

# **COMMUNITIES COMMITTEE**

Wednesday 11 May 2005

Session 2

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## COMMUNITIES COMMITTEE 15<sup>th</sup> 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:

John Blackwood (Scottish Association of Landlords)  
Andrew Bradford (Scottish Rural Property and Business Association)  
Grant Carson (Accessible Housing Solutions)  
Eleanor Clark (Communities Scotland)  
Nick Fletcher (Chartered Institute of Housing in Scotland)  
Richard Hamer (Ownership Options in Scotland)  
Alasdair Seale (Property Managers Association Scotland Ltd)  
Mike Stimpson (National Federation of Residential Landlords)  
Stephen Vickers (Scottish Estates Business Group)  
Lynn Welsh (Disability Rights Commission)  
Megan Wilson (Disability Agenda Scotland)

### CLERK TO THE COMMITTEE

Steve Farrell

### SENIOR ASSISTANT CLERK

Katy Orr

### ASSISTANT CLERK

Jenny Goldsmith

### LOCATION

Committee Room 1



# Scottish Parliament

## Communities Committee

*Wednesday 11 May 2005*

[THE CONVENER *opened the meeting at 09:39*]

### Housing (Scotland) Bill: Stage 1

**The Convener (Karen Whitefield):** Welcome to the 15<sup>th</sup> meeting of the Communities Committee in 2005. Today, as a continuation of our stage 1 consideration of the Housing Scotland Bill, we will hear evidence from four panels of witnesses.

I welcome Nick Fletcher, who is the policy and public affairs officer of the Chartered Institute of Housing in Scotland and apologise for the fact that the committee is starting a little late this morning.

The Executive has consulted on the bill. Has it done so effectively? Has your organisation been able to engage in that consultation process as constructively as you would have liked?

**Nick Fletcher (Chartered Institute of Housing in Scotland):** Yes, the Executive has consulted extremely widely. We were involved in the housing improvement task force, which was set up in 2001 to start developing proposals for tightening up the private sector. My director, Alan Ferguson, was an individual member of the task force, which produced two reports that were consulted on quite widely and were responded to. That led to the "Maintaining Houses - Preserving Homes" consultation last October and, again, we fed into that. We are now starting to feed into the process of the Housing (Scotland) Bill. There has been a lot of consultation and discussion across the housing sector.

**The Convener:** In your written submission, you raise the issue of resources, particularly for housing renewal areas, and say:

"The financial memorandum for the Bill does identify some resources but this appears to be based on limited information."

Can you tell the committee a little more about your concerns in that regard? Why is it vital that housing renewal areas are resourced effectively?

**Nick Fletcher:** The financial memorandum did not make entirely clear the level of resources that would be required. I have spoken to the Convention of Scottish Local Authorities about this and I believe that, in its submission to the committee, it suggests that it might be difficult to assess the resources that might be required. At this stage, it is also difficult to assess what resources will be required to implement the

housing renewal areas. It can sometimes be difficult to work out exactly the level of resources that will be required to ensure that innovations such as housing renewal areas are successful. We are simply raising the issue at the moment. Once the bill is implemented, the Scottish Executive and the Scottish Parliament will have to monitor the amount of money that local authorities find that they need in order to resource the housing renewal areas and ensure that those resources are made available.

Once legislation is passed, it is important to ensure that it can be implemented. We need to learn lessons in that regard from our experiences with previous pieces of legislation. For example, there were concerns that the financial resources that would enable the aims of the Homelessness etc (Scotland) Act 2003 to be met were not being made available.

**The Convener:** Your concern is not that the financial memorandum is way off the mark at the moment, but that there must be proper scrutiny once the bill is enacted to ensure that sufficient resources are available.

**Nick Fletcher:** Basically, we are flagging up the issue to ensure that, once the bill has gone through Parliament, people start considering exactly what resources are required. Until detailed plans are developed for housing renewal areas, it will be difficult to say how much money will be required.

**Patrick Harvie (Glasgow) (Green):** In your submission, you say that the definition of the tolerable standard should address the total thermal performance of the house. Could you tell us more about the reasons behind that suggestion?

**Nick Fletcher:** We have supported the extension of the definition to require "satisfactory thermal insulation" rather than basic thermal insulation. If we are to tackle fuel poverty, it is important to ensure that we have a good standard of insulation for properties. Work will be done at a later date to define exactly what is meant by thermal insulation in relation to the tolerable standard. At this stage, we must consider the performance of the building as a whole. Thermal insulation is not just about filling cavity walls. There are many properties where we cannot fill cavity walls, such as solid-walled tenements, and in such properties we have to consider how else we can boost thermal performance. Because it is difficult to put thermal insulation into a tenement, the thermal efficiency of the building will not be great. However, if there is cheap heating in the building, that will help to increase its thermal performance and will tackle some of the fuel poverty issues that arise. It is a question of balancing the cost of heating a building with its

thermal efficiency. I hope that the Executive will investigate those kinds of issues when it develops the standard.

09:45

**Cathie Craigie (Cumbernauld and Kilsyth) (Lab):** Good morning, Nick. I feel that we are a bit mob-handed at our end of the table, with you up there on your own. I hope that you do not feel like that.

The bill introduces a repairing standard, which is a minimum standard that must be met to ensure that the house is habitable and properly maintained. Do you think that the proposed changes to the repairing standard for private landlords will be effective in promoting higher standards in the private rented sector?

**Nick Fletcher:** Yes. We are satisfied with the bill's proposal on the repairing standard for the private rented sector, which brings that sector into line with the public sector and the changes that were made in the Housing (Scotland) Act 2001. The bill restates some of the repairing obligations from the 2001 act. We are also happy with the proposed private rented housing panel, which will have powers to enforce the repairing standard. That is important; it is good to have standards, but we must also have means of enforcing them. The private rented housing panel is a good means of enforcing the repairing standard. At the moment, if private tenants want to address issues they have to apply to the sheriff court, which can be a lengthy and costly process. The proposed panel should make it easier to implement and enforce the repairing standard.

**Cathie Craigie:** As I understand it, the CIHS believes that the private rented housing panel's role should be extended to cover a range of landlord and tenant disputes as well as housing management issues. Why do you believe that its role should be extended?

**Nick Fletcher:** The private rented housing panel provides an opportunity for us to move in that direction. We did some work a couple of years ago—it was launched last year at our annual conference in Aberdeen—on whether there was a need for housing tribunals in the public rented sector. We are well aware that it can be difficult to resolve disputes that arise between landlords and tenants without recourse to the sheriff court. We are concerned that the court system is adversarial and that if tenants are not properly represented they immediately start to lose out. The knowledge that is required by sheriffs and others who are involved in the process is not always there, because not many disputes are taken to court. We seek a more equitable system in the public sector.

The same issues apply in the private sector. If

there is a housing management dispute between a landlord and a tenant, it is difficult for the tenant to do anything about it without recourse to the sheriff court, which can cost money and can be time consuming. We all know that there are delays in the sheriff court and, again, it is an adversarial system, so if people are not properly represented they might lose out. To be properly represented often costs a lot of money, which not all private rented sector tenants have.

The private rented housing panel will be able to deal with disputes that arise from the repairing standard, but we have an opportunity to consider whether it should deal with other disputes that arise in relation to the statutory obligations in the bill, such as certain management standards that private landlords have to meet and certain things that they can or cannot do. The private rented housing panel's role could be extended to cover that, and we also suggest that the panel could deal with issues around tenancy deposits. Disputes about the return of deposits are an important issue for people in the private rented sector. Many people who live in the private rented sector would welcome arbitration or a panel system that would help them to resolve such disputes without recourse to other legal action. A simplified system that is equitable for tenants and landlords should be created.

**Scott Barrie (Dunfermline West) (Lab):** Chapter 5 of part 1 deals with the repair, improvement and demolition of houses. Your submission comments:

"there is concern that the measures may not be fully utilised if local authorities do not have an adequate means of being able to recoup their expenditure from owners where the authority has carried out work through enforcement action."

Will you expand on that concern? To what extent might local authorities be inhibited from using the proposed powers?

**Nick Fletcher:** When an authority has tried to engage with an owner but has had no success and the owner has taken no action, the proposed powers will give the authority the ultimate sanction of doing the work itself. That is a great last resort that we expect authorities to use when they must. However, our concern is that they might not use it if they do not feel that they have an adequate way of recouping their resources. If they pay for the work, they need to be able to get the money back.

The consultation paper suggested the introduction of charging orders, which were supported widely and which the CIHS supported. I understand that the Scottish Executive is not convinced that charging orders are the best way forward. We have spoken to the Executive about that.

We flag up a concern, as we did with housing renewal areas. We must ensure a satisfactory means of recouping resources and we must work together to find out what that means is, so that improvement orders are used properly and local authorities undertake work when they must do it to bring housing up to standard.

**Scott Barrie:** Would it be better to introduce charging orders through the bill, as was proposed in the consultation?

**Nick Fletcher:** We are not convinced either way. We are still talking with other organisations. We want to talk to COSLA a bit more and perhaps to the Scottish Executive a bit more and we want to find out exactly what the issues are. We are not fully aware of why charging orders are not the way forward, why other methods would work better or why some local authorities feel that charging orders are the best way forward and that other measures will not work as well. More work on that needs to be done before stage 2.

**Mr John Home Robertson (East Lothian) (Lab):** Your submission says:

“the CIH would like the Scottish Executive to look at how”

maintenance orders

“will be managed by considering the need for an owners’ management scheme to control the fund and take forward future maintenance issues beyond the lifetime of the ‘maintenance order’.”

That is obviously desirable, but it sounds awfully complicated. Will you expand on that, please?

**Nick Fletcher:** The proposal is not that complicated. One concern is that when there are several owners in a property, organising work is difficult. We are all aware of examples of that. We suggest that we should take a longer-term approach to how we manage property and not the short-term approach that owners tend to take. We must take a longer-term approach to the repair, maintenance and upkeep of property. That fits in with the principle behind the bill of ensuring that property owners take responsibility for their obligations to look after and maintain property.

Examples of how the proposed scheme operates are available from other countries. One of the best ways of proceeding is to establish an owners association for a tenement. That creates a community group in the tenement that takes responsibility for the building’s on-going upkeep by creating a fund to which owners contribute, every month or every year, a set amount of money that is based on a survey of the property that sets out the on-going maintenance and likely future repair costs. That allows people to budget for future repair and maintenance. In the long term, that arrangement could save owners money. We all see stories about owners who could not agree on

the repair of a small hole in the roof, after which the hole becomes bigger, which leads to damage to the fabric of a property, so that what could have been a £600 or £700 repair becomes a £2,000, £3,000, £4,000 or £5,000 repair.

Such a system requires more work, because owners’ attitudes must change. They must start to realise that they are responsible as a group for their building. A change in attitude from individualism to a more community-based approach to looking after a building needs to be tackled. If we were to go down the road of encouraging or legislating for the setting up of owners associations and sinking funds—maintenance funds or whatever you want to call them—a lot of support would have to be given to the owners in setting up and running the groups and in managing the property. There is an opportunity for local authorities, registered social landlords and private factoring services to play a key role in working with owners to establish those schemes and in managing them on behalf of the owners. The owners would have ultimate control of the schemes, but they could put the management of them out to another body.

All members of the committee have been sent a copy of our briefing paper, “Safe as Houses?”, which sets out some of the key principles behind the idea of sinking funds and owners associations. We would like to find a way not to bring them in immediately through the bill, but to have within the bill a power to enable the Scottish Executive to set up owners associations once some of the key principles have been discussed and set out. The Tenements (Scotland) Act 2004 gives the majority of owners the power to go ahead and carry out a repair. The problem is that, when they have carried out that repair, there is still no effective means of recouping the money from the owners who have not contributed. Perhaps there could be a requirement in the Housing (Scotland) Bill that, when the majority of owners are in favour of having a maintenance fund, such a fund must be set up.

**Mr Home Robertson:** That is something that the committee can reflect on; however, the Executive’s policy memorandum states:

“It would ... be very difficult to enforce the setting up of a reserve fund in every building with common obligations.”

You are proposing that there should be precisely such a fund. Have you discussed that with the Executive? What sort of dialogue has there been on that theme?

**Nick Fletcher:** We have discussed that with the Executive, and what it states in its policy memorandum is essentially what it has said to us. It would be difficult, but that does not mean that there should be no investigation of ways and

means of doing it. It may be that it is too early, at this stage, to do it for each tenement. In that case, we could do it for the tenements that want to do it, where the majority of owners say, "Yes, we would like to be part of this." Perhaps we could do it for those tenements, and that could be a way of starting the process off.

**Donald Gorrie (Central Scotland) (LD):** I have a question on the sinking fund. If you were sitting at this end of the table, would you vote for a national scheme in which all the people in tenement property had to contribute, or would you vote for the alternative that is described in your paper, which is that, if the majority of owners voted for such a fund, the minority should be compelled to contribute? Given the stark choice, which of those would you go for?

**Nick Fletcher:** I would probably go for a combination of the two.

**Mr Home Robertson:** Sounds like a Liberal Democrat.

**Nick Fletcher:** Is that a politician's answer?

Ultimately, I would like the bill to contain a power to enable the Scottish Executive to set up such funds nationally. However, what the bill could do immediately is ensure that, when the majority of owners in a tenement are in favour of a sinking fund, one has to be set up. There could then be a reserve power to enable the Executive to set up such funds nationally if it chose to do so at a later date. If that power was not in the bill, there would have to be new legislation to enable the Executive to do that. If such a power were to be included in the bill, it might not be used for five or 10 years but it could be used at some stage.

**Scott Barrie:** Let us turn to disabled adaptations. Do you believe that the private rented housing panel should have the power to resolve any disputes over the granting of permission to adapt a house if the private tenant wishes to adapt the house but the landlord says no, or do you believe that it would be better for disputes to go to the sheriff courts to be resolved?

**Nick Fletcher:** In line with what we have said before and in line with the work that we have done on finding an equitable and easy system for people to use, we would like the remit of the private rented housing panel to be extended to enable it to deal with those disputes. We would like the panel to be able to mediate between the landlord and the tenant, but to have the ultimate power to enforce a decision if no decision can be reached between the two. At the moment, if the landlord refuses to allow the tenant to adapt the property, the matter has to go to the sheriff court, which can be a long drawn-out and expensive process, and not all tenants have sufficient resources to be able to follow that through. The

private rented housing panel could provide a much quicker resolution to the dispute, which would only make that part of the bill stronger. The danger with having to return to the sheriff court to resolve issues is that that weakens aspects of the legislation. We have found that in the public sector. Parts of the Housing (Scotland) Act 2001 are very strong on rights and responsibilities, but because those rights and responsibilities can be enforced only through the sheriff court, many of them are not being enforced. There is a danger that, if the bill does not provide an easy method of enforcement, we will find that provisions that are down on paper will not be implemented on the ground.

10:00

**Scott Barrie:** Are there any downsides to the proposal?

**Nick Fletcher:** The only downside is that there may be spurious applications to the private rented housing panel, because it is easier to apply to the panel in a dispute. There should be mechanisms available to the panel to filter out spurious claims. In the case of the repairing standard, it is proposed that the applications should be passed on to the relevant area after they have been examined initially.

