entry are and then deal with that point, which follows on naturally. The rights of entry cover three areas. First, they may be used to establish whether there is an issue, for enforcement and to confirm that an issue has been addressed. Linked to that is whether an offence is taking or has taken place, and the provisions spell out the circumstances in which constables can attend. Provisions then qualify the process, in that reasonable notice of 24 hours must be given and, if entrance cannot be gained, there must be a warrant. An application to a sheriff for a warrant can, of course, be challenged.

Although we spoke earlier about the focus tending to be on tenemental properties, the powers in the bill apply equally to individual houses. If the local authority were concerned about a house that stood alone and wanted to establish whether it should create an HRA, the powers would apply. The answer to your second question about whether an individual house could be involved is yes.

**Donald Gorrie:** We have had time to read the bill only quickly, but the part on rights of entry does not seem to talk at all about preliminary negotiation. One could interpret that as saying, "Right, there's a problem—boom, we go in." Earlier, we had a discussion about negotiating to take the landlord along to a property before putting the boot in. Should not that be possible?

**Archie Stoddart:** The powers are underpinned by a process. One of the issues that local authorities identified as a difficulty was that of obstructive owners. It might be worth reinforcing in guidance the fact that we would expect the HRA process to be followed, a declaration to be made, a copy of that declaration to be issued and people to have the facility to make representations to the local authority. It would not be good practice to follow up a letter with a warrant straight after someone first hears about a matter. Perhaps we could amplify that in guidance.

The reason why we might be slightly edgy about having to set out all the processes is that there will be circumstances, such as an emergency, in which someone will just have to go into a house or flat, and we would not want to constrain that.

I draw members' attention to another provision in the bill that is an important improvement on existing provisions: the right of access to an adjacent property when that is required to do work. Local authorities have reported a number of difficulties when an owner has said quite reasonably, "I can't do the work unless I can access the next-door property to put up

scaffolding" or whatever. The bill builds in a right in such instances, but it also builds in a process by which compensation can be determined through arbitration if any damage is done.

**The Convener:** I have a couple of final questions. The first is about the consultation that you conducted. During the consultation, you indicated that it was the intention to implement the EU directive that relates to energy performance certificates. Why is that not contained in the bill?

**Archie Stoddart:** The EU directive applies to both domestic and non-domestic properties. At the consultation stage, we formed a view on whether that area would best be developed through the bill or through another mechanism. Our colleagues who have the lead responsibility came to the view that it would be better developed through regulations arising from the Building (Scotland) Act 2003, because that would capture both sides of the equation. The issue is a technical point about how the EU directive is taken forward rather than the fact that the issue is not being taken forward.

**The Convener:** Thank you for that clarification. My final question is about how the Executive has proofed the bill. The Executive is committed to equality proofing and I am interested to know what you consider the implications of the bill to be for equalities, human rights and sustainable development.

**Archie Stoddart:** On equalities, the task force work was part of the embedding equalities in housing pilot. First, the conclusions of the task force were tested and verified against a number of identified groups and that was the platform that we built on. Secondly, we identified the specific areas of disability and finance, in particular Islamic finance. We are progressing work on that in the context of preparing the guidance.

On sustainability, we take a commonsense approach of considering that if buildings are maintained and we establish a baseline of quality, that will enhance the sustainability of buildings and of wider communities. Several aspects of the bill reinforce that in relation to areas and individual properties.

Unless there are other issues that you want to explore, the only example of the human rights context in the bill is the fact that where notices are served or there are requirements on people, the provisions are underpinned by a clear appeals process. For example, unlike for housing action areas, each activity in a housing renewal area will require an individual work notice with all the panoply of appeals that accompany that.

**Mr Home Robertson:** I seek clarification on the subject of tied housing. In my experience as an elected representative, some of the most difficult cases involving private rented housing concern tied housing. That covers a multitude of evils—everything from tied houses, to manses, to Bute House at the other end of the equation. Will you confirm that section 12, entitled "Tenancies to which repairing standard duty applies", will cover such properties? This is a difficult area, because in such cases the landlord is also the employer and it can be particularly difficult for the tenant to raise issues.

