COMMUNITIES COMMITTEE

Wednesday 18 May 2005

Session 2

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COMMUNITIES COMMITTEE
16th 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:

Sandra Blake (Citizens Advice Scotland)
Lucy Burnett (Friends of the Earth Scotland and the Association for the Conservation of Energy)
Brian Doick (National Association for Park Home Residents)
Jenny Duncan (National Union of Students Scotland)
Martyn Evans (Scottish Consumer Council)
Colin Fraser (British Holiday and Home Park Association)
Donald Fullarton (Scottish Association of Building Standards Managers)
Louise Goulbourne (Citizens Advice Scotland)
Norman Kerr (Energy Action Scotland)
Cathy King (Convention of Scottish Local Authorities)
Grainia Long (Shelter Scotland)
Colin McCrae (Convention of Scottish Local Authorities)
Liz Nicholson (Shelter Scotland)
Robert Renton (Scottish Association of Building Standards Managers)
Keith Robson (National Union of Students Scotland)
Mike Thornton (Energy Saving Trust Scotland)
Mervyn Toshner (Scottish Association of Building Standards Managers)

CLERK TO THE COMMITTEE

Steve Farrell

SENIOR ASSISTANT CLERK

Katy Orr

ASSISTANT CLERK
Jenny Goldsmith

LOCATION
Committee Room 1

Scottish Parliament

Communities Committee

Wednesday 18 May 2005

[THE CONVENER *opened the meeting at 09:33*]

Housing (Scotland) Bill: Stage 1

The Convener (Karen Whitefield): Good morning. I welcome everyone to the 16th meeting in 2005 of the Communities Committee. Christine Grahame sends her apologies, as she is unable to attend. I remind members that tomorrow we have an informal briefing in committee room 1 with the Housing (Scotland) Bill team and that tonight I am hosting a reception for Scottish Gas, which members are welcome to attend; it is about the voluntary sector and helping people who are in debt with their fuel bills.

The only item on the agenda is the continuation of our evidence taking on stage 1 of the Housing (Scotland) Bill. The committee will hear evidence from five panels. I welcome the members of our first panel. Louise Goulbourne and Sandra Blake are from Citizens Advice Scotland; Louise is the organisation's social policy co-ordinator and Sandra is manager of the Edinburgh central citizens advice bureau. Martyn Evans is the director of the Scottish Consumer Council. I thank you for joining us this morning.

I will begin with a general question that we are asking all the witnesses who appear before the committee. How effective was the Scottish Executive's consultation on the bill? Were your organisations given the opportunity to engage effectively in that process?

Martyn Evans (Scottish Consumer Council): We feel that there was effective consultation and that we were given a full opportunity to respond to the draft bill and to earlier consultations.

Louise Goulbourne (Citizens Advice Scotland): We agree that the consultation process has been satisfactory.

The Convener: My next question is for Citizens Advice Scotland. In your written submission, you concentrate on the case for a rent deposit scheme, which one of my colleagues will ask you about later. Leaving that aside, will you outline your concerns about the private rented housing sector and the problems that most often manifest themselves in the daily workings of citizens advice bureaux?

Louise Goulbourne: A private rented sector issue that could be tackled in the bill, but which is not at the moment, is consideration of management and relational problems and disputes that arise between tenants and their landlords, which are not necessarily predictable. We have client evidence on matters such as landlords letting themselves into tenants' properties without giving due notice. That can cause conflict, which might need dispute resolution. After letting themselves in, landlords can sometimes behave in a threatening or violent way towards their tenants.

There is an issue with unexpected charges. Tenants who have signed a tenancy agreement and moved into a property can be faced with quite random charges. For example, a tenant had a short assured tenancy agreement in which it was written that there would be a £50 charge if they moved out early. When the tenant decided to terminate the agreement early, the landlord upped the charge to £150. The more information a tenant can be given on what charges to expect, the better.

My main concern relates to management and relational issues that might need dispute resolution. One cannot always predict what those will be.

The Convener: That was helpful.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): We will move on to discuss the proposed scheme of assistance. One of the bill's underlying principles is that individual owners should be responsible for the maintenance and upkeep of their property. What are your views on the range and types of assistance that local authorities may give to private owners under the bill? Although in its written submission the Scottish Consumer Council welcomes the inclusion in the bill of a range of tools to assist owners, it would like the proposals on providing owners with practical assistance to be developed. I invite Martyn Evans to expand on the reasons for that.

Martyn Evans: We welcome the fact that the bill provides more flexibility to assist owners. We say that on the basis that there is little evidence on why owners invest in their properties; we have written a paper about that lack of evidence. Without knowing why owners invest in their properties, it is difficult to apply the right tools to encourage investment. We think that the greater flexibility that the bill will provide will be a great advantage.

In our research paper, we say that there may be inefficient elements in both the current grants system and in future grants systems. People may have been planning to do work, but the fact that they wait for a grant means that grants do not create more repairs in the owner-occupied sector;

they just encourage people to delay in an effort to get a subsidy for their repairs.

All in all, we think that the bill represents a good step forward. We favour more flexibility, but more evidence is needed on the decisions that owners make about the timing of their repairs and what they repair. As we know, for the most part, people have a preference for investing in the internal structure of their building rather than its external structure. From a public policy point of view, one of the difficulties with that is that, as regards an increase in the value of their house, an owner may well get more of a reward for improving its internal structure than for improving its external structure. In that sense, we have a strange situation in the market, which other parts of the bill may address.

Louise Goulbourne: We, too, welcome the fact that local authorities will have more flexibility in the help that they can offer. However, we have one concern about the removal of the mandatory grant. Although we agree with the principle that homeowners should take responsibility for maintaining their properties, I should draw the committee's attention to our debt report "on the cards: The debt crisis facing Scottish CAB clients", which highlights the fact that 30 per cent of debt clients are homeowners. As a result, we ask that the assessment of homeowners remains flexible and that local authorities take a holistic approach to the assistance that should be offered to people. After all, the fact that someone is a homeowner does not mean that they have enough income to sustain a debt.

Sandra Blake (Citizens Advice Scotland): More and more people are moving away from the local authority and private rented sectors towards home ownership. However, a real problem for many of them is that they do not understand that when they own their own house they are responsible for the roof, the guttering, the walls, the outside bits and pieces and all the other aspects of a property that would have been maintained by a landlord.

Patrick Harvie (Glasgow) (Green): The Scottish Consumer Council has said that the main issue with regard to the tolerable standard is lead in drinking water. Given that the level of lead in water is part of Scottish Water's water quality standards, why do you think that it should be included in the tolerable standard? How much of a problem is this?

Martyn Evans: I do not have any up-to-date information about the extent of this problem in Scotland, but it has been described as a silent epidemic. Although over the years lead pipes have been replaced, which has certainly improved the situation, lead is still present in the system and has a very significant effect on children who live in affected homes.

Including such an aspect in the tolerable standard will enable us to set out a clear standard for the level of lead in drinking water and to communicate the actions that an owner or tenant can take if they want, for example, to have their water tested. It will also enable the matter to be dealt with consistently across Scotland. After all, lead in drinking water is a significant public health risk. Although the level of lead has reduced dramatically over the past 15 to 20 years, the issue still needs to be emphasised clearly and tackled without any variation across the country.

Linda Fabiani (Central Scotland) (SNP): You have all made it clear that people would rather spend money on the internal rather than the external features of their houses. Will the repairing standard in the proposed legislation improve the quality of domestic buildings?

Martyn Evans: It is difficult to make predictions on that matter. For a start, evidence from the previous grants system shows that 60 per cent of people would have done the work anyway. As Sandra Blake and Louise Goulbourne have pointed out, some people, particularly those who live in tenements, do not understand their repairing obligations and other parts of the bill might give them a clearer idea of what they are responsible for. The Tenements (Scotland) Act 2004 has also helped to tackle some difficult situations in that respect.

This is a difficult public policy issue because, as I said before, the market does not always reward investment in structural repair. If the market properly discounted the fact that you did not make repairs to your home, you would get no reward for that lack of investment. However, that does not seem to happen. For example, two properties in the same location might be similarly priced despite the fact that they might be in different states of disrepair. The picture is much more complex than it appears, and the public policy objective of having homes in a good state of repair might not be achieved simply by having a single lever or group of levers. That is particularly true of tenements, which raise other complex social issues that we are also tackling through public policy.

I am not denigrating the repairing standard, which I think represents a good step forward and will provide greater flexibility. The difficulty with the current system is that local authorities are reluctant to serve improvement orders on houses because owners do not have the money to carry out the repairs. Therefore, it will be good to have a more flexible way of looking at disrepair and making a clearer statement about owners' responsibilities. After all, property is an asset—although not always one that people can fully realise—and as such, one can ask for a broader

public benefit to be recognised. With those caveats, I think that the provision is an important step forward.

09:45

The complexity of the issue about which you ask is such that we have in the past asked Communities Scotland to do more work on what motivates owners to keep their properties in a good state of repair. If we understood that better, we could find instruments of public policy to encourage owners by grant or other means, as we said before.

We advocate taking a more flexible approach, even down to adopting good trader schemes. Many people have no confidence in the range of traders in their area. We might be able to improve that through trading standards and having good trader schemes so that one can pick competent local traders with confidence. Building works is the second most significant area of consumer detriment in Scotland, according to the Office of Fair Trading; the first being garage services.

Louise Goulbourne: From our perspective, the bulk of the evidence that we have is about how the bill will impact on the private rented sector. We have case evidence from clients who have found it difficult to secure the repairs that they need. So the new repairing standard should in theory improve things in the private rented sector because it will give tenants a strengthened bargaining power to make sure that repairs take place.

Sandra Blake: I will expand on that and tell the committee that a number of people have come to us with complaints. One tends to think that complaints are usually about repairs to white goods, for example, but tenants are coming in to complain that in the middle of winter there is no heating, no water, no shower, that the windows will not close—fundamental things that make life tolerable, particularly if one is paying rent for a property.

Linda Fabiani: That leads on to my next point. We talked about awareness and information and one of the strong points that came out in evidence from the Scottish Consumer Council concerned the development of a specific information strategy. That ties in with the proposed private rented housing panel, which should make it easier in theory for private sector tenants to have addressed the kinds of problems that Sandra Blake and Louise Goulbourne raised.

In your opinion, will the proposals make matters easier? Will things be easier only if there is a proper information strategy? Will you also look at it from the landlord's point of view? We all know that there are decent landlords out there—the majority are decent. One of the points raised in the evidence from the landlords organisations is that they feel that the bill is a bit one-sided. One example given was that a tenant might refuse to let the landlord in to do a repair. What then? The landlords organisations feel that there would be no redress from the panel and that they would not be able to put the landlords' point of view. How do you feel about that?

Louise Goulbourne: As I understand it from the bill, the rights of entry would cover gaining entry to a property.

Linda Fabiani: Yes, but the landlords felt strongly that by the time their case went to a panel, the balance would be loaded on the side of the tenant and they would not have the opportunity to present their case.

Louise Goulbourne: The bill seems to provide that a tenant cannot go straight to the panel; they have to have gone to the landlord first so that there is opportunity for the landlord to take the action needed. Even when the case has been referred to the panel, there would still be time to act and they could even appeal.

Linda Fabiani: I see all that, but I have had experience as a landlord of social rented property of tenants refusing access for annual gas safety inspections and stuff like that. It happens, not very often, but it does happen. Do you feel that there should be scope for the panel to be able to act on behalf of the landlord too in some mediation service?

Louise Goulbourne: Alternative dispute resolution and mediation services would be welcome. I reiterate that most of our evidence comes from tenants.

Martyn Evans: We are keen on mediation services. However, I do not think that the bill's focus on tenants is unbalanced. We are saying that the landlord has an asset and that the maintenance of that property is in the public interest and how the tenant receives the property is in the private interest.

The sector that is in the most significant disrepair is the private rented sector, so we are applying particular pressure there. The weakness lies in the lack of information that tenants have about their landlord's repair obligation and in the expense of the method of redress. The cheaper and more affordable method of redress that has been suggested is welcome, because people will be able to go to the panel without encountering the adversarial system of the sheriff court, which is the current form of redress.

We are utterly convinced that without an information strategy the market will not be affected. If people are to exercise their rights, we

must tell them what their rights are. On the question about balance, my view is that private landlords are perfectly capable of taking action within the current system of redress—they do so regularly. The proposed mechanism aims to create greater balance by increasing tenants' ability and confidence to use a more informal method of redress. I notice that the Scottish Committee on the Council of Tribunals says in its evidence that it is in favour of mediation prior to a settlement. That could be tried.

Sandra Blake: On information, I would say that the booklet that is taken away from our office most often is the one on assured tenancies and how to deal with complaints about landlords. The information must be there, but it must be in language that people understand.

Louise Goulbourne: One idea is to produce a leaflet written in layman's terms that would be made available to landlords when they register with a local authority and passed on to tenants. In making information available we also need to target foreign workers and backpackers; for example, we might want to put the leaflets in backpackers' hostels. We also need to raise awareness among those who are on low incomes or benefits, so the leaflet could be made available through local authorities when people apply for housing benefit.

Mary Scanlon (Highlands and Islands) (Con): In response to Cathie Craigie's question, you talked about the structure and fabric of buildings. To what extent will the single survey improve the condition of private sector housing stock, which is one of the bill's key objectives?

Martyn Evans: As we understand it, the purpose of the single survey is to give the purchaser a greater amount of information about the condition of the property. They can then apply that information when they consider the price that they are willing to pay. The problem is the long-term decline in the repair standards of housing stock, which is everyone's asset. The immediate purpose of the single survey is to give the buyer more information about their major investment to enable them to make a decision about whether they should buy the house at the asking price or reduce their offer because of disrepair. The other objective is to prevent multiple surveys and avoid the setting of artificially low prices. It is clear that the single survey will give consumers of owner-occupied housing more information so that they can make a judgment about value. It should give a clearer indication of the repairs that are required before or after the house is purchased, so it is an important step.

Mary Scanlon: Do you think that owners, knowing that they must have a detailed and extensive survey of the fabric of the building, might be more willing to invest in the property because that will lead to a better valuation and sale value? The potential buyer will get much more detailed information. Do you think that the single survey will act as an incentive for people to invest in the structure of property rather than just in, say, new kitchens?

Martyn Evans: I would like to think that that would be the case. If the seller has to provide more information to the buyer and the seller finds a defect in what they are selling, they might think that it is worth while to invest to deal with the defect. On the other hand, the seller might say that they must have a discount because of the defect. The question is whether the seller is willing to invest before the sale or to discount what is being sold.

For us, the key is the information in the transaction. At the moment, people are fairly blind when they buy the major asset in their life. The lack of information about the repair of the property means that location becomes the primary determinant of price. To go back to what I said before, if that is the case—if you know that a well repaired house does not sell for much more than a house in relatively poor state of repair in the same area—there is a disincentive to invest in repair. From a consumer point of view, having more information in the market means that market actors will make better decisions.

The question that we had in our minds was whether the proposal would be fair both to sellers and to buyers. I think that the advantage in knowing more information is to the buyer, but it should be borne in mind that most sellers are buyers as well. On balance, we think that the proposal is reasonable.

Mary Scanlon: Most buyers become sellers as well. It is interesting that you feel that the proposal would be more of a negotiating and bargaining tool than an incentive to invest.

Martyn Evans: The issue is about information that helps to make decisions about the transaction. When we were discussing the matter, we did not see it as being a mechanism that would automatically lever more investment into the building; that remains a decision that the owner of the asset would make. The buyer would ask themselves whether, in the light of the greater amount of information that they had about the asset, it was worth the price that was being asked.

Mary Scanlon: I note that you are disappointed that it has proved necessary to introduce a compulsory scheme. The Law Society of Scotland and the Royal Institution of Chartered Surveyors suggested that the cost of a single survey might be as much as £850. It seems that, every time that I come to this committee, I hear about an extra

element of cost. For example, we have heard about latent defects insurance and the purchasers information pack and now we hear that, at some point, it will be mandatory for the property to have an energy performance certificate. Do you know any more about the situation than I do? Do you think that it might become extremely costly for people to put houses on the market? I know that your submission does not mention all those factors and that the submission from Citizens Advice Scotland does not mention the single survey, which might suggest that you are not concerned about those factors.

Martyn Evans: I think that there is a tendency to try to pile more into the purchasers information pack than would be helpful. We should be wary of that, as each element has a cost implication. However, the purchasers information pack is a good idea, in that it provides a logbook of what is happening, and we approve of that.

The cost of the single survey depends on the degree of competition in the marketplace, which is to say, the number of people who are willing and available to do these surveys. From the evidence that has been submitted to the committee, it is apparent that there are people who do not like the idea of the single survey and who use the suggestion that it will cost a lot of money as a means of attacking it. From a lay point of view, it is hard to determine which factors are genuine problems and which have simply been put forward in an attempt to avoid the introduction of single surveys. We currently have what are called scheme 2 surveys, from which we can make a rough adjustment.