**Cathie Craigie:** I want to ask about the scheme of assistance for housing purposes. Part 2 of the bill widens the range of options for providing assistance. The underlying principle of the bill is that owners have responsibility for their properties. In your submission, you state:

"there may be merit in having a single loans scheme that covers all 32 local authorities."

Do you think that a single scheme would be flexible enough to meet the needs of local communities?

**Nick Fletcher:** We are not suggesting that a single scheme should determine the way in which all local authorities operate or the levels of grant and assistance that they provide. Those matters should be decided on a local basis. We suggest that levels of grant and assistance should be set out in a local authority's housing strategy, so that everyone knows what forms of assistance they may be eligible for.

When we suggest that there should be a national scheme that covers all 32 local authorities, we are talking about whether authorities have the power to make loans to people. Operating 32 different loan schemes could be complicated, expensive and resource intensive. Our suggestion is that one body should operate loan schemes for all local authorities that intend to offer loans. We have made the same suggestion to the Scottish Executive, and COSLA may look at



it. It is probably not an issue that needs to be dealt with in the bill, as long as the bill allows local authorities to join together to operate loan schemes. Such an approach is worth considering, as it would provide economies of scale and would be less complicated than having different loan schemes operated by local authorities throughout the country. Applications to loan schemes would be made only on the basis of what local authorities said in their housing strategies about the level of assistance that they would provide to people. A local authority might not be able to give someone a grant or other assistance, but if the person was unable—because of income restrictions, for example—to obtain a loan by the normal methods, the local authority might be able to offer them one through a loan scheme in which all 32 local authorities were involved.

**Cathie Craigie:** Is there anything in the bill that would stop local authorities doing that?

**Nick Fletcher:** I am not aware of anything in the bill that would prevent it, although I have not examined the relevant provisions in sufficient detail to be certain of that. At this stage, we are raising the issue as a good practice point that local authorities may want to consider and that either the Scottish Executive or the committee may want to recommend.

**Mary Scanlon (Highlands and Islands) (Con):** I want to ask about the single survey and the purchasers information pack. To what extent do you think the single survey will meet its key objective of improving the condition of private sector housing stock?

**Nick Fletcher:** I think that it is a starting point and will assist in improving the condition of private rented housing stock. We have a long way to go, and improvements will take a long time, because the condition of private and owner-occupied housing stock has deteriorated year on year for the past 20 or 30 years. We now have appalling conditions in the private housing sector. The Scottish house condition survey indicates clearly that conditions in the private sector are worse than those in the public sector.

The public sector is doing an awful lot to raise the standard of housing. The new Scottish housing quality standard will have to be met by the year 2015, which may lead to a strange situation in which we have good-quality public sector housing, but poor-quality private sector housing in certain areas. The single survey is one tool that will help to raise standards, because it should, I hope, set out clearly the structural condition of the property and the repairs that are needed, which is information that most people who are in the market to buy a house do not get at present. People get a simple survey that gives them a price for the property, but which does not tell them much

about the property's condition. In the longer term, the single survey will change buyers' minds, so that buying will become not just about location, but about the condition of the property that they are buying. The system will give buyers more information on which to work. If two houses on a road are on the market for a similar price, but the survey shows that one is in better condition, the people who live in the other property will have to start improving it to ensure that it is of a certain standard, so that they can sell it.

The single survey is one aspect of improving quality in the private sector. The other aspect has been discussed—it relates to sinking funds. The aim is to change owners' perspectives and make them realise that they are responsible for the upkeep of the fabric of the building, which forms part of our heritage. Buildings change hands, but they are part of the built heritage in Scotland, which we need to maintain.

**Mary Scanlon:** I certainly agree that to make a proper decision in any market, information is needed. There is no doubt that the proposal will enhance the information that is available.

You mentioned how the single survey would affect buyers and sellers. Do you agree with the up-front costs to the seller that are given in the financial memorandum? We talk constantly about the single survey. The financial memorandum states that the average cost for such a survey will be £400. Given your knowledge of the profession, do you agree with that? The legal profession will provide the purchasers information pack, which will be extensive. It will include

"copies of any planning, listed building or building regulation consents and approvals, any guarantees for work carried out ... a copy of the land certificate ... a summary of common repair and maintenance obligations ... and a summary of any property management responsibilities."

Do you believe that, as the financial memorandum states, lawyers will provide those packs for £100?

**Nick Fletcher:** Unfortunately, I am neither a surveyor nor a lawyer.

**Mary Scanlon:** I am asking because of your knowledge of how the profession works; I appreciate that you cannot answer for the Law Society of Scotland. Is £400 a reasonable estimate for the average cost of a single survey and is £100 a reasonable estimate for the average cost of a purchasers information pack?

**Nick Fletcher:** The figure of £400 is not unreasonable, based on what I have heard from other people and other reports and bits of evidence that I have seen—the figure seems to be what people are talking about. However, as I said, I am not a surveyor, so I do not know what the full

costs are, although the figure seems reasonable, based on assumptions from other places.

Because I am not a lawyer, it is difficult to say whether the figure of £100 is reasonable. Time will tell what will be in the purchasers information pack, because work is on-going on that. The CIHS has ideas about other information that could go in the pack. Some of the information that you mentioned should be provided at the moment. The information pack will pull all the information together in one source, rather than in different pieces of paper from different places. The figure of £100 could be sufficient, because some aspects of the work are done already.

**Mary Scanlon:** From my little knowledge of lawyers, the figure seems to be exceptional value for money.

Your submission states:

"people exercising the right to buy will not be entitled to the same information as people buying in the private sector"

and that the proposal

"falls short of the single survey as it will not provide a structural survey of the house therefore denying the prospective buyer real information".

What additional benefits would a structural survey give to potential right-to-buy purchasers that will not be available under the bill at present?

**Nick Fletcher:** What is fair for people in the private sector should also be fair for people in the public sector. Everyone should have access to the same level of information. There was a suggestion in the consultation that right-to-buy purchases might be excluded from the single survey. We were keen to stress in our submission that they should be included. To an extent, there have been concessions on that. The bill states that certain levels of information about maintenance will be included and will be given to prospective purchasers. That does not, however, mean that the survey will go into the full condition of the property.

There are examples of people in certain parts of the country, for example in Cumbernauld and West Lothian, exercising the right to buy but then discovering that the house that they have bought is structurally unsound. One argument for excluding right-to-buy purchases is that a person who has been living in a house for some time should know the condition of their property. That is not necessarily the case, however. Many people in the private sector have lived in their house for a long time, but they might not realise that their roof is about to cave in until it is too late.

People who have never before been involved in the house-buying market will not have experience of the things they must do. They might not be

able to afford to carry out their own surveys. Sometimes they will not access a mortgage and will pay for the house on cash terms, so a survey might not be carried out for the purposes of getting a mortgage. Greater protection might sometimes be needed for people who have been thinking about exercising the right to buy so that they know what the condition of the property is.

We welcome the Executive's proposals on providing more information about on-going maintenance, which is always a key issue. It can be a problem if people who have exercised their right to buy do not realise that there are on-going maintenance issues and get into difficulties. We need to go a step further and include structural information.

In our submission to the consultation, we set out what we thought was a way to get round some of the concerns. As we know, the single survey will not be cheap. It might cost about £400. Somebody has to bear the costs of that if the prospective right-to-buy purchaser pulls out. Of all the applications made each year, quite a large proportion do not go through to a final sale. We must protect the public purse and avoid money being paid out if it does not lead to a purchase.

We suggest that, instead of having the single survey, including the structural survey, right at the start, as is the case in the private sector, once the prospective right-to-buy purchaser has received all the information about on-going maintenance costs and the valuation of the property, once they have checked whether they can go ahead with a mortgage and have then decided to proceed with the purchase, it should be decided at that point that the person may purchase the property subject to the structural survey. If the purchaser finds out that the structure of the building is a big issue, they can pull out of the sale and the cost will be borne by the public purse. If the person goes ahead with the sale, the cost will be borne by the right-to-buy purchaser, as would be the case in the private sector. That will help with the carrying out of expensive surveys that do not lead to a sale.

**Christine Grahame (South of Scotland) (SNP):** My questions are on the single seller survey. Obviously, the survey will be carried out only when someone has decided to sell their house. However, one of the main aims behind the single seller survey is to improve the housing stock. Concerns are expressed in the submission from the Glasgow Solicitors Property Centre about the shelf-life of the survey and the requirement that it be carried out in advance of marketing. The GSPC's suggestion is that the survey should be done concurrently with the marketing—within 15 working days, for example—and that the seller may not accept an offer until the survey has been made available. What are your comments on the

issue of surveys' shelf-life and the GSPC's proposal?

**Nick Fletcher:** I am aware that the shelf-life of surveys is an issue. I am not from a surveying background, so it is difficult for me to comment on what the shelf-life should be. In some areas, a house could be on the market for quite a long time, in which case there may understandably be an issue around the validity of the survey. However, it is difficult to set a shelf-life for a survey. The survey tells us the condition of the property at the time that it was carried out; we will then have to make an educated guess about the implications six months down the line. That is a difficulty with the single survey.

We propose the introduction of sinking funds throughout Scotland. As part of that, a survey of the property would be carried out at least once every five years, so that the owner could identify the state of the property and provide an on-going picture of its condition. We would get more detail about the history of a property's condition and how that impacts on prospective purchasers by introducing sinking funds rather than single surveys, which have a limited shelf-life. That might be a way of selling the idea of sinking funds—if owners got together and established a fund, that information could be put into the purchasers information pack. If a prospective purchaser saw that a fund was in place for the property, they would know that there were plenty of surveys from the past few years indicating the condition of the property and what had been done to improve it, which would give them a better picture of its condition.

10:15

**Christine Grahame:** Of course, there are many types of property for which a sinking fund would not be appropriate, such as those purchased through shared ownership schemes. The concern is that, if we introduce a single seller survey—for which I have a lot of time, as it is much better for security purposes than the current valuation survey—and prospective sellers feel that the market might be sticky, they will not put their houses on the market. The GSPC, which is in the business of buying and selling property, also takes the view that the introduction of a single seller survey would mean fewer houses coming on to the market so that the market stagnates, causing even more housing problems. How do you feel about that?

**Nick Fletcher:** I am not sure about that or why the GSPC has arrived at that conclusion. The survey would put the onus back on owners to improve their properties before they put them on the market. The fact that there are bad properties might initially restrict the market, but if an owner is

desperate—if they really want to sell and move—they should start to improve their property now in anticipation of having to provide a single survey that sets out its condition.

**Christine Grahame:** That is where my concerns come in, human nature being what it is. Somebody who is thinking about selling their house would have to instruct a survey that might cost them much more than £400—perhaps £700, for example—and the survey might uncover repairs that need done. The prospective seller would then have to pay for that work and would not put the house on the market until months after the survey. In that case, what use would the survey be, as another one would have to be done following repairs?

The prime motivation behind the single seller survey is to improve the housing stock, but I can envisage problems about the tie-in to sales. After the works were concluded, another survey would need to be done, which could mean that the owner would be paying out £1,600 before they had begun to market their house. That is how the single seller survey provisions are drafted, but I do not think that they will operate in that fashion. I think that people will do nothing until they decide that they want to sell. That is when they will instruct their single seller surveys.

**Nick Fletcher:** That is a danger, which is why we are proposing the introduction of sinking funds, because that would involve a continuing commitment to maintain the property. The most difficult thing to do in society is to change people's attitudes, but we need to change owners' attitudes so that they understand that the condition of their property is important and that it is not simply a matter of installing a new kitchen or doing bits and pieces of do-it-yourself inside the house. Most of the money that is spent on home improvements is spent on improving the interior of the home, not on improving or addressing problems with the structure of the property. Attitudes towards that need to change.

If somebody has a survey carried out and finds that repairs are needed, they have a choice. If the property's condition means that a few thousand pounds-worth of repairs need doing, they can put the property on the market with that survey but drop the price by £3,000 and leave the buyer to get the work done; alternatively, they can get the work done themselves and then put the property on the market. Either way, the single survey would inform people about the condition of the property and would put in place a mechanism to allow the property to be improved if the owner really wanted to improve it. It could be that, if the seller puts the property on the market for £3,000 less, somebody would buy the property and not do the repairs. They would get the property for £3,000 less but

they would know that they were living in a property that needed to be repaired at some stage.

**Christine Grahame:** That defeats the purpose of the policy.

**Nick Fletcher:** To some extent, yes. That is why sinking funds are a better way forward, certainly for tenemental or flatted property.

**Cathie Craigie:** I return to the CIHS's position on whether there should be single seller surveys in the local authority sector. You said that you can get a better picture of the housing stock in a tenement block if there is a sinking fund, because that means that more people are involved in considering the maintenance and repair needs of the property. Would that be the same for local authorities, which need to consider the repair needs, maintenance commitments and structure of their stock for the regular housing strategy reports on their areas? Would information about the condition of properties already be there?

**Nick Fletcher:** Not necessarily. Local authorities and private sector registered social landlords are both currently working towards the Scottish housing quality standard. As part of that, in April this year, they had to submit their delivery plans setting out how they will improve all their properties. However, not every house will have been surveyed in detail. A sample survey will have been done across a lot of the property to try to assess what the needs are across a range of property.

The survey is not done down to the level of the individual property and, for a variety of reasons, a property built at the same time and of the same construction materials as the property next door might be in a different structural condition from the neighbouring property. Repair issues that were missed in the past could have led to water seeping through the wall and damaging the structure of the building, which might not be picked up in a wider sample survey of the area for the housing quality standard.

Somebody might want to exercise the right to buy, but their property might not have had a full, detailed survey done on it. If we are asking somebody to shell out their life savings to buy a property, we need to give them clear and accurate information on the condition of that property—if we do not, we could be creating difficulties for them in maintaining the property in future. If a person buys a property that is part of a block and then finds out that there is a structural defect, that could also cause difficulties for the local authority or RSL. If the local authority decides to improve the block, the person who has bought their property might say, "Well, you can improve it, but I haven't got any money to contribute to that because I put all my money into buying the property." There can be

problems not only for the person who is exercising the right to buy, but for the ex-landlord.

**Cathie Craigie:** Do local authorities have a duty to advise right-to-buy applicants of the condition of the property?

**Nick Fletcher:** Not of the structural condition as such. Under the bill, the local authority will have to set out the likely on-going maintenance costs to the prospective purchaser. All local authorities have planned repairs and maintenance schemes, under which they will replace kitchens or doors every five or 10 years, so costs such as those will be set out for prospective buyers. The authorities will say, "Well, this is what we would be doing to your property as the landlord, so those are your likely maintenance costs on an on-going basis." However, the local authority will not advise buyers of the likely costs of any structural defects in the building.

**Cathie Craigie:** My next question is about the licensing of houses in multiple occupation. The CIHS's submission states that it

"supports this part of the Bill but would like the Scottish Executive to ensure that HMO licensing and private landlord registration interact closely with each other so as not to create an overly bureaucratic burden on private landlords."

Could you elaborate on the thinking behind that suggestion and tell us how your concerns about that part of the bill could be addressed?

**Nick Fletcher:** First of all, we welcome the proposal to relegislate for the licensing of HMOs. Licensing through the Civic Government (Scotland) Act 1982 gave rise to a number of problems and it is good to see that those problems are now being addressed by proper primary legislation.