**Roger Harris:** Much of the difficulty in relation to tied housing comes from the combination of a housing and an employment arrangement. Whether the landlord is subject to the repairing obligation hinges on whether a particular arrangement is a tenancy, which will depend on the facts of the case. In essence, a tenancy exists where the parties are identified, there is an identified period for the let and the rent and the premises are identified—that is my layman's understanding. In general, we think that such an arrangement would usually apply in relation to tied houses, but one would have to take account of the particular contractual arrangements between the employer and the employee in relation to the house to understand whether the provisions will apply.

**Mr Home Robertson:** I apologise for bringing in that point at the last second, but we need to return to the subject.

**The Convener:** I thank the witnesses for their attendance this morning. I am sure that all members of the committee found their detailed answers very helpful at the beginning of what will be a long and interesting process.

I now suspend the meeting until 11:30 to allow for a changeover of witnesses.

11:27

*Meeting suspended.*

11:33

*On resuming—*

**The Convener:** I welcome everyone back and thank our second panel of witnesses for joining us. Andrew Robinson and Dave Cormack are from Communities Scotland and will give evidence on the 2002 Scottish house condition survey.

**Donald Gorrie:** On the survey's discoveries, will the witnesses give us the main headlines? Did the survey identify changes or movement in relation to the discoveries of previous surveys?

**Andrew Robinson (Communities Scotland):** Are you interested in a particular aspect of the housing stock? The survey's main findings cover a number of topics.

**Donald Gorrie:** If you give us the headlines, I am sure that colleagues will pursue individual matters.

**Andrew Robinson:** The house condition survey covers all aspects of the Scottish housing stock, such as tenure, disrepair, energy efficiency, and the work that householders do, but I will try to supply the main headlines. We discovered that the majority of the Scottish housing stock has some disrepair, albeit minor in most cases. Repair costs for the stock have come down slightly in relative terms, although they have gone up in real terms.

The stock is more energy efficient than it was in 1996, when the previous survey was carried out, largely because more of the stock has double-glazing and insulation.

We discovered that Scottish households spent roughly £3 billion on their dwellings in 2002, although a large proportion of that money was spent on painting and redecoration rather than on repairs.

**Donald Gorrie:** If you were the referee in a contest between the Scottish Executive and decaying housing, who would you say is winning? Are house conditions getting better or worse?

**Andrew Robinson:** That is a difficult question. In 1996 approximately 1 per cent of the housing stock was below the tolerable standard and in 2002 the figure was still approximately 1 per cent. However, if we consider other factors and standard amenities, such as central heating and double-glazing, we find that the stock seems to be improving.

**Christine Grahame:** You said that people spent quite a lot on painting and redecorating. Can we assume that because of all the do-it-yourself and decorating programmes on the television, people would rather redecorate than get into the nitty-gritty of repairing things like downpipes and rones?

**Andrew Robinson:** It would be hard to ascertain the effect of DIY programmes, but people spend a considerable amount of money on DIY and on work that we would regard as simple decoration rather than on repairs or improvements.

**Christine Grahame:** Tarting up the house.

**Andrew Robinson:** Yes.

**Christine Grahame:** Perhaps people 10 years ago were more likely to spend money on basic repairs because they were not being influenced by all the television programmes. I wondered whether the survey had detected that.

**Dave Cormack (Communities Scotland):** The 1996 survey identified exactly the same situation. People tended to install new bathroom suites and put in new kitchens rather than repair the house.

**Christine Grahame:** So the programmes have not had an impact.

**Dave Cormack:** There has been no obvious change since 1996.

**Christine Grahame:** Donald Gorrie asked a general question, but I will be more specific. What were the survey's main conclusions about disrepair in the private sector? Can you identify four or five bullet points?

**Andrew Robinson:** The survey found disrepair in most houses in the private sector, although most of that is very minor, as I said. There is a disproportionate amount of disrepair in the private rented sector, compared with the rest of the Scottish housing stock.

**Christine Grahame:** What is the proportion in relation to privately rented and owner-occupied houses?

**Andrew Robinson:** I am sorry; are you asking about disrepair?

**Christine Grahame:** You said that there is a higher proportion of disrepair in the private sector. What percentage of stock is in disrepair in the private sector, compared with the owner-occupied sector?