From the consumers' point of view, my only concern is that those involved in this process often link their prices to the value of the house. We think that that is of benefit to those dealing with the transaction but is of no real benefit to the consumer, because the rate of house price inflation is significantly more than the general rate of inflation.

If we had any concern about the price of the survey, we would consider it carefully and refer it to the Office of Fair Trading if we had to. We are empowered to make complaints about uncompetitive activities, which we would do if we thought that the price was disproportionate to the effort made. We would like there to be a significant degree of competition. If the scheme were compulsory, a range of players would engage in the area and the market would work it out fairly quickly. However, we would in the beginning have to keep a good eye on the situation to ensure that super profits were not being made. I am not in a position to say whether the cost would be £400, £800 or whatever, but I would say that it would be much lower than some of the figures that you have been given and that have appeared in the press.

Mary Scanlon: Do you think that the four separate elements that I mentioned would give sellers and buyers helpful information?

10:00

Martyn Evans: Yes. A large number of people who buy tenement properties have no sight of their title deeds, which means that they do not get a clear indication from their solicitor about what their repair obligations are. That has led to some confusion and, occasionally, big surprises. We are working with the Law Society on that matter in connection with the purchasers information pack. Our difficulty is that understanding and translating complex titles involves some expense, but we will need to work that one through because people do not want vast numbers of title deeds landing on their desk when they buy a property, especially if that involves working through a complex title obligation or repair obligation. However, by addressing the problem in a commonsense way, we hope that we will be able to raise awareness among the solicitor profession about the need to give clients information about their repair obligation so that people have a greater understanding about what their investment costs.

As Sandra Blake said, more and more of us are becoming homeowners, but such ownership has a cost because properties must be kept in a reasonable state of repair. I am wary of loading too much on to the purchasers information pack and of pretending that it comes cheap, but I believe that such a pack could be produced at a reasonable price if there was good will on the part of the solicitors.

Donald Gorrie (Central Scotland) (LD): I want to pursue the points that the Scottish Consumer Council makes about the single survey in its extensive written submission, but I also welcome the views of Citizens Advice Scotland.

The Scottish Consumer Council makes the good point that the single survey will be proportionately more expensive for poorer people who are selling cheaper houses. However, by definition, such houses are probably most in need of a survey because they are more likely to have problems. How would we get over that conundrum?

Martyn Evans: We considered exemptions, but we concluded that they would be inappropriate for the very reasons that you have given. The issue is difficult. The only way forward for consumers would be for mortgage lenders—the Council of Mortgage Lenders seemed willing to do this when we spoke to it—to include the price of the single survey in the purchase price so that it can be repaid over the life of the mortgage. That would make the single survey much more affordable.

We are on the horns of a dilemma: exempting such properties from the single survey would be

against the public interest, but requiring other purchasers to subsidise those surveys would go against our consumer policy objectives, which demand full cost recovery. However, the significant upfront costs that purchasers, especially first-time buyers, face would be mitigated if, as the Council of Mortgage Lenders has suggested to us, the cost of the survey could be spread across the 20-year life of the mortgage. That would make the survey significantly more affordable.

Donald Gorrie: I want to pursue the issue of which properties should be exempted from the single survey. Your submission accepts that new houses should be subject to a separate system. It also suggests that right-to-buy houses and what one might call more informal sales might also be made exempt. Should those be exempted?

Martyn Evans: We believe that new houses should be excluded from the requirement for a survey, but we see dilemmas in each of those other examples. In the single survey group, we are working through the arguments for and against such exemptions, but we probably see no clear reason why any of those subsequent categories should be exempted. With right-to-buy properties, there is an issue about whether the seller should take on repair notice obligations to the purchaser. Given that right-to-buy transactions these days often involve low-income households taking on low-value properties, there is an issue about whether the requirement for a survey might be disproportionate.

The most complex question is what obligations should apply to informal transactions and how those could be policed. Our worry is that providing an exemption for informal transactions might shift a whole range of currently formal transactions into the informal market. We do not have a solution to that, but we have raised the issue in the single survey group, which is trying to work through the problem.

Donald Gorrie: For some time now, your organisation has advocated the inclusion of a hidden defects guarantee. As your submission points out, there is some opposition to the inclusion of such a guarantee because surveyors might not be able to secure insurance. Do you have a solution to that problem? Is your proposal so important that it is worth taking on those problems?

Martyn Evans: We have discussed the issue with the RICS, but we believe that the problems are not insoluble, because the price for such insurance is a matter for the market. If the single survey is made compulsory, we do not believe that the inclusion of a hidden defects guarantee should also be made compulsory, as that would affect how the market looked at the issue. Insurers would think that, because it was compulsory, they could put their prices up.

Clearly, surveyors are able to obtain professional indemnity insurance. Although the cost of that is rising, the hidden defects guarantee would provide a significant long-term benefit to both sellers and buyers. Given the value of the assets involved, the price would not be that significant. We have heard again from our colleagues in the RICS that such insurance is difficult to obtain. We have not talked directly to insurers, but we would be surprised at that. The issue is the price at which such insurance would be offered. Any insurer will offer almost anything; the key is the price and whether that is affordable.

It will become clear in discussions whether there will be a competitive market in insurance. I think that there will be such a market and that prices will come down. The price of the hidden defects guarantee depends on the competence of the surveyor—if they are competent, the price will come down. It also depends on the contractual arrangements that surveyors make. Some of the things that they could not reasonably have foreseen will not be covered, but they are not liable for those. Things that could reasonably have been foreseen will be covered and surveyors will be liable for those. One can exaggerate what surveyors are insured against. They are not insured against everything, but are insured against what a reasonably competent professional could have uncovered, given the nature of the contract. That is insurable at a reasonable rate.

Donald Gorrie: You also deal with the shelf-life issue, which I do not understand but which seems to excite many people. The idea that a house will deteriorate completely in the three months during which a person is trying to sell it seems ludicrous. Is this a real issue? If the survey sticks to the facts about the building and the question of guessing the price is set aside, will it not be valid for a number of months?

Martyn Evans: We are keen for valuation to be retained in the single survey, because it is one of the key elements that enable people to make a judgment about the upset price. We are trying to address the issue of low upset prices. Like you, we are sceptical about the arguments relating to the shelf-life of the survey. It is common sense that a property will not deteriorate suddenly, although over time the survey may become less valid. The issue is for us to identify a reasonable point at which it will be obligatory to have a second single survey done. If we do not do that, it will be possible for people to say that a property has been surveyed once and that the survey should apply for ever. That would undermine the whole purpose of the public policy. We would like to discuss with our colleagues in the single survey group what

would be a reasonable time beyond which a survey would not be valid. However, in the case of most properties we have no concern that after two or three months there might a sudden deterioration. For the most part, that is not how the market works.

Donald Gorrie: Those are helpful comments. You expressed concerns about enforcement of the single survey. Apart from highlighting the issue, can you suggest any practical propositions for dealing with it? It would be useful for us to know whether clients of citizens advice bureaux have raised the issue of single surveys with them.

Martyn Evans: I wish that I had a practical solution to the problem of enforcement. The issue is whether the informal transactions that we have discussed should be exempt from the duty to provide information to potential buyers. If they are included in the provision, it is difficult to know what should be done when there is a breach of the obligation to provide a single survey in situations where people are selling a property to one of their children. I do not have a clear idea of what to do in that situation.

If we can narrow down the exclusions, we can deal with the vast majority of cases in which the public would think that it is unreasonable to insist on a single survey. However, we must be careful that we do not create a loophole in the law that enables the purpose of providing a single survey to be overcome. The key issue as regards enforcement is setting up the right forms of exemption. I am most worried about informal transactions. I wish that I had a solution to the problem, but I would go down the road of exemptions rather than analysis of enforcement.

Donald Gorrie: You have been very clear and honest.

Louise Goulbourne: This is not an issue on which we receive social policy feedback.

Sandra Blake: People do not come into citizens advice bureaux to complain about the matter.

Donald Gorrie: No, they come in to talk about rent deposits, which is probably the subject of the next question that we will put to you.

Cathie Craigie: Before we ask about that, I have a follow-up question for Martyn Evans about the house condition survey. The proposal does not include new houses, and you have said that they should not be included in it. In your view, how will consumers in the new housing sector be protected? Does the existing National House-Building Council guarantee protect the consumer when faults arise?

Martyn Evans: We have published a short paper on the issue, which I can send to the committee, if members would like. There are two problems. The first is the contract through which people buy a new house. Unlike contracts for the purchase of second-hand homes, contracts for new houses are with the seller, who makes up the contractual terms and offers them to the purchaser. Our concern is that those terms are very one-sided. We know that the Law Society of Scotland is doing work in this area and is keen to see the contract made more balanced.

The second point is about the warranty that is provided, which is merely an insurance system. I refer back to the hidden defects insurance. If that can be provided for new homes, it can be provided for second-hand homes, albeit that the price is different. The issue is not whether the warranty system is working well—quite often it is—but whether the building work has been done to the satisfaction of the new owner, which is often not the case. The remedies have to be made through the warranty. The issue is the quality of the property at the point of transfer to the new owner, not the warranty. The warranty, which is an insurance document run by the business, helps to market houses, just as car warranties help to market cars, and is a good thing. We would not want to intervene on that, but we want greater intervention at the point of sale, which is coming through at the moment. Our paper suggests that there should be more interventions to ensure that the quality of workmanship is what the contract says it is. There would be a degree of verification and independent assessment at the point of sale. That is in the system, but it is not quite working well enough at the moment. I will send you the paper, which is clearer than the explanation that I have just given.

Cathie Craigie: That would be good. Some of my constituents have said that they have more rights in buying a tin of beans than they have in buying a new house. Do you think that the bill provides an opportunity to make improvements?

Martyn Evans: Regrettably, I do not think that you have the power to do that. We have said, using a different analogy, that people have more rights in buying a loaf of bread. Issues around the Sale of Goods Act 1979 are reserved. Heritable property is excluded from the act. Our policy is that there should be discussion about including it, thereby giving people rights as a purchaser. Our paper says that that is a reserved matter and that your colleagues at Westminster should discuss it. We would welcome your saying that it is important to pursue the idea, because that would give us slightly more leverage when we are discussing the matter at a UK level. We would welcome a review of the act to see whether heritable property should be included.

Scott Barrie (Dunfermline West) (Lab): I direct my questions specifically to Citizens Advice

Scotland. In your paper, you talk extensively about the rent deposit scheme; you give us numerous examples of difficulties that people have brought to you and claim that, on the basis of that evidence, there is a strong case for the introduction of such a scheme in the private rented sector. Why do you think that and what financial impact could the proposals have on private landlords?

Louise Goulbourne: We think that there is a strong case for a rent deposit scheme to be introduced because currently there are no regulations on rent deposits, which means that at any one time landlords and agencies hold a sizeable chunk of money, which is subject to no regulations. Landlords are entirely unaccountable for what they do with the money. Most landlords are good landlords, but when disputes arise the only means of redress that tenants have is the small claims court, which in many circumstances is not accessible to them. Foreign students, foreign workers or people who are moving abroad at the end of the tenancy have no way of pursuing disputes about the deposit. We are looking for a system to be put in place that will redress the balance.

You asked about the impact of a rent deposit scheme on the market. It is not about imposing penalties on good landlords; in fact, introducing such a scheme might benefit them. At the moment, tenants might withhold the last month's rent. The scheme would remove that incentive, which would be good for landlords and their agents, because it would remove the risk of losing that rent.

10:15

Sandra Blake: The biggest issue for private tenants that our office deals with is the return of their deposits or part of their deposits. Disputes arise about what proper cleaning charges are, what the proper repairs that need to be done are, what needs to be replaced and what fair wear and tear on the property and its contents should be accountable in the deposit.

We have a service in Edinburgh sheriff court that gives advice, which plays a huge part in helping people to prepare small claims actions. We also have a mediation service in that court. Much of the work of the mediator and the mediation service concerns rent deposits and working together with landlords and tenants to resolve issues. Much court time could be saved if landlords and tenants did not have to appear and make presentations.

Patrick Harvie: Written evidence from other organisations welcomes what is in the bill to improve physical standards and makes the case for mirroring that with an explicit set of management standards. Some of what you said about rent deposits, rights of access and intimidation backs that. Do you, too, want an explicit set of management standards for the private rented sector?

Louise Goulbourne: Yes—definitely. Without that, a piecemeal approach to improvements will be taken. Management standards would complement the physical standards for accommodation.

Linda Fabiani: I know that rent deposit schemes work in other countries and that you have examined them. How would such a scheme operate here? Would the private rented housing panel run it? Who would hold the money? Would you expect the panel's powers to encompass the mediation that you talked about?

Louise Goulbourne: Broadly, we would want a scheme under which an independent third party held all the money. Such a scheme would be self-financing. The scheme in New South Wales is self-financing because all the money is held centrally, so it generates enough income to cover costs.

An independent alternative dispute resolution service would be needed, which could by all means be organised through the private rented housing panel. A clear definition of what landlords and tenants could expect reasonably to be taken from a deposit and clarification of tenants' and landlords' maintenance responsibilities would also be needed.

Linda Fabiani: Would that be incorporated in a tenancy agreement?

Louise Goulbourne: Yes. That would be a good place to put the information.

A sanction would be needed to bring landlords who were not complying up to standard. Exactly how that would work would need further discussion and we would be interested in feeding into any working group that was established to investigate the issues.

The Convener: That concludes the committee's questions. I thank the witnesses for attending and for taking the time to submit written evidence before appearing.

The meeting will be suspended briefly to allow for a change of witnesses. I remind everyone that if they switch on a phone during the suspension, they must switch it off before we resume.

10:18

Meeting suspended.

10:20

On resuming—

The Convener: I welcome our second panel of the morning. We are joined by Cathy King, head of care housing in the City of Edinburgh Council, and Colin McCrae, principal housing officer of Dundee City Council, both of whom are representing the Convention of Scottish Local Authorities; Jenny Duncan, who is the National Union of Students Scotland's women's officer; and Keith Robson who is the director of NUS Scotland.

I will open our questioning with a general question on consultation. If panel members sat in on the first session, they will know that I asked whether the Executive's consultation on the bill proposal was effective and whether panel members had been allowed to engage in the process. I am keen to know whether that is true in your case.

Cathy King (Convention of Scottish Local Authorities): We are happy with the consultation process, which was extensive and inclusive. The timescales allowed meaningful consultation on, and discussion of, the issues.

Colin McCrae (Convention of Scottish Local Authorities): We would reiterate that. We found the engagement and discussion very useful, both through the housing improvement task force consultation on "Maintaining Houses—Preserving Homes" and the housing bill proposal process. We have a houses in multiple occupation networking group, in which the Scottish Executive participates on an in-attendance basis, which has proved to be exceptionally useful.

Keith Robson (National Union of Students Scotland): We were happy with the consultation process. We had the opportunity to feed into it.

The Convener: My next question is for the COSLA representatives, given that local authorities are responsible for many of the issues that surround houses in multiple occupation. What are the key issues for local authorities in terms of introduction and operation of the current licensing scheme for HMOs?

Colin McCrae: The key issues, of which there are many, include enforcement and identification of properties. There is also a perceived problem with fees, in as much as they vary widely across the country, and there is a problem with some of the minor detail of the legislation that we operate to at the moment. Local authorities have problems in identifying particular types of HMO that should be licensed.

A significant amount of time is spent on identification of HMOs. It is a difficult area for local authorities because of the restriction on access to information between different council departments—I am thinking of access to housing benefit and council tax records and so on. In the main, local authorities must rely on information that comes from outside the authority or from its own identification work. The issue then runs into the problem of enforcement.

Cathy King: There is the question of the balance between supply and community needs. Licensing of HMOs has developed an expectation in communities that additional controls will be put in place. Although that is true, we need to recognise that the HMO sector is a legitimate and valuable form of housing, particularly for young professional people in Edinburgh. We need to find a balance between maintaining a supply of HMO properties and communities' needs and their expectations on control. The issue is one that we have struggled to tackle.

The Convener: On enforcement, are you hopeful that the bill will assist local authorities?

Colin McCrae: The existing facilities that we have are limited and unhelpful. The proposals in the bill are certainly helpful, particularly the provisions for increased sanctions and suspension of rent. We need a variety of tools to deal with a variety of landlords and a variety of situations. Further sanctions would be beneficial. It is particularly important that local authorities be able to close HMOs in particular situations. That said, the single most useful tool that the bill will provide, and on which we will predominantly rely, is rent suspension.

Cathie Craigie: The National Union of Students highlights in its written submission to us that it has campaigned for a long time for licensing of the HMO sector. The existing legislation was established under the framework of the Civic Government (Scotland) Act 1982, which the bill proposes to amend. What impact will that have, and will it bring benefits?

