

# **COMMUNITIES COMMITTEE**

Wednesday 25 May 2005

Session 2

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## COMMUNITIES COMMITTEE

### 17<sup>th</sup> Meeting 2005, Session 2

#### CONVENER

\*Karen Whitefield (Airdrie and Shotts) (Lab)

#### DEPUTY CONVENER

\*Donald Gorrie (Central Scotland) (LD)

#### COMMITTEE MEMBERS

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

#### COMMITTEE SUBSTITUTES

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

\*attended

#### THE FOLLOWING GAVE EVIDENCE:

Malcolm Chisholm (Minister for Communities)  
Neil Ferguson (Communities Scotland)

#### CLERK TO THE COMMITTEE

Steve Farrell

#### SENIOR ASSISTANT CLERK

Katy Orr

#### ASSISTANT CLERK

Jenny Goldsmith

#### LOCATION

Committee Room 6



## Scottish Parliament

### Communities Committee

*Wednesday 25 May 2005*

[THE CONVENER *opened the meeting at 10:30*]

#### Items in Private

**The Convener (Karen Whitefield):** I open the 17<sup>th</sup> meeting in 2005 of the Communities Committee. I remind all those who are present that mobile phones should be turned off. We have received apologies from Mr John Home Robertson, who is unable to attend today's meeting.

Item 1 on the agenda concerns item 4, which is consideration of the committee's approach to its stage 1 report on the Housing (Scotland) Bill. Do members agree to take item 4 and any future items relating to our stage 1 report in private?

**Members** *indicated agreement.*

## Subordinate Legislation

### Fireworks (Scotland)

#### Amendment Regulations 2005 (SSI 2005/245)

10:31

**The Convener:** The second item on the agenda is consideration of the Fireworks (Scotland) Amendment Regulations 2005 (SSI 2005/245). The regulations were laid on 4 May 2005 and are subject to the negative procedure. The instrument will amend the Fireworks (Scotland) Regulations 2004, which make provisions to minimise the risk that use of fireworks will result in harmful consequences for people, animals or property. It responds to the concern of the Communities Committee and the Subordinate Legislation Committee that the 2004 regulations could oblige Crown servants to apply for a dispensation from the fireworks prohibition. The instrument will remove the ability of local authorities to grant a dispensation from the fireworks curfew to Government and armed forces employees.

In its report, the Subordinate Legislation Committee highlighted the failure to follow normal drafting practice by citing in the preamble the statutory precondition to carry out a resource impact assessment. Members have been provided with a copy of the regulations and the accompanying documentation. No member has indicated that they wish to comment. Is the committee content with the regulations?

**Members** *indicated agreement.*

**The Convener:** In its report to Parliament, the committee will make no recommendation in respect of the regulations. Do members agree to report to Parliament our decision regarding the regulations?

**Members** *indicated agreement.*

## Housing (Scotland) Bill: Stage 1

10:33

**The Convener:** The third item on the agenda is stage 1 of the Housing (Scotland) Bill. I welcome the Minister for Communities, Malcolm Chisholm, to the committee. He is accompanied by four Scottish Executive officials: Roger Harris, Archie Stoddart, Neil Ferguson and Jean Waddie. I hope to conclude questioning of the minister by 12 noon, at the latest. Minister, would you like to make a statement or shall we move straight to questions?

**The Minister for Communities (Malcolm Chisholm):** I will make only a brief statement, so that members do not think that I am trying to avoid their questions—perish the thought.

As members know, the Housing (Scotland) Bill is a major piece of the housing legislation jigsaw. There have been four such pieces of legislation over the past four years. This is the fifth, and it focuses on the quality and conditions of the houses in which the majority of people live—houses in the private sector. The provisions of the bill arise from the work of the housing improvement task force; it is important that members realise that we are following the principles that have been laid out by that task force.

The underlying principle is that owners should be responsible for maintaining their homes, but support should be available where it is needed. Related principles include: influencing the operation of the housing market, in particular the buying and selling process; modernising the role of local authorities to improve their ability to encourage and, if necessary, require owners to carry out works; reshaping assistance to owners; and modernising the operation of the private rented sector so that landlords carry out more repairs and maintenance. Those principles, which were set out in the task force's report, are addressed in a number of ways in the bill. In some respects, such as on improvement and repair, the bill tailors existing practice so that it will better reflect changed circumstances. In other areas, such as provision of information on the sale of a house, the bill takes a bold and radical approach.

Time is short, so I will not summarise the bill but will instead conclude by highlighting how we have listened to the responses to the consultation document "Maintaining Houses—Preserving Homes", which we issued last summer. Following those responses, I have moved towards provision of mandatory support for disabled people, which is one of the controversial aspects of the bill on which I am sure the committee will question me,

although it is nonetheless worth my pointing out that movement.

The other development since the consultation concerns the single survey, on which I am sure the committee will also want to ask questions. Obviously, I took the view that the only way to ensure that information for buyers would be delivered was to make the provision of such a survey mandatory.

I am keen to listen to members' views as well as to answer their questions. I will certainly read the committee's report with great interest and attention when it is published, but I am happy to listen to proposals for further changes.

**The Convener:** I thank the minister for keeping his comments brief to allow committee members the maximum opportunity for questions.

Much of the bill is about changing the culture and attitudes of people to ensure that houses in the private rented sector, owner-occupied sector and local authority sector are properly maintained. Do you think that you have that right? Will you be able to take people with you in effecting that change in culture?

**Malcolm Chisholm:** The involvement of key stakeholders in developing the policies has been a strong feature of the process, as it has perhaps been a feature of the Scottish Parliament more generally. In that sense, I think that we have generated a lot of buy-in, notwithstanding the controversies that will arise. Obviously, many of the responsibilities under the bill will rest with local authorities, but local authorities are very much signed up to developing the different role that they will be given, whereby they will have responsibility for ensuring that the quality of private sector housing is improved.

Publicising the new arrangements will be a big task, but a start has been made on improving awareness in the private rented sector. Obviously, a bigger job will be to inform the public about the changes during the bill's passage, but there is a lot of buy-in. While reading the oral and written evidence that the committee has received, I was particularly impressed by the Scottish Consumer Council's support for the measures. Obviously, it is hard for one organisation to speak for all consumers but, in so far as any organisation can do so, I suppose that the Scottish Consumer Council can make that claim. In particular, the Scottish Consumer Council submission states:

"We ... welcome the inclusion of a range of tools which local authorities can use to assist home owners."

In other words, it welcomes the fact that local authorities will be given more tools than they have at present. The Scottish Consumer Council also accepted the need to move beyond the current model of grants which, it argued,

"may provide a disincentive to homeowners to undertake repair and maintenance in the first place."

Therefore, on the consumer side, the measures have gained some understanding and support.

**The Convener:** What plans does the Executive have to publicise the rights and responsibilities of tenants and the obligations of owner-occupiers in respect of maintenance and repairs? Is there an on-going commitment to make people aware of those? It strikes me that, although a one-off awareness-raising campaign might reach some people, we will need to keep on at that if we are to ensure that everybody understands the implications of the new legislation.

**Malcolm Chisholm:** Absolutely. As I said, we have already made a start in the private rented sector with our better renting campaign, but we will clearly need to do much more, in conjunction with key stakeholders, to get the message across to people who will be affected. We intend to do that with stakeholders as the bill progresses.

**Donald Gorrie (Central Scotland) (LD):** I will talk about money. There are many very good proposals in the bill, but if local authorities do not have the resources—the people or the cash—to make it all work properly, the bill's provisions will not work. Will councils have enough money? Should you give them more money or direct them to use their money differently?

**Malcolm Chisholm:** If we consider the money in general, the budget line has certainly been increasing. The budget line has existed in that form for a relatively short time.

When I was the minister with responsibility for housing in 1997, one of the complaints that people made was that private sector housing grant was no longer ring fenced. Many people who had an interest in housing said that the money that had traditionally been spent on housing by councils was therefore being spent on education or some other worthy cause. That funding was, as a result, ring fenced a couple of years ago. All the indications are that far more is now being spent in that area than was spent during the proceeding period. The budget has been set at £65 million a year in the spending review. There is also £10 million a year extra for implementation of the housing improvement task force recommendations. That compares with outturn expenditure of about £50 million a couple of years ago. The budget is increasing.