**Andrew Robinson:** I do not have the figures to hand, but we can provide them.

**Christine Grahame:** Disrepair covers a wide range of matters. Did the survey identify areas of disrepair in the private sector that are on the increase and causing concern? Can you give answers for the rented and the owner-occupied sectors?

**Dave Cormack:** We would have to come back and provide the committee with exact details. When we considered disrepair, we covered all of a property's main building elements—external and internal. By "element" I mean, for example, the roof covering, the slates or the windows. In common areas we considered doors, windows, stairs and wall structure. We can provide data on percentages if the committee requires that information.

**Christine Grahame:** It would be useful for the committee to have an understanding of the nature of the disrepair. We are considering work notices and enforcement orders, so we would be interested in knowing whether the nature of disrepair has changed over the decades. Are roofs in Edinburgh and Glasgow getting worse? Do more windows need replaced? What is the nature of the problem?

**Dave Cormack:** Change is usually slow to take place. The surveys are snapshots in time, so we are looking at 1991, 1996 and 2002. We could look at the figures, but we would have to provide you with the information later, as we do not have it to hand.

**Christine Grahame:** That would be useful.

**Andrew Robinson:** I can give you some breakdown of the figures for disrepair between owner-occupied stock and private rented stock. The private rented sector stock accounts for 8 per cent of the overall stock and 14 per cent of the total patch repair costs. So, as you see, the level of disrepair in the private rented sector is disproportionate.

**Patrick Harvie:** I want to pick up on some of the differences between the private rented sector and the owner-occupied sector. Does anything in your surveys tell you whether the level of disrepair in the private rented sector is the result of neglect because the landlords are not in occupation? Or are houses that are already in a poor state of repair the ones that end up being rented out?

**Andrew Robinson:** Unfortunately, we cannot tap into the sources of why dwellings are in disrepair; we simply assess the extent of the disrepair. It would be pure speculation to say whether the level of disrepair in the private rented sector was the result of landlords not looking after their stock as well as owner-occupiers.

**Scott Barrie:** Are any specific repair problems associated with certain types of tenure?

**Andrew Robinson:** Are you asking whether there are higher levels of certain kinds of disrepair?

**Scott Barrie:** Yes, depending on the type of tenure.

**Andrew Robinson:** All the information is contained in the house condition survey main report. We could give you a detailed breakdown of the differences in disrepair across all the elements of the dwelling and the differences in repair costs, broken down by owner-occupier and private renter.

**Linda Fabiani (Central Scotland) (SNP):** I am interested in the differences between different regions. Are there different types of disrepair in, for example, Argyll and the islands? There must be differences between the kinds of disrepair that exist in such places and the kinds of disrepair that are found in cities. Also, in smaller areas, are the repairs that are required different for different types of housing stock—for example, for old tenement stock and peripheral estate stock? Are there different patterns of disrepair in different regions and for different stock types?

**Andrew Robinson:** That is difficult to say with certainty from looking at levels of disrepair in small areas. We can look at the differences between unitary authorities, but we have a fundamental issue in relation to sample size. If we wanted to compare the situation in peripheral estates with the situation regarding other houses, our sample size in peripheral estates might not be large enough to tell us anything meaningful.

As for differences in types of repair, or differences in the extent of disrepair, between urban and rural areas, we have found that there is no real difference between the proportions of disrepair in urban and rural dwellings. We could look in more detail at the type of disrepair that urban and rural dwellings have, but we have not done that yet.

**Scott Barrie:** What were the 2002 survey's main findings on the needs of disabled people and the adaptations that have been done on their behalf?

**Andrew Robinson:** The house condition survey asks respondents whether they have had an adaptation made to their dwelling and whether they feel that they need one. We also assess the dwelling according to the barrier-free standard. We estimate that very few dwellings in Scotland meet the barrier-free standard, for various reasons. We can run some analysis on the report's main findings about people who need adaptations and get some estimates for the committee on that.

**Scott Barrie:** That would be useful to inform us of what the need is and where we stand. Do you know how many properties have been adapted, according to respondents to the survey, and what that figure is as a percentage of the total stock?