Keith Robson: As you will see from our written submission, we are widely supportive of that proposal. There are a handful of amendments regarding HMOs, of which we have been supportive in matters such as rent suspension, which has been mentioned. Our concerns around HMO licensing are to do with the level of fees and the perception of the need for licensing versus what is called community needs. That issue can be played out emotively in the media by people who are perceived to be quite powerful or influential in society—a judge and a former Cabinet minister have recently spoken out about HMO licensing in the blocks in which they live—and the rationale behind why we have HMO licensing can be forgotten. However, as we understand it, the bill is more or less just a re-enactment of the provisions that are set out in regulations under existing legislation.

Colin McCrae: The fact that the provisions will come under the Housing (Scotland) Bill is extremely important. We are dealing with housing, and that brings the provisions into the correct environment. The bill also gives the opportunity, through the debate, to deal with issues that have arisen from the Civic Government (Scotland) Act 1982. It provides an opportunity to deal with weaknesses in that act and to rectify them from all sides' point of view, be they the tenant, the neighbour, the landlord or the local authority. The provisions' being brought into a housing bill is extremely useful because that provides a focus, rather than the issue being lost in the licensing background. It gives a very fixed and firm focus.

Cathie Craigie: One of the changes will be that, instead of licences being issued for up to three years, as at present, it will be possible to issue licences for three years. Will that make a huge change to the current process, and is that welcomed?

Colin McCrae: The majority of local authorities apply the up-to-three-years rule. All things being equal, my local authority will issue a three-year licence. Some authorities, at the other extreme, issue one-year licences; however, they are beginning to recognise the volume of work that that creates and are seeing that three-year licences are the way ahead. Nevertheless, I stress that having a choice only between issuing a licence for three years and refusing a licence is a weakness. The bill should enable a local authority to grant a licence for a shorter period when there is justification for that. That may be oriented around a perception of management risk within the property, and there may be some debate with the licensing committee about whether to grant or refuse a licence. The ability to offer a licence for a shorter period because of concerns would be extremely useful. Without that, local authorities will be asked to make black-or-white decisions, with no grey areas and no room for movement.

Cathie Craigie: Will the bill allow scope for that to happen?

Colin McCrae: I do not believe that it will—the matter will need further clarification. The bill simply states that a licence should be awarded for three years, giving a commencement date and an end-date. The bill should contain a specific provision that would enable local authorities to issue licences for shorter periods, subject to justification and appeal, although the norm should be three years.

Cathy King: My local authority is in a different position, as our norm is one-year licences. During consultation of communities, concern has been expressed that the only option in the bill is the three-year licence. It would be comforting and reassuring if local authorities were given discretion in specific circumstances to limit the licence period to one year.

10:30

Cathie Craigie: Does the NUS have a view on that?

Keith Robson: By and large, we are comfortable with the idea of a three-year licence; however, as we say in our written submission, we welcome the enforcement powers that have been added. If somebody is granted a licence for three years, they may be tempted not to carry on making necessary repairs or to keep the property up to the correct standard. Nevertheless, I understand why the three-year licence has been introduced; it would reduce the regulatory burden on local authorities and landlords. I hope that the enforcement powers will help to alleviate any difficulties during the three-year duration.

Cathie Craigie: Let us move on to discretionary exemptions. The bill gives ministers the power to designate categories of HMO that could be exempted. What categories of HMO do you believe should be exempted?

Colin McCrae: Speaking from the experience of my local authority and what we have found as we have gone through the licensing procedure, I suggest that very few HMOs merit exemption, other than those that are already exempted. However, the bill suggests that we will be advised of specific categories of HMO that we may choose to exempt.

I will take this opportunity to raise a specific issue and to give my view on how the exemption power may best be used. Under the existing legislation, migrant workers—for example, people who travel to Edinburgh to build the Parliament building, or to Dundee to lay marble, whether they are travelling within or outwith the country—have another principal home. Where they stay in Edinburgh or Dundee is not their only or principal home; therefore, the legal advice from my local authority is that I cannot enforce the legislation on where such people stay as a licensed property. However, there is a strong argument that such people, who may spend weeks or months in that accommodation, should be offered the same level of protection as everyone else. At the moment, the matter is open to interpretation. Some local authorities may enforce licensing and others may not, on the basis of that legal evidence. The opportunity to create categories of HMO that may be exempt would be a way of addressing that problem. If migrant workers were included in the bill as a category that a local authority may wish to exempt, their accommodation would be clearly labelled as an HMO and it would be for the local authority to decide whether it would be exempted. At the moment, that is a grey area.

The definition of categories for possible exemption will be extremely important, as the positive side—which I have just outlined—could be offset by the negative aspect of inconsistency throughout the country, with some authorities choosing to exempt certain categories while others choose not to. The biggest noise would come from operators of those categories. If, for example, the universities in Edinburgh were exempted but those elsewhere were not, that could be seen as a significant inconsistency.

Exemption has a place, and a very careful choice about what categories could be exempted would be beneficial. If the provision were in place, I would argue strongly that migrant workers should be a designated category. Local authorities should be given that option.

Jenny Duncan (National Union of Students Scotland): We would have concerns if students in halls of residence—whether roomed by universities or by private accommodation providers—were affected by that. In the past, they have been adversely affected by housing legislation; we would like them to be considered on the same level as other citizens.

Mr John Home Robertson (East Lothian) (Lab): I have a quick question on the point that Mr McCrae just made. Are you saying that local authorities are concerned about the fact that migrant workers may be living in unsatisfactory housing or bad circumstances and that they feel that there is a need for stronger powers to protect those people? I am trying to lead you a bit.

Colin McCrae: There is a need to clarify the status of those people. Some migrant workers are probably living in poor conditions, although others may not be. The difficulty is that the legal advice that is given in some local authorities is that they cannot enforce the licensing legislation on where such people stay, although other authorities have taken a different view and have decided that they will do so. As things stand now, the issue would be determined in court rather than through the legislation.

Mr Home Robertson: Does the bill represent an opportunity to put that right?

Colin McCrae: Yes—I believe that it does.

Cathie Craigie: Moving on to the question of fees for HMOs, I was a member of the then Social Inclusion, Housing and the Voluntary Sector Committee when HMO licensing was introduced. We were strongly lobbied by various people about the level of fees and the huge differences across Scotland, including differences between cities in the east and west of Scotland. Ministers will now have the power to direct fees. Does COSLA welcome that? Does COSLA acknowledge the differences in fees and the difficulties in justifying them to private HMO operators? Should we seek improvements and explore the possibility of there being level fees throughout Scotland?

Colin McCrae: Fees are an emotive subject. A wide variety of fees are imposed, ranging from £150 to in excess of £1,700. We should recognise the matters that influence the level of fees. There are inconsistencies that are derived from influences outwith the local authority. Some local authorities are charged by their fire authority for inspections, whereas others are not. The level of such fees varies. Some authorities are charged by the police, whereas others are not and—again—fees vary. In summary, there are external influences on local authorities' fees, which vary throughout the country. Fees also depend on how many staff local authorities have. Some authorities have 34 staff dealing with HMOs; some have two.

I turn now to prosecution and enforcement. If authorities wish to go to prosecution, a significant effort and number of man hours will have to be put in. That will usually involve man hours outwith normal working hours, which will influence the level of the fee. It would be difficult to set a single fee that would apply across the board to all local authorities. If that was done, there might, for instance, be a requirement for certain city authorities to receive some subsidy if they were faced by a high level of prosecutions, a large volume of HMOs and a difficult set of issues in comparison with, say, a rural authority.

Although I understand the concern about variety in fees, I point out that the authority with the £150 fee is probably operating at a loss, whereas the existing legislation says that we should break even. I suspect that the majority of authorities are breaking even or thereabouts, and that the level of fee reflects staffing, workload and the authority's approach to licensing. In the future, it might be more a case of determining what should be included within the fee, in which case local authorities would be able to justify why their fees were set at a certain level. There is a perception of inconsistency among landlords who have large portfolios spanning a number of authorities. Fees depend on the areas concerned; I think that such matters should be left to local authorities to determine, but with reasonable guidance.

Cathy King: I agree. Guidance on what should be included in fees would be useful. Authorities that are neighbours of the City of Edinburgh Council have different fees. Colin touched on the fact that the cost of enforcement is embedded in the fee. That is inevitable, because of the requirement to break even under the Civic Government (Scotland) Act 1982. The enhanced sanctions under the bill might lead us towards a more uniform fee structure.

The Convener: Does the NUS have anything to say on fees? I am conscious that, in your written

evidence, you highlighted concerns about how fees sometimes impact on rent levels. Would you like to add anything on that, having listened to COSLA's evidence?

Jenny Duncan: We understand why fees exist. However, as we said in our written evidence, we are concerned that landlords would pass the cost of a high-level fee on to the students through their rents, which could create a black market in housing, with students trying to find unlicensed accommodation. That would undermine the initial reason for the introduction of HMO licensing, which was to improve the safety of rented accommodation.

Donald Gorrie: I will explore with COSLA and the NUS the people aspect of HMOs. The bill is mostly to do with the physical side—that is, ensuring that students and other people are decently housed—but we all know that there is a political problem: students tend to have a different lifestyle and keep different hours from many other people, so the nimby factor arises. If society wishes to provide adequate good accommodation for students and wants not to upset too many non-students, how should we deal with that? Is it enough to try to ensure that the landlord is a proper and fit person and that the neighbours can get at the landlord, who can then get at the students? Should there be a rationing system within a tenement block or a wider area? Should we muddle through as we do at the moment? As everyone knows, the issue is politically quite complex.

Cathy King: The difficulty of a rationing or quota system is that it probably could not be retrospective, so the current provision would continue to exist and new provision—which might be of higher quality than existing provision—might be hit.

Tensions exist but, in all our university cities, we recognise the value that students bring to the community and civic life in general. We have to strike a balance. The issue is about housing strategy to some extent and about planning to some extent. We must plan for the future rather than respond to individual complaints about, or issues with, particular HMOs. The complexity of the housing market should also be reflected; for example, in the Marchmont area of Edinburgh, there are lots of large flats, many of which have been lost to student occupation. Many of the community groups in Marchmont bewail the fact that those flats are no longer family houses. However, young families are moving out of Edinburgh to places where they buy homes with gardens, so if those flats were not used by students, who would use them and where would the students go?

Needs must be balanced and we need a strategic view. The forthcoming planning bill might offer an opportunity to consider the use of HMOs and the merits of quotas.

Colin McCrae: I will add to what Cathy King said, with which I agree entirely. The proper approach is to use licensing to educate all those who are involved about their responsibilities. It is also to inform neighbours who might be concerned about how the HMO licensing scheme is controlled and managed and about ensuring that people understand that it is about managing bad behaviour and poor standards. The forthcoming planning bill should consider the overview of density of HMOs in a particular area, taking account of the factors that Cathy King mentioned. We are able to influence that, but work needs to be done on the link between licensing and planning.

Jenny Duncan: One thing that concerns me about the questions and answers so far is the assumption that all students are the same—that they all go out drinking and come in late at night. That is certainly not the case.

The NUS would strongly oppose the imposition of any quota system because such a system assumes that only students live in HMOs, which, as we have established, is not the case. There is a tendency for people who talk about students and HMOs to demonise that particular group, which they would be wary of doing with other groups.

It is also important to emphasise the fact that many student associations, for example in Edinburgh, have worked with residents groups to reach constructive solutions and build relationships with all residents of the community.

10:45

Donald Gorrie: I accept your rebuke—I did not intend to demonise anyone. It is possible to have two perfectly worthy people who have different lifestyles. I tried to reconcile a family that ran a Chinese restaurant with an ordinary 9-to-5 family who lived next door. They had horrific problems. They were both worthy families, but they lived their lives at different hours of the day.

Should we put more in the bill about the people aspect of HMOs, so that owners ensure that most people behave properly and so that they deal with the minority who do not, or should we leave that, as you suggest, to a planning bill? Do we need to say anything about people, as opposed to the quality of buildings?

Cathy King: The people aspect is crucial to recognising HMOs as a legitimate form of housing. It is what concerns communities and neighbours and occupants of HMOs. The bill probably covers all that. We are lucky to have a range of legislation in respect of tenancy conditions that allows us to

deal with antisocial behaviour, but I would be wary of adding to that. To a large extent, we already have the tools. It might be helpful to have an exhortation in guidance to co-ordinate that and to use what we already have.

Donald Gorrie: The measures in the relevant part of the bill are not to be implemented until perhaps 2007. Is it good to have a delay to sort matters out properly, or is that an undue delay?

Colin McCrae: We would like the delay to be extended until 2008, rather than 2007. It is important that provisions be introduced in the round. We have spoken about planning issues and changes in that environment. There has also been discussion of landlord registration. There are a number of spokes to the wheel. A great deal of work is being done across housing legislation and some local authorities fear that if the bill's provisions are brought in too early they will be brought in half-cocked, and it will be hard to make them work. It is important that the measures be viewed in the round, and that everything is in place.

It has been suggested that the guidance and benchmark standards will need to be reviewed in line with building standards. It is terribly important that the links to other legislation and other departments are in place when the change happens. The change should be seamless. All the people who are involved and who have sought change should see that the links are in place at the point of change.

Keith Robson: Can Mr Gorrie provide a clearer definition of "people aspect"? I am trying to understand what he means by that. If we are going down the road of HMO licensing and quotas, are we talking about giving for every 100 licences, 10 to a group of students, 20 to doctors, 10 to nurses, 15 to teachers and so on? Is that what Mr Gorrie means by "people aspect"?

Donald Gorrie: I did not mean anything at all. We are here to learn from you. I think that you would not disagree that, rightly or wrongly, there are sometimes problems in areas where many students and many other people live. Nobody is particularly to blame; they just have different ways of doing things. How can we get around that? I presume that it is in the interest of the NUS that the maximum amount of accommodation that is suitable for students be available. If we make a mess of HMOs, people will drop out of the system, as Jenny Duncan made clear in her written evidence, and which you are anxious to avoid. Landlords may get fed up if they are constantly hassled by neighbours who claim that their tenants are misbehaving, and they will stop providing that sort of accommodation. I am interested in whether you have any suggestions about how to reduce that conflict.

Jenny Duncan: Everyone would agree that good neighbourliness is an important attribute of living in a community. I think that tenants and probably neighbours would welcome legislation on absentee landlords, for example, who are problematic if they cannot be contacted for whatever reason. Landlords can be a form of mediation between tenants and neighbours and we would welcome a greater clampdown in that respect.

Linda Fabiani: I have a supplementary question that picks up on what COSLA said. Should these matters be considered in the round again under local authority housing strategies? We hear about balanced communities, for example, but would local authorities or COSLA like a steer in the bill on HMOs?

Cathy King: That aspect should certainly be included in local authority housing strategies. However, different authorities will give different weights to the various issues. Rural authorities have different perspectives and needs from those of cities. The planning aspect would also be picked up. All those matters need to be addressed in local housing strategies and probably in private rented strategies that local authorities are developing.

Mary Scanlon: My first question is to COSLA, whose submission states:

> "Further work will be required to ensure that the different forms of regulation are co-ordinated at national and local level, including HMO licensing, registration, voluntary accreditation, and the role of the Private Rented Housing Panel."

You have dealt with the issue in answering earlier questions, but will you expand on what the submission says? One or two people who have given evidence prior to today have suggested that, if a landlord has properties in different local authority areas, there should be a uniform structure—which Cathy King mentioned—perhaps a uniform fee and more consistency and that a national registration scheme rather than a local scheme would be beneficial. Would a national scheme be workable?

Cathy King: On co-ordination, we are aware that the private rented sector believes that it is, for the first time in ages, being hit with a lot of regulation. People in Edinburgh and throughout the country are dependent on that sector. In Edinburgh, there are as many households in the private rented sector as there are in the social rented sector, which is unusual. The private rented sector is a major factor in meeting housing needs for a whole range of people.

We are keen to manage owners' and landlords' perspectives so that they do not feel that they are being hit time and again by inconsistent and unco-

ordinated regulation. Local authorities must take responsibility for a selling and education job, but any assistance that we can receive from the Executive to help with the timing and co-ordination of regulation would be extremely helpful.

The cross-authority issue is difficult because, even in Edinburgh, there are different markets and housing demands. Perhaps we should consider whether the local authority unit is the right structure. Increasing numbers of people who work in Edinburgh, for example, are travelling from Lothian and Fife and it is likely that their housing is provided by landlords who have properties throughout those areas. Greater co-ordination is needed, but that will be difficult to achieve because, as Colin McCrae said, the fees structure indicates that the cost, staffing and effort levels that go into regulation vary across local authority districts. I do not have any clear thoughts on how a national registration scheme would work unless it involved some form of cross-subsidy, which Colin McCrae alluded to.

Mary Scanlon: Colin McCrae said that there were many spokes to the wheel. He mentioned fees from £150 up to £1,700. Is that for HMO licensing?

Colin McCrae: Yes.

Mary Scanlon: Do you have any idea how much extra it would cost a landlord to register under the national registration scheme for private landlords? Have you estimated a cost for that yet?