Even within the budget for adaptations for disabled people, which I am sure the committee will ask me about later, we have seen a significant increase in the past four years; the amount of money that is spent has doubled in that period, so that budget line is increasing. As with any other budget in the Executive, people can always say

that we need more. Obviously, that is one of the points that we will discuss in respect of disability.

The other figure in the financial memorandum that may have caused some confusion, not to the committee but to others, is the figure of £3 million. That figure is for implementation; it is not for grants, loans and so on. That is the other figure that is being discussed.

**Donald Gorrie:** The representatives from the Convention of Scottish Local Authorities had obviously been reading Rabbin Burns, which is commendable. COSLA said in its evidence that it did not want to be seen by others as the ogre who forces people to do things. There is a risk that if local authorities' budgets are limited, they will do the legal stuff but not the helpful advising and co-ordinating work. Will there be enough money for that positive side of the bill?

**Malcolm Chisholm:** Those possibilities have been opened up by the bill because there has perhaps hitherto been too much of a one-club policy in terms of grants. We know from what people have told us that, in many cases, grants being mandatory for statutory notices—not in Edinburgh, but elsewhere—has caused a problem for local authorities, which would often not declare statutory notices because they did not have the money to back them up. Not only will more money be provided because, as I said, the budget line is increasing, but there is also a greater range of possibilities for action in respect of what local authorities can do with the money. The Scottish Consumer Council made that point.

COSLA is very positive about the bill. I know that you heard evidence from COSLA—I have read it and the other evidence—that was positive. It obviously had one or two points to make, but COSLA will always argue—understandably and rightly—for more money. I will always argue, at each spending review, for more money for housing, but the reality is that in comparative terms there is more money in the budget and more flexibility for local authorities to make the money go further and to target it more effectively. That is obviously also the nature of the discussion that we will have about the specific disability issue.

**Linda Fabiani (Central Scotland) (SNP):** One of the consistent themes throughout the evidence that we have received has been the diversity of the housing stock in Scotland—that confirms what many of us know. That diversity can perhaps be most readily described as being the difference between urban and rural stock, with all the attendant problems that come with housing in rural areas, such as lack of tradesmen, different building structures and so on. Does the bill strike a balance between the national guidelines, which have to be in place, and the local flexibility that is required to enable local authorities to get the best

for their stock? How does that fit in with the housing strategies that local authorities must work to?

10:45

**Malcolm Chisholm:** We must have national standards. Obviously, changes are being made to the tolerable standard, which must apply across Scotland—it is very much the foundation of the bill. Obviously, there is a lot of local decision making and discretion, which will now be exercised openly and accountably through local housing strategies. The bill also requires open and accountable publication of criteria for the use of the assistance powers.

A balance has to be struck between local discretion and national standards. Some of the rural issues relate to funding. Certainly, we have sought to address the issue through funding allocations over the past couple of years. The highest percentage ever of the Communities Scotland budget now goes to rural areas—I think that it is 29 per cent. That is another way in which rural areas are being dealt with.

**Linda Fabiani:** A stark example was suggested by a representative of a rural area—I cannot remember which one. If someone has a stone cottage in the middle of nowhere that is a couple of hundred years old, it would be very difficult to bring it up to the tolerable standard as required by the bill, especially if Historic Scotland or another similar body were to get involved.

**Malcolm Chisholm:** I am sure that there are particular issues for Historic Scotland in respect of a number of buildings. Obviously, a regime is in place and we must take account of it. I do not accept that that becomes an argument—if that is what Linda Fabiani is putting—to exempt buildings from the tolerable standard. Obviously, from time to time, there are issues and difficulties with Historic Scotland.

**The Convener:** I call Cathie Craigie.

**Cathie Craigie (Cumbernauld and Kilsyth) (Lab):** Thank you, convener, but Linda Fabiani covered the point that I wanted to make.

**The Convener:** I have equal opportunities issues to raise. Clearly, the policy memorandum states:

“The provisions of the Bill are not discriminatory”

in any way. However, the committee heard the concerns of Disability Agenda Scotland and Ownership Options in Scotland that the bill discriminates against people with disabilities. Disability Agenda Scotland said:

“The bill treats adaptations to private housing in a way that restricts disabled people’s access to private

housing.”—[*Official Report, Communities Committee*, 11 May 2005; c 2192.]

What is your response to those concerns?

**Malcolm Chisholm:** I am conscious that that provision is possibly the most controversial. It is certainly the one to which I gave a lot of thought when I first became minister. I am saying not that we have arrived at an ideal position but that I want to discuss some of the issues and dilemmas around the issue. The first thing that I would say is that the provisions are an advance on the current situation. We can always say that the bill should go further; no doubt there will be discussion about whether we want to develop the proposals further.

Under the status quo, we have mandatory grant for standard amenities, which will remain the case, and discretionary grant for adaptations. I have mentioned that the budget for adaptations has doubled in the past four years. However, that is very much a discretionary grant, so we have moved towards mandatory assistance. We are now saying that everybody in that situation has to get assistance. That is a development from the position in “Maintaining Houses—Preserving Homes”.

The other change that I made soon after coming into post was to say that I was still concerned that there could be too much variation and flexibility, and that we therefore want a power of direction in terms of how local authorities discharge the duty. I accept that there is room for further discussion on that. I would be willing to consider further movement if that would reassure members about our commitment. I have read the evidence and I know that some people want further movement. However, there would be difficulties. People invoke the English model but there would be cost implications in such a model. That said, the fact that there is mandatory grant in England does not mean that more money is spent per head in England on adaptations; in fact, more money is spent per head in Scotland. There are reasons for the difference; for example, England has a budget and it has waiting lists. One local authority has a waiting list of three years for the disabled facilities grant. We cannot compare England directly with Scotland.

Moving towards a mandatory grant system will have implications for funding. Ownership Options plucked out a figure of £100 million, but we do not know what the actual figure would be. It will be difficult to include provision in the bill when we do not know its cost implications or where the money will come from. If the money is not there, the waiting list will take the strain. I am not saying that I am not prepared to consider whether we can modify the proposals; I am simply trying to explain why we ended up with the present balance. We have to consider both mandatory assistance and



the powers of direction and guidance to ensure that proper attention is given to this issue.

Adaptations are one of the two priority issues for private sector housing grant. Another issue we could consider is ring fencing the budget, if that would reassure people. Ring fencing is being used less and less with local authority budgets, but it remains an option. We are committed to adaptations as a priority, but we want to target money so that grants go to the people who need them most. We should not spread the money equally across everyone, because some people may be able to contribute to the costs.

**The Convener:** A number of my committee colleagues are particularly interested in adaptations. I do not want to go into the details of what is or is not in the bill, but I want to ask about the overriding policy commitment to equal opportunities. Under a provision in the Housing (Scotland) Act 2001, ministers and local authorities must ensure that the functions that are conferred on them by the act are carried out in a manner that encourages equal opportunities. However, there is no similar provision in the Housing (Scotland) Bill. Is the Scottish Executive willing to reconsider that? Is the provision necessary, or is there a reason why the bill does not contain one?

**Malcolm Chisholm:** I think that that is an omission; we would certainly be keen to have such a provision.

**The Convener:** That is very helpful. I do not think that we should always follow the way things are done at Westminster; we can do our own things. However, Cathy Peattie, the convener of the Equal Opportunities Committee, has contacted me to raise a concern that has been expressed in her committee. The Westminster Housing Act 2004 includes a duty on local authorities to assess the accommodation needs of Gypsies and travelling people who reside in, or who resort to, their district. However, no similar provision has been included in Scottish legislation. Is there a reason for that?

**Malcolm Chisholm:** What was the specific provision that the English act introduced?

**The Convener:** In England, the 2004 act places a duty on local authorities to assess the accommodation needs of Gypsy Travellers. Is the Housing (Scotland) Bill the appropriate vehicle for us to place a similar duty on local authorities in Scotland?

**Malcolm Chisholm:** The Housing (Scotland) Act 2001 covers Gypsy Travellers as part of the local housing strategy. I will look again at the Housing Act 2004. The section that I was aware of was section 209, which is headed:

"Protected sites to include sites for Gypsies".

Such measures exist already in Scottish legislation. I will look into the additional point that you mention but I think that it was covered by the 2001 act.

**The Convener:** Thank you. It would be helpful if you would get back to the committee on that.

**Cathie Craigie:** Let us move on to discuss the bill's proposals for housing renewal areas. The evidence that has been taken by the committee suggests that there is support for those proposals. It is right for us to move from focusing solely on housing and the old housing action areas to provisions that seek to deal with the many problems that exist in communities. That change in emphasis is to be welcomed.