A new range of burdens is being placed on the private rented sector and, to some extent, we believe that that is right, because we are trying to raise standards—both condition standards and management standards—in that sector and to ensure that private landlords know what their obligations and duties are. We know that, although there are many good landlords out there, there are some poor-quality landlords at whom measures need to be targeted. All along, we have supported the idea of registering private landlords to ensure that we can improve standards.

However, we must be aware that the more bureaucratic we make the system and the more burdens we place on the private rented sector, the greater the danger that the sector will start to contract. People will say, "Oh my God! This is just too difficult for me." We must remember that many private landlords are people who rent out only one property—people who are involved in the buy-to-let market or people who have moved house and

have kept their previous house and rented it out. In that sense, many people are dabbling in private renting. The danger is that the more bureaucratic we make the system and the more burdens we impose, the greater the chance that people will pull out of the private rented sector and contract that market, which we know plays an important role in tackling homelessness.

Many young single people access private rented accommodation, especially through the HMO sector. The fact that the private rented market plays a significant role in housing people in Scotland means that we need to be careful that anything that we do to it does not cause it to contract. That is why we are keen to ensure that HMO licensing and registration schemes work hand in hand and that, whenever possible, there is passporting between having an HMO licence and being registered as a private landlord. We want some of the processes to be simplified to ensure that landlords do not have to keep registering all over the place.

To move away from the HMO stuff, another suggestion that we would like to be considered is the idea of each local authority maintaining its own register of private landlords. Landlords who operate across local authority boundaries—the larger landlords—will have to register in each local authority area. If we had a national registration scheme with a national database, a landlord would need to register only once, which might make the system easier to police. Although a landlord can be deemed not to be a fit and proper person in one area and can be struck off the register in that area, they may still be able to operate in another area as a result of that information not being communicated to the relevant local authority. A national scheme would avoid that problem.

**Cathie Craigie:** One of my colleagues will ask about the registration scheme later.

**Nick Fletcher:** Sorry.

**Cathie Craigie:** I agree that we must have a system that is not overly bureaucratic, but which protects the people who rent in the private rented sector. I remember that when the licensing of HMOs was introduced—in 2000, I think—concerns were expressed that people would pull out of the sector. You have spoken about that danger again today. Does the CIHS have any evidence that landlords are pulling out of the sector?

**Nick Fletcher:** There is anecdotal evidence of that, although I am not aware that anyone has done detailed research in the area. Perhaps that gap needs to be filled. Just the other week, there was something in the papers about the fact that students who are studying in Edinburgh are already sorting out their accommodation for next term—which starts in September—because the

HMO sector in Edinburgh, where many students live, has contracted a great deal as a result of landlords pulling out of it. That could be a result of HMO licensing, but it could also be a result of economic factors; it is difficult to say. Detailed research is necessary to work out why the HMO sector in Edinburgh might have contracted. I do not think that there is any strong evidence either way at this stage. That situation might need to be rectified, especially as we are about to try different measures and to move in new directions. We will need to base our decisions on clear evidence of what the impacts of those measures are likely to be. We do not have such evidence at the moment.

**Donald Gorrie:** I want to pursue your thoughts on bringing the quality of the less good landlords up to the level of the best landlords. Are there any provisions that we could put in the bill or measures that we could suggest that the Executive or local authorities could take to educate landlords on their duties and rights? How could we get that through to the sort of landlords whom you have described?

10:30

**Nick Fletcher:** The Executive has recognised the need to improve the information that landlords receive. The better renting Scotland website, for example, is a start down that road. There have also been moves to establish more links with representatives of the private rented sector, such as the Scottish Association of Landlords and the Association of Residential Letting Agents. Those moves are to be welcomed.

We still need to do more, however, and the registration of private landlords would give us the opportunity to ensure that each landlord gets the necessary information about their obligations as a decent landlord. We may find that a lot of private landlords, particularly the smaller ones who let only one property, are in breach of parts of the legislation because they do not know what is contained in it and no one has told them.

There is a duty on us all to ensure that, when a landlord registers, they are given the right information so that they know what sort of lease they should offer, what will happen if they offer the wrong lease and what their rights and obligations are. They need to know what restrictions are placed on them in accessing the property and that they cannot just turn up and enter the property whenever they want to, as a lot of landlords do—they do not realise that they are not supposed to. The bill could provide that the local authority registrar has a duty to ensure that, when people register, they are furnished with an information pack that sets out their rights, obligations and duties as a landlord.

**Donald Gorrie:** Let us pursue this business of a register and whether it should be conducted by a local authority or nationally. You have argued reasonably about cross-border issues, but how do you envisage a register being run nationally as opposed to by local authorities? The information is local and, unless we produced a huge new bureaucracy, we would have to operate through the local authorities anyway.

**Nick Fletcher:** I am not sure that a whole new bureaucracy would be produced. Currently, potential landlords have to pass the fit-and-proper-person test. There is talk about moving on to having a lettings code, which would change things slightly. However, we suggest in our evidence that an alternative to a code would be to expand the role of the private rented housing panel to deal with issues relating to lettings and the management of the property.

The fit-and-proper-person test could apply nationally, because it involves looking at whether the person has been convicted of certain offences that would make them unfit to be a landlord. That information could be checked as easily nationally as it could by local authorities. Indeed, because the person applying to be a landlord would not necessarily have been convicted of an offence in that local authority area—they could have been convicted of an offence in a different local authority area—a national search would be needed anyway. There is no reason why the register should not be national. There could be merit in a system in which local authorities had some responsibility for looking after a national database, which might be a halfway house between a local and a national system. However, such a proposal would need to be considered in more detail.

**Donald Gorrie:** If we had a national database, would it be policed by the councils or by a national body? If I were a tenant with a dodgy landlord in some town, would I go to the local authority or write to St Andrew's House?

**Nick Fletcher:** That would need to be looked at. Off the top of my head, I think that the register could be run nationally, which would enable the landlord to know whom they should apply to. If landlords could apply to just one body, that would allow us to avoid making landlords who operate in four different areas apply to four different local authorities. For example, Communities Scotland, which has a remit to cover housing issues throughout Scotland, could be the body to operate the registration scheme and set up the database. The local authorities could then look at the database if an issue arose in their area; they could enforce the registration scheme in that way.

**The Convener:** The committee has concentrated its questioning this morning on the

main strands of the bill. Are there any issues that you hoped to raise with us that have not been covered? Are there any issues that the Executive has missed in preparing the legislation?

**Nick Fletcher:** I do not think that there are. I have already talked about the things that we would like to see in the bill, such as expanding the role of the private rented housing panel to enable it to look at all aspects of the private rented sector instead of having a narrow role that is concerned only with repair standards. We would also like the bill to address people's attitudes to looking after the condition of their property. We need to move down the road towards having owners associations and sinking funds. Those are two key areas that we would like the bill to address in a bit more detail.

**The Convener:** Thank you for attending the committee meeting this morning and for the submissions that you supplied before the meeting.

There will now be a short suspension to allow for the changeover of panels. I ask members to remain in their seats for the duration. There will be a comfort break between our second and third panels.

10:35

*Meeting suspended.*

10:37

*On resuming—*

**The Convener:** I welcome our second panel. Richard Hamer is director of Ownership Options in Scotland, Lynn Welsh is head of Scottish legal affairs at the Disability Rights Commission, Megan Wilson is principal officer for service development for Sense Scotland and is a representative of Disability Agenda Scotland and, last but by no means least, Grant Carson is manager of Accessible Housing Solutions Scotland. I thank the witnesses for joining us this morning.

I will start with a general question about the consultation process. Do you believe that the Scottish Executive consultation on the bill was effective? Were your organisations able to engage in the process?

**Richard Hamer (Ownership Options in Scotland):** We expressed to the Scottish Executive concerns about the consultation process. We felt that adaptations were not covered adequately in terms of grant funding and local authority powers and we felt similarly about the right for privately renting tenants to adapt. Given that those two issues are big and important

issues for disabled people, it is not right that they were included in a document that was principally about improvement of, and repairs to, housing in private ownership. The focus of the consultation was very much on physical housing, whereas our focus is people-based because of our focus on disabled people. The consultation document was not circulated widely enough and the process did not really involve disabled people. We are talking about a massive change to the adaptations grant process for disabled people and about a huge change in disabled people's rights in terms of the privately rented sector duty.

**The Convener:** Did the Executive attempt to respond to concern about its not having engaged effectively with people who are interested in that aspect of the bill?

**Richard Hamer:** The Executive targeted a number of copies of the consultation document at key organisations, but somebody from one of the larger disability organisations told me that she had not read the document because it looked as if it was about the physical condition of housing and she did not think that that had anything to do with disabled people. That response came from a major disability organisation, so there is real concern, although the Executive might since have made some attempt to engage people.

At the beginning of the process, in discussions with the bill team, I suggested that the issues for disabled people should be dealt with separately or that the proposals should at least be considered later, with things staying the same at the moment. I suggested that the adaptations process and the provisions in respect of tenants in private rented housing should be identified, separated from the parts about house condition and considered later, but the bill team was not prepared to take that idea on.

**Megan Wilson (Disability Agenda Scotland):** I echo what Richard Hamer said. Members of Disability Agenda Scotland support thousands of people who have disabilities throughout Scotland, but we and our member organisations became aware of the consultation process only late in the day when it was flagged up to us by another organisation. Although our member organisations have policy staff who keep their eyes out for anything that is likely to affect the people who use their services, the consultation did not come through when we were looking at new bills and new consultation papers. There was no reference to adaptations in the contents of documents; it was hidden among the improvements. We became involved only because we were alerted to the consultation by another organisation; that applies to six big organisations in Scotland.

**Lynn Welsh (Disability Rights Commission):** I tend to agree that disability and adjustments

played only a small part in the consultation but, to be fair, we should welcome the fact that the matter has been examined by the Executive, which has taken the opportunity to include it in the bill. I disagree with Richard Hamer's view that it should be hived off and left until later. The quicker we can do something—albeit something that works—the better. We are pleased that the Housing (Scotland) Bill has been used as an opportunity to improve matters for disabled people.

**The Convener:** The Executive's policy memorandum states:

"The provisions of the Bill are not discriminatory on the basis of ... disability".

Do you agree with that statement?

**Megan Wilson:** Disability Agenda Scotland's view is that disabled people are being treated differently. The bill treats adaptations to private housing in a way that restricts disabled people's access to private housing. The people who use our services want the same opportunities as everyone else to live in any part of the housing sector. In our evidence prior to today's meeting, we concentrated on funding issues; we believe that the funding arrangements will make it difficult for disabled people to see any improvement in accessing private housing if they need adaptations.

**Richard Hamer:** The Scottish Executive's research highlighted the fact that there is a feeling that disabled people belong in social rented properties. Disabled people generally end up in housing association housing or council housing because they have no choice; they are twice as likely as are non-disabled people to live in social housing. If there is discrimination in the bill, it is discrimination that pushes disabled people towards social housing, where adaptations are done for free and where houses may be built for them within the social housing stock. I support Megan Wilson's point; I seek a situation in which disabled people can live in whichever tenure is most appropriate for them, rather than in a tenure that is decided for them.

**Grant Carson (Accessible Housing Solutions):** The people who need the most extensive adaptations are people with physical impairments, primarily wheelchair users. The proposal to introduce loans for disability adaptations will adversely affect that group more than it will affect people with sensory impairments, for example.

10:45

**Donald Gorrie:** Your written evidence sets out many of your concerns. One of the benefits of devolution is that we can learn from the English and they can learn from us. I understand that you

all believe that the Disability Discrimination Act 2005 is better than what is proposed in the bill. Is it possible to change the bill to adopt the provisions in the English act?

**Lynn Welsh:** I see no reason why we should not do so. Housing law is different on either side of the border but, as we set out in our submission, the provisions that deal with who has the power and rights in the relationship between tenant and landlord could easily be amended in line with the English legislation.

**Richard Hamer:** I, too, see no reason why the bill could not be changed. The question is how practical the right of privately renting tenants to adapt property will be, unless the right grant funding is given to them to enable them to do that and, if necessary and required by the landlord, to reinstate the property at the end of their tenancy. The submissions from the private sector rental associations make it clear that if the bill is to work for tenancies, there must be some way of ensuring that a property can be reinstated. Legally, it is reasonably easy to change the bill so that it matches the English system. The challenge in Scotland is to put in place the right grants system, so that the right of tenants to adapt property can work. The privately rented sector is most attractive for younger lower-income people, both non-disabled and disabled. Those people do not have the money to adapt their properties to any great extent or to reinstate them.

**Donald Gorrie:** Does that mean that the bill will cost us money, which is always unhappy news for the Executive? If the money were deployed in a different way, would we achieve the results that you would like?

**Megan Wilson:** Disability Agenda Scotland makes the point that paying out money for adaptations can save a greater sum of money. We provide direct human support to thousands of people across Scotland. That support is much easier to provide and is provided at a much lower level where people's houses have appropriate adaptations in place. The difficulty has often been that adaptations grant money is expected to come from one department, while the revenue costs of human support come from another. However, in our experience the savings are much greater than the initial cost of adaptations, if they are put in place correctly. In such situations, human support may not be needed at all.

**Grant Carson:** I could not agree more. One of the Executive's priorities is to get disabled people off incapacity benefit and into employment. It is very difficult for people to do that if they cannot get in and out of their houses. Adaptations are crucial to the process of social inclusion. Money is saved when disabled people come off benefits. Such people also pay tax and national insurance, so

there is a double advantage, rather than a hit. We should not see adaptations as being negative; we should see them as being a positive part of the social inclusion process.

**Richard Hamer:** I agree. According to Scottish Executive figures, 230,000 households, including disabled people, are unsuitably housed. We cannot simply say that we do not have the money to provide adaptations, which is pretty much what the policy memorandum says. If the problem is that large, it must be addressed. If disabled people are half as likely as others to be able to rent in the privately rented sector and half as likely as others to buy a house using a mortgage, we must do something about that. We cannot sit back and say that the cost is too high.

**Lynn Welsh:** It is clear that the impact of not being able to make adaptations is, at the end of the day, much worse than the cost of paying for them.

**Donald Gorrie:** Your comments are very helpful. I have no idea what view the committee will take of your approach, but it would be useful if you could do a bit of homework on preparing possible amendments, so that if we wish to pursue that line at stage 2 we will have intelligent amendments to lodge that will be valid from your point of view. We will have to run such amendments past the people who write bills and who live on a different planet from the rest of us, but it would be helpful for us to have specific points to put forward.

**Lynn Welsh:** We would be happy to produce amendments. To be fair, we have had useful meetings with the Executive, but it does not necessarily agree with us. We could certainly produce amendments.

**Scott Barrie:** I heard what you said about consultation on chapter 7 of part 1 and the fact that the provisions were hidden in the bill. What are your views on the proposals to give private sector tenants the right to adapt properties to meet needs that arise from a disability? In practice, how easy will it be for tenants to enforce that right? On one level, there is not much point in giving people rights that they cannot enforce.

**Lynn Welsh:** At present, it would be well nigh impossible to enforce the right, to be honest—our submission makes that clear. For example, appealing within 21 days if a landlord refuses consent is impossible. Who will approach a lawyer and get a landlord into court within 21 days? To that extent, the right will not be enforceable.