11:45

**Andrew Robinson:** We ask about several adaptations, so we can break down the figures for adaptations such as ramps and widened doors. We estimate that about 11 per cent of dwellings have at least one adaptation and that about 4 per cent of households say that they require an adaptation. We can break that down to show that 1 per cent of households have a ramp and 1 per cent have had relocated light systems, for example. We can provide further analysis of the figures if the committee wishes.

**The Convener:** In conducting your survey, how did you interpret the tolerable standard?

**Dave Cormack:** We have adopted a standardised method for the tolerable standard. It varies among authorities. Authorities are allowed to interpret the tolerable standard, which produces local variations. In 1991, we found that problematic, so in 1996 we adopted an agreed

standard. We sought advice from environmental health officers in rural and urban areas and we adopted a briefing standard, which officers provided to surveyors.

One of the main contentious matters was dampness and condensation, or rising, penetrating damp. We agreed a percentage below which a house was not BTS and a percentage above which a house was definitely BTS. A grey area in the tolerable standard always existed for dampness. Advice was given on the location of dampness and the extent that would define whether a house was BTS. That is and always has been subjective. In one situation, four environmental health officers visited the same dwelling—two declared it BTS and two said that it was not BTS. The question is as subjective as that. We try to standardise throughout Scotland and we have agreed that with the relevant environmental health people.

**The Convener:** Having used a standardised definition of the tolerable standard, some local authorities—particularly Glasgow City Council—have expressed concern that it does not allow for local flexibility, so a true reflection is not produced of properties that are below tolerable standard. How do you respond to that, particularly if we are to take your survey as an accurate reflection of the number of properties that are below tolerable standard?

**Dave Cormack:** The survey is national, so we consider stock nationally. We do not consider Glasgow separately. That was one of the drivers. Differences in interpretation exist. Some authorities are about to consider lead in piping to be a BTS failure. The current regulations do not say that; that is a local interpretation. If the regulations were changed and the presence of lead in piping were included, we would take that into account, but we currently do not have the facilities to measure lead in water.

**The Convener:** Are your survey and the information that it provides undermined by the fact that you cannot agree the BTS definition nationally?

**Dave Cormack:** I do not think that the survey is undermined. We have always held up our hands and said that the BTS figure is a minimum. The least number of dwellings is given; we accept that more such dwellings are out there, but we do not know how many. We cannot measure the failure rate for drinking water, for example, because we do not undertake chemical analysis. We recognise, and admit quite clearly, that the BTS figure is a minimum. We have tried to make estimates using other methods but we have not been able to do that.

**Cathie Craigie:** I appreciate the difficulty that there must have been in compiling all the information and producing a report that could give an overview of what needs to be done. However, there is no doubt about the fact that the 2002 house condition survey has influenced the Executive's thinking and the bill that we are discussing. The information that has been provided has obviously been valuable to the policy makers.

The survey estimated that the total visible repairs for the housing stock would cost £1.8 billion and that the comprehensive repair cost would be £6.72 billion. That is a lot of money for local authorities and the private sector. What were the most common types of disrepair and which are the most expensive?

**Dave Cormack:** We would have to do further analysis on that and get back to you. We have tried to give an overall picture and, unless we are asked a specific question, we do not know what information to provide. We have a huge amount of data. We answer ad hoc questions all the time—I think that we have answered 200 of them since the report was published.

**Cathie Craigie:** Will you be able to tell us how the figures were arrived at?

**Andrew Robinson:** We would be happy to co-ordinate with the committee and the clerks. If you draw up a list of questions, we will endeavour to answer them.

**Cathie Craigie:** The committee would be interested to know whether there was a common thread running through the repairs, for example whether the costs relate primarily to roofs that have been allowed to fall into disrepair.

**Andrew Robinson:** The issue of the elements that are in disrepair is complex. The main report demonstrates that the biggest element of disrepair is external paintwork. The external paintwork of 32 per cent of dwellings is in disrepair, but I think that I am right in saying that that is a low-cost item. In relation to high-cost items, the principal roof structures of 1 per cent of dwellings were in disrepair.

There is complex interplay between the extent of disrepair and the cost of repair. We can try to provide figures relating to the elements of high-cost disrepair rather than big elements of low-cost disrepair.