The difficult process that local authorities and individual owners must go through in order to establish a housing action area takes years. I do not mean just a couple of years—the process seems to go on for ever. Will the process that will require to be followed to declare a housing renewal area be speedier and less bureaucratic than the previous process?

**Malcolm Chisholm:** It will certainly be a more flexible process. We do not want it to take as long as some of the current procedures. The process will be driven by local authorities, although certain requirements will be placed on them. This is one of the areas that COSLA was not so keen on, but we think that authorities should have a plan to deal with BTS housing and the timescales that are required to address it. We do not want a protracted process, which has sometimes marked the housing action area regime in the past.

**Cathie Craigie:** Given that the housing renewal areas will be concerned with much more than just housing, how will the new arrangements be driven? How will funding be allocated? Will Communities Scotland still be involved? If we are looking to bring a number of houses into better condition, so that people will want to buy or rent them, and if we want to work in the community and improve the amenities in an area, how will that be funded?

**Malcolm Chisholm:** The funding must come from the general private sector housing grant. I know that there are concerns about whether local authorities will focus on that area of work, which is why we want the whole process to be more transparent. Authorities will require plans for BTS housing, and they will know exactly how much of their resources are being concentrated on that. A couple of weeks ago, I visited some BTS houses in Glasgow; many such issues were raised with me there. We want to ensure that such plans exist and that local authorities' actions in that regard are transparent. The funding could integrate with what

Communities Scotland is doing, but the lead responsibility lies with local authorities.

**Patrick Harvie (Glasgow) (Green):** I will come on to several issues around the tolerable standard. Linda Fabiani and I will share the questions. The Chartered Institute of Housing in Scotland raised the issue of the phrase “satisfactory thermal insulation”, and suggested that it would be preferable for the tolerable standard to refer to the overall energy performance of properties, which would also cover other factors. On a related issue, it has been made clear to us that the target of national home energy rating 2—or NHER 2—is no hurdle at all for most properties to get over. Could you address some of the issues around thermal efficiency and whether the tolerable standard, rather than simply insulation, will address that?

**Malcolm Chisholm:** The tolerable standard is a minimum standard. I have read all the evidence, and the energy efficiency bodies obviously want more to be included in the bill, but we must strike a balance. We are committed to improving the energy efficiency of housing as a whole. We cannot set the tolerable standard as a desirable standard; it will be the minimum standard that is required. This will be the first time satisfactory thermal insulation has been included in the tolerable standard, which represents an advance on what is in place at the moment. Guidance will be issued on interpretation of the tolerable standard, including where it concerns thermal insulation. The guidance will be drawn up by an advisory group of experts. Progress has been made on that.

I remind the committee that, beyond the tolerable standard, we have the target of reducing by 20 per cent the number of houses with poor energy efficiency by 2006, which will be reviewed when we get the results of the next Scottish house condition survey. We have that general target as well as the BTS provision.

11:00

**Patrick Harvie:** The tolerable standard will mean that work will be done on some properties, but given that there are properties that cannot take insulation for whatever physical reason, would it not be appropriate for the tolerable standard to mention efficient heating?

**Malcolm Chisholm:** Satisfactory heating is one of the criteria for the tolerable standard, so heating is already covered. Insulation is the new element.

**Patrick Harvie:** Is the efficiency of heating—rather than the fact that it is merely satisfactory—already covered?

**Malcolm Chisholm:** The criterion is couched in general terms, such that heating should be satisfactory.

**Patrick Harvie:** Okay. In other words, the efficiency of heating is not specifically mentioned.

**Malcolm Chisholm:** Not specifically.

**Patrick Harvie:** Has a target date been set for when the thermal efficiency component of the tolerable standard should be met? That was one of the recommendations that Friends of the Earth made in its evidence to us.

**Malcolm Chisholm:** That will be expected to be achieved once the legislation is in place.

**Patrick Harvie:** Before I pass over to Linda Fabiani, I turn to lead content in drinking water. I was pleased to hear that, like me, you were impressed by the Scottish Consumer Council's submission. The SCC mentioned the housing improvement task force's recommendation about having a standard for lead in water. Its perception was that the existing standards are not being applied consistently and that it would be appropriate for the tolerable standard to address in some way the problem of lead in drinking water. Has that been considered?

**Malcolm Chisholm:** The existing tolerable standard includes a requirement to have an adequate piped supply of wholesome water. That is the way in which the matter has been dealt with hitherto. I am happy to consider the issue further, but the existing standard ought to cover lead in drinking water.

**Patrick Harvie:** Will assistance be available for addressing that problem?

**Malcolm Chisholm:** Local authorities already provide such assistance.

**Linda Fabiani:** What has struck me throughout our evidence taking is that everyone wants the bill to work. The approach has been highly constructive; no one who has given evidence has been against what we are trying to do. That said, genuine concerns have been raised on some elements of the bill. The Scottish Association of Building Standards Managers was worried about a lack of co-ordination between different housing legislation—for example, between the Building (Scotland) Act 2003 and the bill—and a lack of clarity over whether building standards or tolerable standards were being worked to. It suggested that some form of protocol be set up, to which it would be easier for the different disciplines within councils to work. Would you be willing to address that in the guidance that you produce?

**Malcolm Chisholm:** I read the evidence of the SABSM and, in a way, it made a general point. I would be interested to hear about specific examples of situations in which problems are envisaged. Although the two pieces of legislation deal with related matters, they cover discrete areas and there are certainly no contradictions

between them. I am conscious of the issue and, if people think that there might be problems, we could consider doing some work to resolve them. It would be best if people could give us specific examples of cases in which problems might arise.

**Linda Fabiani:** Perhaps the committee could ask the SABSM for more information on that.

**Mary Scanlon (Highlands and Islands) (Con):** My question is on the repairing standard. Quite a few witnesses spoke about the need to achieve a balance between having a reasonable standard of repair and not forcing landlords to leave the private rented market because the additional burdens would be too much. A witness from the Scottish Rural Property and Business Association told us that the homes that he manages generate an average annual surplus of £67 per property. Therefore, it would be difficult to achieve the repairing standard in old properties by reinvesting the surplus. How can you strike a balance between improving standards in the private rented sector and ensuring that there is an adequate supply of private rented housing?

**Malcolm Chisholm:** We want to strike that balance. When I read the evidence, I was conscious that we could be criticised from both sides on the matter. Some groups want to know why we have gone beyond the repairing standard for social rented housing by including fixtures, fittings and furnishings, which is a highly appropriate approach to private sector renting. Equally, other groups asked why we were not following the Scottish housing quality standard; I think that that view is based on a misunderstanding, because the repairing standard in social rented housing is quite distinct from the Scottish housing quality standard. However, the point is that we have been attacked from both sides. We believe that the proposed repairing standard takes a significant step forward in relation not just to what tenants can expect but to how they can exercise their rights. Tenants will no longer have to go to court to do that; they will be able to go to the new private rented housing panel.

**Mary Scanlon:** Do you agree with the National Union of Students and others, who said that any additional costs on landlords would simply lead to rent increases? There has already been a significant reduction in the buy-to-let market.

**Malcolm Chisholm:** The National Union of Students did not argue against the repairing standard; indeed, it welcomed the proposal. The NUS was worried about the possible effect on rents of fees for houses in multiple occupation, but there will be a new ministerial power to regulate such fees. The extent to which higher standards will increase costs or drive people out of the market is obviously an issue in any regulation of the private rented sector. A balance must be

struck, but that is not an argument against having a repairing standard.

**Mary Scanlon:** I just wondered where the money would come from. I do not want to stray into the territory of other members' questions, but I was thinking about the SRPBA's evidence and the £67 surplus. If someone were to apply to a local authority for assistance, they would be able to get advice, a grant or a loan. In what circumstances might someone be entitled to that grant or loan? Many people will not want to take out loans, but they might not have the money to invest in their property to bring it up to the standard. Who will be eligible for a grant or a loan?

**Malcolm Chisholm:** It will be for local authorities to come up with schemes of assistance and set out the criteria for eligibility. In some areas, the private rented sector is particularly important—Edinburgh is perhaps an example—and the local authorities in such areas might well decide that a grant would be an appropriate use of funds. They might equally decide that it was more appropriate to offer a loan.