Colin McCrae: The only indication that we have on cost is a general indication that it should be low, which has come from the Scottish Executive. Determination of the fee will be complicated. A landlord who is licensed as an HMO operator has been through many of the processes that are proposed for registration. If someone is a licensed HMO landlord, it seems that they should automatically become a registered landlord, as they have met that requirement and have already paid to be assessed as a fit and appropriate landlord.

Mary Scanlon: When you talk about better co-ordination within a local authority, are you thinking about the possibility of bringing those two registration schemes together in a database?

Colin McCrae: Yes. Many local authorities—including, I think, the City of Edinburgh Council, but certainly Dundee City Council—are moving towards having a private sector service. Some departments have units called private sector services. That is a clear focus for all the information to come together.

Many of the landlords whom we deal with in licensing—and, indeed, in voluntary accreditation—will be the ones whose other non-licensable property we are interested in. Although we will have inspected the properties of a landlord who is licensed to operate HMOs and will know the condition of those properties, it is fair to say that many landlords have brought them up to the required standard because of the licensing legislation. However, they may have a large portfolio of other non-licensable properties and it is not taken as read that they are adequate. In the registration process, we will have to take account of both the ability of the individual to be a landlord and the condition of the property.

I believe that local authorities will take a reactive approach to registration. It will be about self-verification on the part of the landlord. It will not be a straight switch whereby, if someone is HMO licensed, they do not need to do anything else. There may still be a need to do something, but I anticipate that the fee level would be relatively low, because we appear simply to be creating a database of landlords and their properties. It would be useful to HMO licensing if, as part of the registration, landlords were obliged to identify properties that were HMOs. That would help with the enforcement side.

Mary Scanlon: You talked about a low fee, but I am not sure what a low fee is in a local authority. Is that £150 or £1,700?

Colin McCrae: As I indicated earlier, it depends on what we are doing. There is little information on registration. We have no guidelines and no direction about the method by which we will collect or retain the information. Until we know that, it is difficult to determine what will happen.

Mary Scanlon: Cathy King said that the process has to be self-financing under the terms of the Civic Government (Scotland) Act 1982. Is that correct? Would the fee have to cover fully a local authority's costs?

Colin McCrae: Yes. My understanding is that the fee would have to cover our costs.

Mary Scanlon: Thank you. That is helpful.

My next question is to the NUS. Like many others, you have asked for better information for landlords and for tenants, so that tenants know their rights, for example. How could that most effectively be achieved to ensure that all students knew their rights and responsibilities?

Jenny Duncan: We already produce a series of leaflets that advise students of their rights, whether that is to do with education funding, health care or housing. I imagine that we would do something along those lines to get the message across. A lot of what we do involves working with our members, the student associations, and their existing welfare services. For example, if students come to their student association's welfare

services with a problem, the services will be well versed in the issues. The requirements and expectations of the new legislation must be highlighted through those means.

The Convener: That concludes the committee's questions to the panel. I thank the witnesses for attending and for their written submissions in advance of the committee meeting. I will suspend the committee to allow for a five-minute comfort break and the changeover of witnesses.

10:59

Meeting suspended.

11:05

On resuming—

The Convener: I welcome our third panel of witnesses. We are joined by Lucy Burnett, who is the parliamentary officer for Friends of the Earth Scotland and the Association for the Conservation of Energy; Mike Thornton, who is the head of the Energy Saving Trust Scotland; and Norman Kerr, who is the director of Energy Action Scotland. I congratulate Norman Kerr on his appointment as the director of Energy Action Scotland—it is nice to have him at the committee in his new role.

Do the witnesses feel that their organisations were able to engage effectively with the Executive during the consultation process and were any changes that you felt were necessary made?

Lucy Burnett (Friends of the Earth Scotland and the Association for the Conservation of Energy): The consultation was full and lengthy and provided many opportunities to get involved. One significant point is that neither Friends of the Earth Scotland nor the two bodies that the other witnesses represent were involved in the housing improvement task force, which might reflect the fact that there is not a huge amount of detail on improving energy efficiency in Scotland's housing stock in the bill.

Mike Thornton (Energy Saving Trust Scotland): I agree with the thrust of those comments.

Norman Kerr (Energy Action Scotland): We were happy with the consultation.

The Convener: What are the main energy efficiency problems in the private rented sector in Scotland? That is a general question before we get into the detail of what is or is not in the bill.

Lucy Burnett: There are certainly lots of problems in the private rented sector. The figures on the energy efficiency of the sector and the percentage of the fuel poor who are in that sector are significant. The challenge is to improve the sector.

Norman Kerr: I agree. Because the private rented sector has not been subject to regulation, the standard of building has fallen behind. As a number of submissions to the committee have pointed out, the overall energy efficiency of the private rented sector stock is much lower than that of the housing association stock or other social rented stock. Communities Scotland's report into the first year of the central heating programme identified that the majority of homes in which central heating had been installed in the private and private rented sector were significantly below the average energy efficiency standard of the total housing stock, which shows that there have been years of underinvestment in that stock. The difficulty that we have now is to bring investment up to speed so that we have a good-quality private and private rented sector.

Mike Thornton: Another issue is that the private rented sector is fragmented. My organisation provides a lot of advice, information and support, which can make a difference, but it can be difficult to do so for the private rented sector because the people to whom we might talk and who experience issues are the tenants, whereas the landlords are, in effect, in charge of the solutions. The landlord sector is highly fragmented. On the one hand, the sector presents a problem, but, on the other hand, it presents a big opportunity because there is low-hanging fruit that might allow us to kick up the energy efficiency in the sector, precisely because the sector has fallen behind.

Scott Barrie: Energy Action Scotland's written evidence suggests that the definition of substandard housing that will be used to determine whether a housing renewal area should be declared should be expanded to include all houses that fail to meet the Scottish housing quality standard, rather than just those that fail to meet the tolerable standard. Given that it is estimated that about 70 per cent of housing fails to meet the quality standard, what would be the resource implications of your suggestion?

Norman Kerr: The timeframe that has been set for the Scottish housing quality standard is 2015, so programmes are already in place. Very basic insulation measures are suggested as part of that standard and many of those can readily be provided by current grant programmes—200mm of loft insulation, cavity wall insulation and an efficient central heating system where applicable are all available through one grant scheme or another. The resources required might not be as much as people think, although I have not done the calculations to put a figure on them.

We have to consider the timeframe and look to the future of grant programmes. The new energy efficiency commitment programme kicked in in 2004. Phase 2 will come up in 2008. The Scottish

Executive's central heating programme—the warm deal—is up for review in 2006. The Minister for Communities has already indicated that such programmes should continue in one form or another, so there is an opportunity to use existing grants. A lot of those grants are targeted at the private and private rented sectors, so that would not be too onerous a task.

Scott Barrie: So, although you have not calculated the figures, you think that your proposal would be achievable with realistic timeframes and the political will.

Norman Kerr: Yes.

Scott Barrie: My next question is for Lucy Burnett. Your evidence suggests that local authorities should be required to report in their local housing strategies how they will meet the Scottish housing quality standard in the private sector. What action could local authorities reasonably take, given that the Executive considers it to be a matter for individuals to decide whether to make improvements if their properties do not meet the standard?

Lucy Burnett: We have to put that in context. When the Executive introduced the Scottish housing quality standard, it intended the standard to be cross-tenure. I would like the standard to be applied to the private sector and for that to be a target in local housing strategies.

Another Executive target is to eradicate fuel poverty by 2016. It has been estimated that, if we are to take all the houses in the United Kingdom out of fuel poverty, we will need a standard assessment procedure rating of 65, which is higher than that required by the Scottish housing quality standard. For the Executive to meet its fuel poverty target, it will have to do something about the Scottish housing quality standard anyway.

As for resources, that is about what the Executive and local authorities can do. On a national level, building standards should be improved and extended to renovations, for example.

Norman Kerr was talking about some of the existing financial mechanisms. The central heating programme comes to an end in 2006, which will release a significant resource that can be put into energy efficiency. Energy efficiency is important enough in relation to fuel poverty and climate change to make that necessary.

Patrick Harvie: Satisfactory thermal insulation and compliance with the requirements for electrical installations are included in the tolerable standard. Are the four organisations that our witnesses represent content with the tolerable standard as it is spelled out in the bill?

Norman Kerr: No.

Patrick Harvie: Tell me about that.

Norman Kerr: One of the problems is that the tolerable standard is the failure standard. There is nothing in the tolerable standard about condensation dampness or dampness, but most houses fail to meet the tolerable standard because of some form of condensation or condensation dampness. We know that there is a huge impact on the health of people who live in cold and damp homes. The problem is not just about cold damp homes, however; warm damp homes have the same impact. That comparison has been made by Dr Stirling Howieson of the University of Strathclyde in the research that he has carried out for the past five years into asthma. Even if adequate thermal insulation has been installed, if a house is not properly heated and ventilated, the tenant will still have a problem. Many problems relating to dampness are caused by poor thermal fabric, water ingress and the tenant's lifestyle. The tolerable standard does not go far enough, because it does not address dampness and condensation dampness.

11:15

Mike Thornton: The question is how we define "adequate", which is still to play for to some extent. There was a suggestion in the consultation that the national home energy rating should be around 2, which is not a particularly high standard. We think that the NHER should be much higher, partly because work done by the Department for Environment, Food and Rural Affairs south of the border indicates that, if a house is to be fuel-poverty proof, it should have an NHER of 6.5. I am sure that that applies to Scotland, too. The DEFRA work might be out of date by now, because fuel poverty is a function of fuel prices, among other things, and we all know that fuel prices are rising. A house with an NHER of 2 might meet the tolerable standard but still be a fuel poverty magnet. Such issues need to be resolved.

Lucy Burnett: We need a staged approach. An NHER of 2 might be appropriate at the first stage, but targets for increasing the rating over the years could be set. It would be unrealistic to expect all houses to have an NHER of 5 overnight, but if we get the timescales right it should be possible gradually to improve the standard of the housing stock. As I understand the bill, the tolerable standard will no longer be just a condemnatory standard; local authorities will be able not just to demolish a building, but to take other action.

Patrick Harvie: Although demolition will still be an option.

Lucy Burnett: Yes.

Patrick Harvie: What does an NHER of 2 mean in practice? How much insulation—or how little—are we talking about?

Norman Kerr: The NHER is not just to do with insulation; it takes account of the quality and efficiency of heating systems in the building. A number of commentators say that it is difficult to achieve an NHER of 5 or 6, but computer modelling indicates that even an old tenement building in Glasgow that has little insulation can quickly achieve an NHER of 5 if a modern, efficient gas-fired central heating system is installed, so an NHER of 5 is not onerous to achieve. The Scottish house condition survey indicated that, in the current housing stock, the median NHER is 6 and the average NHER is 5.4, so there is not a huge number of houses that need to be brought up to an NHER of 5 over a 10-year period.

Patrick Harvie: Do you mean that, for most housing, achieving an NHER of 2 would not be a hurdle?

Norman Kerr: Yes.

Linda Fabiani: Should maintenance plans take account of matters such as thermal efficiency?

Norman Kerr: Yes.

Lucy Burnett: Yes.

Mike Thornton: Yes.

Patrick Harvie asked how much insulation would be needed to achieve an NHER of 2, but it is worth considering the NHER as a proxy for fuel bills. In some models, a home with an NHER of 2 might have fuel bills of £1,350 a year, but the bills might be reduced to £800 a year if an NHER of 5 was achieved. As Norman Kerr said, the costs are not significant, but the long-term savings are significant, so increasing the NHER of buildings would have positive economic benefits. The approach would not demand massive investment over a long time for no economic return; it would produce an economic return for individuals and for the economy as a whole.

Patrick Harvie: Norman Kerr spoke about measures other than insulation. Should any measures that we have not yet spoken about be included in the tolerable standard?

Lucy Burnett: Thermal efficiency measures should be included. As well as satisfactory insulation, there has to be satisfactory and efficient heating. Unless we have that, we will not take a house out of fuel poverty. We will have a cold, damp house.

Norman Kerr: I agree. We need thermal efficiency and efficient heating systems and we need measures to deal with dampness, as we discussed earlier.

Patrick Harvie: From the perspective of Friends of the Earth, could mechanisms in the bill encourage the take-up of micro-renewables in the private rented sector? Substantial investments would be needed, but tenants would not make those investments and landlords might not have the incentive to make them.

Lucy Burnett: Micro-renewables will come as we work towards the fuel poverty target. Various houses will be hard to heat and micro-renewables will be a solution to that problem. That will be a challenge for the central heating programme. There is nothing specific in the bill to encourage take-up of micro-renewables; such encouragement will come through building regulations. The next review of building regulations will be next year.

Patrick Harvie: During the Executive's consultation, concerns were expressed about assessing the extent of adequate thermal insulation. Would the panel like to comment on that?

Norman Kerr: The definition of adequate thermal insulation should be what is written in the Scottish housing quality standard. We should not reinvent the wheel. Last year, Communities Scotland did a lot of work on standards in the private sector. In its guidance, it said that standards for housing and repairs should fit in with the housing quality standard. We should apply the standard across the board and people should adhere to it.

Patrick Harvie: Do practical issues arise in assessing whether stock meets the standard?

Norman Kerr: A number of tools are available. Communities Scotland's housing condition survey already provides local authorities with information. Local authorities have an excellent fuel poverty mapping tool that the Energy Saving Trust Scotland funded and Energy Action Scotland and Alembic Research developed. Using information already held in a number of different records, that tool can narrow things down to sub-ward level—to a small area of perhaps 75 houses where problems exist. Identifying houses where the standard is not met is not too onerous a task.

Patrick Harvie: The written evidence from the Energy Saving Trust Scotland says that guidance on the tolerable standard

"should be broader than just interpretation and include practical advice on implementation."

Would you expand on that?

Mike Thornton: Information and advice can play an important role in reaching any particular level of energy efficiency. Guidance should contain signposts to organisations that can supply additional information; it should not try to contain all the expertise within itself. Our written evidence mentions the network of energy efficiency advice centres that we run.

I think that a colleague mentioned earlier that a lot of additional funding is available to meet tolerable standards for energy efficiency. As with many grant regimes, there are different grants for different circumstances. The guidance should say that grants are available but should also refer people to sources of expertise on whether grants would be relevant in any particular case. Some of the money to help people to meet the standards would be from the energy efficiency commitment, which is not a publicly funded grant scheme. Additional funding is therefore available that will not go on the Government's tab.

Cathie Craigie: Will the proposed repairing standard be effective in promoting a higher standard of physical condition in the private rented sector?

Lucy Burnett: We all said that we were a bit confused about the introduction of yet another standard. There seems to be a wealth of standards out there already and now we are hearing about the new repairing standard. We have all referred at various times to the Scottish housing quality standard; we would prefer to see that standard spread across the board, rather than a new standard introduced. As far as we can see, the only difference is that the repairing standard specifies a level of thermal efficiency, which we see as an important component.

Mike Thornton: I reiterate that point. You will have heard in the thrust of our evidence and that of others that if the Scottish housing quality standard is aspired to across all tenures, legislation should work with it. We are concerned that that will not happen with the repairing standard. I am aware that there are resource issues. Norman Kerr said earlier that some of those issues could be dealt with if there were appropriate timescales. We are not suggesting that the SHQS should be applied by law to every building in Scotland tomorrow. There is a case for including the relevant bits of the bill in a strategic view of where the Executive wants to go with its housing standards. Although the repairing standard is good, we are not sure that it represents a step on that route.

Norman Kerr: I agree with my colleagues. The repairing standard would just be yet another standard. If it is lower than the standards that we are already placing on housing associations and local authorities, we would have to ask why we want a lesser standard in the private and private rented sector, which makes up 70 per cent of our housing stock, and why we should penalise local authorities by placing on them a higher repairing standard that we are not prepared to impose elsewhere.

Cathie Craigie: The Scottish Executive says in the policy memorandum that it has proposed that approach because of the recommendations that were made by the housing improvement task force, which considered all the types of private rented accommodation. Some of your organisations were involved in the task force. Do you have any comment to make on that?

Lucy Burnett: None of our organisations was on the housing improvement task force, which is perhaps an anomaly.

Norman Kerr: It is. Energy Action Scotland, FOES and ACE were not on the task force. Perhaps that explains why the task force came up with that suggestion, which we would not support.

Cathie Craigie: Did you comment on the issue during the consultation on the bill?

Norman Kerr: Informal comments were made.

Mike Thornton: We come to the issue primarily from the perspective of energy efficiency. We have not talked about the carbon implications of the standards. The energy efficiency standards will obviously make a significant difference to fuel poverty and to carbon outputs. Given the carbon targets to which the Government is committed and the fact that the housing sector is responsible for 28 per cent of energy use, it is difficult to see how the carbon targets can be met without decent energy efficiency standards across all tenures. We have not talked in great detail about that policy driver. Although it is not the direct thrust of the housing bill, it definitely affects the debate.