**Cathie Craigie:** If external paintwork that is in disrepair is not dealt with by owners at an early stage, it can lead to serious disrepair. Is that the point that you are making? It might not seem like you are doing a lot when you give your building or your windows a lick of paint but, if people are not

encouraged to maintain their property in that way, major problems will arise.

**Andrew Robinson:** Yes, such elements of disrepair can lead to further deterioration. If people do not paint their windows, the frame will become damp and will deteriorate and there could be leakage into the main fabric of the dwelling. There is a stacking-up effect. That is why we pick up all those elements in our report.

**The Convener:** I thank Mr Robinson and Mr Cormack for attending. They may now leave but, unfortunately, committee members may not.

# Petitions

## Terrestrial Trunked Radio Communication Masts (PE650)

## TETRA Communications System (Health Aspects) (PE728)

## TETRA Installations (Planning Process) (PE769)

11:54

**The Convener:** Agenda item 2 is consideration of three petitions on terrestrial trunked radio communication—or TETRA—masts in Scotland. The committee has considered petitions PE650 and PE728 before and is invited to reconsider them in the light of further developments. Petition PE769 has been referred to us for consideration because it is similar in subject matter to the other two. The committee has received from the Executive a response to its questions on PE650 and PE728. The petitioners of PE650 have sent some research that they have conducted, and additional information has been sent on the health impact of 3G—third generation—telecommunications.

Do members have any comments on the Executive's response, the information that the petitioners have submitted or the additional material that has been received?

**Donald Gorrie:** I wonder what progress, if any, has been made on an aspect that we discussed previously; namely, whether research should be undertaken into the experience of other countries. The petitioners argue that there is good evidence from other countries but that the Government does not accept it. If research has not yet been done, I wonder whether we should ask the Scottish Parliament information centre to compile a paper on the experience of other countries. I am sure that the petitioners would supply SPICe with chapter and verse on statements from other countries that they have found helpful.

Our difficulty is that we are not in a position to prove the medical arguments one way or the other; it is not our job to do that. If there is an issue about that, it is for the Health Committee. From the planning point of view, it would be helpful to know about the experience of other countries. Perhaps SPICe, the Executive and the petitioners could supply us with that information, which we could then take into account when we consider the forthcoming planning bill.

**The Convener:** Paragraph 15 of the paper by the clerk refers to other countries' experiences, but part of the difficulty is that many other countries

are in exactly the same situation as the United Kingdom in respect of a lack of material.

**Christine Grahame:** I was interested to read the Local Government and Transport Committee's report on opencast mining, to which we referred last week and which crossed planning issues, health issues and so on. The petitions are in the same area. Paragraph 6 of the paper by the clerk states:

"the Health Committee agreed to appoint a reporter on health matters to participate in any Communities Committee inquiry."

It might be that we should consider using two reporters: one from the Health Committee, and one from our committee who would consider just the planning aspects and how far planning should be involved in health issues.

Unfortunately, petitions such as these sometimes get kicked from pillar to post. The petitions fall into the same category as petitions that were submitted by communities that have been affected by opencast mining. The research that Donald Gorrie requested could be included in the reporters' paper, which we would have before us with the paper on opencast mining when we examine the forthcoming planning bill and consider to what extent health issues should be part of that bill's context. The Executive's response says that

"health concerns can in principle be planning considerations",

but I think that there should be stronger recognition of such concerns in planning issues where there are obvious questions about health risks.

**The Convener:** Before I allow Patrick Harvie to come in, I point out that the committee will undertake considerable work on the forthcoming planning bill. I therefore have reservations about our appointing a reporter, given that we will consider the planning process in general when the planning bill is published later this year.

**Christine Grahame:** I suggested our appointing a reporter because the Health Committee will get involved in the issue only if we start something.

**The Convener:** I understand that when the Health Committee took a decision on the petitions, you were its convener and that you said that the Health Committee was far too important and busy to deal with the matter.