**Mary Scanlon:** Under section 12(c), the repairing standard duty would not apply to

“a tenancy of an agricultural holding”.

Several people asked whether the tenancies of forestry workers, fish farm workers and estate workers would also be exempt. Will you consider the matter at stage 2?

**Malcolm Chisholm:** I think that the answer is yes, they will be, but the question is certainly for stage 2.

**Donald Gorrie:** Several groups that gave evidence to us thought that the private rented housing panel's remit could be extended not only to cover the repairing standard, but to deal with disputes about matters such as management standards and rent deposits. The panel could arbitrate or mediate several types of dispute, including those about adapting a house to meet a disabled person's needs. Does scope exist to amend the bill constructively to widen the panel's remit?

**Malcolm Chisholm:** We are considering whether the panel could have such a role in the longer term, but that would be subject to a wider review. The Chartered Institute of Housing in Scotland has proposed a much wider role for the panel, but what the panel can do is balanced with what will go to the courts. We have focused on implementation of the repairing standard, in which the bill proposes a role for the panel.

**Donald Gorrie:** Do you agree to the general principle that the more things stay out of court, the better? I can see that, as a minister, you do not want to rush into something without thinking about

it properly, but do you agree that, if the panel could deal with disputes and keep them out of court, that would benefit everyone?

**Malcolm Chisholm:** I am prepared to examine proposals on that. What is in the bill is based on the housing improvement task force's suggestion that expansion of the role should be limited, although I accept that you may say that we have followed some of the task force's recommendations too closely. The counter-argument is that we had an inclusive group of which most of the relevant stakeholders were members.

We will research the evidence before determining whether introducing a Scottish housing tribunal, as suggested by the Chartered Institute of Housing, would be a more effective way of resolving disputes between landlords and tenants on matters other than repairs. We are prepared to examine that, but we have not yet done the work to provide for such a body in the bill.

**Donald Gorrie:** That is helpful. I will move on to maintenance orders. Is the balance right between the powers of tenants or owners and the councils' power to decide what happens with maintenance plans? Would a better option not be some sort of maintenance account or sinking fund? I know that your advisers think that that may all be too difficult, but would the gains from having such a fund outweigh the difficulties? The system that you propose may also have difficulties.

**Malcolm Chisholm:** I do not want to sound glib, but, again, that is a matter of balance. Local authorities may require sinking funds as part of a maintenance plan, but the Chartered Institute of Housing suggested compulsory sinking funds for everyone. That is a different proposal, which seems to have practical difficulties. For example, what if somebody could not afford their contribution?

We have achieved the right balance. A compulsory sinking fund would present enforcement difficulties. As I said, a fund may be required for a maintenance order, which is the right approach to adopt. More generally, the new category of maintenance order expands councils' powers to intervene earlier. That is a key provision for the bill's general objective of improving the quality of private sector housing.

11:15

**Donald Gorrie:** Would having a sinking fund not help by enabling earlier intervention? After all, if we address a problem only when it occurs, it may be too late to do anything about it. It seems to me that the principle behind a good part of the bill is that, if people are compelled en bloc to deal with a

problem, someone who cannot afford to do so will be bailed out if they go through the right procedure. The same principle might apply to people who cannot afford to contribute to a sinking fund. Indeed, the principle behind the Chancellor of the Exchequer's new policy on purchasing houses could well apply to the maintenance of houses, in that, if a council bails a person out, it could make back the money when the house is sold on. Would that not solve the problem?

**Malcolm Chisholm:** A sinking fund might well be required as part of a maintenance plan, but imposing the same requirement on everyone is a different matter. How many times would a local authority have to intervene to ensure that everyone contributed to such a fund? It would be difficult to enforce such an arrangement and there would be a lot of resistance to it. We believe that our proposal would be better for any situations that might arise. If failure is the trigger, why should we impose such a measure on people who might already be making perfectly satisfactory arrangements to look after their property?

**Scott Barrie (Dunfermline West) (Lab):** In response to the convener, you said that there might be some movement in the area of adaptations for disabled occupants. I was also interested to hear you say that having a mandatory grant scheme does not necessarily mean that more money is spent. You pointed out that budgets are capped and said that, in some local authority areas south of the border, there are considerable backlogs and waiting lists and that, in Scotland, we are already spending a greater amount per capita on disabled adaptations. I will certainly reflect on those comments.

However, the Disability Rights Commission has expressed concern that, unlike disabled people in England and Wales, disabled people in Scotland will have no rights to assistance from organisations such as the DRC. How can we address the commission's inconsistent role throughout the United Kingdom to ensure that tenants in Scotland have access to the same level of support as people in other parts of the UK have?

**Malcolm Chisholm:** Although I certainly want the DRC to have the same role in Scotland, we do not have the power to put such a measure into the bill. We could seek to have that done at Westminster at the next appropriate opportunity, perhaps during the passage of the Equality Bill.

**Scott Barrie:** Is the matter being actively pursued? When we heard that evidence, I and other committee members felt that it was a glaring omission.

**Malcolm Chisholm:** Yes. The problem relates to the timescale for the legislation. I am quite

happy to look at the English situation with regard to a whole range of proposals. However, given that the Equality Bill was introduced only two months ago, we did not have the opportunity to consider its provisions when we were forming our legislation. As I have said, we cannot put any provisions regarding the DRC into our legislation, but I am certainly keen to have the same arrangement in Scotland.

**Scott Barrie:** Again, in response to the convener's earlier question, you acknowledged that the evidence that we had heard indicated that disabled people in Scotland had fewer rights with regard to the funding of adaptations and that grants would often be lower than those in other parts of the UK. Concern was also expressed that a postcode lottery might emerge as local authorities take different approaches to funding adaptations. How will you ensure that any scheme in Scotland is uniform and that we do not end up with people in different parts of the country benefiting in different ways?

**Malcolm Chisholm:** I share that concern, which is why I have moved towards having powers of direction and guidance. I am quite happy to reflect on whether we need to take things further and I look forward to hearing the committee's views on the matter.

On your comment that more money is given to individuals in England, I should point out that, in England, there is an absolute cap of £25,000 and that the bill seeks to remove the cap in Scotland. As a result, it goes beyond the English provisions.

I understand concerns about variation between local authorities. However, that is a problem with the present system. We have a discretionary grant system and there is considerable variation between the amounts that local authorities spend on adaptations. One might say that the variation results partly from the fact that local authority areas contain different numbers of people with disabilities, but that is unlikely to be the sole reason.

We have moved forward on mandatory assistance. Through the guidance to which I have referred, we can move towards having greater uniformity. If people want, we can consider extending the guidance. The option of regulations would give the Parliament a more formal role in the process, which members may regard as appropriate. I have mentioned ring fencing, although that is unpopular with local authorities and others. Whatever option we choose, I am keen for us to avoid great variation in the rights that disabled people have. That is why we moved on mandatory assistance, guidance and powers of direction. If those measures are not thought to be adequate, we can look to move further.

**Scott Barrie:** Groups representing disabled people suggested in evidence to us that none of the proposals made them believe that local authorities will be able to reduce the significant number of disabled people who are unsuitably housed. How will the bill's provisions address that critical issue? How will we ensure that disabled people get the adaptations that they need?

**Malcolm Chisholm:** There are two categories. In respect of the private rented sector, the bill represents progress, because it provides rights that do not exist at present. I know that there are concerns about the precise formulation of those rights, and you may want to ask about that.

I argue that the bill also represents progress in respect of owner-occupiers. I refer to the directions and guidance relating to mandatory assistance. It might be reasonable to describe the way in which discretionary grants are applied at present in different local authorities as a bit of a postcode lottery.

**Christine Grahame (South of Scotland) (SNP):** I have a brief question about section 69 of the bill, on which you have touched. I accept that there will be guidance on the availability of assistance, the amount of assistance to be provided and what local authorities must do when preparing information. I also accept that there should be some flexibility. What would be your position if you were unhappy with the statement made by a local authority or the criteria that it set for providing assistance, approving expenses and so on? Would you have a role in that situation, while continuing to allow the local authority freedom to exercise its rights?

**Malcolm Chisholm:** We could have a role. The area to which I have given most thought is rights for disabled people. The formal answer to your question is in section 91 of the bill, which states:

"The Scottish Ministers may give directions to local authorities in relation to the provision of assistance under this Part."