Cathie Craigie: In evidence to the committee and in briefings that the committee had with interested bodies throughout Scotland when we were preparing for this stage of the bill, local authorities—particularly city local authorities—advised us to be cautious that we do not set standards in this part of the bill that would force landlords out of the market and force up rents to the levels that the NUS referred to earlier. Is there a balance there? Would it take a lot of money to raise standards? Are people scaremongering?

11:30

Mike Thornton: It comes back to the timescale issue. It depends whether the Scottish housing quality standard is a good standard to aim for. We would not want to adopt the standard if it might produce a problem with the supply of rented accommodation. Viewed over a reasonable timescale, the investment is not enormous. If the Scottish Executive were to set out a timescale or strategy, that would give landlords sight of what investment decisions they would need to make; if the timescale was sufficiently long, landlords could incorporate the necessary work into their own repair cycles, which would greatly reduce the overall cost.

It is about setting out a path rather than willing a revolution tomorrow. You are right in saying that that would have some unfortunate consequences.

Lucy Burnett: Mike Thornton mentioned the costs of heating houses with different NHERs. That will be directly to the advantage of tenants. It is usually the tenants that pay for the heating and the energy costs; to some extent, that will offset the costs.

Norman Kerr: In earlier sessions, Donald Gorrie talked about people. When we talk about repairing standards, housing standards or standards of energy efficiency, we are ignoring people. While there is an impact on the landlord, the greatest impact is felt by the tenant who lives in the property. It is not right to expect someone who lives in private rented accommodation, who has to pay a higher rent, to pay a higher fuel bill because their landlord has not undertaken the necessary repairs, has not had the heating system checked or does not have a good-quality heating system. Why should we penalise people simply because they choose to stay in that sector? I do not understand that argument.

If we are going to do this, we have to do it across the board and we have to be brave about it. Some unpopular decisions may have to be taken but, as Mike Thornton said, we are not advocating a revolution tomorrow—perhaps the day after, but the day after is 10 years away. By giving people encouragement and by using carrots and sticks, we would be able to do that. If we do not do it, we are doing the people who live in the private rented sector a great disservice.

Linda Fabiani: We heard from landlords—particularly rural landlords—that it is sometimes difficult to meet certain standards in some kinds of property, especially when there is a listing on a property because of its age. Should there be exceptions to any quality standard that you would set?

Norman Kerr: No. As soon as you make exceptions, you will have a queue of people at your door to tell you their reason for being made an exception. The Energy Saving Trust in Scotland has a number of high-quality grant programmes. As Patrick Harvie mentioned, those programmes consider small-scale renewable and other technologies that are available and which, if applied, would bring those houses up to standard.

Linda Fabiani: To the satisfaction of Historic Scotland?

Norman Kerr: I would hope that it would be to the satisfaction of Historic Scotland.

Linda Fabiani: Quite a hope.

Norman Kerr: If the installation of a ground-source heat pump upsets Historic Scotland I would need to see the reasoning behind that, and to hear and be convinced by Historic Scotland's argument. If Historic Scotland makes representations to the committee and gives the committee exceptions, it will be the first of many.

Mike Thornton: We should also think about the timescale. There could be an argument for having an exception on the basis that it is not possible for something to be done in a particular building. However, if we set a long timescale, there are a number of technologies in the pre-market stage, including small-scale renewables. In 10 years' time, those will be much more mainstream and will be available. As Norrie Kerr said, that should make the number of exceptions minuscule, even in buildings with the highest historical standards.

Linda Fabiani: Do you think that the scheme of assistance for which the bill provides will encourage or assist occupiers—both owner-occupiers and tenants with landlords—to carry out energy efficiency improvements?

Mike Thornton: It is possible. In my view, the scheme is positive, but it is not particularly focused on energy efficiency improvements.

Lucy Burnett: There is already a wide range of support for energy efficiency improvements, from advice up to grants. Those measures will probably have more effect on energy efficiency than the scheme of assistance will have. It seems sensible that local authorities should be able to choose the most appropriate option. We are concerned that they may always choose the cheapest option, and I would like the issue to be monitored in some way to ensure that that does not happen.

Linda Fabiani: You have raised the next issue about which I wanted to ask. Do you think that local authorities have the capacity to provide what the bill as drafted requires? Might they need to employ specialist people, such as home energy information officers? In their written evidence, Friends of the Earth Scotland and the Association for the Conservation of Energy state that

"the Scottish Executive must monitor local authorities' use of the range of assistance to ensure that they go for the most effective option as opposed to the cheapest."

Can you expand on those comments? I take it that you mean that councils should consider the whole-life cost of an option, rather than just the initial cost.

Lucy Burnett: I am happy to respond to the last question—colleagues may want to address the other issues that Linda Fabiani has raised.

Section 91 gives the Executive a power to give directions to local authorities on the implementation of the section. I would like the Executive to monitor whether local authorities have opted for the most effective way of improving

housing, rather than always for just providing advice, because that is the cheapest and easiest option.

Norman Kerr: The issue of local authority resources was raised. It is helpful to consider how authorities have tackled their responsibilities under the Home Energy Conservation Act 1995. A number of authorities have appointed HECA officers at a fairly senior level, who feed directly into the housing committee and are well resourced. Such appointments have not necessarily been made just because a local authority has a large housing stock, but because the authority has chosen to take a particular strategic direction. In other local authorities, the HECA officer's responsibility is part of someone's job, and they spend half a day a week on it. The issue is how local authorities interpret what they are being asked to do, the importance that is placed on it and the guidance that is given to authorities.

It is unlikely that authorities will have in place people who will be able to do what the bill requires. However, if they are given guidance on how they should meet their responsibilities and if the importance of the issue is emphasised, they will provide the proper staff to do that.

Mike Thornton: Resources external to local authorities, such as our energy efficiency advice centres, may have a role to play. The centres already have very close relationships with almost all Scottish local authorities. The bill has resource implications, but we should be able to handle them. It is a matter of priorities.

Linda Fabiani: I return to the issue of the most effective option. I read the comments of Friends of the Earth Scotland and the Association for the Conservation of Energy differently from how they were intended. I was not thinking about local authorities just giving advice because that is the cheapest option. However, as far as grants and loans are concerned, the worry is that, because of costs and the constraints of finance, local authorities will be tempted to do the minimum that is required under the guidance and legislation instead of thinking about what would be most effective option for a particular house for the next 20 years. Should that situation be monitored?

Lucy Burnett: Bringing a household's energy efficiency up to the tolerable standard might simply be a matter of giving people advice on how to use their energy system more effectively. In other cases, grants might need to be made through the central heating programme or whatever to replace a household's central heating system. We have to find the most appropriate route in the circumstances.

Linda Fabiani: When you talk about monitoring, you do not mean that someone from the Scottish Executive should hound local authorities all the time and tell them "You're doing this wrong. Do what we tell you to do." I might be putting words in your mouth, but you seem to be saying that local authorities should be given sufficient resources to be able to act in the long term.

Lucy Burnett: That would help.

Linda Fabiani: Could Norman Kerr expand on his comment about giving local authorities the ability to lever in private sector funding from certain energy suppliers?

Norman Kerr: Local authorities have been levering in private sector money for a number of years. Home energy conservation officers tend to look at the overall plan for their local authority and think about where they want to go with it, how they can make homes more efficient and so on. Funding for that work comes from organisations such as the Energy Saving Trust in Scotland; from fuel utilities through the energy efficiency standards of performance and now the energy efficiency commitment; and from the Scottish Executive through the warm deal programme. As a result, a range of funding is available, but we need well-resourced and knowledgeable officers to bring together that funding and co-ordinate the work.

There are several good examples of such activity. West Lothian Council has a very strong background in that respect. For example, it has its own advice shop and a well-executed plan that brings in a number of partners. Another very good example is South Ayrshire Council, which has brought together many different pots of money to make the plan work. If committee members have any time, they should take a look at what is happening in those two very committed authorities. They can secure from external sources not only four or five times the funding that they allocate but, very often, help in kind. In that respect, Mike Thornton mentioned the EST's local authority support team, which is very active with and a great resource for a number of local authorities. Although a range of measures is available, we need to give people guidance on and details about best practice. Indeed, we have found that such advice is quickly taken up.

Mary Scanlon: What information or certification, particularly with regard to energy efficiency, should be provided to potential purchasers? I also seek some clarification from Mike Thornton, whose submission says:

"Our view is that not including a requirement for energy efficiency information … in the Bill is a missed opportunity."

Under the European Union directive on energy performance of buildings, which will be implemented through regulations made under the Building (Scotland) Act 2003, energy performance

certificates will have to be made available to prospective buyers and tenants. Will not their introduction fulfil the requirement for energy efficiency information, which, as you say, is not covered in the bill? I will ask you later about your comment that we are not likely to meet certain targets.

11:45

Mike Thornton: Such certificates will be required under the European directive, but we are concerned that the Executive is not taking the opportunity that the bill presents to introduce them explicitly. After all, the certificates represent a great opportunity to mainstream energy efficiency. Home ownership is a significant fraction of the total tenure in Scotland. When people purchase a home, it represents their biggest lifetime purchase and if they were to have a certificate in front of them, they would know about the fuel costs of running that home. Given that those costs can vary by hundreds of pounds, the certificate will make people think with greater interest about energy efficiency and the savings that they can make by introducing energy efficiency measures into their homes. The issue is one of mainstreaming. The EU directive will have to be implemented, but the bill gives an opportunity to introduce the measure now.

Mary Scanlon: The point at issue seems to be that, if the energy performance certificates are introduced through the building regulations route, no greater or lesser a commitment will be made to them than if they were to be included in the bill. Is there a problem in using the building regulations route?

Mike Thornton: I suppose that I am urging the speedy introduction of the certificates. The question is by which bill or which powers the Executive introduces them.

Mary Scanlon: They will have to come into force by January next year. If they are introduced by way of regulations, I imagine that this committee will be involved.

Mike Thornton: However, the Government could derogate from the requirement for up to three years. One of the grounds for derogation is that the significant infrastructure that will be required is not ready and that the required number of certificates cannot therefore be produced.

Mary Scanlon: So you are saying that we will not achieve the timescales for the implementation of the EU energy performance certificates by January next year.

Mike Thornton: If I may, I will be slightly subtle in my response. Instead of saying that the UK will not achieve that timescale, I would rather say that I have concerns that we may not. Those concerns are flagged up in our submission. We think that the bill provides an opportunity to implement the measure.

Mary Scanlon: We will discuss that matter when it comes before us. On the assumption that the energy performance certificates will go through—whether we meet the timescales or not—and that the measure will come into effect in January 2006, are you satisfied that the certificates will provide the purchaser with enough information on energy efficiency? Are they as good as you are looking for?

Mike Thornton: Yes. Broadly, we are happy with them.

Mary Scanlon: They would meet all the standards that you expect.

Mike Thornton: Yes.

Lucy Burnett: We would be very happy with them.

Patrick Harvie: Mr Thornton spoke about the possibility of a three-year derogation. Have ministers indicated that they intend to seek derogation? If we could secure a response on the matter when we discuss the bill with the minister, would that satisfy your concerns?

Mike Thornton: Yes. I am not aware of any plan to derogate. However, the implementation date is not very far away. The question whether moves are being made is more for the committee than it is for us. We have some concerns, but we hope that they will come to nothing.

Lucy Burnett: I will express things more strongly than Mike Thornton did. I am very cynical on whether the certificates will be in place by next January. We have been hearing about the directive for years, yet we have still not heard how the proposals will be implemented. The Government has one major reason for seeking to derogate: it will use the basis that there are not enough people to carry out the energy certification.

In effect, the Association for the Conservation of Energy is the group for the energy efficiency industry. Our concern is that the certifiers will not be trained until after the measure comes into force. Let us do things in a staggered way by beginning implementation next January and starting to train people—we should just get going.

Mary Scanlon: Does any member of the panel know about the Westminster timetable for the directive?

Lucy Burnett: The Scottish Executive is following Westminster's lead on the matter to quite a large extent. Westminster has yet to announce whether it plans to derogate.

Mary Scanlon: Has the matter been debated at Westminster? Has any progress been made or any decisions been taken?

Lucy Burnett: I am not sure.

Norman Kerr: A number of the questions that you are asking us are questions that we are also asking. We would like to see progress but we know of none. As Lucy Burnett said, the problem is that the longer the delay, the more difficulty there will be with training the people who will undertake surveys of buildings. The training is reasonably straightforward and not very onerous, but if there are a number of people to be trained the timeframe becomes significant.

Mary Scanlon: Is it because of your concerns about the delay of three years with the EU directive that you wish there to be a requirement for energy efficiency information to be included in the single survey or the purchasers information pack?

Mike Thornton: Yes.

Norman Kerr: Yes.

The Convener: When the minister comes before the committee, we will pursue the matter with him. We might be able to ascertain some information that will assist us and the organisations that are represented here today.

Donald Gorrie: I seek your advice about how we should pursue the points that you raise either in the bill or in relation to housing policy in general. Two of the submissions refer to English legislation, with references to the Housing Act 2004 and the Sustainable Energy Act 2003. We should not be too proud to learn from the English when they do something better than us. Are there things that we should learn from those two English acts?

Mike Thornton: We recommend in our evidence that Scotland should adopt a target that is similar to the target for England and Wales that was adopted in the Housing Act 2004. The main reason for that, again, is mainstreaming. I am sorry to return to the point, but if the bill contained an explicit mention of energy efficiency and an explicit target, that would be a signal from the Scottish Parliament and the Scottish Executive that energy efficiency is a key priority. The target that we suggest is derived directly from the carbon targets that the United Kingdom Government has accepted. Whether or not energy efficiency is mentioned in the bill, it has to happen if those policy targets are to be met. If it does not happen, there will be a problem, so it seems to us that the simplest way to achieve it would be to enshrine it in the bill. That would start to generate some momentum.

Lucy Burnett: My submission goes even further than that and mentions a

"target of a 20% improvement in efficiency by 2010 and a further 20% by 2020".

Those targets come from the advice that the performance and innovation unit gave the UK Government prior to publication of the energy white paper and they were considered to be cost effective and achievable. I would like to see a target for 2010 and a further target for 2020, to keep the momentum going.

The Sustainable Energy Act 2003 gives the UK Government powers to give local authorities directions on energy efficiency. I find that helpful, because it tries to rectify some of the weaknesses of the Home Energy Conservation Act 1995.

Mike Thornton: If there is an act in England and Wales that contains a target but there is no target in Scotland, that does not merely fail to send a positive message. It sends a negative message.

Norman Kerr: I do not want to disagree with my colleagues, but we need to be careful when we set percentage targets. Patrick Harvie will be aware that his colleague Shiona Baird is consulting on her proposed home energy efficiency targets bill. We continue to talk about percentages because of the perceived failures of the Home Energy Conservation Act 1995.

I give an example of local authority A and local authority B. Local authority A has a 30 per cent target and is well on its way to achieving it without any difficulty. Local authority B has an 8 per cent target and is struggling to effect it. If we give those authorities an additional 20 per cent, 15 per cent or 30 per cent target, we are not considering the starting points. Local authority A is well on the way to meeting the 30 per cent target, perhaps because it has done nothing for the past 20 years, and has a lot of low-hanging fruit, as Mike Thornton described it. Local authority B struggles because it has undertaken a significant investment programme over the past 20 years and put in a lot of loft insulation, cavity wall insulation and double glazing. To give that authority—as opposed to a fairly bad local authority in this respect—a straightforward percentage target does not help.

In our submission to Shiona Baird's consultation, we suggested that, instead of being given a percentage, local authorities should be given an NHER target of 7, which is well above the suggested target of 5. If all houses reached a level of 7, that would represent a big energy saving measure. That would mean that like would be compared with like and authorities would not be starting at different points. I do not disagree with my colleagues on the need to have targets, but we need to be careful with how we set across-the-board percentage targets.

Mike Thornton: I am equally reluctant to disagree. We were thinking that the target could

be more sectoral, and not focused exclusively on the local authorities. That would mitigate some of Norrie Kerr's points, which I agree are valid.

Lucy Burnett: I sympathise with some of the arguments that Norrie Kerr has made from the local authority perspective, but I think that there is still a case for a Scottish, percentage-based, overall target.

Donald Gorrie: There is a school of thought that we are overwhelmed by targets—that we have far too many of them. I am sure that there is a target somewhere for reducing the number of targets. Without being unduly cynical, may I ask whether targets are the best way in which to progress? Lucy Burnett's submission recommends:

"local authorities should be required to appoint Home Energy Conservation Officers … the Scottish Executive should give itself powers to give energy efficiency directions"

to those authorities. We might need both those requirements. What would you advise us to progress with?

Mike Thornton: The targets are required, in policy terms, by the carbon targets that the UK Government has signed up to. In that sense, the targets are secondary, and are necessary to achieve some other targets. I am aware of the ability of targets to multiply, sometimes not helpfully. In this case, however, the targets that we are discussing underline the fact that measures must be taken in a number of sectors, including housing, to achieve the carbon targets that have been agreed to.