Nick Fletcher suggested that such matters could go to the private rented housing panel, which might well be a more useful way to proceed. The Disability Rights Commission is very much in favour of disability discrimination cases coming out



of court and going to tribunals of various types. We see that as much more useful and user-friendly. The panel may offer a better option.

As our submission makes clear, in England and Wales, disabled people will have the DRC's support—I could represent them in courts or tribunals, for example, if that was necessary to enforce the right. We also provide a conciliation service, which has been highlighted as being a useful tool. We are concerned that disabled people in Scotland will have no rights to assistance from the DRC, although people in England and Wales do. It is important to address that.

**Megan Wilson:** Timescales are important. The time should not be too long. Disabled people must often wait a long time just for an assessment of needs, which is the first step to reaching agreement on the adaptations that are required. Delays can arise all the way along the process. Anything that is proposed for appeals must have timescales that are realistic and which do not mean that the disabled person waits an inordinate amount of time.

**Scott Barrie:** Did Ms Welsh suggest that the DRC's role be extended to Scotland? Would that be one way of ensuring that people were adequately represented?

**Lynn Welsh:** That would help enormously. The provision concerned is the only one in any anti-discrimination legislation on gender, race or disability on which only people in Scotland will not have the assistance of one of the commissions, as people in England and Wales have. This is the first time we have seen such a split, which arises simply from how the bill is drafted. That concerns us deeply. I know that some legal difficulties arise over arranging for the DRC to have the powers in Scotland, but it is massively important that it have such powers in order to make the bill workable.

**Cathie Craigie:** I will move on to the scheme of assistance. The evidence from Ownership Options was that the bill has several fundamental differences from legislation for other areas of the UK. Paragraph 125 of the policy memorandum that accompanies the bill says that giving mandatory status to all adaptations for disabled people

"would create a duty on local authorities which in the view of the Executive could be very difficult to comply with".

Has that been discussed with the Executive since the bill's publication? I ask Richard Hamer to comment further, but I am also interested in other people's point of view.

**Richard Hamer:** Much of the preceding work came from the housing improvement task force, with which we were involved. That led to the

"Maintaining Houses—Preserving Homes" consultation and to the bill.

Throughout those discussions we have brought up the issue of the scheme of assistance and how it will work. At a meeting we had with the Minister for Communities, the housing bill team and people from Communities Scotland, those points were discussed. Figures were bandied around at the time about how much it would cost to increase the support that is given to disabled people; we have done more work on that. According to the Scottish Executive's figures from the Scottish house condition survey, and figures that have been provided by the City of Edinburgh Council, to bring the adaptations that get discretionary grant up to a mandatory status would cost comfortably under £100 million. When the issue was originally discussed there was talk of the cost being about £500 million. Obviously, there is a significant difference between £100 million and £500 million. There are, however, differences; the two situations are not entirely comparable.

It is difficult for us to understand why the focus has not been on solving the problem of so many people living unsuitably. I have always failed to understand the difficulties that the Executive has in dealing with providing adaptations funds. I understand that the problem is historical, in that the housing improvement and repairs grant scheme is aimed at people who have failed to maintain their property or who have bought a property that they have failed to inspect, or for cases in which the property has simply run down over time. However, when we talk about adaptations, we are not talking about people who have failed to do something—we are talking about people who have impairments. The situations are completely different: one is about people; the other is about property. To include adaptations within such a scheme makes it difficult to treat them both fairly. As I said in our proposal, we agree with the ideas around the scheme of assistance for repairs and improvements to properties. It is only in relation to adaptations that we take issue.

If England, Wales and Northern Ireland can have a scheme that offers significantly more support to disabled people without its failing horrendously and—apparently—without its being impossibly difficult for local authorities to provide it, I cannot see why Scotland should be any different. As our submission makes clear, the scheme in Scotland is significantly behind the scheme in the other parts of the United Kingdom. In Wales, the scheme has just been changed so that the parents of disabled children are no longer means tested in respect of the costs of adaptations. The proposals within the scheme of assistance that is included in the bill will leave Scotland even further behind. I do not understand the necessity to make the system worse rather than better.

**Cathie Craigie:** You rightly say that this is about people. Regardless of people's needs, we should all be treated fairly and equally. If a person who is well off and who receives assistance from a local authority sells their property and profits from that assistance, is it fair that some of that money should be used to help people who are less well off?

**Richard Hamer:** Our submission clearly differentiates between changes to a property that increase its value and changes that devalue it. I am sure that any surveyor or anyone from the private rented sector would agree that most adaptations would devalue a property. The example I gave in the submission was of a doubling in cost in relation to somebody who adapted their property. Where adaptations devalue a property, a person should be given a grant. If an adaptation or an extension improves the value of a property, and if the owner would realise that value when they sold their property at a later date, I can see a reason for it being a loan. I would not say that it should be a loan; I am saying that the loan should be the very minimum. I am aware that local authorities have different opinions about loans and grants. Some local authorities we have spoken to have said that they would rather just provide a grant because they think that that would be easier. The spirit of the legislation is that local authorities should be able to choose. All we are suggesting is that minimum standards should be set for disabled people that are higher than the standards for the repair and improvement of a property.

11:00

**Cathie Craigie:** Section 68(1) on assistance for housing purposes states:

"A local authority may provide or arrange for the provision of assistance to a person in connection with work on any land or in any premises for any of the following purposes".

Some of the purposes are then listed. Paragraph (b) specifies

"acquisition or construction of a house",

and paragraph (e) mentions

"adaptation of a house for a disabled person to make it suitable for the accommodation, welfare or employment of that person".

Does section 68 give you any comfort that the needs of disabled persons are being addressed? If that is not the case, please tell the committee why.

**Richard Hamer:** The bill is ferociously complex in relation to what disabled people can get. In England and Wales, if someone requires an adaptation, they have a mandatory right to a grant—that is that. That is the only statement that

is made on the matter. In Scotland, as I mention in the appendix to our submission, adapting a house to add bathing or toileting facilities is subject to different support or assistance compared with adapting the house in another way. That, in turn, is different from improving a house by extending it, which is different from acquiring and constructing a property, which is different from reinstating a property. There are yet more differences between those cases.

We see a fundamental difference between what a local authority can do and what it must do. That is the most important point. We view a number of areas as being downgraded in relation to the assistance that authorities must provide. The scheme of assistance starts at a basic level of providing advice and information.

In cases where people wish to extend a house, a local authority may currently choose to provide a means-tested grant for an extension, but is under no legal obligation to do so. It is proposed that local authorities be able to choose to provide assistance. It used to be a choice between providing and not providing a grant. Under the new scheme, authorities will be able to meet their requirements simply by offering someone advice and telling them that they need to see an independent financial adviser and get a loan. We do not consider that to be acceptable.

The only situation that will stay exactly the same is that of adapting a house to add bathing or toileting facilities; all the other circumstances will change. The appendix to our submission mentions the proposal

"To adapt the house in any other way."

There is a nonsensical situation in that respect. There is a mandatory right to grants for adding toileting or bathing facilities, but no mandatory right to a grant for adding a stairlift in order to access existing toileting facilities. Although I do not think that this would turn out to be the case, it would be possible to end up having to provide an extra toilet, perhaps downstairs, simply because there is no mandatory right to a grant for the purposes of access to existing facilities.

None of the changes proposed under the bill gives us any real faith that disabled people will receive any more financial assistance, and none of the proposals makes us believe that local authorities will be able to reduce the significant number of disabled people who are currently unsuitably housed.

**Grant Carson:** There is a basic principle that adapting a house will increase its value. Should that increase not be paid back? A non-disabled person who makes such an adaptation might aspire to owning a bigger house, while a disabled person might be adapting their house to meet their

basic needs, such as accessing toilet facilities or a bath. Under the current system of means testing, a non-disabled social worker will end up having far more income than a disabled social worker, because the disabled social worker will be paying for adaptations for basic community care assistance, for example, if she needs help getting out of bed in the morning—that is charged for. We end up with a system under which disabled people who are working end up being significantly less well off than non-disabled people doing the same job. We have a fundamental difficulty with that: the principle is wrong.

**Cathie Craigie:** In its evidence, COSLA says that the situation with regard to assistance for disabled people is strengthened, not weakened, by the bill. However, you appear to take a completely different angle on that matter. Would you comment on that?

**Megan Wilson:** Our experience reflects some of what Richard Hamer was saying. Unless mandatory grants are introduced for adaptations and, if necessary, reinstatement, local authorities will act differently from one another in the same circumstances. People are already being treated differently in different parts of the housing sector. For example, some local authorities do not think that adaptations for people with visual impairment are important and very much prioritise adaptations such as ramped access for wheelchairs and so on. Cheaper adaptations are not considered for grants. Moreover, issues such as the location of houses—and, for example, how close the bus stops are—are important to people if they want to access suitable housing. The bill's approach will not improve the situation for people; it will only compound the differences between the different parts of the housing sector.

**Lynn Welsh:** Moving from “you shall do something” to “you can do something” never improves the situation for the people at the bottom who expect to receive services.

**Cathie Craigie:** Would the ministerial power to issue guidance to local authorities stop the postcode lottery across authorities and lead to a more uniform approach?

**Lynn Welsh:** It might well do, if ministers use that power appropriately and usefully. However, the power to make regulations does not apply specifically to grants and loans. I am not sure why that is, but it does not assist the situation.

**Richard Hamer:** Scottish ministers' ability to direct and local authorities' discretion with regard to the provision of assistance are subject to political decisions. Not many organisations would agree that the best way in which to give disabled people rights is to make political decisions for local

areas on the basis of whims. I should say that I am not suggesting that that will happen.

Across Scotland, there is a diverse pattern of provision of support for disabled people. Communities Scotland's research shows that one local authority simply did not provide discretionary grants for adaptations, which meant that there were no grants for ramps, stairlifts or handrails. Furthermore, when it was given the chance, Glasgow decimated its adaptations fund to pay for a shortfall in education funding. As a result, although I would like to believe that local authorities could be trusted with adaptations funding, Ownership Options in Scotland finds that rather hard to believe.

Similarly, even if we provide ministers with the ability to issue directions, we should remember that ministers and priorities change. The right of disabled people to a decent life must be embodied in legislation instead of being left to guidance. Guidance already exists for the improvement grant regime, but that has not prevented diversity in the provision of support among local authorities. I struggle to understand how the proposed guidance will change that situation.

**Christine Grahame:** Your evidence has been interesting and pointed. I acknowledge your comments about the current postcode lottery—indeed, many of us have experienced that in our battles with local authorities over funding for constituents—and your point that the bill might compound the problem.

You said that since the means test was introduced, less financial assistance has been made available. I take it that moving away from a mandatory system of grants to a system of assistance, which appears to consist of speaking to people about things and telling them where to go, represents more cost-cutting.

Should we amend the bill to ensure that certain provisions are mandatory—about which I agree with Donald Gorrie—or could we resolve the situation by putting such provisions in regulations, which would have statutory authority and would be more flexible? After all, guidance can sometimes be terribly flexible. The real question is whether we should amend the bill to make the provisions mandatory and ensure national delivery or whether we should put them in regulations that have the authority of statute but which are flexible, in that they can easily be amended and added to.

**Megan Wilson:** Disability Agenda Scotland would take much more comfort from grants being made mandatory in the bill. It is simply a matter of being clear about being signed up to inclusion throughout the proposals on adaptations.

**Grant Carson:** That would be the preference of Accessible Housing Solutions as well. The bill

should be equality proofed, and the right to grants should be in primary legislation. That would be better than dealing with the issue by regulation, as it would send the right signal.

**Christine Grahame:** Where would you put the details of the interaction of grants and loans, how increases in property value are handled and the recouping of costs? Would the financial mechanisms not be better placed in regulations? We do not usually deal with such matters in bills, because they involve the stipulation of sums of money or percentages.

**Lynn Welsh:** We could have both: the absolute right to a grant or loan could be in the bill itself and the minutiae of how to work out which a person gets and in what circumstances could go into regulations.

**Mary Scanlon:** The problem with my asking questions after everyone else has done so is that a lot of my questions have already been answered. Therefore, I will ask a fairly general one. I agree that adaptations save money, although not necessarily under the same budget. I have an interest in health and have seen how many people are bed-blocked in a hospital because they cannot get into their house as it needs adaptations. The saving might not come out of the same budget, but I appreciate that it is huge.

I will ask about a topic that was touched on in answers to Donald Gorrie, Scott Barrie, Cathie Craigie and Christine Grahame, but I simply want a general answer. In the submission from Ownership Options in Scotland, there is a section about Scotland lagging behind the rest of the United Kingdom. The submission points out that there is less right to a grant and a lower maximum grant in Scotland, that we are falling behind in means testing and that there is no specific scheme for disabled people. Does the bill need a radical overhaul to bring it into line with the provisions in England, Wales and Northern Ireland? Have we missed an opportunity to address disabled people's needs?

**Richard Hamer:** I add the point that we could lag behind on the private rented sector.

With changes such as those that Donald Gorrie has suggested, we could improve the bill to match or improve on what is offered in England, Wales and Northern Ireland. I have not said in our submission that the systems in those jurisdictions work correctly, nor would I say that. The issue will always be partly to do with the availability of the budget to make the system work correctly, but there should be no disparity between local authority areas or the different countries of the UK in how much financial support disabled people get to adapt their properties or in the rights that they

have to do so. There should be similar rights throughout the UK, and disabled people in Scotland should be able to remain in their properties under whatever tenure they wish and whatever tenure enables them to have a decent family life and access to employment.

**Mary Scanlon:** We all agree with that, but my question was whether we are falling behind England, Wales and Northern Ireland. Does the bill give disabled people in Scotland the equal rights that we all agree that they should have?

**Richard Hamer:** No, it does not at present.

**Lynn Welsh:** It does not, although we are now substantially behind England and Wales.

**Mary Scanlon:** In an answer to Christine Grahame, Richard Hamer mentioned inequalities between local authority areas. However, I am slightly confused. In answer to a question that Cathie Craigie posed, he said that all adaptations devalue a property, whereas his submission says that

"works that devalue a house should receive grant and works that increase its value should receive a loan".

What adaptations increase the value of a property?

11:15

**Richard Hamer:** In our submission, we differentiate between an adaptation to an existing property, extending a property and acquiring a property. When we talk about adaptations, we are talking about making changes to an existing property.

There have been suggestions that changing a bathroom to include a wet-floor shower might be the sort of adaptation that adds value. It seems from discussions with people from local authorities that, when such adaptations are made and paid for with a grant, they tend to be done to the very basic standard, using an institutional, medical model. That means white handles and the minimum of white tiling. I do not think that that adds value to a property. Stone with chrome handles and a chrome shower might add value, but I struggle to believe that most adaptations would improve the value of property. For simplicity, we would say that adaptations should receive a grant, whereas extensions and moving home should be subject to a minimum of a loan, or preferably a grant. However, I understand the costs involved.

**Mary Scanlon:** There is an emphasis on grants. I am perhaps missing something, but I do not see any increase in the budget for local authorities in the financial memorandum to cover the additional money needed for providing adaptations. Is it the witnesses' understanding that the expenditure in

the bill and the adaptations required under it, not to mention the possibility of raising our game to be on an equal level with England, Wales and Northern Ireland, will all have to be met under the current budget? Is there a budget somewhere else for such expenditure, or has there been a budget increase that I am unaware of?