We will have the power to do that. I am most conscious of the need to exercise it in relation to disability, but that is not to say that it might not apply in other areas.

**Christine Grahame:** I appreciate what you say about the power to give directions, which I had not noted. However, if you gave directions and a local authority replaced or revised its statement but you were still unhappy with the way in which it was dealing with adaptations and funding for disabled people, would you have a role? Could you take punitive measures—for example, in relation to funding—if you were unhappy with what the authority was doing? What would happen if it were harder to get adaptations in an area because the

money was not ring fenced and the authority was using it for other purposes?

**Malcolm Chisholm:** For the past couple of years, private sector housing grant has been ring fenced, so it is controlled by the Scottish Executive and, ultimately, the Scottish Parliament. The present arrangement is that local authorities get the money in part informally and in part by bidding for it. If directions are not followed, the Executive has direct financial control.

**Christine Grahame:** You do not have a role. What I am getting at is—

**Malcolm Chisholm:** We have a role in directions and in finances.

**Christine Grahame:** But that would be it. You would not intervene.

**Malcolm Chisholm:** That seems quite a lot to me.

**Christine Grahame:** If a health board misapplies funding, ministers can intervene, but if a local authority misapplied funding or you were not happy about what it was doing, you would not intervene.

**Malcolm Chisholm:** The relationship between the Executive and health boards is different from the relationship between the Executive and local authorities. There is always a balance, to use that word again. Sometimes we are criticised for intervening too much and sometimes we are criticised for not intervening enough. On the specific issue to which you refer, I am confident that, in the direction power and the financial power, we will have enough levers to deal with the problems that you have in mind.

**Cathie Craigie:** COSLA expressed concern in its evidence to us that the proposals for making charging orders should be more flexible. There is also concern that it would have been better for the bill to follow the housing improvement task force's recommendations in that respect. Will charging orders give local authorities the ability to recover costs and the flexibility that they need to do that?

**Malcolm Chisholm:** Local authorities have a number of ways in which to recover debts, including inhibitions, standard securities and the existing charging orders. I am aware of the other model—the modified charging order, as it were—and I note the evidence that COSLA gave on that, although I am told that some local authorities have now realised that it contains problems. From their point of view, the biggest problem with that arrangement would be that there was no guarantee that the debt would be paid. That would be a disincentive for any local authority to apply the model.

The issue that has attracted the most attention is the first charge status and the problems that that

might create for someone's mortgage. That is important from the point of view of an individual who is in that situation, but from the local authority's point of view a greater concern would be the lack of assurance that the money would be recoverable at the end of the period. The existing charging order, under which an annual payment is made, gives local authorities a lot more assurance.

**Cathie Craigie:** Local authorities, including the one in my area, point out that many people have equity in their home but no extra cash to cover the annual payment. Those authorities suggest that it would be better for local authorities to recover the money plus interest when the property is sold. COSLA has taken on board the difficulties that the Council of Mortgage Lenders has highlighted, but it still believes that the need to recover money for the public purse could be better met so that there is no competition between the CML and the local authority about who gets the equity that is left after the property is sold. It is often many years before the property is sold and its value will have increased.

**Malcolm Chisholm:** There are two points in that. Releasing equity is one thing and local authorities certainly have an option to give equity loans—with the consent, obviously, of the home owner. The issue about charging orders is more likely to arise when someone is not willing to pay their share. In such cases, the local authority has no assurance that the money will be paid at the end of the period. Equity loans are still an option, under which equity is released from the house and paid back when the house is sold.

**Cathie Craigie:** Are you discussing the matter with COSLA and local authorities? It is clear that COSLA and the CIHS are not happy with the bill as it stands.

**Malcolm Chisholm:** The situation is dynamic. I read COSLA's evidence but have been told that, following discussions, local authorities now see the difficulties that are involved. I am sure that the issue will arise in later discussions on the bill, but I have been told that more local authorities now accept the difficulties that would arise as a result of the proposal.

11:30

**Cathie Craigie:** The committee has taken extensive evidence on the scheme of assistance for housing purposes and we have heard strong views on the need for flexibility to allow local authorities to determine what is best for their area. Will the bill allow national consistency and local flexibility in relation to the scheme of assistance?

**Malcolm Chisholm:** It is a matter of balance, which is my favourite word today. Obviously, local

authorities will need to think about what will work best for their area and they will have to publish criteria, but in general this is about helping those who need help and doing so cost effectively so that as many people as possible are helped. The key point is that we want to help more people and we want more work to be done—indeed, that aim was the housing improvement task force's starting point. I think that the cost of dealing with urgent disrepair has been estimated at around £5 billion. We must get things done more quickly, but that is difficult within the current, inflexible grants system.

As I said, local authorities must think about what is best for their area. There must be flexibility, but ministers will be able to use powers of direction if there is a case for greater consistency. We do not want to direct people inappropriately, but we certainly want to have such powers because that will reassure people—I hope—that local authorities will not behave in an unacceptable or irresponsible way.

**Cathie Craigie:** We have heard evidence from witnesses from rural communities that dealing with disrepair can be much more expensive in rural areas than in city centres. My local authority gave examples from North Lanarkshire. Scotland-wide, more homes are in need of repair, but there are home owners in that area who are on low incomes. Will the scheme allow local authorities flexibility in order to meet people's needs through grants and loans?

**Malcolm Chisholm:** Obviously, grants could still be used. Some local authorities are keen on grants and there is nothing to stop them continuing to use grants. We have dealt with rural issues in general and funding issues if costs are higher in rural areas. One would expect rural local authorities to take those circumstances into account.

**Cathie Craigie:** The difficulties that local authorities may experience in trying to provide loans and the difficulty of working out loan schemes in 32 different council areas have been brought to our attention, and it has been suggested that a national loan scheme would be a better way forward. Local authorities could share the overall administrative costs of the scheme and there could be expertise in one place as opposed to having 32 different departments. The bill does not preclude such a scheme, but will the Executive consider providing for it in the bill?

**Malcolm Chisholm:** Local authorities grouping together to provide loans—which the bill certainly allows—would probably be more cost effective and we will continue to explore the practicalities of that. However, although nothing in the bill prevents that from happening, I am not sure whether local authorities would want the bill to go as far as insisting on such a scheme.

**Cathie Craigie:** What would the implications be for private sector housing grant budgets if local authorities decided that the loans-based approach was not appropriate in their circumstances?

**Malcolm Chisholm:** Obviously, given the fact that repayments are made, loans help local authorities over time. However, in the first year or two, the money will come out of the budget regardless of whether it is paid out as a loan or a grant. Are you implying that, if loans are not taken out, more money will be required?

**Cathie Craigie** *indicated agreement.*

**Malcolm Chisholm:** No doubt some local authorities would argue that. That is obviously the case over time. If grants are used all the time, more money is required, although what has sometimes happened when grants have been used all the time is that work that should have been done has not been done. Local authorities will always argue for more money, which is reasonable. You know the situation: we must balance the budgets and do the best that we can. We think that our proposals will let the money go further and allow more work to be done.

**Mary Scanlon:** I will move on to my favourite subject: the single survey. You said that you were impressed by the evidence from the Scottish Consumer Council. The council expressed its disappointment that it proved necessary to introduce a compulsory scheme. What is your justification for making the single survey mandatory, given that only 74 out of 1,200 surveys were done? Why were those involved in the steering group not consulted about your decision to make the survey compulsory? They were quite shocked when you made the announcement.

**Malcolm Chisholm:** The Scottish Consumer Council indeed had the concerns that you have indicated. However, in the written evidence that it submitted to the committee, which I have read, it was supportive of the underlying objectives of the bill, which are, as you know, to reduce the incidence of multiple surveys; to improve the quality and extent of the information that is available to purchasers; and to address the problems that have been caused by the setting of artificially low upset prices in order to stimulate interest in properties.

The single survey is certainly in the interests of buyers and it is certainly in the interests of the state of the private housing stock, which should be a matter of concern to us all. It is not in the immediate, short-term interests of sellers, who were the people who were in control as far as the pilot was concerned, subject to the advice that they received. In that sense, you might say that the pilot was doomed from the start to have only a small number of people participating in it.

Nevertheless, it was important to have the pilot and we will analyse the results alongside the precise details of the scheme. We will continue to work with stakeholders on that.