**Christine Grahame:** No—I got a reporter appointed, which was as good as it got.

**The Convener:** Perhaps the Health Committee must be reminded of its responsibilities on the issue.

12:00

**Patrick Harvie:** I look forward to your reminding the Health Committee of that, convener.

I agree in principle with Christine Grahame that it would be unfortunate if we continued to kick the petitions from one committee to another. We should do some substantive work on them. Every time the issue has been discussed, there has been broad agreement that real issues and serious concerns have been raised, but the petitioners have not yet had the opportunity to speak about their concerns formally through Parliament's processes. Similarly, the industry has not had a formal opportunity to put its case. That leaves the matter in the realm of informal lobbying and it is clear that the industry has far more resources to do that than the petitioners have.

There are contradictions in the Executive's response. Although the letter states that

"health considerations can be material",

in the middle of page 3, it states that it is for central Government

"to decide what measures are necessary to protect public health."

The Executive has decided that there is no public health issue and that local authorities do not need to consider further the concerns about health aspects in considering planning applications.

One issue that has been outstanding since Parliament started to consider the matter is that research is on-going. Even the Home Office does not say that it is satisfied that there are no health risks, but merely that none has yet been demonstrated. Even though research is on-going, the TETRA system has been rolled out and switched on. There is a strong case for our taking action on the petitions, either in the way that Christine Grahame suggests or in other ways that members might propose.

**The Convener:** I will let members have their say, after which we will go through the clerk's paper and consider individually the recommendations as to how we should proceed. There are issues in relation to community involvement, but I hope that as we consider the forthcoming planning bill, the committee will regard as a priority the involvement of communities and individuals in the planning process.

**Mary Scanlon:** As Patrick Harvie mentioned and as our paper states:

"material planning considerations are not defined in legislation and are … a matter for the courts."

We might want to consider that point in the autumn when we see the proposed planning bill, although I appreciate that that suggestion will probably not satisfy the petitioners who are with us

today. However, we need to consider not just TETRA masts, but opencast coal mines, landfill sites and wind turbines. In the Highlands, some people have researched the effects of wind turbines, although I do not know whether the research is accurate.

The minister's letter does not really give us much more information than we already had. The three points at the top of page 3 are: that

"TETRA signals have no effect on calcium exchanges";

that

"Airwave masts do not pulse";

and that

"hands-free kits transmit very little energy".

The letter also states that more research is being carried out. It has been suggested that we should ask researchers to collate evidence, but the final page of the minister's letter states:

"We are not aware of any research on the current approaches within the rest of Europe to health concerns".

I would not say that I have read every word, but I have been reasonably diligent and I cannot find anything that really suggests that there is a serious health concern. That is for the Health Committee to consider, but this committee should consider—as has been done in Wales—whether health should be a material consideration in planning legislation. I am sorry if that point is not helpful for today's discussion, but nothing has jumped out at me as being categorical and empirical proof that there is a serious health concern.

One of my colleagues tells me that the radiation that is emitted from a TETRA handset is 1,000 times less than that from a mobile telephone. That may be right or wrong, but it is the kind of information that we need. No one is talking about banning mobile telephones.

**Mr Home Robertson:** They are banned in this committee.

**The Convener:** Some people tend to leave them switched on, or even to use them.

**Mr Home Robertson:** It seems to me that the committee has neither the remit nor the expertise to judge medical issues. If there is any evidence whatever that any new structure or process could be detrimental to health, it must be the responsibility of the chief medical officer to advise the Executive and thereafter for the Executive to act on that advice. That would be the correct route. I take the point that colleagues have made about the case for introducing medical considerations into the list of material considerations in planning issues, but that discussion will be for later in the year.

**Cathie Craigie:** Patrick Harvie's point about the petitioners being kicked about from one place to another might be right. People have been kicked about. Other committees have either passed on their responsibility or have misled people into thinking that another committee might have something to offer.

We clearly cannot get involved in health issues: we must take account of them, but health is not within our remit. If people have serious health concerns, they should address them to the Health Committee. MSPs and committees of the Parliament should not drag things out and give people hope that they will conduct an inquiry when they will not.