**Richard Hamer:** Earlier, the question was asked why COSLA chose the approach that it had taken. Local authorities have been looking to spread the available money more thinly among people who are seeking adaptations. Ownership Options does not think that that is appropriate. The sums of money must be increased.

**Mary Scanlon:** We could be raising the hopes of many disabled people without providing a budget to finance the objectives. Is that the way in which the panel sees it?

**Grant Carson:** If you radically changed the bill to include a stronger right to adaptations and brought us into line with Northern Ireland and Wales, where there is a higher grant limit of £25,000, a greater budget would inevitably be required.

**Mary Scanlon:** From our work with constituents, we all know that it is very difficult even to get a shower fitted. Whether it involves an elderly person, a disabled person or someone else, it takes a long time to get that done. It is a matter of concern if we are seeking better standards of adaptation to meet the needs of disabled people within a budget that most people recognise is inadequate for current needs.

**Richard Hamer:** As we identified in our submission, there does not appear to be a shortage of money available for providing suitable housing, either through the development of new social housing or through the homestake scheme. The split or prioritisation of money within the whole budget under the Executive's housing division seems to have been done in the wrong way, and it could be reallocated in a better way.

**Lynn Welsh:** The right to adapt private rented property does not have to come through social work assessments. It is there to allow disabled people to live a better, more equal life. It is not just about meeting social needs; there is a stronger and higher right. When asking whether an adaptation increases the value of a property, we should remember that private rented properties are now covered, and any increase in the value of a rented property will never transfer to the disabled person anyway. We should bear that in mind when we consider the grant-loan divide, as there is also an ownership-tenancy divide.

**Megan Wilson:** To return to the example of wet-floor showers, which might improve the value of a property, that does not mean that the disabled

person will be able to repay the loan in the first instance. There will still be several extra costs attached. It might be dangerous to assume that, because the value will be higher in the end, the person can afford to make more payments at the beginning of the process.

**The Convener:** I thank the witnesses for attending and for their written submissions.

11:20

*Meeting suspended.*

11:30

*On resuming—*

**The Convener:** I welcome our third panel of the morning. We have been joined by John Blackwood, director of the Scottish Association of Landlords; Mike Stimpson, chair of the National Federation of Residential Landlords; Eleanor Clark, HomePoint co-ordinator of Communities Scotland; and Alasdair Seale, vice-president of the Property Managers Association Scotland Ltd. Thank you all for attending this morning.

I will start by asking the same question about consultation that I asked all the panellists who have come before the committee to talk about the Housing (Scotland) Bill. Has the Executive consulted effectively on its legislative proposals and were you able to participate effectively in that consultation process?

**Alasdair Seale (Property Managers Association Scotland Ltd):** I cannot comment on what my colleagues on the second panel said, but from the point of view of the Property Managers Association Scotland, the answer is yes.

**Eleanor Clark (Communities Scotland):** Communities Scotland is part of the Scottish Executive, so our answer is yes. [*Laughter.*]

**The Convener:** If the Executive did not include Communities Scotland in the consultation, there is no hope for anybody.

**John Blackwood (Scottish Association of Landlords):** The Scottish Association of Landlords has been involved from the days of the housing improvement task force and has represented the interests of Scottish landlords as their largest organisation in Scotland.

**Mike Stimpson (National Federation of Residential Landlords):** Yes—I think that the consultation has been okay.

**Donald Gorrie:** It will obviously cost money to improve houses to meet the tolerable standard. Will that involve rents increasing so much that tenants will be deterred, or will it drive more landlords out of the private rented sector?

**Alasdair Seale:** It will do neither. The majority of properties already meet the tolerable standard and are looked after and owned by responsible landlords and their agents. My assumption is that the introduction of a tolerable standard is intended to bring up to a tolerable standard landlords who operate outside that. Because it is likely that the rent that they already charge matches the market rent, I do not see any way in which such rents could be increased.

**John Blackwood:** The only additional point to consider is timing of the implementation of the relevant part of the bill. Technically, as soon as it is implemented, every property should comply with the new repairing standard, which could be quite dramatic in some cases, particularly in relation to the basic thermal insulation test. Consideration should perhaps be given to phasing in that provision over a reasonable period, as happened with the Housing (Scotland) Act 2001. There is currently no facility in the bill to do that.

**Mike Stimpson:** I sit on committees that deal with thermal insulation. The properties that will be most difficult to bring up to any fixed thermal level will, because of their age, be in the private rented sector. It will be impossible to deal with such properties without massive expenditure because of their mansard roofs. Solid walls are another major problem. The thermal standard that has been suggested as a tolerable standard is a mistake.

We have to bring properties up to proper thermal standards; I agree with John Blackwood that that has to be done in a carefully programmed manner. If it is to be done, it must be done with grant assistance. Tenants will not be prepared to pay more towards meeting the standard and landlords will not get more rent for undertaking the work.

Most tenants will not take any notice of an insulation standard being set at a particular level. They will be more interested in location, including accessibility of their places of work or places where they wish to visit. We accept that insulation is important for everyone, but if we set a standard and make it an offence not to meet it, some properties will not be available to let, because it will be impossible to bring them up to that standard. The issue needs to be examined very carefully. We have no objection to all the other elements of the tolerable standard, which are perfectly reasonable and fair.

**Donald Gorrie:** I want to pursue thermal standards and electrical standards. In one of your submissions, you express concern about the fact that good electrical contractors are slightly worried about less good contractors and how they will be policed. We want good electrical and thermal standards, so is it possible to amend the bill so

that we approach those issues in a commonsense manner?

**John Blackwood:** In our written submission, we suggest that there is an issue with the people who carry out electrical safety checks in Scotland. I gather from the bodies that represent electricians in Scotland that the situation here is unique, although there are comparable regulatory bodies in England. The building standards regulations have been changed. Any electrician who is involved in building new property or in carrying out substantial repairs to property will need to be properly registered. I believe that Select is the Scottish equivalent of the Electrical Contractors Association. It is the body that is able to confirm that people have been trained to meet various standards.

It is important to know that many companies in Scotland provide both gas and electrical safety checks. As a landlord, I use one such company. Recently I found out from Select that many of the people who carry out such checks are registered with the Confederation for the Registration of Gas Installers, which is a requirement for people who carry out gas safety checks, but they are not registered with any body for electrical work. Before they carry out portable appliance testing, they may have done no more than pick up the machine and take a day-long course. Although that it is better than nothing, it is important to emphasise that there must be a standard for electrical checking in Scotland, which is not the case at the moment. The issue is being addressed by other legislation, such as building standards regulations. Perhaps that should be taken into consideration in the bill.

**Mike Stimpson:** In England, there is a five-years-or-less test, which must be carried out by a qualified electrician. It is similar to the CORGI annual test, but it takes place a maximum of once every five years and a certificate is issued. The test relates mainly to earthing of electrical equipment and low voltage in bathrooms and kitchens, where a source of electricity can be touched by hand. In England, no electrician or landlord is allowed to do electrical work in bathrooms or kitchens. Properties must be certified by the five-yearly check, which is carried out by properly qualified people. Many people who are not qualified have had to take courses to get the qualification. There is special dispensation for gas fitters, who must take a special course to do the electrical work on boilers. It is right that all of that is happening.

**John Blackwood:** There is no comparable mechanism in Scotland.

**Donald Gorrie:** Would it be possible to stipulate in the bill that, if a qualified person certified that it was not sensible to spend a lot of money to improve the insulation of a house because of its

construction, it would not need to meet the thermal insulation standard? What approach would you suggest? Should we improve the houses that can be improved, but not waste money on the others?

**John Blackwood:** We need to take a commonsense approach in the bill. The bill provides scant information on the tests and requirements for basic thermal insulation. That is an issue for members of the Scottish Rural Property and Business Association. Commonsense needs to apply when we deal with older tenemental buildings in Scotland, which do not meet modern building standards. There should be a different benchmark for properties of that ilk. There should be some sort of standard, but it should take cognisance of the age and size of the property and the area in which it is located. All those issues affect a property's thermal insulation.

**Mike Stimpson:** The need for thermal insulation differs according to the type of tenant who occupies a property. Students, for example, would not necessarily require, need or wish to have the same level of insulation as old, disabled or young people, all of whom need properties with more insulation. Such an approach would allow us to take a commonsense view of the various types of property and perhaps to restrict the type of tenant who occupies them.

**Alasdair Seale:** We should remember Nick Fletcher's earlier differentiation of thermal insulation and thermal performance. Thermal performance covers issues such as heating systems and a property's location with regard not only to the effects of, for example, weather but its position in a tenement, so it addresses some of the issues that have been raised. After all, the quality of insulation might be less relevant than the ability to heat a property affordably and in a greener manner.

**Cathie Craigie:** I want to move on to the repairing standard—[*Interruption.*] I am sorry, convener. If you had not given us a comfort break, I would not have been able to switch my phone on. I will drop it on the floor for now.

**The Convener:** I have reminded committee members before about switching off their mobile phones, Mrs Craigie.

**Cathie Craigie:** I apologise to the witnesses. Where was I?

**Mr Home Robertson:** On the phone.

**Cathie Craigie:** Although in its submission the Scottish Association of Landlords acknowledges that the tolerable standard is outdated, it expresses concern that the repairing standard will differ from the standards that will be placed on RSLs. I am sure that the committee will examine that matter. Will the introduction of the repairing

standard have a positive effect on the physical condition of properties in the private rented sector?

**John Blackwood:** Yes; in fact, such an effect is required. We fully support the introduction of the repairing standard, but it will, as our submission points out, result in another cross-tenure inequality that should be addressed. When we consulted on the introduction of a new repairing standard, we assumed that it would automatically be brought into line with the standard that is set out in the Housing (Scotland) Act 2001 which, after all, is only three years old. However, it appears that, after further discussion and consultation, the issue has grown substantially. Although we agree fully with what has been added to the new repairing standard, we feel that it should be made available to everyone. Such a requirement would meet the needs of modern tenants and a modern Scottish society.

**Mike Stimpson:** We are concerned not about the repairing standard itself but about an apparent difficulty with regard to certain decisions. We believe that the repairing standard should reflect a property's physical state, and that registration and licensing should reflect its management. However, I notice that Shelter Scotland suggests that the two aspects should be interlinked. We feel that they are exclusive and should not be mixed.

**Alasdair Seale:** We are concerned that tenancies under the Agricultural Holdings (Scotland) Act 1991 are excluded from the repairing standard provisions but we are not clear about why such a proposal has been made.

I should also point out that agricultural tied tenancies are not the only type of tied tenancies. For example, a warden or housekeeper in a residential retirement home would be in a tied tenancy; I imagine that the committee would want to ensure that the repairing standard applied to such properties.

**Cathie Craigie:** Tied tenancies seem to be the domain of my colleague, John Home Robertson, whose ears pricked up when the phrase was mentioned. I am sure that he will follow up that point. Does Eleanor Clark have a comment on the point about the distinction between the private sector and RSLs? What is Communities Scotland's view?

11:45

**Eleanor Clark:** Last year, Communities Scotland published national core standards for private landlords. Those were the result of an extensive consultation following the recommendation of the housing improvement task force that there should be voluntary accreditation schemes for private landlords. It was felt that

before the development of such accreditation schemes could be encouraged, a view would need to be taken on what accreditation actually meant. An extensive consultation process resulted in a set of national core standards that cover tenancy management and property condition, guidance on achieving and aspiring to those standards and guidance on development of voluntary accreditation schemes.

The commitment was made that the core standards should reflect as much as possible the Scottish housing quality standard that was being developed at the same time. The national core standards represent the private rented sector equivalent. The Scottish housing quality standard allowed local authorities a time lapse in which properties could be brought up to standard. The standards for private landlords also contain that. Those standards are available as guidance to any individual landlord. They are being used in four areas in Scotland where there are voluntary accreditation scheme pilots, and they are viewed positively.

**John Blackwood:** We would go slightly further. We agree with the new repairing standard, although it should be a cross-tenure standard. As well as an implied term, there should also be within the tenancy agreement an explicit term stating the repairing standard. Much of the complexity that has been experienced by landlords and tenants lies in the fact that they are not fully aware of their rights and obligations. A positive way to address the issue would be to have an explicit term specified in the tenancy agreement. That was consulted on, and we certainly picked up on it. We would like to pursue that idea. Tenants and landlords have obligations under statute, so it is all the more important that such things be expressed in writing. We would go further and we would emphasise the issues of timing and implementation. We feel that there needs to be a practical and commonsense approach.

**Cathie Craigie:** I am sure that we can follow that up with the Deputy Minister for Communities when she comes before the committee.

We have touched on the cost of implementing the bill's provisions and how that might affect levels of rent or the market. We took some evidence from housing professionals before stage 1, in briefing sessions. We need to be careful that the provisions are not such a heavy burden that landlords are forced out of the market, or that rents are raised so high that students, for example, cannot afford them. Mike Stimpson mentioned this earlier, but do the witnesses have any other issues around people's ability to comply with the provisions and how rent levels might be affected?

**Mike Stimpson:** Two things are particularly noticeable in Scotland. Scotland is one of the few parts of the British isles where property prices are still increasing considerably. I do a lot of seminars in England, and I have found that a number of buy-to-let purchasers are now buying in Scotland. A number of people, mainly from down south, are buying properties in the nice new developments in the big cities as buy-to-lets because of the attraction of the return and because they are now able to wash their faces with a 15 per cent deposit in Scotland. We are quite surprised that there is a movement towards that, particularly with properties that are being built by Miller Homes, which seems to have a first-class management structure and a first-class management system for buy-to-let purchasers.

If you regulate to such a degree that the cost makes it impossible for landlords to make a profit, you will lose the best landlords, not the worst, because the worst will not register or license until you catch them. That is worrying. The private rented sector accounts for 7.5 per cent of all dwellings in Scotland, which is extremely low, and in certain areas in Scotland the figure must be less than 5 per cent, which is not encouraging. Fife Landlords Association tells me that, because of the HMO licensing scheme, 10 per cent of its members have sold their HMOs. That is not encouraging, either.

What is in the bill to encourage a good landlord? The answer is that there is nothing to give a landlord anything. If you enact a bill that does not encourage landlords to do anything but which introduces more regulation and leads to greater costs, you will not improve the product but put its cost up by causing increases in rents. Your objective is to improve the product by bringing up to standard the properties that are not up to standard but, with HMO licensing, you are charging the good landlords for bringing to book the bad ones. That mistake has been recognised and will not be made in England, which will do the opposite with its licensing regime. In England, the charging system will use the lightest touch on the good landlords and ensure that the bad landlords pay for failure to bring their properties up to standard or keep them up to that standard.

What could you have done? There is a form called the 8T5, which has to be served on every tenant before an assured short-hold tenancy is granted, otherwise the default tenancy is an assured long-term tenancy. That was a very naughty inclusion in the English Housing Act 1988 that was implemented in 1989. Every landlord organisation did its best to ensure that that disappeared as quickly as possible and, in the Housing Act 1996, the measure was repealed because, in effect, it trapped landlords. Everybody in Scotland who takes a tenancy must, by reading



the form, know what they are taking. It would have been nice if the Housing (Scotland) Bill had recommended that that form be dispensed with.

**Cathie Craigie:** Can I butt in? I know that the convener will pull me up. We are trying to make our way through the bill, so I ask you simply to address the point about which I asked, which I think you have done.