Some issues still have to be resolved. You say that members of the steering group were shocked. A meeting was held with them on 22 February, at which they were asked whether any alternatives were available to address the problems of quality, multiple surveys, low upset prices and the various other issues that the survey seeks to address. It is fair to say that no new ideas were forthcoming. Basically, the matter was left at that. I decided to make a statement on the matter before the parliamentary proceedings for the bill started because I thought that it was a service to the bill and to the committee to do so.

**Mary Scanlon:** Will you involve the single survey steering group in the analysis and evaluation of the 74 surveys that were carried out?

**Malcolm Chisholm:** The steering group is involved. It meets on an on-going basis and it will certainly be involved in that.

**Mary Scanlon:** I turn to another part of the evidence from the Scottish Consumer Council about the scheme. It has highlighted the

“potential difficulties it may bring for disadvantaged buyers and sellers, who may be on low incomes and/or be buying or selling low-value properties.”

The council is also unsure about how effectively the scheme will be enforced.

Let us consider the information that must be made available. There must be a valuation, to cost around £150; a single seller survey, allegedly at £400, although the Law Society of Scotland believes that it will cost £850; a purchasers information pack; energy certification, which is required under European Union regulations; and latent defect insurance. How does someone on a low income with a low-value property find the money to get all that in place before they put the property on the market? A house might take 12 months to two years to sell. Have you had talks with the Law Society and the Royal Institution of Chartered Surveyors? Are solicitors willing to pay for the information in advance and wait for the house to sell until they get their money back, or will the money have to be paid up front by the seller?

**Malcolm Chisholm:** That question cannot be answered, because the market will determine the precise details of payment arrangements and so on. I am sure that different arrangements will be offered and will apply. I accept that there are different views about the overall sum, but the RICS goes along with the figure of £400.

The purchasers information pack is obviously the overarching pack that will contain the single

survey. The energy performance certificate is, as you say, required by the European directive, but I am sure that we all think that introducing it is a desirable step anyway.

I think that the advantages of the proposal are so overwhelming that the majority of people will see the merit of it and the evidence is that that is the case. Our basic objective in the bill is to improve the quality of private housing stock in Scotland, and it is ridiculous that people can buy houses without having that information available to them. The most effective way of making that information available is through the single survey so that people do not have to go through multiple surveys. The move to a single survey is a big culture change and it is a radical step. There are some problems, but they will be addressed in the implementation of the proposals. Notwithstanding that, the basic reasons for the introduction of the survey, which were supported by the housing improvement task force, mean that we have taken the right decision.

**Mary Scanlon:** Do you accept what the Scottish Consumer Council says about the problems for people on a low income with low-value properties in areas of low demand?

Paragraph 215 of the financial memorandum states:

“£400 would be a reasonable estimate of the average cost.”

It also states:

“The cost of this survey will again depend upon the size and value of the property and the competitive nature of the market”.

How will the competitive nature of the market impact on the information in a survey? How can that make the survey more or less expensive?

**Malcolm Chisholm:** It is the cost of the work, is it not?

**Mary Scanlon:** But the work is the same, whether there is low demand or high demand in the market. Surely it is about the quality of the survey.

**Malcolm Chisholm:** I should not have to lecture a Conservative about the merits of competition. That is a fact of the market, so it is not a great mystery.

Admirably, you concentrate on the poorest sellers, but those people are also the poorest buyers, who are the most vulnerable people and, arguably, the most in need of the single survey. I realise that if people concentrate on sellers, the single survey can appear to be an extra imposition. However, I point out, first, that sellers are also buyers and, secondly, that as the scheme works out the price will not necessarily be borne



only by the sellers. That cannot be enshrined in legislation. Again, I am afraid that some of that depends on the market and what effect it has on the price of the property and so on.

We must consider the matter in the round. I am not dismissing the point that the Scottish Consumer Council makes, but when we consider the single survey in the round we see that it is in the interests of low-income house owners as well as more affluent ones.

**Mary Scanlon:** I think that as I lectured on economics for 20 years I know a wee bit about markets and supply and demand. Perhaps the minister would like to tell me whether a survey is likely to be more or less expensive if a market is more or less competitive, and why?

**Malcolm Chisholm:** I imagine that a market will develop and that different prices will be offered. That is not something that we can predict with any certainty.

**Mary Scanlon:** It is the same survey whether the market is hot or cold.

Much has been said about the shelf-life of a survey. We have also been told that dry rot progresses at a metre a month. If someone does not sell their house for 12 months or two years, how often will they have to get a new survey done? That could be very costly for people with low-value properties in areas of low demand.

11:45

**Malcolm Chisholm:** Options for addressing that issue are still being considered. We could—dare I say it—do nothing and leave the market to resolve the issue. Alternatively, we could include a valuation in the single survey and create a mechanism for refreshing the valuation after a set period of time. Another option would be to exclude a valuation from the survey. I am not particularly attracted to that last option, but it is still being considered. Obviously, the stakeholders are involved in considering those issues—I am sure that the committee will approve of that—so let us see what they come up with. I suppose that I favour the second option of refreshing the valuation, given that the valuation is the element of the survey that is most likely to date quickly, but let us see what the experts say.

**The Convener:** The issue is of great interest not only to Mary Scanlon but to Christine Grahame.

**Christine Grahame:** I want to return to the issue of what the pack will mean for sellers who want to move but who do not have much money and whose current property is in an area that is not in high demand. In such cases, no firm of solicitors will carry outlays of the order of £700, £800 or £1,000. If four or five such properties are

to be sold, people will not even know whether they will sell. Nowadays, the practice is for solicitors to get those outlays up front and get the money in the bank in case the party concerned is unable to sell the house and the solicitor is landed with a bill for which no money is paid. After all, solicitors are also running a business. Although the pack is a good enough idea, the timing of it appears to me to be wrong. The problem is that the survey will need to be carried out before the seller knows whether there is a market for the property. Would it not be better if, as was suggested to us in evidence, the property was marketed and the pack was put together at the same time? In that way, the seller who was not getting any bites would not have to go to all that expense, which might need to be incurred again five or six months down the line.

**Malcolm Chisholm:** I noticed the similar proposal that was made by, I think, the Glasgow Solicitors Property Centre. The committee has not heard from any of my officials, so I will pass that question to Neil Ferguson, who is the expert on single surveys.

**Christine Grahame:** Perhaps that means that the minister did not like my question.

**Neil Ferguson (Communities Scotland):** The timing of the pack in relation to when the property comes on to the market is an issue. The problem with not presenting the valuation at the beginning of the marketing process is that the seller would not have the guidance of an upset price, so we would miss that objective. Also, such information is needed when the property is first marketed because it gives the seller the opportunity to effect any outstanding repairs. Obviously, if that information were not available up front, that opportunity would be missed. If sellers have the full single survey in their possession, they should be able to see what is wrong with their property and make amendments before putting it on the market. It will be in their interests to do that. For those reasons, the housing improvement task force felt that a pre-sale survey would be better than one that was carried out during the marketing process.

**Christine Grahame:** But how will someone who, say, bought their council house and has no capital pay for those speculative outlays when they will not know whether the property will sell? That is a huge issue. If, in the course of marketing the house and putting the pack together, some structural faults are found, they can be remedied or reflected in the purchase price or the seller can undertake to withhold money for the works that need to be carried out. Contractually, there may be ways round the problem. I am trying to be helpful to the person who wants to sell their house—I am not trying to be difficult, but this is a

huge problem that could lead to stagnation in the property market if it stops people working their way up.

**Malcolm Chisholm:** In the submissions that the committee has received, that is the only feature that would cause me concern. I am told that there is no evidence that the proposal would have that kind of effect, which would obviously not be desirable in any way. However, the concern that has been raised can certainly be reflected on further. As I said, I read the Glasgow Solicitors Property Centre submission, which I thought sounded like an interesting idea and I asked people what they thought about it. The issue can certainly be raised in the stakeholders group, but it does not seem to have found much favour given the objectives of the single survey. I would hope that payment arrangements can deal with the problem of people who do not have that money up front. I assume that your concern is that someone will be asked to pay right away and will not be able to do that. If someone has a house to sell, I assume that they will have money coming to them in the near future.

**Christine Grahame:** Only if they sell it. My point is that the solicitor or person acting will not risk their business. Perhaps they have five properties on their books and, with all the outlays that are going on, they will want the money.