Lucy Burnett: The energy efficiency industry, on whose behalf I speak, is crying out for targets. People want certainty that they can invest in the future, helped by knowing what the target will be and how big the industry will be in a certain number of years. If we make comparisons with the success that has been achieved in the renewable energy industry over the past few years and compare that with the growth in the energy efficiency industry, which has no targets, we find a major differential.

Norman Kerr: We have a target in the form of the Scottish housing quality standard and an NHER target of 5. That does not go far enough. If we change that to a target of 7, savings might be greater than 20 or 30 per cent across the board. I agree on the danger of setting too many targets, because they might become a mere reporting mechanism by which one just states, "We have not achieved our targets."

Local authorities were given the responsibility of implementing energy saving measures across all types of housing tenure, which is why a number of them reduced their targets to 10 or 12 per cent. They felt that they had no authority over sectors other than their own. It is okay to direct local authorities to have home energy conservation officers, but unless the resources are there to back that up, we will end up creating posts that become frustrating for people to hold.

Donald Gorrie: I found that helpful. I think that you have convinced me that the targets are necessary. You have achieved something for me.

The Convener: Donald Gorrie is not an easy man to convince, as all committee members know. I thank the witnesses very much for their attendance. Your contributions and your written evidence have been very helpful.

11:59

Meeting suspended.

12:01

On resuming—

The Convener: I welcome our fourth panel of the morning, which consists of representatives of the Scottish Association of Buildings Standards Managers. We are joined by Donald Fullarton, the vice president, Mervyn Toshner, a member of the management committee, and Robert Renton, a building standards consultant.

If you were present during the previous evidence-taking sessions this morning, you will know that this is a standard question: do you believe that the Executive has consulted effectively on the bill and was your organisation allowed an opportunity to engage in the process?

Mervyn Toshner (Scottish Association of Building Standards Managers): The association is pleased with how the Executive consulted on the bill. The association is in a position to represent building standards services throughout Scotland's 32 local authorities and is keen to be involved in the legislative process. We are delighted to have the opportunity to be here.

The bill is extremely wide-ranging. There are a number of components in which we have a definite interest simply because we are involved in provision of the service. The association is also keen to be involved in future development, whether through working groups or work on the statutory instruments that will be created under the bill or the guidance. In our written submission, we alluded to the need for further work and we want to be involved in that. In some councils, the range of interests that we have is quite extensive—from houses in multiple occupation to grant assistance to our core work of improving building standards and housing.

The Convener: Thank you. I know that your range of expertise has excited a number of

committee members, in particular Ms Fabiani, so we will allow her to start the questioning.

Linda Fabiani: I think that "excited" is going a wee bit far, convener, but I am certainly very interested in the evidence that the association submitted, and I thank the panel for that. It is extensive, well put together and easy to read.

I will focus initially on the comments about the tolerable standard. The language in paragraph 3 of the submission is quite strong and talks about

"The obvious dangers in adopting a higher level of tolerable standard".

That is followed up with the statement that pressure could be created to increase standards through an improvement programme, which would have to be

"funded with substantial support from government both in monetary terms and in technical support."

Will the representatives expand on that?

Mervyn Toshner: Any raising of the threshold will be a challenge. Until now, thermal insulation has not been part of the tolerable standard and nor has the requirement for adequate and safe electrical installations. As we have heard, the number of properties in Scotland that will need to be upgraded to meet the new tolerable standard could be extensive. The best way to improve houses and to tackle substandard properties is through financial grants. We appreciate that the bill is a move towards much more comprehensive support to improve properties; nonetheless, much work does not go ahead simply because sufficient finances are not available. Perhaps the bill will change that situation, but careful monitoring will be required. Measures such as energy certificates and energy labelling will increase awareness by providing simple guidance and making it clearer how important it is to have satisfactory thermal insulation, which will assist improvements.

In the earlier debate on the tolerable standard, an interesting point was made about condensation. I know that I am digressing somewhat from the question, but I point out that, although the tolerable standard is to be changed so that the threshold will rise, the current standard includes a requirement for satisfactory heating and a requirement that the house should be free from rising or penetrating damp. That provision covers some of the problems that were identified earlier, although not necessarily that of dampness from condensation. The standard already includes a provision on dampness that must be satisfied if a house is to be habitable.

The main challenge is that of thermal insulation. The standard of electrical installations, such as lighting and power sockets, will not be as extensive a problem as is the low level of thermal insulation. Although the Scottish house condition survey, which has been mentioned, and local house condition surveys offer sample testing, the national home energy ratings and other information that they provide show that extensive work will be required, particularly to older stock.

Linda Fabiani: On thermal insulation, your evidence states that "robust national guidance" is required to get "a consistent minimum standard". In paragraph 7, you mention the difficulties that arise in upgrading specific house types, which is a point that I raised earlier. Were the previous panel's suggestions about the ability to meet target dates and to upgrade houses feasible? You can be honest, because none of them is here. Can that upgrading be achieved, particularly for some house types? You are professionals who monitor and regulate the situation day to day. Do you feel that the upgrading will be more difficult than it has been made to sound?

Robert Renton (Scottish Association of Building Standards Managers): One witness said that replacing a heating system can generate a massive improvement in energy use, thereby negating somewhat the need to carry out physical works to improve thermal insulation. One difficulty is that the tolerable standard refers to thermal insulation rather than to energy use. The point that we tried to make in our written evidence is that there needs to be a debate on the issue that includes building standards people.

Although a raft of information on energy use and energy conservation is already available from the Energy Saving Trust and the Executive, that information is not readily available to normal members of the public. It is not easy for someone who is looking to upgrade their property to find information readily. Through the tolerable standard, the bill will allow us to concentrate on what is required of housing, especially housing in the private sector. We would ask that there be a debate that includes building standards officers and which recognises the difficulties that we have raised on the practicality of carrying out improvements.

Linda Fabiani: Before Mervyn Toshner responds, I have something to add. The point that Mr Renton made about technical ability applies to the electrical as well as to the thermal side. In its evidence, the SABSM expresses concern about the need for

"legitimate certification by competent registered electrical installers."

Are you suggesting that there are not enough operatives out there?

Donald Fullarton (Scottish Association of Building Standards Managers): The control of electrical safety is a key issue. What has

happened with building standards under the Building (Scotland) Act 2003 offers a benchmark. We have in place a certification of construction scheme that specifically addresses electrics. As building standards managers, we would advocate exercising control over the upgrading of the tolerable standard by having competent professionals who are measured in a way that assesses their experience and their qualification. That is usually done through their membership of a professional body, such as Select.

The Scottish building standards system is way ahead of that in England and Wales in that respect. We have always controlled domestic electrical work; such control has just come into being in England and Wales. We are now taking things a stage further by introducing an element of quality control. We want to combat the cowboys by ensuring that all electrical work in Scotland—not just electrical work in housing—is carried out by competent professionals.

You mentioned guidance on insulation. Building standards professionals have expertise in how to adapt properties so that they meet an acceptable threshold. The present building standards provide detailed guidance on the standards that should be met. We suggest that there should be a link with the standards that are already in place. Although, in general, building standards apply to new buildings, we look at conversions of buildings that might not have been required to incorporate any form of energy conservation. It is not always possible to apply the new standards, so acceptable thresholds have been developed. Much guidance on that is available.

Linda Fabiani: To round things off, correct me if I am wrong, but I picked up from your submission a concern about the fact that we have many different pieces of legislation, but nothing to tie them together. Is the fact that we have pieces of legislation here and there rather than central standards an issue for you?

Mervyn Toshner: Reference has been made to the NHERs, the standard assessment procedure, carbon emissions and energy certificates. Our association would put the emphasis on energy certificates. The tolerable standard will be used to determine whether thermal insulation is satisfactory. There are two parts to that: the methodology that is used to set a standard and the level at which the standard is set. The standard could be a moving target.

The building regulations use the SAP to assess insulation. New houses get a certificate. To meet the EU directive on the energy performance of buildings, that procedure is being amended to include thermal insulation, ventilation, heating, solar gain and type of fuel. That will link to the NHER and carbon emissions. The committee has heard that the directive is to be implemented and I can update members on when that might happen. The SAP 2005 amended rating will meet and link to the other methodologies that members have heard about.

Then the question of what is acceptable for the tolerable standard arises. The committee has heard about the Scottish housing quality standard and other standards. Further work is obviously needed to allow us not only to consider the impact throughout Scotland of pitching the tolerable standard at a certain level, but to develop guidance and information and to produce practical examples of how to upgrade existing buildings and conversions—I am thinking not just of existing houses—to meet a proper standard. The association uses the building regulations as a reference point and has detailed information about construction techniques. We would want to contribute to such an exercise.

12:15

Linda Fabiani: I thank the convener for allowing me to start. My excitement is somewhat sated.

The Convener: I am pleased to hear that.

Cathie Craigie: I agree with Linda Fabiani—

Linda Fabiani: Are you excited, too?

Cathie Craigie: Yes.

I thank the witnesses for their useful submission. I know that they have listened to the evidence all morning, when I have focused on the repairing standard provisions. The association highlighted concern about whether the reference to building regulations on disrepair and sanitary fittings is understood. Will the witnesses expand on that so that the committee can explore the issue?

Robert Renton: One consequence of the change to the building standards system as a result of the Building (Scotland) Act 2003 was that the technical standards changed from prescriptive standards into functional requirements. The rest of the guidance and technical handbooks are purely optional.

When statutes refer directly to building regulations, it is difficult to know what that means. The definition of building regulations in the bill does not refer to the building standards regulations under the 2003 act, which is somewhat of a weakness. What does the term “building regulations” mean? We ask for that to be addressed.

The 2003 act gives local authorities the power to take action to remove defective buildings or to require owners to do so. The bill contains a power to require owners to repair buildings. We are not necessarily arguing that that is a dual function and

that the act and the bill will produce ambiguity, but the powers are similar and housing professionals and building standards professionals should understand them.

Rolling out practical implementation of the empowerments in the act and the bill will be a matter for discussion between building standards professionals, housing professionals and environmental health professionals. Everyone should get together to provide adequate and robust guidance that the public understand. It is important that those who administer the enforcement power understand what they are doing, but the public—in particular private landlords and tenants—must understand the empowerment to fulfil the bill's aims.

Cathie Craigie: Have you had discussions with the Scottish Executive about the issue since the bill was published?

Robert Renton: Not specifically. We have had general discussions about the objectives, but we have not discussed the matter specifically or in detail.

Cathie Craigie: You say that it is important that there should be clarity and consistency, so that you as professionals can do your job properly.

Robert Renton: The correct use of resources in local authorities comes into play, as local authorities employ both housing professionals and building standards professionals. If there is a lack of understanding at that level, there might be duplication that could be avoided. If the aims and objectives of both pieces of legislation are understood, we might be able to use the same resource to achieve the same end. That issue has not been discussed in great detail to date. Building standards professionals take the view that we are an available resource that should be used to take matters forward.

Linda Fabiani: I want to pursue the same point. In your written evidence, you ask for enforcement protocols to clarify the respective roles of the Housing (Scotland) Bill and the Building (Scotland) Act 2003. That would make clear the responsibilities for domestic properties, as opposed to other properties. Do you see that as an important issue?

Robert Renton: Operationally, it is essential. Best practice is generated by such protocols, especially at the front line. There should be a clear understanding of the aims and objectives of both pieces of legislation. The people who are charged with implementing the two pieces of legislation should understand the relationship between them. A protocol is the way forward.

Linda Fabiani: I do not know quite how one would go about issuing such a protocol—other members might feel the same. Will you provide us with some guidance on the matter after the meeting?

Robert Renton: Yes.

Mary Scanlon: I want to pursue the topic about which I have asked all day: the information that is to be provided on sale of a house. In your evidence, you recommend that information should be provided, either in the purchasers information pack or the single survey, on whether a building

"complies with building regulations and statutory consents",

on statutory notices, on the construction history of the house and on

"the standard of work carried out on a house",

including identification of defects. I wonder how that will sit in this world of do-it-yourself.

Have you had any talks with the Scottish Executive about whether such details should be included in the purchasers information pack? Do you think that, if only a survey were done, the purchaser would be at a disadvantage because a great deal of information would not be included? How would the significant amount of information that you seek be costed? Would that affect the speed at which the work was done?

Mervyn Toshner: I will attempt to answer some of your questions. There is a direct link between the Building (Scotland) Act 2003 and some of the information that we seek. The 2003 act requires all 32 local authorities that have electronic systems to have an electronic register. The register will hold many of the data: statutory notices, consents and historical information about a property.

Mary Scanlon: It would not hold data about the standard of the work carried out on the property.

Mervyn Toshner: The 2003 act gives powers to local authorities to issue defective buildings notices. The register would include data about a property if such a notice had been issued. On standards of work, there would be a direct reference to a completion certificate that would state that the work complies with the building standards regulations. As I have said, the information that would have to be provided for a property inquiry would be important.

On the cost and speed with which it could be provided, an electronic facility would be as efficient as one could expect.

Mary Scanlon: So an additional inspection of the house or works done at the house would not be required because everything would be recorded.

Mervyn Toshner: In some cases, additional inspections might be required. Another part of the Building (Scotland) Act 2003 deals with building

standards assessments, which the council, as the verifier, has a duty to carry out, if it is requested to, to determine whether a house complies with the building regulations.

As I understand it, when the European directive on energy performance is introduced, it will use a building standards assessment, which will involve a visit being made. The certificates of energy labelling are valid for 10 years.

I have said that one part of the building standards register—that concerning the consents, approvals and associated data—is electronic. However, in the future, there will be a second part, which will contain the drawings and the submitted information, which will also be available electronically. That would allow people to see what consents are attached to a property. In effect, a logbook of the property would be built up and would stay with the property.

A good analogy would be the logbook containing information on a car. A car costs much less than a house but, often, someone who is looking for the best price for a car will provide as much information and as many certifications as they can. Not only that, but people will have receipts for work that has been done on their car. A much higher level of awareness is required to ensure that people who are proud of their property have documentation and other information about the property history, such as the information that the Scottish Building Standards Agency can provide. In that regard, I should say that there is scope to ensure that the building standards register includes, for example, any notices that have been issued under the bill. Those would also be available electronically.

What I am describing is not pie in the sky. Since 1 May, councils have been producing electronic registers and, for example, there have been local meetings with those involved in house conveyancing, who have said that they are delighted that they can lift such information off websites. They might need to validate the information, but they are glad to be able to access it easily.

Mary Scanlon: I think that it is welcome as well. I noticed that you were speaking in the future tense about building up a logbook. Given the great age of many properties, many renovations and adaptations will have been done before the second world war or even the first world war—my property in Edinburgh was built in the 1850s and has been adapted since—which would mean that no information would be available about them. Therefore, quite complex inspections of older properties would have to be carried out, which I would have thought would be quite expensive if they were to cover everything that you have outlined.

Mervyn Toshner: In the first instance, part of the building standards assessment would be for energy labelling, which is a requirement under a European directive. There has been some debate around when that might be introduced. The Scottish Building Standards Agency's corporate plan, which was published recently, says that a derogation will probably be used so that the directive's energy labelling provisions can be introduced in 2007, which the directive allows. Properties will be inspected and a buildings standards assessment made to produce an energy label which, under the provisions of the directive, will be available when a house is sold or put up for rent. The energy label will provide a good marker of the potential energy costs for prospective purchasers and tenants and it will identify improvements to energy efficiency that could be made. If energy labels do nothing else, they will increase awareness.

12:30

Mary Scanlon: I understand that and fully support the approach. However, I was thinking about older properties. Standards of work that might have been acceptable in the 1920s, the 1950s and the 1980s might not be acceptable now. Many people might have had work done on their properties in good faith, which would not meet the current standards or comply with the current regulations. That is my fear.

Mervyn Toshner: I will use the example of thermal insulation again. The amendments that were made to the building regulations about three years ago increased the required energy efficiency of houses by 25 per cent. New properties are often built to the minimum building regulations standards. You might be talking about stone properties that were built in the 1900s, but even recently built properties will not meet the standard, which is changing and becoming higher. For that reason, care should be taken and there should be joint working to determine what is a satisfactory level of thermal insulation for the tolerable standard. Simply to talk about the building regulations or some other standard that can always be raised would obviously cause great difficulties.

The Convener: I thank the witnesses for their evidence. Members touched on what they regard as the most important aspects of the bill, but are there other aspects that you think we should be aware of?

Robert Renton: Our main concern is about implementation of the proposals in the bill and how related legislation will be harmonised.

The Convener: Thank you. I suspend the committee briefly to allow for the changeover of witnesses.

12:33

Meeting suspended.

12:34

On resuming—

The Convener: I welcome our fifth and final panel of witnesses. We are joined by Brian Doick, who is the president of the National Association for Park Home Residents; Colin Fraser, who is the Scottish director and chairman of the British Holiday and Home Park Association; Liz Nicholson, who is the director of Shelter Scotland; and Grainia Long, who is the policy manager for Shelter Scotland.