**Mike Stimpson:** That was all that I want to say on that point. The only other point that I was going to make was that the licensing and registration regulations should use an extremely light touch on landlords who act properly and who belong to accreditation schemes and proper professional associations. Such landlords should pay the minimum fee. I see that in some proposals—particularly those on registration—you are talking about self-certification for the good landlords who can be trusted, which is excellent, but that should be matched by reducing costs to them and by imposing severe costs on those who will not comply.

You are introducing private rented housing panels—which I fully support, as we should remove as many housing matters from the courts as possible—but why have you not considered rent arrears? If tenants do not pay rent, landlords cannot maintain properties, but that appears to have been ignored. A tenant can legitimately go for three or four months without paying rent, but the landlord will still be required to meet all the standards and will have to go to court to get the tenant out. I see that there is no intention to remove rent arrears from county courts. That should be the first move. It would be a marvellous opportunity to demonstrate to landlords the way we should go because, although most tenants want longer tenancies, landlords will not grant longer tenancies because of the difficulty of removing tenants who are difficult—that is, those who do not pay the rent. If tenants who do not pay their rent could be removed by an easier means, such as through the private rented housing panel, landlords would be prepared to grant much longer tenancies. That would be very useful in encouraging the sector and allowing it to continue and flourish, as opposed to having even more control by regulation.

**John Blackwood:** To go back to the earlier point about repairing standards, as an organisation with grass-roots knowledge of the private rented sector throughout Scotland, we stress the importance of recognising the diversity in the sector. We have reason to believe that it is very different from the sector in England and from the sector in Wales, with which we draw more comparisons.

In certain local authorities, such as the City of Edinburgh Council and Perth and Kinross Council,

the private rented sector is significantly larger than the national average, which results in a number of things. There is more supply and more accommodation on the market, so many landlords struggle to find tenants. That may be juxtaposed with the situation in other areas of Scotland, including the more rural areas, where tenants have no alternative accommodation available to them. For those who are, for want of a better expression, stuck in some parts of Scotland, it may be possible for their landlords to raise their rents to recoup some costs, but that is not possible in other areas.

It is difficult to generalise and say that tenants will have to pay higher rents or otherwise. That will depend on where they live as well as on the particular property. It is a difficult question to answer.

**Mary Scanlon:** I would like to clarify something about the difference between repairing standards in the social and private housing sectors. Eleanor Clark from Communities Scotland, in response to Cathie Craigie, mentioned national core standards, which reflect the Scottish housing quality standard. However, John Blackwood of the Scottish Association of Landlords mentioned a distinction between repairing standards in the social and private housing sectors. Do I misunderstand the situation? Is there one standard, or do you see two standards?

**John Blackwood:** In statute, there are two standards. Eleanor Clark referred to the core standards. Those are aspirational standards, which exist for private landlords and are benchmarked against the existing standards under the Housing (Scotland) Act 2001. The core standards serve as a voluntary code, as it were. The 2001 statute is quite different from the legislation that is proposed under the Housing (Scotland) Bill. The basic repairing standard is to be the same under the bill.

The bill also contains additional elements that cover fixtures, fittings and furnishings, which means that private landlords will have to ensure throughout the lifetime of a tenancy that the fixtures, fittings and furnishings comply with fit-for-use and other standards. We do not disagree with that, but we point out that that does not apply to people in the public sector—tenants of local authorities and RSLs in general. We feel that the standards should apply across the board.

**Mary Scanlon:** I think I understand that. I will move on to repair inspections. We have heard evidence this morning from disabled groups. The National Federation of Residential Landlords mentions in its submission something that I had not thought of before. It states:

“The cost of any adaptations must be the responsibility of the tenant, and equally there must be adequate provisions

for the property to be reinstated to its original condition once the tenant vacates. It is not reasonable to expect a landlord to be responsible either for the cost of any adaptations or for the reinstatement at the property once those adaptations are no longer required."

Is the federation saying that the tenant must find the finances to adapt their homes for disabled access or whatever, and take responsibility for returning the house to normal tenancy conditions when they leave? That would be an onerous financial burden on disabled people, would it not?

**Mike Stimpson:** We believe that that should be provided for by the state.

**Mary Scanlon:** Have you discussed the matter with local authorities or the Executive to find out whether they are willing to pay twice for disability adaptations and for reinstatement of houses to their original condition?

**Mike Stimpson:** We have not.

**Mary Scanlon:** Do you think that you would have much success with such questions?

12:00

**Mike Stimpson:** Again, I can speak only for England. There, the social services normally meet disabled people's basic requirements. When a tenant goes into a home or dies, facilities are never removed. They could be used again, but they are simply left where they are. The landlord has to remove facilities and we think that that is wrong.

**Mary Scanlon:** So that issue must be clarified during discussions on the bill. I assume that local authorities would say that the landlord would be left with the responsibility for facilities if a tenant dies.

**Mike Stimpson:** That is right.

**John Blackwood:** We have consulted COSLA on the matter. One issue is that grant-aid mechanisms are tied to applicants, who are the tenants in this case. A tenant dying or abandoning the property is an unfortunate possibility. Perhaps money will be made available through local authorities to make alterations, but unless the tenant is there, no money could be made available from the local authority to reinstate a property. We think that that is wrong. Obviously, only the tenant can make an application in the light of their individual circumstances, but something should be linked to the grant to allow a facility to be reinstated if or when the tenant leaves. We are thinking about potentially long-term sustainable accommodation.

**Mary Scanlon:** So we are talking about almost doubling the cost of providing adaptations

because we are taking into account the costs of removing them.

**John Blackwood:** The issue goes back to the previous panel's evidence. In the long run, money will be saved and in the circumstances it would be unreasonable for a landlord to say that something cannot be done. At the moment, it is reasonable for a landlord to say that someone cannot fit a new bathroom with a wet-floor shower, for example, because of the cost implications.

**Mary Scanlon:** I understand that, but this is the time to discuss such matters. The issue must be addressed.

I want to ask the other witnesses about repair inspections taking place as often as every six months. What would be the effect of such inspections on landlords and tenants? The financial memorandum mentions additional costs to everyone from the Scottish Executive to landlords, but additional costs to tenants are not mentioned. The Scottish Association of Landlords has talked about repair inspections significantly increasing rents. What will the cost be to tenants?

**John Blackwood:** Cost is an element, but if a repair inspection report is required to be given prior to the beginning of every tenancy—which is technically every six months—practicality is more the issue. What should be in a report? How extensive should it be?

**Mary Scanlon:** Would a report have to be done by a professional surveyor?

**John Blackwood:** We do not know. The bill does not state that, so we would like the matter to be clarified.

**Mary Scanlon:** There would be significant costs if a report that is similar to a single survey had to be done by a professional surveyor every six months. Figures of between £400 and £700 have been given to us. We will clarify matters. Are you worried about rents increasing as a result of such costs?

**John Blackwood:** Yes. I think that there would be an immediate knock-on effect, as there would be a cost at the time that would be passed on to tenants. I also question the worth of such reports. The issue must be addressed, but perhaps it is better to think of the wider context and the new repairing standard. Landlords will have to give more details about such things as fixtures, furnishings and fittings. Many landlords do not supply inventories—that is not good practice, but it happens. Perhaps there could be an agreement so that the landlord provides an inventory that details not only the furniture and its condition but any repairs that need to be carried out. The inventory could be given at the beginning of the tenancy and it would be for the life of that tenancy.

There is a way round things without requiring a completely separate report on works to be carried out in addition to an inventory and so on. There could be copious pieces of paper that nobody will ever read or fully understand. That is a big issue.

**Cathie Craigie:** Do you agree with the Scottish Executive's view that the private rented housing panel will make it easier for private sector tenants to enforce a landlord's statutory repairing obligations? As we are tight for time, I will link in another question on the same theme. It has been suggested to the committee that the remit of the private rented housing panel could be extended to deal with other tenures and with problems that landlords have with tenants. Will you comment on that suggestion? Those questions are for John Blackwood and Alasdair Seale.

**John Blackwood:** We support the panel's role of addressing the repairing standard. It is easy to think that this new tribunal could cure all the ills of the private rented sector in relation to rent arrears, dispute resolution and a number of contractual terms within the written agreement. A concern is that if the panel's remit were widened beyond the basic repairing standard, it would be required to have a load of other skills. It would also short-circuit the entire Scottish court system, and issues arise in that regard. I am not necessarily completely against the suggestion, but it is naive to think that the panel that the bill introduces could cure all ills.

One of the reasons why our submission focuses solely on the repairing standard is that although we believed that there might be issues with the current short assured tenancy regime, we felt—as we were part of the housing improvement task force—that the bill should focus primarily on the repairing standard and on improving the quality of Scotland's housing stock. Therefore, the panel should address that. As the rent assessment committees already examine all those issues, it would be a simple transition for them to be included.

On the subject of the repairing standard, we would like landlords to have the right to approach the panel, which they do not have under the bill; only private tenants have that right. Landlords should be able to come to the panel and say, "I am not able to fulfil my obligation under the repairing standard because the tenant is not giving me access to the property." A large number of complaints come into SAL on the issue of not getting access. Currently, the only recourse for the landlord is through the Scottish courts. By the time the landlord gets there—whenever that is—the repair probably requires a huge overhaul. By the time a landlord has gone through the court procedure, it will have cost a fortune, when initially the situation could perhaps have been resolved by

doing a simple repair. The relationship between landlord and tenant will have been destroyed and that is not productive. If we could use the panel to mediate in an adversarial situation, that could be important and it would fall easily within the remit of the repairing standard.

**Alasdair Seale:** We concur with what John Blackwood has said about the need to enable landlords to refer issues to the new panel. In addition to the points that he has made, we feel that that would give the panel more credibility and independence than it would have if, as is currently suggested, only tenants could refer cases to it.

An issue that concerns us is when a tenant can refer a case to the panel as the bill makes no provision on whether a landlord has failed to remedy a situation. The tenant could trigger a reference on the basis that he has told the landlord about the problem. He could go to the panel the next day without giving the landlord a reasonable period of time in which to carry out relevant repairs. There is scope for revision of that proposal.

**Mike Stimpson:** Checks must be made of the landlord by the panel to ensure that a case that is being brought is genuine rather than vexatious. I have spoken about this already, so I will not go through it again, but, unlike John Blackwood, I believe that the panels are ideally set up to deal with simple cases of rent arrears. Rent assessment committees deal with rent and with properties all the time. The panels are to be authorised to deduct up to 90 per cent of the rent if repairs are not carried out. However, landlords cannot be expected to do repairs if tenants choose not to pay the rent. The two issues are linked. As I say, it would be a good encouragement to landlords—

**The Convener:** May I interrupt you? I think that you have made that point on the record on more than one occasion. The committee will bear in mind your concerns on the matter when we consider all aspects of the bill.

**Scott Barrie:** I have a two-part question on chapter 7, which is on the right to adapt rented houses to meet the needs of disabled occupants. First, do you agree that private sector tenants should have that right? Secondly, what are your views on the criteria, as set out in section 52, that landlords may use to consider whether a request to adapt a property is reasonable?

**John Blackwood:** We agree with the right and we think that it should be in the bill. As we explain in our submission, many of our members have asked how they will ensure that money is in place for reinstatement; we have been through that argument, which is an important one. That is where the test of reasonableness comes in, and

there needs to be greater guidance on that. I do not know whether it should be in regulations or in statute, but the matter needs to be addressed.

It is clear that the private rented sector needs to offer equality to people with disabilities in accessing private rented accommodation in Scotland. We whole-heartedly support that and in principle we do not have an issue with it. The question is about the practicalities of who pays—that is always the issue, but it is a real one in this case.

**Alasdair Seale:** We welcome the right of tenants to force through such modifications, but we think that short tenancy periods should be exempt from the requirement. There seems to be little point in spending private or public sector finance on adaptations to properties that are let under short-term leases.

**Mr Home Robertson:** I have a couple of quick questions on part 4, on HMOs. We heard Mr Stimpson make the case for distinguishing between good guys and bad guys, or good landlords and bad landlords. I take the point that there might be a case for incentives for good landlords and penalties for bad ones, and we might be able to return to that. In its submission, the Scottish Association of Landlords supports the idea of achieving parity of fees in relation to HMOs. Will you tell us, fairly briefly if possible, why you think that it is so important for that to be done in primary legislation rather than in regulations?

**John Blackwood:** The Civic Government (Scotland) Act 1982 (Licensing of Houses in Multiple Occupation) Order 2000 allowed local authorities to interpret standards and take matters forward as they wished. We had issues with that; at the beginning, we were not against the principle of HMO licensing and what it stands for, but we had problems with its administration. Our experience is that landlords from every local authority area in Scotland come to us and say, “I’ve got three flats, which are coincidentally in different neighbouring local authorities. I have to fulfil three completely different tests and pay three different fees.” The bureaucracy is horrendous, and we have evidence to show that. The Executive has produced new guidance, but we think that it is time for primary legislation to allow Scottish ministers to address the continuing issues with licensing. It has been mentioned that there will not be any great urgency in implementing part 4 of the bill, but we think that there should be.

**Mr Home Robertson:** That relates to my next question. In your submission, you say that you want the provisions on HMOs to be introduced “sooner rather than later”, but we are led to believe that that will not happen until 2007.

**John Blackwood:** We have an issue with that. The system already exists, so it would be easy to implement it in primary legislation and allow that aspect of the bill to be implemented relatively quickly. We hope that that will be the case.

**Cathie Craigie:** John Blackwood mentioned private landlords and the registration scheme earlier this morning, but I ask the witnesses to give their views on how the changes that are proposed in the bill will affect the private letting sector.

12:15

**John Blackwood:** We have supported national registration of landlords as exactly that—national registration—and we have made strong submissions to that effect through the housing improvement task force. There is a public interest in having such a register. Even from the landlords’ point of view, there is an interest in being able to see the extent of the private rented sector in Scotland. At the moment, we are not entirely sure how big the sector is. Many landlords are hidden landlords, or are people who do not recognise that they are landlords. That gives rise to policy issues for us.

There should be registration, but it should not be devolved to local authorities because that could smack of HMO licensing. It would be quite easy to set up a national register containing nothing more than basic information on who the landlords are and where their properties are. As you have suggested, the bill considers extending that information. However, it is difficult to think about extending something that does not yet exist. Registration has yet to be implemented throughout Scotland.

It would be quite easy to set up a national register. Landlords would register and that would be it. The information could be used by all local authorities, which could then extrapolate. We feel that a national register would be the best mechanism for that.

**Alasdair Seale:** I concur exactly.

**Cathie Craigie:** Usually, local is best. Democratically elected local people will be the people who take the big decisions and they will usually know what their communities need. As you know, I stressed that point when we were working on the Antisocial Behaviour etc (Scotland) Bill. I strongly believe in the fit-and-proper-person test and in local registration.

I acknowledge that only a minority of private landlords do not act reasonably and responsibly. However, if there is a problem, it should be dealt with by local organisations such as the police or the antisocial behaviour task force. They should be able to get local access to information.

Moreover, if there are bigger problems, information can be shared locally.

I really cannot understand why your organisations would prefer national registration. I had presumed that it would be easier for you to deal with people at local level, rather than with a centralised department.