On the business of the shelf-life, there are issues for lenders and not only in terms of valuations. It is all very well to have a structural survey, but not one that has been sitting around for four months or so. I suspect—the minister can advise me on the matter—that lenders are saying that a further survey will be required. They will not be happy to lend money on the basis of an old survey.

**Malcolm Chisholm:** We will have to see what the lenders have to say about that. As I said, different shelf-life options are being looked at. Most concerns at the moment are being expressed about the valuation.

**Patrick Harvie:** I will follow up on one of the points that Christine Grahame made before I move on. There was a difference of opinion between you and Christine Grahame. You said that, as people have a house to sell, payment arrangements could be made to reflect the fact that they have money coming in. Christine Grahame made the point that a business might not take that risk, because some properties will not sell. Even if the reality is closer to your argument, there will still be some interest payable or charge based on the fact that a company is taking on a risk. Would you accept that it is at least likely that people on low incomes will pay more for those surveys than people on high incomes?

**Malcolm Chisholm:** That is not a point that has been made before.

**Patrick Harvie:** So that has not been considered.

**Malcolm Chisholm:** No.

**Patrick Harvie:** Okay. I will move on by returning to my other favourite topic, energy efficiency—

**The Convener:** Mr Harvie, before you move on to that issue, I remind you that we have not finished our questioning on the single survey.

**Patrick Harvie:** I am sorry.

**The Convener:** As the convener, I have the responsibility of ensuring that all issues are explored properly.

**Patrick Harvie:** I am sorry, convener; I thought that you said I should move on to that section.

**The Convener:** In your enthusiasm, Mr Harvie, I will overlook it.

I want to ask about the exclusion from the requirement to have a single survey of properties that people are exercising their right to buy. The committee has taken some interest in evidence that to exempt properties of that kind is not in the interest of people who are exercising their right to buy, as they will be disadvantaged as a result. Although someone is living in a property, they do not necessarily know about all the structural difficulties in their home. What consideration did the Executive give to the issue and would you be willing to reconsider it?

**Malcolm Chisholm:** Certainly, a lot of consideration was given to it. I am always willing to reconsider, if the committee makes a case for a different arrangement. Obviously, difficulties may arise for some people if they have to pay up front. That was being impressed on me in the last discussion. Your question moves the discussion in the opposite direction. I am now being asked why I am not making people pay up front. Those people may feel that they do not need to do so, as they might have lived in their house for 10 or 20 years or whatever. Again—dare I say it—it is a matter of balance.

Certainly, we want more information to be made available. That is required in the bill. More information should be made available to those who seek to buy their council house or housing association accommodation. That seems to be the right approach. The objectives of the single survey on such issues as multiple surveys and low asking prices do not match the situation of someone buying their own house.

The approach that we have adopted is that more information should be made available. As I said, if

people want us to look again at the issue, I am happy to do so.

**The Convener:** Are you confident that the information that local authorities provide to people who exercise their right to buy will contain sufficient detail to enable the buyers to make a judgment about whether they will be able to maintain the property in future?

**Malcolm Chisholm:** We want to home in on the key area of property maintenance, so that people know what they are getting into when they buy a property. We require that information to be covered, why is why section 110 spells out the matter. However, the suggestion that there should be a survey for everyone in that situation would not meet the objectives of the policy.

**Patrick Harvie:** I have been chafing at the bit to ask about energy performance certificates—apparently it is now time for me to do so. The minister will be aware that the matter has arisen in the committee's previous discussions. The key issues appear to be the availability of staff who can carry out the certification and how the measure will be implemented. Previously it was thought that it would be implemented through the single survey that the bill proposes, but it was suggested recently that regulations under the Building (Scotland) Act 2003 will be used. Will you give us an update on those two issues?

**Malcolm Chisholm:** It will be implemented through regulations under the 2003 act. I am told that there are between 400 and 500 building control staff in Scotland. The task of ensuring that sufficient staff are trained will have to be undertaken and I am advised by the Scottish Building Standards Agency that it thinks that the work can be completed by 2007, so it hopes to use the derogation for one year. That might be convenient, because the timescale for implementation will probably be aligned with the timescale for the single survey.

**Patrick Harvie:** Has there been a decision on the one-year derogation, or is that still speculation?

**Malcolm Chisholm:** I am advised by the SBSA that that is their objective for ensuring that there is the capacity.

**Patrick Harvie:** Is derogation just the current expectation or is there clarity about when the decision will be firmed up?

**Malcolm Chisholm:** I think that it is the expectation.

**Patrick Harvie:** Okay. Friends of the Earth Scotland and the Association for the Conservation of Energy expressed concern about the use of the derogation and said that the situation would be clearer if the bill included targets, as did the Housing Act 2004 down south.

**Malcolm Chisholm:** Are you talking about targets for improving energy efficiency, rather than for the provision of information on the matter?

**Patrick Harvie:** Yes.

**Malcolm Chisholm:** I referred earlier to our target to reduce by 20 per cent the number of houses with poor energy efficiency by 2006. The position will be reviewed in 2007, using the Scottish house condition survey data. The Executive is currently producing an energy efficiency strategy for Scotland. You mentioned the English target. It can always be argued that such targets should be set, but the implementation of the target is creating difficulties in England—although that is not to say that a target is not worth considering. Work on energy efficiency is going on in relation to the strategy and the target, which is separate from the work on the bill.

**Cathie Craigie:** The bill promotes a co-ordinated approach to issues that affect private sector landlords, but it will allow local authorities discretionary powers to exempt certain types of HMO from the licensing system. Is that the best approach or should the bill set out the exempt categories of HMO without allowing local discretion to vary the approach?

12:00

**Malcolm Chisholm:** We expect the exemption categories to involve smaller, non-problematic HMOs, which are adequately covered by the provisions relating to landlord registration in the Antisocial Behaviour etc (Scotland) Act 2004, which I believe you know something about. Local authorities will decide whether exemption is an appropriate step given local conditions. We would not expect there to be major exemptions. We would only have exemptions in cases that were not covered by something else.

**Cathie Craigie:** You are confident that the correct balance will be struck.

**Malcolm Chisholm:** I have great confidence in the provisions of the Antisocial Behaviour etc (Scotland) Act 2004.

**Cathie Craigie:** Shelter Scotland wondered how effective a letting code would be because landlords would not be legally obliged to adhere to it. Do you have any comments to make on that?

**Malcolm Chisholm:** That is one way of putting it. Again, as you know better than I do, those landlords will have to be registered and, if they did not adhere to the code, they might find that they would not be registered.

**Cathie Craigie:** Why do I feel that the ball keeps getting kicked back into my court?

The bill allows for HMO licences to be given for a three-year period. Previously, the licences were given for a period of up to three years. Witnesses have mentioned that that allowed local authorities the flexibility to intervene if problems arose.

I know that local authorities have the power to revoke an HMO licence, but that could involve a lengthy legal process. Do you agree that it would be reasonable to leave the period as being up to three years?

**Malcolm Chisholm:** I have noted the various views that have been expressed on that matter. Going back to Mary Scanlon's point about private landlords, I would say that we must get the balance right in this area as well. We do not want to have overregulation—in that regard, I note that the National Union of Students supported the three-year provision—but, equally, I note that some local authorities wanted a shorter period. The City of Edinburgh Council was one of those, but I am told that it is now moving toward a three-year licence, so it sounds as if some local authorities are deciding that the three-year system is better.

If local authorities have serious concerns about the issue, of course I am willing to consider other options. However, in general, the arguments for having a three-year licence are stronger.

**Cathie Craigie:** It would be useful if there could be on-going discussions on the matter. I know that North Lanarkshire Council, which covers my constituency, feels that a more flexible approach might be appropriate.

Has the Executive considered the possibility of introducing a restriction on the number of HMOs that can be licensed in any given area? The committee discussed that with some of the witnesses last week. In certain areas of some university cities, there are many HMOs.

**Malcolm Chisholm:** That is a matter for local authorities, which have powers under planning legislation to restrict the number of HMOs that can be licensed in any given area if they want to. The Executive would not want to get involved in that area.

**Cathie Craigie:** Would that be something that local authorities would be expected to identify in a local housing strategy, for example?

**Malcolm Chisholm:** I do not think that we would expect local authorities to do that, but they could if they wanted to.

**Cathie Craigie:** Previous witnesses brought to our attention a black hole in respect of unregistered HMOs that provide shelter for migrant workers, who have no protection under the legislation. The reason why enforcement is impossible is that the place where the migrant

workers stay for the period in which they are working is not considered to be their principal home. I am sure that you would want to consider that matter. Have you done so and, if so, do you have any solutions?