I thank the witnesses for coming along. I ask them whether the Scottish Executive's consultation on the bill was effective and allowed their organisations to participate in the process.

Brian Doick (National Association for Park Home Residents): We were a bit late in coming into the arena, as we were not aware of all that was happening until after the consultation, but we are happy with what we have seen since then.

Colin Fraser (British Holiday and Home Park Association): We had sufficient opportunity to contribute to the consultation and we put a considerable amount of effort into our response, but we were a bit disappointed when, at the end of the process, the Scottish Executive accepted the English approach without taking into consideration what we had said.

The Convener: We might touch on that point again, Mr Fraser.

Liz Nicholson (Shelter Scotland): Shelter Scotland is satisfied with the Executive's consultation process. We participated in that process, but we were also in the slightly advantageous position of having been represented on the housing improvement task force. Many of the task force's proposals have been incorporated into the bill and we are satisfied with that, but I echo Colin Fraser's disappointment that, when it comes to mobile homes, the bill does not take full account of the different environment in Scotland—not only the weather but the profile of residents and the existing legal framework. We would like to flesh out that point this morning.

The Convener: That takes me nicely on to my next question, which is about the distinction between the situation in Scotland and that in England and Wales. The bill's proposals were based partly on the report of the park homes working party in England and Wales, but it is clear from what you have said that you are disappointed with the Executive's approach. What are the distinctive characteristics of mobile homes and park homes in Scotland and how well can the bill's proposals be applied to Scotland? Should we do something else?

Colin Fraser: The difference is that, in England and Wales, the British Holiday and Home Park Association represents about 600 residential parks but, in Scotland, it represents 41 residential parks with something like 1,862 pitches. It is said that there are about 4,000 pitches in Scotland, but I do not believe that. In Scotland, we do not have the same problems as south of the border, in that most of the parks are small and controlled by individuals. However, the BHHPA Scotland does not believe that the approach of the English legislation, which the Executive has followed despite the fact that our consultation response made what we thought were reasonable suggestions on how to improve the situation in Scotland, will do anything to stop unscrupulous park owners—UPOs—doing what they are doing.

Liz Nicholson: We are concerned that the different groups of mobile home residents are not reflected. There are two problems. First, the bill could impact on owner-occupiers on protected sites, who have a certain degree of protection under the law. They have problems with maintaining their sites, because local authorities do not have a duty to ensure that sites are maintained. Secondly, where people rent on licensed sites the law is complex. If someone takes the wheels off their caravan, they have protection under the Rent (Scotland) Act 1984 and the Housing (Scotland) Act 1988. If they do not, they do not have protection, because they are not viewed as living in a dwelling-house. The whole area needs to be reviewed.

We are most concerned about unlicensed sites, where many people who cannot get into the private rented or social rented sectors rent. Conditions are appalling. The caravans are damp and cold and have loads of condensation in winter but are like ovens in summer. Often no services or sanitary facilities are available. We do not want those conditions to be maintained. People should not be living in mobile homes in Scotland. Nevertheless, they are living there with no protection at all. The bill does not address that group. It addresses people who, on the whole, choose to live in mobile homes.

Grainia Long (Shelter Scotland): The key problem is that the bill misses an opportunity to deal with groups who live on or rent mobile homes on unprotected sites. We are talking about 1,500 people who rent in the private rented sector and another 500 in social rented housing. The bill only looks towards England. The bill's proposals are perfectly sensible, but the mobile homes issue is so complex that starting to deal with it is like opening Pandora's box. You cannot look at one group in isolation. We call for the bill to be

amended to give people who rent mobile homes similar rights to those of people who rent permanent structures.

In addition, we should generate a profile of mobile home use. When we began to research mobile homes we found it extremely difficult. People who rent on unprotected sites are hidden from census data. The Scottish Executive is looking to do some research, but we need to widen our knowledge of mobile home use and then consider overhauling mobile home legislation. To illustrate how complicated the legislation is, when the Office of the Deputy Prime Minister amended legislation in England it inadvertently amended legislation in Scotland. That happened because the legislation is complicated and acts are piled on top of one another—we have a 1968 act, a 1975 act and legislation from the 1980s. We need two phases: we can amend the bill and, at a later date, we should have a Scottish Law Commission review or other kind of review of mobile homes legislation.

Brian Doick: I agree with my friends from Shelter Scotland. As you can appreciate, I have been heavily involved with the working party in London for the past six years. A lot of work has taken place with mobile home dwellers, albeit that dwelling in mobile homes is far more common in England than it is in Scotland, and we have a greater element to examine. Mr Fraser mentioned the number of parks in the country. On our computer in head office we have recorded 114 mobile home parks in Scotland, which is more than has been anticipated. We have unlicensed sites because so many parks are dotted around and are not recognised.

I met residents from three parks in Scotland yesterday who do not even have agreements. Perhaps three or four people out of 50 in each park have agreements. That is in line with the previous situation in England, which led to the changes on agreements, which are an important factor. The people whom my colleagues here are talking about have nothing whatsoever. They have no agreements, which means that the person who owns the land can exploit them more than owners in England are now doing. Those unscrupulous park owners are very nasty people; they are only interested in money and do not care how they get it, whom they exploit and whom they move off the parks. There are quite a few things in the English rules that will help to better those conditions, and they will certainly help people in Scotland.

12:45

One of the biggest problems that we have in Scotland is that the parks are not registered and the majority are not known about. We did research and found 114 parks, quite a lot of which are not registered. Ours is a national organisation and we get members only when people are in trouble. People do not hear about us. There is no documentation being flown around the country saying, “These people can help you.” People try their best; they go to Shelter or to the citizens advice bureau, but many of those people have no knowledge about the legalities of mobile homes. Even most solicitors do not understand the law. The law is there to be used but, as Colin Fraser said, it needs to be strengthened more than it was in England. We should have gone further in England, but we have to accept what we have got.

However, it is right that the legislation needs to be examined more deeply in both countries. The provisions on mobile homes were put into the Housing Act 2004 because, although we were trying to revamp all the legislation, it would have taken another six years to get any new legislation at all. The Government came up with the idea of putting the measures on mobile homes into the Housing Bill, which was already going through, to get the main proposals enacted to help at this stage. They will help at this stage, but we will not let the matter go. We want to push further and get stronger legislation.

Park owners like my friend Mr Fraser should have no fear of the legislation because it will protect them as well as protecting the residents. A good park owner will go down the right road and look after people.

When people do not have agreements, the park owner has a free hand to demand money when he wants to. Current legislation says clearly what has to be in the agreement, when money should be paid and how it should be paid by the resident who rents the stance. Without an agreement, that protection does not exist and people are exploited.

The Convener: Several members have questions on some of those issues.

Mr Home Robertson: This is rather a specialised subject because there are relatively few sites, individuals and stances concerned. However, as we have heard, the issue might be rather bigger than the official statistics indicate. It is certainly of particular interest in a constituency such as mine in East Lothian and I take the point that, in addition to the holiday home element, there is a twilight area where some pretty vulnerable people have to use mobile homes as permanent accommodation and they clearly merit the attention of the Parliament.

The Mobile Homes Act 1983 controls the terms of the agreement between the site operator and the tenant of the stance. The act specifies the implied terms that will be part of the agreement whether they are stated or not. For example, once a mobile home owner leases a stance, the

express conditions of the agreement might be finalised up to six months into the tenancy. The Executive has concluded that that puts the owner of the mobile home at a disadvantage in any negotiation as the terms can be finalised after the home has been purchased. The bill requires that the agreement should be based on terms that have been provided in writing 28 days in advance of the agreement. Do you agree that the bill provisions requiring those terms to be agreed in advance will make those who lease a stance less vulnerable than they are at present?

Brian Doick: Yes.

Mr Home Robertson: So it is a step in the right direction.

Brian Doick: It is. Basically, we are talking about people who buy a brand new home, move on to the site and reach an agreement with the park owner. If the home is sold later on as a second-hand unit and the agreement is assigned to someone else, the section of the bill to which you refer will not apply. The section deals with what happens at the beginning and addresses why people end up without agreements.

Under the 1983 act, people can go to the park owner and pay £100,000 or £150,000 for a home—they can pay even more in England—but they will not have an agreement. They will have spoken to the park owner, but the law says that the park owner has three months to give an agreement. A person might pay out £150,000 and then be offered an agreement that is a load of nonsense and puts them in a serious situation. As a result, they might realise that the place that they have moved to is not the place for them to live in and they will consequently need to sell the home.

Mr Home Robertson: But the money will already have been spent.

Brian Doick: The home will then be sold off and 10 per cent of the price that it is sold for will have to be given away. Therefore, the person will lose a fortune. It must be right to have an agreement prior to any money crossing hands. The purchaser can then look at the document, take it to a solicitor and get advice about it. As a result, they will have been given the correct opportunity and that is the right way forward.

Colin Fraser: I want to return to the number of sites and unprotected sites that exist. There is a unique situation in Scotland. In the Highlands, most crofts are allowed to have three caravans and such crofts will be classed as caravan parks. The result is that there is a tremendous number of caravan parks. If a person has a holiday park—I have a wee holiday park in Buckie—with a residential caravan for the warden, it will be classified in the statistics as having a residential licence and will therefore be classed as a park. Many of the extra parks are parks with residential licences rather than residential parks. As I said, all the crofts in the north are allowed to have up to three caravans, which can be old things that are rented out. I think that that is where Shelter Scotland's problem arises.

I return to the 28 days issue. The idea is excellent, but there is nothing that will force unscrupulous park owners to give people terms 28 days in advance. There will be no penalty. If people wish to give up their rights, they can sign a letter that says that the period can be shorter, but that period is not defined. In the consultation, we suggested that the minimum period should be 14 days because if a person goes to an unscrupulous park owner, they could receive a nice, printed letter that they will be asked to sign and there will be acceptance in one day. That is the law in England. In Scotland, we want there to be a minimum period of 14 days, so that people at least have time to consider matters.

Mr Home Robertson: So you are suggesting that this is the right way forward, but that things will not be watertight.

Colin Fraser: The bill is not strong enough.

Mr Home Robertson: The committee can consider the matter.

Liz Nicholson: I fully support having an agreement beforehand, which is important, but we must also consider whether conditions can be enforced. There will be no form of redress. Before Christmas, there was a problem in your constituency. A site had a sewage problem, but the local authority did not do anything about it because it did not have a duty to act. The bill needs to be tightened up much more so that local authorities have more responsibilities for sites and can make the site owner do something.

Mr Home Robertson: I have a question for Mr Fraser. In your evidence on behalf of the British Holiday and Home Park Association, you express concern that

"If, as stated, any term not in the Agreement would be unenforceable, then it follows that the terms of the Park Rules would be unenforceable."

Why would that be a disadvantage? The answer is fairly obvious, but you have an opportunity to expand on what the submission says.

Colin Fraser: The park rules would not usually form part of the agreement if they were given in advance. I thought about the matter prior to coming to the committee and concluded that it would be possible to put into the express terms of the agreement a statement that people will have to abide by the park rules. They could be given a copy of the rules at the time. That would sort the issue out. It would have to follow on somehow or

other that the express terms and the park rules could be changed in the future with the agreement of, for example, 50 per cent of the owners or the court, because things evolve. The new park homes that people can buy now last for 40 years. Things can certainly change over 40 years, so there cannot be the same park rules and the same express terms for 40 years. Bodies such as the Scottish Executive make new rules and that could change the park rules.

Mr Home Robertson: You would like a more specific provision in the bill.

Colin Fraser: Yes. Under the bill, anything that is not in the implied terms and the express terms would not be enforceable. If the park rules were not included in the agreement, they would not be enforceable. If a statement were put into the agreement saying that residents must abide by the park rules, that would bring the rules into the express terms.

Mr Home Robertson: We can look at that.

Brian Doick: I agree with Mr Fraser, but I add that in England a section of the written agreement states that people will abide by the park rules, as those rules change from time to time. That is attached to the agreement and is part of it. A clause in the agreement enables the park rules to be changed. If the park owner wants to change the park rules, he has to notify the residents that there will be a change. If a third of the park residents object to the change, the park owner has to call a meeting to discuss it and a simple majority vote at the meeting will either pass or reject the new rule. That could happen while a transaction on a home is going on. The park rule system would still apply. People would have to understand that if the rules were being changed by the residents, not directly by the park owner, they would have to go along with that. I wanted to put you in the picture about what happens in England.

Mr Home Robertson: On another aspect of the implied terms in the 1983 act, we understand that the review in England found that aspects of those rules had been abused by site owners who removed old homes in order to replace them with newer and much more profitable homes. The bill proposes a solution to that problem. What are your views on the bill's provisions to allow a contract to be terminated on the ground of detrimental effect resulting from condition alone, rather than from age and condition as is the case now?

Colin Fraser: That is an excellent idea. Homes can be refurbished and so on nowadays to make them look like new. I do not know whether it is a good idea to spend so much money refurbishing them, but they can be refurbished. The park owner could write to the home owner to say, "Look, your home is detrimental to the site and it needs this, this and this done. You have a month or two to do it. Otherwise we will go to court."

The court could give the home owner more time to do the refurbishment and state that if they do not do it by the end of that time they would have to move. That gives them an opportunity to make the changes. We again come back to UPOs, as we call them: unscrupulous park owners. People on parks with such owners do not know their rights, so they think that because their van is old and they are told to take it off, they have to take it off. We have to sort that out.

Grainia Long: There are two issues. The first is about the sale of mobile homes and the power for the park-home owner, both in England and in Scotland, to recoup 10 per cent of the sale value of a mobile home. We have called for the Scottish Executive to scrap that power, which would not be allowed under any circumstance in relation to any other home. Imagine the housing market in this day and age allowing that when someone sells their property somebody else gets 10 per cent of the value of the sale? That is inconceivable, but it happens regularly in relation to mobile homes. In England, that was addressed. Again, however, the profile is different in Scotland and mobile home use is more transitory. People sell their mobile homes regularly in Scotland whereas, as a colleague has just said, people in England buy a mobile home and keep it for decades. They would perhaps sell it only once, and it would be a very old mobile home at that stage. We are calling on the Executive to take the initiative and scrap the 10 per cent rule. It is an antiquated rule, and it is an issue for mobile home owners when they come to sell and have to move off the site.

The second issue relates to the rights of people who rent mobile homes, of which there are thousands in Scotland. If the owner wants to evict a household, they have to take that household to court but they do not have to prove grounds. That is highly unusual in cases of renting, and it would never be the case for a permanent structure. The bill does not tackle that, and we need to flag up the fact that people who rent mobile homes are slipping through the gap in the legislation.

13:00

Mr Home Robertson: It is emerging that there are various rather serious issues in the sector that could probably do with a bit more attention.

Finally, on the implied terms of the 1983 act, the site owner's consent to the assignation of a stance agreement—which is separate from what you have been talking about—when an individual wants to sell their mobile home cannot be unreasonably withheld. That is what the 1983 act says; however, I gather that there is evidence—

from the park homes review—of site owners frustrating sales through delays in giving or withholding consent. The bill therefore provides that site owners must make a decision on the assignation of a site agreement within 28 days of an application being made. Is that helpful?

Colin Fraser: That is not a problem. That is a good idea.

Mr Home Robertson: So, some specific proposals in the bill are useful; however, I think that you are saying that it should go further.

Colin Fraser: All the proposals in the bill are useful, but they need to be expanded on a bit. We want to make things more difficult for unscrupulous park owners—and there are a few moving into the industry. We want to sort them out.

The big problem at the moment is the fact that there is nothing in the legislation to force site owners to give agreements. The Government thinks that, because we say that site owners should give agreements, they will. However, we—BHHPA Scotland, which is independent and differs from BHHPA nationally—would like the legislation to be written in such a way that people would not have to pay pitch fees until they got an agreement. That would really make UPOs dish out agreements, and people would know their rights because they would have something to read. People in UPO parks at the moment do not know their rights and get bossed about here, there and everywhere.

Brian Doick: What Mr Fraser says is correct and I agree with it; it is an excellent suggestion. That would be a stronger action than is being taken in England. The UPOs, as we call them, act in very bad ways, especially when people want to sell their homes. If someone tries to sell their home, the UPO will put every feasible obstacle in their way, which is one of the reasons why agreements were introduced in England.

There is no time factor in the 1983 act; it just says that a person has the right to sell their home to a person who must be approved by the park owner. All that the park owner is able to do is approve the purchaser. He is only to decide, for example, whether they are too young to live on his park—it may be a park for old-age pensioners—and that type of thing. However, the UPOs abuse the system and say, "I'm going to have to tell the purchaser that, under the five-year clause in the act of Parliament, your home is going to be detrimental to the park within five years and I'm going to have to move it off." That will stop people from buying the home, as no one is going to pay £50,000 or whatever to buy a home for five years. That is the sort of thing that goes on, although the park owner is able only to approve the person. It is an absolute nonsense that people should be in such a vulnerable position that they have to put up with that.