**John Blackwood:** It is quite the opposite, actually. Many of our members have properties in various local authority areas, so they might be faced with double or triple registration, and they might have to fulfil the individual tests of each local authority. It would be far better if every landlord had to register with a national database that would be run by Communities Scotland—I am giving Eleanor Clark another job today—or if they had to register somewhere within the central administration of the Executive. That national information would be clear and transparent, allowing local authorities to look at the people in their areas and base their local strategies accordingly. It would be far easier for a landlord to register once than to register many times. A national register would also be more user-friendly and approachable. It would also, I hasten to add, be far cheaper.

I should declare what might be an interest: I am part of the implementation working group for the Antisocial Behaviour etc (Scotland) Act 2004. That group is looking specifically at registration and we thought that a national register would be best.

There are positive aspects for landlords in registering, but only in registering. It has been suggested that the register be extended to include codes of good practice and so on, but we deal with such issues through accreditation. Registration should lead people into accreditation and perhaps into HMO licensing or whatever. We regard accreditation as a very positive model. It represents the first positive engagement that we have had with the private rented sector. Before that, all we had was regulation, regulation all the time, and that was very reactive. To support the ethos of accreditation, registration should stand alongside it but not be part of it.

**Cathie Craigie:** Perhaps we will need to have further discussions, but not here.

**The Convener:** And not today, Mrs Craigie.

**Christine Grahame:** I want to backtrack for a moment and pick up on something that Mr Seale threw in at the end about exempting short tenancies from obligations on disabled adaptations. Many tenants may find themselves on a series of short tenancies, which the landlord simply repeats. How does one get round that? The landlord might simply issue one short tenancy after another to the same tenant, thus circumventing the obligations.

**Alasdair Seale:** That is a good point.

**Christine Grahame:** That is why I made it.

**Alasdair Seale:** My comments were designed to preclude a landlord from being obliged to carry out or to have carried out adaptations for someone who is planning to live in a property only for a short term. Many landlords grant leases that have as their principal period six months, but which have automatic extensions built in. We would need to consider what the definition of a short period is in that context.

**Christine Grahame:** I would like to hear more from you on that before stage 2.

**Alasdair Seale:** I would be happy to assist.

**Donald Gorrie:** I want to find out about the role of the private landlord accreditation pilot group—that is a bit of a mouthful. Rather than have a seminar just now, it would be helpful if Eleanor Clark would be kind enough to give us a brief piece of written evidence to explain the background to the setting up of the pilot group and its purpose, which we could read at our leisure. In addition, I will put some specific questions on the record. How do you feel that the local authorities that are involved in the pilot are developing their proposals? Is that working well?

**Eleanor Clark:** It is. Although it is early days, nine months into the development there have been very positive responses in each of the four local authority areas in which the accreditation schemes are being piloted. Before selecting those four areas, we invited all local authorities to apply for grant assistance over two years to be involved in the pilot group. The fact that more than half the local authorities in Scotland applied showed that there was definite interest. One of the criteria for the assessment of applications was that there should be evidence of genuine partnership between the local authority and private landlords in that area. In other words, we were looking for private landlord forums or other evidence that the council and private landlords were already working together and were ready to take part in an accreditation scheme. We wanted to ensure that the pilot would genuinely be about accreditation schemes and not simply about councils getting together and working positively with private landlords. That is the basis on which the four successful local authorities were selected. The pilot is working well in each of those areas, although it is still early days. Progress so far has positive implications for the success of the pilot.

There is support for each scheme within the pilot group as well as for the group as a whole so that what is to be learned from the different applications in the different local authority areas can be captured and given out as good practice

guidance as the accreditation programme develops.

There is a concern that is similar to a concern that has been raised about registration, which is that landlords whose portfolios include properties in a number of areas in Scotland want to know whether they would need to jump through different hoops to get accredited in different areas. As part of the pilot, we have provided as a resource an agreed set of core standards for each scheme to use. Those standards are not mandatory—the local authority concerned can elect to remove elements from them, but so far there has been little or no adaptation. It is too early to say, but we are already getting the feeling that that will not be an issue and that accreditation schemes in different parts of the country will not be radically different.

That said, there will be some differences between schemes in rural areas and those in urban areas. Those are to do with property condition, types of property and matters such as thermal insulation, which has been mentioned. Schemes are being amended on that basis, but so far the picture is good. The City of Edinburgh Council has now launched its scheme—it is being chaired by John Blackwood. Although the council sent out packages of information to 2,000 landlords only at the weekend, John Blackwood has told me that applications have already been received from landlords who wish to join the scheme. South Ayrshire Council has launched a scheme, too. Dundee City Council and Dumfries and Galloway Council are the other two authorities involved and they are not quite ready to launch their schemes, but they are working with project groups on the adoption of the standards.

**Donald Gorrie:** In addition to what you have said, have any minus elements in the scheme, from the landlord's point of view, surfaced so far?

**Eleanor Clark:** It would be wrong not to say that there is concern among the landlords about registration and accreditation. How are the two going to fit? What do the proposals mean for one or the other? The landlords are unclear about what registration will mean for them.

The positive side is that landlords understand that if registration means that they are simply registering a business, accreditation means that they have an opportunity to demonstrate the quality of the business that they are providing. In most schemes, the partnership is working towards some positive incentives for landlords to encourage them to come into the scheme—each scheme has different packages of incentives, depending on what needs to be done locally. One of the main advantages that we have seen at the moment is that there is a good line to the local authority in relation to a range of things concerning

regulation and legislation and some assistance is being made available to help particular landlords to understand the implications of legislation.

**Donald Gorrie:** While we are in the market for additional written evidence, perhaps Mr Stimpson would be kind enough to produce more thoughts on his interesting proposal that housing renewal areas should cover the whole area, not just the housing. It will be difficult to explore that issue just now, but I would find some elaboration of that helpful.

**Mike Stimpson:** I would like to make one point at the moment. Fife is not one of the four pilot areas, but I am extremely impressed with its accreditation scheme, which is called a charter for private landlords. It has been well received by the landlords in Fife and I commend it to the committee; it is first class. I point out that it contains published benefits for landlords as well as for local authorities. It is extremely good indeed. I am surprised that Fife was not used along with the other four.

**Scott Barrie:** It is not the first time that something good has come out of Fife.

**The Convener:** Not that you are biased at all, Mr Barrie.

**Eleanor Clark:** It is not a matter of regret that Fife was not included in the pilot. The reason why it was not was that it had already done the work. The situation was done and dusted. Fife is used by us as an example and the council acts as an adviser to the pilot group. We were well aware of how far ahead Fife was.

**The Convener:** That clarification is helpful.

As we have no more questions for our witnesses, I thank them for their attendance and for their written submissions. Committee members look forward to receiving any further written evidence that they might supply us with in the weeks ahead.

12:28

*Meeting suspended.*

12:30

*On resuming—*

**The Convener:** I welcome our fourth and final panel. We are joined by Andrew Bradford, leader of the planning, housing and infrastructure group of the Scottish Rural Property and Business Association, and Stephen Vickers, the Buccleuch Group's estate manager, who is representing the Scottish Estates Business Group.

Thank you for joining us, gentlemen. I start by asking you the same question on consultation as I

have asked of all the panellists. Do you believe that the Scottish Executive has consulted effectively on the proposals and allowed you the opportunity to engage with it?

**Andrew Bradford (Scottish Rural Property and Business Association):** Yes. In general, we do. We appreciate having been included in quite a lot of the procedures from way back, and more recently in the technical and policy reference groups. However, it is worth pointing out that our written evidence is our only opportunity to respond to the bill as introduced, and we feel that wider public consultation on the bill as introduced might have led to a more clearly drafted bill. When we examine the local housing strategy reports from across the country, we see an almost universal comment that there is a lack of knowledge or understanding about the private rented sector. We are concerned that the Parliament is legislating on a subject of which people may have an incomplete understanding. However, the answer to your question about consultation is yes.

**Stephen Vickers (Scottish Estates Business Group):** I echo a number of the points that Andrew Bradford has made. In particular, we welcome the invitation here to discuss the proposals on the back of our written evidence. A degree of confidence comes from the fact that the work of the housing improvement task force led to the consultation entitled "Maintaining Houses—Preserving Homes", which led in turn to the Housing (Scotland) Bill, which means that we are now able to have a well-founded discussion.

**Donald Gorrie:** We had a good discussion with a previous panel about thermal efficiency and electrical standards in the tolerable standard. Do you have any particular concerns about those standards in rural areas that you think we should address?

**Andrew Bradford:** Yes. A number of quite considerable differences between the private rented sector and other housing providers must be understood. In particular, properties are likely to be of a greater age. I hate to quote statistics, but 57 per cent of properties in the private rented sector in Scotland were constructed prior to 1919. That compares with 23 per cent of owner-occupied properties, 15 per cent of RSL properties and only 2 per cent of council houses. We are talking about a very different type of property, and the fact is that elements of disrepair and inadequacy of thermal efficiency are related to the age of a structure as much as they are to tenure.

There is a concern that many of the houses in rural Scotland will be difficult to bring up to what would probably be deemed to be acceptable levels of thermal efficiency without major reconstruction works. As the committee has heard, such houses are of solid wall construction and the roof structure

is such that one cannot get insulation into the roof. To do so would be tricky and expensive, and the only way that I, as a landlord, have found of doing it effectively is to strip the building back to the four walls and roof and start again, which is expensive.

**Stephen Vickers:** Andrew Bradford said much of what I hoped to say about buildings' age and construction. In rural areas, we steward several listed buildings that are of great significance for their historical character or for the landscape. Listing often puts physical restrictions on what we can do. Thermal efficiency is not just a matter of wall insulation; it involves double-glazing and the like. Our stewarding of those properties, which we all want to help to preserve, is restricted. The need to preserve and maintain the heritage must be balanced with the need to ensure that Scottish tenants have good properties to live in.

In rural areas, we do not have the availability of contractors that urban landlords have. That has an impact on cost and on the time that it takes to undertake works. The skills base is also a factor, because not many people are entering those key-worker positions.

**Andrew Bradford:** It is worth bearing in mind the fact that if a new threshold is set, many properties might fall below it. We heard earlier that allowing a timescale in which to adapt houses to the new standard makes sense. From a purely practical point of view, if a limited number of tradesmen are available and many properties require work, all the work will not be able to be undertaken overnight. If the standard rises on 1 February or whenever, not all properties will comply by 2 February—that is a non-starter.

Common sense says that a similar approach to the one for the Scottish housing quality standard, which is to be adopted by 2015—in 10 years' time—would provide scope for the process to happen, not least for listed buildings, which Stephen Vickers mentioned. It took me more than six months to obtain listed building consent to replace one window in a building in a listed property recently. That is a practical point.

**Mr Home Robertson:** That was quick.

**Donald Gorrie:** The Scottish Rural Property and Business Association's submission is strongly in favour of maintaining mandatory grant assistance, which the housing improvement task force argued against. If both witnesses agree, will they set out their stall on why grant should be maintained?

**Andrew Bradford:** Another difference between the rural and urban private rented sectors is that rural rentals are considerably lower and the cost of repairing structures is probably higher, because they are subject to greater wear and tear from the elements than are houses in urban areas, which are perhaps more sheltered by neighbouring

buildings. If landlords are squeezed on the rent and expenses sides, that makes the economically viable enterprise much more fragile.

In case you asked such a question today, I looked up some information before the meeting. I manage more than 60 properties, which we lease to third parties just to provide accommodation, most of them for what we deem to be a local rent rather than an open-market rent. In the past three years, the average surplus that those 60 houses have generated is £67 per property per annum. There is not much fat in that to allow money to be spent on meeting insulation standards.

The bill and its associated literature say that it might be possible to raise rents, but raising rents is not compatible with continuing to deliver affordable housing. That is simple. In some areas, the market would not stand rent rises, so that might not be an option.

**Stephen Vickers:** The issue relates to our rents and our tenant structure. The private let sector plays an important role in rural communities that are economically fragile. In those areas, we house key workers, who cannot afford higher rents. However, landlords cannot sustain the uneconomic letting of property. A balance must be achieved.

The aspirations of the Housing (Scotland) Bill are wholly supportable. Of course the urban areas will have a strong influence on a bill such as this, but delivery and how we manage the process are different in rural areas. Members should seriously consider the possibility that there will be fall-out of properties from the private let sector if regulation is too severe.

**Andrew Bradford:** Once we get to the truly rural parts of the country, in communities below 1,000 strong—which, where I live, is regarded as a big town, although it depends which end one is looking at it from—the private rented sector is providing 11 times the quantity of housing that RSLs are. It follows that a 10 per cent reduction in the private rented sector would completely wipe out the contribution made by the RSL sector in those areas. I would be concerned about any discouragement of rented housing provision. We endorse the standards, but we have reservations about the effect that they might have on supply. We do not want the private rented sector to shrink. We would like the legislation to nurture, support and encourage the sector, rather than hinder it.

**Linda Fabiani (Central Scotland) (SNP):** From your evidence it appears that you believe that the rural housing sector should be treated differently, and that there might be a special case for revitalising local communities and for keeping people and attracting people to those communities. If that is what you believe, what

criteria do you think it would be sensible to use to make exceptions for or to define those particularly fragile areas?

**Andrew Bradford:** I am making a case for responsible landlords, who I am quite certain exist in both urban and rural areas. I suspect that the legislation is aimed at the small percentage of landlords and tenants who fail to observe the tenets of responsible landlordism or tenancy. I have not tried to determine what the parameters might be for special treatment, but equally there is scope for ensuring that the bill is rural proofed so that it works within a fully understood rural private rented sector. As I said earlier, the subject has not been fully understood, although work has been done on it in recent years: Peter Kemp and David Rhodes did work at the University of York back in 1995; there is report 83 from Scottish Homes and the Scottish Landowners Federation; an interesting report on property strategy in Dumfries and Galloway was produced early last year; and I think that Glencairn Community Trust produced a report on affordable housing last year.

Some knowledge is coming out on the private rented sector, and it is clear that there are differences. I can give one example. In urban Scotland, the average tenancy in the private rented sector is 18 months. In Dumfries and Galloway, around 50 per cent of tenancies have lasted in excess of 15 years. There is considerable stability in the rural sector, which is perhaps the position we are striving to get the urban sector to. It is essential that we try to nurture the good bits. In order to do that, we need to understand the rural sector.

12:45

**Stephen Vickers:** I agree that it is not the case that everything is rosy in rural areas when it comes to landlords. Some landlords in rural areas demonstrate bad practice and we are as keen as anyone to see them shamed through the requirements of the Housing (Scotland) Bill.

I go back to what I was saying about rural areas. Like Andrew Bradford, I could not say exactly how we should go about doing this, but we must take account of the different tenant structure that we have. Tenants are generally low-paid key workers in local areas. They are successions of families in communities who are trying to keep the communities together; they try to support the small local schools and small local services. Rent is generally lower. There is also a different contract structure in that there are fewer contractors and there is a slightly lower skills base. That leads to succession problems. The properties are of traditional structure, which has an impact on the ability to bring them up to standard. There are particular issues about services to and from



properties. Properties are often not on mains water and electricity pylons generally do not run at the back door. Certain issues must be tackled.