**Malcolm Chisholm:** I noted the comment that the official from Dundee City Council made on that, but I had to inquire as to what point he was making, because it was not clear to me. If there is thought to be a problem with principal residence in such situations, we can examine the issue.

**Cathie Craigie:** I would appreciate that. COSLA says that the bill, like everything, will cost money to implement and that it will take time to set in place the necessary administrative back-up to implement the provisions on HMOs. The policy memorandum states that those provisions will be implemented around 2007, but COSLA says that 2008 would be a more realistic implementation date. What is your response to those comments?

**Malcolm Chisholm:** We want to provide a period of stability for HMO licences and I do not want to set an absolute date for implementation. I rather thought that I might be criticised for not implementing the new provisions before 2007, but 2007 is the earliest that we would want to implement them. Our objective is to implement them then but I am prepared to listen if the committee wants to make representations on that point.

**Cathie Craigie:** Some committee members have been involved in HMO licensing for a number of years now, as have some of the minister's officials. I am sure that the committee wants HMOs to be properly licensed and regulated, but that must be done to a realistic timetable. When HMO licences were first introduced, the Parliament and Executive were criticised for moving too quickly without due consideration of all the implications, so we must ensure that local authorities can deliver whatever we legislate for.

**Malcolm Chisholm:** I do not disagree with that.

**Linda Fabiani:** I might do.

**Cathie Craigie:** You do?

**The Convener:** We do not want any disagreements to break out between committee members at this point.

Legislation is proposed on mobile phones—sorry, I mean mobile homes, not mobile phones, which, fortunately, have not rung this morning—but the Executive seems to have taken its steer on the matter from a working party in England and Wales and does not appear to have taken into consideration the uniqueness of the sector in Scotland. Is it appropriate to copy the model that has been adopted in England and Wales?

**Malcolm Chisholm:** I cannot win on this: I am criticised if I do not copy England and if I do. We have slightly better protection against harassment, so I hope that we have improved on the English provisions, rather than the opposite. The bill gives ministers powers to make further amendment, so we will follow that up with consultation in Scotland. We have room to make further Scottish adjustments if that is what the committee would like.

**The Convener:** Is there a need to carry out research on the nature of mobile home accommodation, the conditions in which people live and what can be done for Gypsy Travellers and others who live in static or mobile homes on caravan sites throughout Scotland?

**Malcolm Chisholm:** We will research the evidence on other mobile home occupants. Shelter highlighted the situation for renters when its representatives came to the committee, and I have had a meeting with Shelter about the issue, so we will certainly carry out research to find out whether action is needed or whether we can use existing powers. For example, there might be a power in the Housing (Scotland) Act 2001 that enables us to take action on the situation for renters. You will be glad to hear that the focus on renters is beyond the scope of the current English activities.

I have already had one question on Gypsy Travellers. The answer to that question was that there was relevant provision in the 2001 act. We are still considering other issues that the Equal Opportunities Committee's report on Gypsy Travellers raised. In our response to that report, we said that a model tenancy agreement for Gypsy Traveller sites had been developed, but a process of consultation and policy development continues on the recommendations in general. We recently held a major conference on the subject, at which I spoke. I am not sure whether you want to know anything more specific on Gypsy Travellers.

**The Convener:** That is fine. The evidence that the committee heard last week from representatives of those who live in mobile homes and mobile home park owners and from Shelter suggested that the existing legislation needs to be reviewed and that research is needed into who lives in such places and what conditions they live in, to ensure that we have appropriate legislation that protects those who live in such accommodation.

**Malcolm Chisholm:** We will undertake the research, which is perhaps the necessary first step.

**Scott Barrie:** Last week, we heard evidence from several organisations in support of a rent deposit scheme, which the bill does not address. Will you comment on that evidence?

**Malcolm Chisholm:** To an extent, such schemes do not feature in the bill because we based the bill on the housing improvement task force's work. However, that is not a reason not to add them. In the bill, we have focused on the physical condition of buildings, but I am increasingly interested in rent deposit schemes. I have asked officials to examine models that might deal with the problem. I am keen to consider the options and we might produce a proposal.

**The Convener:** Do members have any outstanding concerns? Donald Gorrie has a matter to raise.

**Donald Gorrie:** Another idea that has been around that is not in the bill, and which might help with the single survey, is to encourage professionals to include in surveys hidden defects guarantees or insurance. If more of them did that, the market might operate better and buyers would have more confidence.

**Malcolm Chisholm:** I have noted that idea, which seems good in principle. I imagine that one related issue is cost. The idea is to be encouraged, but I am not sure whether we could mandate it.

**Donald Gorrie:** Providing encouragement would be a step forward.

**Patrick Harvie:** One argument that Shelter has made quite strongly is that although it welcomes the work on physical standards, it wants operating or management standards in the private rented sector. A rent deposit scheme is almost a step in that direction. Is the Executive open to exploring those ideas? Is the bill a suitable vehicle for such matters? If not, will another vehicle appear in the near future?

**Malcolm Chisholm:** We are very interested in standards in general in the private rented sector. We are encouraging landlords to be involved in the accreditation scheme and the bill has the letting code in reserve, which could address the issues that you mention, if the code meets the committee's approval. Provision exists for such matters. We have discussed implementation and the private rented housing panel's role in that. There is no doubt about our commitment to higher management standards as well as higher physical standards.

**Patrick Harvie:** That would cover enforceable management standards.

**Malcolm Chisholm:** Yes.

**Christine Grahame:** I add my support for the rent deposit scheme that Scott Barrie suggested and urge the minister to lodge an amendment to include that in the bill. As we all know, students, for example, often find that the rent that they have paid in advance is withheld when they leave a

property, sometimes for spurious reasons. Students are vulnerable; the only way for them to get their money back is to go to court, but they do not do that. I encourage the minister to consider the proposed scheme, which would cure a great unfairness.

12:15

**Malcolm Chisholm:** I am certainly keen to address the problem.

**Mary Scanlon:** My question returns to markets, supply and demand and money. The financial memorandum states that the surveying and legal professions will pass on to house buyers and sellers additional costs of

“Up to £35 million per annum”.

That is a huge amount. It also states:

“Reductions in purchase prices resulting from the better information could see prices in the first year being £120 million lower than they would otherwise have been.”

It is a bit of a shock for people who buy and sell houses to find out there will be additional costs of £35 million per year and that the value of houses on the market will fall by £120 million. Where did you get those figures?

**Malcolm Chisholm:** There are many assumptions in that. At one point, the financial memorandum refers to “a rational housing market”, although I am not sure that there is any such thing. The two sides of the equation are likely to exist in one form or another. We know about the cost of the survey, but we think that the advantages outweigh the cost.

I cannot tell you the technical steps that were taken to arrive at the figure of £120 million but I presume that it is based on the fact that, as we know, many houses are sold with hidden defects. Indeed, we are told that an enormous sum—I cannot remember what it is—is spent by people who buy new houses. From memory, I think that it is about £3,700 per year. I got it right—Archie Stoddart has confirmed that on a piece of paper. The assumption is that if people know that there are problems with a house, that will at least reduce the selling price, which seems to be a good deal for house buyers.

**Mary Scanlon:** The fact that people spend £3,700 in the first year does not explain the reduction in purchase prices of £120 million in the first year, resulting from better information.

**Malcolm Chisholm:** It does. I used the £3,700 figure to illustrate a problem that exists at the moment but which is hidden. In the new world, that hidden problem will become open and the assumption is that it will be taken into account in prices. Someone who knows that they will have to

spend money on a house will not pay as much as they would have paid if they thought that the house was in perfect condition.

**Mary Scanlon:** If people who are buying houses at the top end of the market know that house prices in Scotland are going to go down by £120 million, that might stop the housing market. People might think, “If I wait until Malcolm’s legislation comes through, I’ll get a bargain.”

**Malcolm Chisholm:** I am not sure what the figure translates into for one house in Scotland, but many buyers would be quite pleased if that was to happen to a moderate extent.

**Mary Scanlon:** A lot of sellers would not be as happy.

**The Convener:** Thank you, minister, for attending today and answering the committee’s questions.

12:19

*Meeting suspended until 12:25 and thereafter continued in private until 12:58.*

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