It was right that we wrote to the Executive, but the Executive has failed to answer some of our questions. We asked the Executive to ensure that it gave the public the facts about TETRA, to allow people to consider those facts and so to make well-informed decisions. It would be difficult even for us to sit here and make well-informed decisions. On one side, the Executive says that there are no medical concerns but, on the other, the petitioners have listed a host of medical concerns. We need to give the public the facts and we need to take decisions based on those facts. Donald Gorrie suggested that we gather relevant information from other parts of the world and that we use that during our consideration of the planning bill later this year. That is the way forward. We must ensure that people in communities across Scotland feel that they can be heard, can be involved in the planning process and can have their views taken into account by the democratically elected representatives who take decisions on planning matters.

**Scott Barrie:** I have little to add, other than to say that it is unfortunate that the petitions have been around for such a long time. There has been no closure on them, which gives out an unfortunate signal. One committee must grasp what is obviously a difficult nettle. We are being asked to prove a negative—that is always difficult to do.

The Health Committee initially ducked its responsibility in offering a reporter to another committee when it had not even agreed to have an inquiry. That was a bit of a cheek, but maybe we can gloss over it today.

**Christine Grahame:** I did not do that single-handedly; it was the committee's decision.

**Scott Barrie:** I said that the Health Committee made the decision. However, we need to give some signal—if that is not an unfortunate pun—to the petitioners that we are listening to their concerns. We have responsibility for planning, and a major planning bill will be forthcoming later this

year, which means that the issues coincide. When we come to examine the planning bill in detail, we can consider the issues that the petitioners and other people have raised over the past couple of years, and examine them as material considerations.

**The Convener:** Like other members, I am keen to let the petitioners know where they stand because they have brought issues to Parliament that are of genuine concern. It is important that they feel that their engagement with the process has been worth their while. To push them around from pillar to post is in no way helpful. For that reason, I am keen for us to decide what we can and cannot do, and to decide how we will progress matters so that the petitioners know where they stand and where they might be able to engage with us in future on some of the issues that they have raised.

I would like clarification of whether members agree that the health effects of TETRA are not for the Communities Committee but for the Health Committee to consider, of which we will advise the Health Committee. Mary Scanlon's point—which was echoed by other committee members—on whether health effects should be considered on planning applications is, however, a matter for this committee. I suggest that when we consider the planning bill in the autumn, health effects should feature in our evidence taking. Are we agreed?

**Christine Grahame:** I accept that. Of course, I made the point that planning issues cut across opencast mining, wind farms and everything else. I hear what you say, convener. I hope that the petitioners might be considered as witnesses, along with others who have similar concerns, when we deal with the forthcoming planning bill.

**The Convener:** They will certainly be able to submit written evidence and, after our sifting of all the written evidence, they will, along with everybody else, be considered when we decide who will give oral evidence.

**Patrick Harvie:** There remains an issue with the current development of the technology. If research is on-going under the auspices of the Home Office, and the Health Committee is being encouraged to examine the health implications of the technology, should we—even if only from a purely financial point of view—ask the Executive to think carefully about whether the technology should be put in place in any more parts of Scotland than it already is?

**The Convener:** You are suggesting that there should be a moratorium on the installation of TETRA masts, which is not a matter for the Scottish Executive or this committee; it is a matter for local authorities. Perhaps the petitioners would be best placed to pursue that issue with their local authorities. On that basis, we must clearly explain the position.

Is that course of action agreed?

**Members** *indicated agreement.*

**The Convener:** The final important issue is community involvement. I gather from comments that have been made by every committee member that we are keen that community involvement in the planning process be revisited when the proposed planning bill comes before Parliament in the autumn. Many issues and petitions that we considered in the past—in relation to opencast, landfill and the planning process as a whole—will be revisited. I hope that the points that the petitioners raise in relation to TETRA and telephone masts will be considered again in our evidence gathering. Are we agreed that that should be the case?

**Members** *indicated agreement.*

**Donald Gorrie:** I would like to obtain evidence from other countries. The report deals with Europe, but there is a world outside Europe. There would be no harm in our asking SPICe to find out whether other developed countries, such as the United States, Australia and Canada, have experience of TETRA masts and the relationship between health and planning. If we ask SPICe to produce such research, that will help us in the autumn.

**The Convener:** I see no difficulties with that. I hope that SPICe will in the autumn be able to furnish us with whatever information it can find.

With all those conditions agreed, are we content to close the petitions?

**Members** *indicated agreement.*

*Meeting closed at 12:16.*

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