Scott Barrie: The written evidence that we have received from the British Holiday and Home Park Association states that

"it is imperative that proposed occupiers purchasing homes by assignment are aware of the nature of park home pitch tenure".

Can you briefly explain to us why that is necessary?

Colin Fraser: It is absolutely necessary. When home owners from a UPO-run park sell their homes, they will not tell the purchasers that if they sell they must pay 10 per cent of the sale value to the park owner; they will not tell them any of the rules and regulations; and they will not hand over their agreements. Anybody who sells a home by assignment should have to give a copy of their agreement to the potential purchaser 28 days before the sale. The park owner gets 28 days to approve the person, so the two 28-day periods will run together. The person who is purchasing the home is the most important person. When someone is leaving a park all that they want is the most money that they can get for their home. They do not want to tell anyone the downside—if there is one—to living in the park.

Scott Barrie: What are your views on the power of Scottish ministers to amend the implied terms in schedule 1 to the Mobile Homes Act 1983 by order, following consultation? Do you recommend that any of those terms should be amended?

Colin Fraser: That is a strange one. At the moment, Scottish ministers have the power to amend the Mobile Homes Act 1983 retrospectively, but they will keep only the power to change new agreements. That means that there will be two groups of people owning mobile homes: one under one piece of legislation and one under another. To me, that does not seem to be a good idea.

Brian Doick: The provision was introduced because there is limited legislative time. As I said earlier, in order to change legislation to assist people, we have to get provisions into the legislation now rather than in six, eight or 10 years' time. It will take that length of time to get it all done properly. In the case of the Housing Act 2004, we put in a clause that gave the secretary of state the right to change the implied terms where necessary. There are currently 22 terms being negotiated in England, many of which are the express terms that unscrupulous park owners alter to suit themselves. Upon the change of assignment of a home, they make such alterations in an underhand way. Someone will get an agreement from the person they have assigned

the home from, but the next day, when they have moved in, there will be a knock on the door. The park owner will say, "Sorry, I forgot to give you your agreement", and give them another one. People do not know any different. They think that he is the boss and that that is it. It is not until a few months later when they are talking to their neighbours that they go through the agreement and find that six or seven things have been altered. That puts them in a bad position and they find that they are in trouble financially.

The provision on implied terms was included in the 2004 act in order to get a retrospective start and get things put straight into agreements. The Government cannot rewrite agreements because they are made between the park owner and the home occupier. The Government cannot legislate and say, "We are going to change all agreements", but it can change the implied terms, which are legalities. That is an important point.

The Convener: Mr Harvie has some questions for Shelter Scotland.

Patrick Harvie: Earlier, Shelter Scotland talked about the distinction between owners of mobile homes who rent their stance and those who rent the mobile home itself. You said that the latter are particularly common in Scotland and you call for them to be covered by the bill. You explained clearly why you think that that is necessary, but how can it best be achieved? Can the matter be fully addressed in the bill or will it have to wait for the review that you seek? What is the best mechanism for achieving the result?

Liz Nicholson: We seek the same rights for tenants who rent mobile homes that are enjoyed by tenants who rent bricks and mortar. The bill makes some amendments to the existing legislation, but there are difficulties, particularly in relation to people who rent mobile homes on unlicensed sites. We do not want that to continue. It is a difficult position, whereby we are trying to make the legislation better and offer people more protection. At the same time we should be saying that the situation should not exist because the conditions are so appalling and people have no protection whatever. It goes back to the supply of housing—we are talking mostly about people who cannot get into any other sector. It is a bigger issue than just amending the legislation. We could extend to people who rent mobile homes on unlicensed sites the repairing standard, which is already in the bill for the private rented sector, and the registration scheme. Basically, we do not want unlicensed sites in Scotland.

Grainia Long: We cannot argue for mobile home legislation to be simplified while also using the bill and ending up with a more complicated piece of legislation. If we were to have a review that simplified the legislation and dealt specifically with those who rent mobile homes we would be looking for a commitment to a timescale. An overhaul of the legislation is probably the best way to ensure that we do not inadvertently complicate something that is already too complicated.

Colin Fraser: We are talking mainly about caravans on crofts, not proper sites. As far as I understand it, they come under crofting legislation rather than legislation to do with mobile homes. Crofts in the Highlands are allowed to have three caravans on them. That cannot be handled under the bill.

In a licensed park, if owners do not have short assured tenancies when they are renting out caravans, there is no way they can get tenants out without going to court. At least when there are short assured tenancies, even if people decide to stay on, owners can get them out in a month or two. If tenants do not have a short assured tenancy they cannot be moved, because they have a right to stay there.

Patrick Harvie: I want to ask Shelter Scotland a bit more about the review of legislation that it is calling for. You spoke earlier about why it is necessary, but what is the scope of it and in what timescale does it need to take place?

Grainia Long: Over a decade ago Shelter carried out a major investigation into mobile home use with the Convention of Scottish Local Authorities. We made three recommendations, one of which the bill covers. The first recommendation was that the provisions of the Caravan Sites and Control of Development Act 1960 be made mandatory, which would ensure that standards on mobile home sites were enforced—enforcement is the key issue that we have all mentioned today. The bill should cover that. If it does not, a review of legislation would need to consider it.

The second recommendation was that those renting mobile homes should have similar rights to those renting permanent structures. The review of legislation would have to cover that, because a range of legislation, right through to the Antisocial Behaviour etc (Scotland) Act 2004, relates to the registration scheme and things could get complicated.

The third recommendation was about the anomalies in the 1983 act, which we have mentioned and which the bill will cover.

A starting point for the review would be to consider how each piece of legislation applies to groups. I would like the review to happen within the next year. We cannot have changes to legislation as a result of the bill kicking in without considering other areas. I would certainly not like to see a big time delay between the two initiatives, so to speak.

Liz Nicholson: What we have heard this morning about the problems with the English legislation makes it even more important for us to get it right in Scotland. We have the opportunity to do so if we have a review. Given what the Parliament has achieved in relation to housing legislation, the opportunity to put through the Parliament legislation relating to mobile homes is something that we could move on more quickly than could be achieved at Westminster. We should take advantage of that and get rights for tenants and owner-occupiers of mobile homes.

13:15

Patrick Harvie: I apologise, but my final question covers a lot of ground. Your valuable submission sets out a fairly long list of issues, including empty homes, minimum operating standards, rent deposits and illegal evictions, that we have not been able to cover in this evidence-taking session. Is the bill the right vehicle for addressing all those matters? How much can we achieve with it? Has the Executive been open to your suggestions?

Liz Nicholson: The bill is the right vehicle for the proposals in our submission. After all, we are not suggesting anything that is completely outwith its context. In the housing improvement task force, we tried to focus on how to modernise the private rented sector and make it more accessible, particularly to our clients. We also thought about how we could increase the supply of housing for people on low incomes and make access much easier.

We propose the introduction of a rent deposit protection service, because a huge problem for people who want to access the private rented sector is that they lose their deposits and cannot get back in again. As for illegal eviction, the homelessness task force was aware of the problem, and this year it has become a priority for the homeless monitoring group. We are seeing more cases of illegal eviction in our housing aid centres and it seems that, although it is a criminal offence, the police are not doing much about it. It might not be a top priority for them, but it is a major cause of homelessness in the private rented sector for people on low incomes. Finally, our proposals for empty homes, which include leasing them through local authorities to people in housing need, are directly related to our work on increasing the supply of housing.

As I have said, those proposals are not outside the bill's scope. We are simply keeping to the housing improvement task force's ideas on the private rented sector and seeking to increase housing supply and access for people on low incomes.

Grainia Long: In March, the Scottish Executive produced a housing policy statement that accepted that the private sector must have a role in meeting housing need. Given the lack of affordable housing in the social housing sector and the fact that the private rented sector is small, we must consider the private sector if we want to meet that need. This bill goes a long way towards meeting that aim; however, if we are going to do this at all, we should do it properly. As a result, the bill needs to cover certain areas to meet its policy intention.

One such area is empty homes. I point out that compulsory leasing is a natural progression from all the other interventionist initiatives in the bill and that local authorities, particularly those in rural areas, have told us that they need such a measure. It is a good compromise between their current powers, which are limited, and compulsory purchase, which is a very extreme measure.

Our proposals on illegal evictions and rent deposits will ensure that the private rented sector thrives. We need that in Scotland to meet housing need and to ensure that people who cannot access social housing are able to view the private rented sector not as a tenure of last resort but as a feasible option. Equally, landlords want a more thriving private rented sector so that they can make a profit. Everyone will win with these measures, which is why they need to be included in the bill. They fill various gaps and will ensure that we have the thriving private rented sector that we all want.

Linda Fabiani: I ask the panel to please excuse me for leaving the meeting a short time ago. I want to ask a specific question and then I have a general question about the issues that Grainia Long, Liz Nicholson and Patrick Harvie have been discussing.

My specific question relates to Grainia Long's comment about doing away with the provision under which, when people sell mobile homes, 10 per cent of the price must be given to the park owners. I understand that point; it does not make sense to me at all that that is legal. However, the point that struck me was that park owners would want to make up that money in some other way. How would they do that? Perhaps the issue has been discussed, but if not, could it be addressed?

Grainia Long: The issue was considered in England, but the measure was not removed, because of the profile of mobile home use there. As I said, mobile homes in England tend not to be sold; turnover is low because mobile homes tend to be expensive homes where people go post retirement. I do not want to stereotype, but that seems to be the profile. In Scotland, ownership is much more transitory and mobile homes are sold more regularly. The 10 per cent payment kicks in

every time a mobile home is sold, so a seller might lose £2,000 or £4,000 one year and then another 10 per cent in five years' time, if they sell another mobile home. If a person regularly sold mobile homes, over 10 or 20 years the amount would accrue into a much greater sum. As I said, people in England tend to sell just once.

Linda Fabiani: If that income was taken away from park owners, they would try to find another way of making it up, so what would give?

Brian Doick: In the agreement that is made between park owners and residents, there is a clause about an annual pitch or stance fee review. The agreement states that, when the review takes place, two issues must be taken into consideration: the retail prices index and any changes in legislation that affect the running of the park. Under the Mobile Homes Act 1983, the commission was reduced from 15 per cent to 10 per cent, but, under the clause about the pitch fee review, park owners increased stance fees by substantial sums to make up for the loss. When the measure was considered in London, we said that we did not agree to a reduction in the commission because of that clause in the agreement, which would mean without any doubt that people would be ripped off. We have evidence that, in 1982, fees were going up by £5 or £6 a week—those were permanent increases—which is why that clause was put in the agreement.

The Government is considering reducing the 10 per cent commission, although it has not yet come up with a figure. However, it intends to put in the clause in the agreement wording to the effect that there can be no increase in pitch fees as a result. We believe that 10 per cent commission now is a bit different from 10 per cent in 1982, because, in 1982, mobile homes cost about £3,000, whereas they can now cost £100,000.

I understand our friends Shelter Scotland's point, but the committee must be aware that, if the measure was removed, people could be a lot worse off. If people do not sell their mobile home, they will not have to pay the commission. We tell people, and they agree, that if they want to sell for £10,000, they should add on the commission and sell for £11,000 or £12,000. That is the only way in which to get the commission back. People have to be sensible and careful.

Colin Fraser: The situation in Scotland is different. South of the border, it is not unusual for park homes that are even 20 years old to sell for more than £100,000 or, in the south of England, for £150,000, which means that the park owners get £15,000. However, in the average park in Scotland, second-hand homes sell for £20,000 to £25,000 and new homes sell for up to about £50,000, which is a lot less than in England. Park owners need that money to keep parks viable—it is part and parcel of owning a park. Nowadays, the high-bracket homes in England are sold much more often. It is nothing for somebody to buy a new home for £150,000 and for it then to be sold two or three times in six or seven years. Mobile homes in the south of England are going up in value and when people's equity goes up, they sell their home. I ask Brian Doick whether he agrees.

Brian Doick: I agree.

Linda Fabiani: I am not sure whether Colin Fraser is an owner, but—

Colin Fraser: Yes, I own caravan parks.

Linda Fabiani: Right. What would you do if your income reduced because you no longer got the 10 per cent commission when people sold their homes?

Colin Fraser: If the legislation was the same as it is at present, I would increase the pitch fees. However, even if the measure under which we can increase rents was removed, people could go to the courts in Scotland to argue that they were losing money as a result. They might be able to get the measure reinstated if they could prove how much they were losing. The commission is a substantial element of parks' yearly turnover.

Grainia Long: The only point that I would like to make is that we are inadvertently allowing an incentive for landlords or owners to increase the rate of sale of a park—

Linda Fabiani: Absolutely, I do not disagree. I just know that, if people are used to an income, they will get it in some other way. The committee has to be aware of that.

The Convener: I am conscious that Linda Fabiani has another question to ask. I ask her to move on to that question. If the witnesses have an interest in answering the question, they may do so, but there is no need for everyone to speak if they do not want to.

Mr Home Robertson: Yes. We are getting hungry.

Linda Fabiani: My next question is a very quick one. It follows on from the question that Patrick Harvie put to Shelter on its submission. I, too, read the submission and I was struck by the fact that you are looking for a management standard as well as a repairing standard. That suggests that Shelter is seeking a big extension of the powers that are to go to the private rented housing panel. What should the panel do and what should its powers be? If the panel is to deal with illegal evictions, should mediation be involved or are you talking about the equivalent of a housing court? If something is illegal, surely the police would deal with it.

Liz Nicholson: We would like management standards to be included in the bill. In our

experience, if a landlord keeps his property in a poor state of repair, it is likely that poor management standards will also be involved. Let us say that the panel is dealing with a case in which a poor state of repair is involved. If the tenant says, "Well, my landlord comes into my property without being invited," the panel will have to say, "Oh, I am sorry, we cannot do anything about that." If that happens, the powers of the panel will be reduced as a result.

One of the reasons why the power is not included in the bill is that management standards were beyond the remit of the housing improvement task force. We know that management standards are closely linked to the poor conditions that are to be found at the bottom end of the private rented market. That is not the case for all landlords, of course.

The panel should not deal with illegal evictions. Its remit should be confined to standards of repair and management standards. When we talk about management standards, we are talking about the low-level standards that are already in legislation and not an onerous standard with which a number of landlords would find it difficult to comply. We are talking only about the basic stuff of providing a rent book and a written lease. That said, we would like to see the inclusion of third-party insurance. We are talking about the standards that provide a baseline.

Illegal eviction is a criminal offence and should be dealt with through the procurator fiscal. However, we would like local authorities to be given the duty of investigating cases of illegal eviction. A local authority has more knowledge of the situation and is more familiar with the issues than the police are. At the moment, we know from our casework that the police are saying, "This is nothing to do with us. This is a civil matter." There is a lack of awareness of the criminal nature of illegal eviction and harassment of tenants. We would like to see the inclusion in the bill of something similar to the powers that environmental health officers have to investigate a case and produce an authoritative report that goes to the procurator fiscal's office.

At the moment, even if the police investigate a case, they do not have the time or resources to investigate it properly. Procurators fiscal often throw cases out because they do not have enough information on which to take forward the case. We would like the roles to be changed so that the matter is taken away from the police. The local authority could still inform the police that it is investigating a case, but it would be for the housing department to investigate the case. Housing departments have the knowledge and resources to look into cases in more detail and provide a strong case to the procurator fiscal.

Colin Fraser: Could I just say something before you close?

Linda Fabiani: I do not know. You will have to ask the convener.

The Convener: If you are very quick, Mr Fraser.

Colin Fraser: Very quickly, surely there will be a big difference in November when all landlords have to be registered as fit and proper persons. It will be very easy for a landlord to lose their licence.

Linda Fabiani: That makes the assumption that all landlords will come forward for registration.

Brian Doick: Can I just add one point?

The Convener: If you are also very quick, Mr Doick.

Brian Doick: One of the sections of the Housing Act 2004 in England, which amends the Caravan Sites Act 1968, is relevant to harassment and illegal eviction. That section was included because none of the previous legislation on mobile homes has acted as a deterrent to unscrupulous park owners. The section of the 2004 act provides for an offence for which someone can go to prison. Irrespective of what our friend said, with which I do not disagree, that will be an important factor for the mobile home industry. Mobile homes are covered by legislation that is unique to the industry, but nowhere is there a deterrent. The section of the bill on harassment and illegal eviction is important and should even be strengthened. The National Association for Park Home Residents would applaud all the members of the Scottish Parliament if they were to strengthen the bill in any shape or form.

The Convener: Thank you very much. That concludes the committee's questioning for today. The panel gave us some helpful and useful evidence. We will reflect on it before we take evidence from the minister next week.

I remind members that they are asked to stay behind after our session with the minister next week for our initial deliberations on our stage 1 report.

Meeting closed at 13:31.

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