As Andrew Bradford said, where good practice is being demonstrated in rural areas it is reflected in the turnover of tenants. On the particular estate that I am on the percentage for turnover of tenants is in single figures. That is because the tenants are content with the standard of the property in which they live. Generally speaking, the properties also happen to be in stunningly attractive areas. The issues in rural areas are different.

I agree with what Andrew Bradford said and I will use his phrase: rural proofing the bill is very important.

**Mr Home Robertson:** I think that Mr Vickers has acknowledged a point that I want to raise. We all understand that the situation in rural Scotland might be different and might need special attention, but that does not mean that there should be wholesale exemptions from regulation. I put it to the panel that there are some shockers in rural areas: there is bad housing and bad practice. There have been bad stories about some landlords. The committee and the Parliament have a duty to deal with that problem as well as to take account of the needs of good landlords.

**Stephen Vickers:** I echo the SRPBA's view on that point. We do not want to be in the same barrel as any bad apples. We would rather that they were thrown out of the barrel or that we stepped into a different barrel altogether.

In the Scottish Borders, we see the voluntary accreditation that is coming in as a way of achieving a gold standard. Properties will be able to be stamped to say that people can have confidence in them. People will be able to let a property in the Borders and the stamp will tell them that it is of a good standard.

**Christine Grahame:** I support John Home Robertson's comments. Many of us have experience of rural housing. I lived in a very small place. There were 300 people there and we thought that it was big.

There are problems with the bill. How do we get round those problems and do justice to good rural landlords? Is another section required in the bill to deal with a definition of rural housing? You have admitted that rural housing is difficult to define and I do not think that the issue is dealt with as the bill stands. I agree with John Home Robertson that we cannot have exemptions one at a time. A section is required that would deal with rural housing and we perhaps need a definition of what constitutes rural housing.

**Andrew Bradford:** Do not let us invent another one: I am aware of about 42 different definitions already.

**Christine Grahame:** I was going to say that in your submissions you say that you want a definition of "house" and a definition of "person". I was going to raise that point with you, so you can add that to your list of questions. How do we deal with the matter?

**Andrew Bradford:** I come back to the point that every local housing strategy that I have read states that more research is required into the private rented sector. It is extraordinarily difficult to answer your question at this stage. We need to understand the sector better.

My organisation is working with local authorities across Scotland that have a rural interest—there are about 27 of them—and with the national parks authorities. In Dumfries and Galloway, we are involved in the accreditation scheme that the committee has heard about. We are in receipt of grant aid from the Executive to put someone in post to try to gain knowledge within our organisation. We are trying our hardest to get information about the sector.

**Christine Grahame:** We have a bill in front of us now.

**Andrew Bradford:** I return to a point that I made earlier: there is a concern that we are making a bill about a subject that we do not fully understand.

**Christine Grahame:** Are you in discussions with the Minister for Communities and the Minister for Environment and Rural Development on the concerns about rural areas? After all, we are on a timetable.

**Andrew Bradford:** We are in discussions with the Executive about the parallel issue of the provision of new affordable housing in rural areas. We are certainly dealing with that. I do not want to pre-empt anything, but it is evident to me that the accreditation standards that have been talked about—and various other conditions—are blindingly obvious quid pro quos for assistance to deliver new affordable housing. It seems utterly logical for there to be a balance or a contract between the provider and the part-financier, which will probably be the Government, to deliver quality of structure and management. I fear that I am not answering your question about how to get all that into the bill. I am not sure that I have an answer for you, but if one comes to me before the committee gets to the next stage, I will write to you.

**Stephen Vickers:** I am afraid that I, too, am unable to answer the question directly. If we look one step ahead and imagine that there is something in the bill that would allow us to take

account of the rural situation—not an exception, but something that took relevant account of the situation—how would we make it happen? I return to a point that was made earlier: on this issue, local is best. We already have local housing forums, and greater involvement of the private rented sector in those forums would help to raise the issues so that everyone was sitting around the table discussing them. The provisions will be delivered only if people are involved.

**Cathie Craigie:** I move on to the repairing standard. You will have heard the other evidence that we took on that. In your opinion, will the introduction of the repairing standard improve the condition of properties in the private rented sector in rural areas? To what extent do you think the repairing standard maintains the right balance between improving standards and making them too onerous?

**Andrew Bradford:** The repairing standard already exists, but the bill alters it in relation to the letting code. That code is unspecified at this stage and we do not know how much it will affect things so I cannot comment on the matter, although we suggest in our submission that, rather like the access code, it should be laid before Parliament rather than merely being introduced after consultation. You asked whether the repairing standard will improve conditions or standards. As was mentioned earlier, the best thing that could be done is to ensure that people are aware of it. We need to get the information out and ensure that landlords are aware of their responsibilities. As far as I can see, there is little in the repairing standard in the bill that is not already a responsibility.

**Stephen Vickers:** A landlord who demonstrates good practice has nothing to fear from the repairing standard. I would like to think that few, if any, SEBG members would have anything to fear from it. There are, however, people letting out what are at the moment vital properties in rural communities. They are not letting multiple properties, but one cottage on their farm. Such people will have difficulty in meeting what is a standard that is being set to match everybody. Their personal financial circumstances or other influences might not allow them to meet that standard and those properties might fall out of the let sector.

**Cathie Craigie:** Is the remit of the private rented housing panel broad enough to deal with any issues that might arise? Does it give the tenant enough protection to ensure that their landlord is meeting their obligations? Moreover, do you agree with the suggestion that other witnesses have made that the panel's remit should be extended?

**Andrew Bradford:** There is a lack of a level playing field between the landlord and the tenant. I have no doubt that the bill seeks to address the

small percentage of landlords who are not delivering the right and proper goods. I would also like to think that the bill seeks to address the small percentage of tenants who, for reasons best known to themselves, might not wish to honour their agreements. Indeed, I think that someone used the word "vexatious" in that respect.

The bill is full of duties for the landlord; however, some of those duties are noticeably absent for the tenant. There is scope to strike a better balance between the two sides. In our submission, we have suggested some simple duties that could be included in the bill. I will not go into them all now but I suggest, for example, that a tenant should notify the landlord of any repair that is needed. It is difficult for a landlord to be telepathic in such circumstances and it would be sensible to place a duty on the tenant to report such repairs.

I suspect that that builds on earlier comments about the private rented housing panel. We have pointed out that having a private rented housing panel and a private rented housing committee might overly complicate matters. After all, it appears that the committee will merely select the cases that will go forward to the panel. We feel that such a tier is unnecessary and that the chairman of the panel should make the selection. However, that is simply a refinement that will reduce the number of stages that people have to go through.

**Stephen Vickers:** Recently, the idea behind various elements of agricultural law has been that smoother, more easily used routes of arbitrating disagreements are always to be welcomed. The bill suggests such a route for tenants, but I echo Andrew Bradford's comment that there needs to be a similar route for landlords. All disagreements need to be dealt with quickly and efficiently, because that will often lead to a tenant staying in a property and having a happy relationship with the landlord. At the moment, the measures that are open to the landlord, particularly with regard to the non-payment of rent, are draconian, and we do not necessarily want only such measures to be available to us. However, things need to be equal on both sides.

On assessing matters that are brought before panels and committees, I will mention a rather vague word that is often used in law. We need some assessment of reasonableness to ensure that the panel is able to take a view on what is a reasonable complaint and what is not.

**Mary Scanlon:** I should say on record that the previous Minister for Communities visited Kincardine O'Neil. I, too, have visited the area, and have absolutely no doubt that what is being done there is excellent practice. I was particularly impressed by the way in which the old farmhouses, cottages and steadings have been

put back on to the rental market. I would like to see that happen across Scotland and hope that other members will take the opportunity to visit the area.

As we are stuck for time, I will ask one question. We will come back at stage 2—and undoubtedly at stage 3—to the issue of the agricultural tenancies, including tied tenancies, that will be affected by the repairing standard. In your submission, you point out that a tied house is exempted if the tenancy has been made under the Agricultural Holdings (Scotland) Act 1991 and wonder why the same does not apply to tenancies that are made under the Agricultural Holdings (Scotland) Act 2003. You also wonder why the definition in the bill covers only agricultural workers, not forestry, fish farm and horticultural workers. I imagine that we will revisit this matter, but have you any specific concerns that you wish to put on the record? Moreover, have you any estimates of the number of tied tenancies that would not fall under the bill's fairly narrow definition?

13:00

**Andrew Bradford:** You kindly invited the committee to come and visit me, and I reiterate that invitation. [*Laughter.*] I would be delighted to see any of you.

**Christine Grahame:** Do we get tea and scones?

**Andrew Bradford:** It is a sair traivel. You will get tea and scones.

**The Convener:** Members have not only invited themselves but asked to be fed and watered when they arrive.

**Andrew Bradford:** It is one of those privileges. It is rather like being given a white elephant by the King of Thailand, is it not?

**Linda Fabiani:** Stop there.

**Andrew Bradford:** I had better stop digging.

You made the point that tied houses are not held only by agricultural tenants. In an earlier contribution, a warden of a sheltered housing development was given as an example of a worker with a tied house. I am glad that that non-rural example was given. The point that we are making is that there is a lack of clarity. We must ensure that the legislation is clear on the matter. We point out that the Agricultural Holdings (Scotland) Act 2003 is not mentioned.

On the point about numbers, I am afraid that I do not have an answer for you.

**Mr Home Robertson:** Will you acknowledge that if someone lives in a tied house and their landlord is also their employer, they are in a

particularly vulnerable position? It is important for the legislation to give due protection to tenants of that type.

**Andrew Bradford:** I would have thought that the bill was trying to address standards of housing, full stop.

**Scott Barrie:** I ask a question that I asked the previous panel. Do you agree that private sector tenants should have the right to adapt private rented properties to meet needs that arise from disabilities? What are your views on the criteria that are set out in section 52 of the bill, which landlords may use to consider whether a request to adapt a property is reasonable? Are there any issues that relate to the length of a lease?

**Andrew Bradford:** I suspect that my answer will be similar to that of the previous panel. It is reasonable to adapt properties. I draw your attention to my earlier point about the age of the structure, because it may be that some houses are unsuitable for particular needs or requirements. However, to put that aside, the right to adapt is reasonable.

The issue of reinstatement is a concern. You heard earlier that most adaptations do not add value. In the rental context, the value of the property is less relevant than its rental value and I suspect that most adaptations will not make a property more lettable, although obviously there will be exceptions. It does not make sense for small landlords, who might have only one or two properties, to say, "This property has been adapted. Let's keep it that way in case we can find a new tenant." In a small community, it might be many years before the same requirement arises. Generally speaking, the requirements of people with particular needs are different. What suits one tenant might be totally unsuitable for the next.

I have some experience of the matter, because about 20 per cent of our houses are barrier-free and were constructed recently to that standard. I was interested in the response of local authorities. In February 2003, four separate departments asked me to house four separate people in wheelchairs because they did not have the facilities. I took one of them, who was a local resident, but I am afraid that I said that we should not take the other three because I did not set out to build what might have been a county hospital by the time that we were through.

We are agreeable to alterations. If alterations would add value, the obvious step is to deal with restoration to the landlord's satisfaction by agreement between the two parties. The thought occurred to me that to ensure that restoration was underwritten to an extent, a bond such as a public bond might be the way forward.

**Stephen Vickers:** Several of our members are the only providers of private let accommodation in rural areas, so we are duty bound to consider applications from disabled people. The estate on which I work welcomes applications from disabled people, especially as His Grace the Duke of Buccleuch is disabled.

The key is to work closely with the local authority, which often makes an application and suggests adaptations that are required in a property. We can work with an authority on installing and removing adaptations. That is often decided case by case. Unfortunately, it does not suit primary legislation to say that we should proceed case by case, but that is how we are achieving a happy transition from adapting a house for disabled use to adapting it back to general let property.

**Cathie Craigie:** I have a brief question about the amendments to the provisions in the Antisocial Behaviour etc (Scotland) Act 2004 on the registration scheme for private landlords. How do you feel that has been addressed? Will you reflect on the comments earlier, which I know that you heard, about whether the scheme should be national or local?

**Stephen Vickers:** A local scheme would be best for the particular issue that we have just discussed. In terms of registration, my direct role for my principal employer spans four authority boundaries, so simply the logistics of trying to meet four registration standards would not be comfortable for us. Accreditation might be more suited to a local or national scheme, but a registration scheme should be national. People who live in Scotland or who move here to live should have a single core standard for registration.

**Andrew Bradford:** It is difficult to comment, because the bill will amend and extend measures that have not yet been introduced. We and local authorities are still waiting for guidance on how the scheme may be rolled out. As I have said, it is difficult for us to understand how the introduction of the letting code, which will be the principal change to the registration provisions, will interact with the accreditation schemes of which we have heard.

As for whether the registration scheme should be national or local, we have raised the cross-border issues that arise from having local schemes. I would probably plump for a national scheme.

**Donald Gorrie:** The submission from the Scottish Estates Business Group asked whether Communities Scotland could help private sector landlords in the way that it helps registered social landlords. Could that be achieved administratively, or is a change in the rules needed?

**Stephen Vickers:** The witness who was here from Communities Scotland could tell you more about how its operation is legislatively structured. We are working very amenable on the ground with people from Communities Scotland, especially on the delivery of affordable rural housing, which Andrew Bradford mentioned and which is a key target for most of our members. Unfortunately, Communities Scotland's framework means that it cannot consider a private landowner who wants to provide affordable housing in the same light as an RSL. Communities Scotland cannot consider giving private landowners grant funding to release properties, which would achieve a big step forward in the provision of affordable rural housing.

**Donald Gorrie:** At the informal hearing that we had in Perth, we heard of an interesting development to tackle the shortage of craftspeople in the area, on which the local council and landlords co-operated well. Are you aware of that or any other system? You suggest that councils and landlords could co-operate more to provide important craft services.

**Stephen Vickers:** I have no direct experience of the Perthshire system—the area is slightly north of my fields of operation. I talked about possible grant funding and assistance to private landowners and private let sector providers. The quid pro quo is housing people who have housing needs that properties are unavailable to RSLs to meet. The private sector could play a massive role in that.

**Linda Fabiani:** What would that role be? Would an estate maintain full control and receive grants, as RSLs do, or would it co-operate with RSLs, which would run some of the show?

**Stephen Vickers:** One shoe does not fit every foot in this instance. In some cases, local estates and landowners can form community bodies—that practice is being adopted in Scotland for other purposes—to assess local need and criteria and to allocate housing. Sometimes, a private landowner could retain full operation under guidance or light-touch regulation from Communities Scotland, to ensure credibility. At the other end of the scale, a private landowner could assist Communities Scotland or a registered social landlord to achieve delivery.

**Linda Fabiani:** Would all that tie into local housing strategies and the idea that a local approach is best, which you have mentioned in your evidence? A contradiction exists between the local housing strategy element of some legislation and the national elements of other legislation. As Cathie Craigie said, a local approach is best and we are in danger of eroding that.

**Stephen Vickers:** Please do not take this as a glib comment, because it is not intended to be, but

in matching the aspirations of a national bill on housing with local delivery, you have been tasked with a difficult web to weave.

**Andrew Bradford:** I confirm that it is utterly logical to us that the local housing strategy, rather than a national approach, should be the vehicle that sets priorities.

**The Convener:** I thank the witnesses for joining us and for their evidence, today and in writing before the meeting.

*Meeting closed at 13:13.*



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