

# **COMMUNITIES COMMITTEE**

Wednesday 23 November 2005

Session 2

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## COMMUNITIES COMMITTEE 28<sup>th</sup> Meeting 2005, Session 2

### CONVENER

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

### DEPUTY CONVENER

\*Euan Robson (Roxburgh and Berwickshire) (LD)

### COMMITTEE MEMBERS

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

### COMMITTEE SUBSTITUTES

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

\*attended

### THE FOLLOWING GAVE EVIDENCE:

Brian Adair (Association of Residential Letting Agents)  
James Alexander (National Union of Students Scotland)  
Jamie Ballantine (Tenant Participation Advisory Service Scotland)  
John Blackwood (Scottish Association of Landlords)  
Rosemary Brochie (Shelter Scotland)  
Natalie Hoy (City of Edinburgh Council)  
Sarah-Jane Laing (Scottish Rural Property and Business Association)  
Derek Muir (Fife Council)  
Robert Steenson (North Lanarkshire Council)  
Mike Stimpson (National Federation of Residential Landlords)  
Jennifer Wallace (Scottish Consumer Council)  
David Webster (Glasgow City Council)

### CLERK TO THE COMMITTEE

Steve Farrell

**SENIOR ASSISTANT CLERK**

Katy Orr

**ASSISTANT CLERK**

Jenny Goldsmith

**LOCATION**

Committee Room 2

## **Scottish Parliament**

### **Communities Committee**

*Wednesday 23 November 2005*

[THE CONVENER *opened the meeting at 09:36*]

### **Subordinate Legislation**

#### **Private Landlord Registration Modification (Scotland) Order 2005 (Draft)**

#### **Private Landlord Registration (Advice and Assistance) (Scotland) Regulations 2005 (SSI 2005/557)**

#### **Private Landlord Registration (Information and Fees) (Scotland) Regulations 2005 (SSI 2005/558)**

#### **Private Landlord Registration (Appeals against Decision as to Rent Payable) (Scotland) Regulations 2005 (SSI 2005/559)**

#### **Antisocial Behaviour Notice (Appeal against Order as to Rent Payable) (Scotland) Regulations 2005 (SSI 2005/560)**

#### **Antisocial Behaviour Notice (Management Control Orders) (Scotland) Regulations 2005 (SSI 2005/561)**

#### **Antisocial Behaviour Notice (Landlord Liability) (Scotland) Regulations 2005 (SSI 2005/562)**

#### **Antisocial Behaviour Notice (Advice and Assistance) (Scotland) Regulations 2005 (SSI 2005/563)**

**The Convener (Karen Whitefield):** I open the 28<sup>th</sup> meeting of the Communities Committee in 2005. I remind all those present that mobile phones should be turned off. We have received apologies from John Home Robertson, who is unable to attend.

The committee will take evidence on the statutory instruments on the agenda, of which members received copies in advance of the meeting. We will hear evidence from a number of panels, the first of which comprises David Webster, who is the housing strategy manager at Glasgow City Council; Robert Steenson, who is the environmental health manager at North Lanarkshire Council; Natalie Hoy, who is the

divisional officer in housing inspection, enforcement and licensing at the City of Edinburgh Council; and Derek Muir, who is the housing development and strategy manager at Fife Council. I welcome you all to the meeting.

I will start with a general question about consultation on the regulations. I am sure that you are aware that the regulations are the result of amendments that were lodged at stage 2 of the Antisocial Behaviour etc (Scotland) Bill by Cathie Craigie, who is a member of the committee. Concern was expressed at the time that the amendments were accepted without there being consultation on the issues. Was that criticism justified? Has the Scottish Executive consulted effectively on the issue to take into account the concerns of local authorities and to ensure that the proposals are workable?

**David Webster (Glasgow City Council):** We in local government were concerned about the proposals at the outset, because we could see what a big administrative task it was going to be to implement landlord registration. However, the Executive has been co-operative and consultative in its approach. We are almost fully satisfied that the Executive has taken our concerns on board and that the consultation has been thorough.

**The Convener:** The Executive has been keen to ensure that the regulations have a light touch. Has that been achieved?

**Robert Steenson (North Lanarkshire Council):** The challenge has been to have a light touch, while achieving the form of regulation that was envisaged when the amendments that introduced the registration scheme were made to the bill. That was a challenge for the Scottish Executive, but it has achieved the aim. I cannot speak for private landlords but, from the point of view of local authorities, the approach has as light a touch as I would wish in the circumstances. Given the scheme and the issue with which it deals, there could not have been a much lighter touch.

**Derek Muir (Fife Council):** I must state that the view that I will express is not necessarily that of the Convention of Scottish Local Authorities; it is the view of Fife Council, as a contributor to the COSLA response. Fife Council has concerns about the light-touch nature of the regulations, particularly with regard to the fit-and-proper-person test. We feel that onerous duties are being placed on the council, that the competence tests go beyond what should be covered through self-certification and that the landlord will still be in the position of power in the relationship between landlord and tenant. A person who is included on the council's register of private landlords will be regarded as council approved, which may expose

the council to an unfair risk should problems occur subsequently.

We propose several changes to enhance the fit-and-proper-person test. We incorporated those proposals in our response to the consultation exercise, although I am happy to run through them if that is what the committee wants. Alternatively, we could retable them. We want to ensure that all persons who own property that is subject to let are subject to the scrutiny arrangements. In many cases, companies own such property, so we ask that the directors and partners of companies that own property, whether or not it is let through an agent, should be subject to the rigours of registration. Further, at the least, a disclosure check should be required for all landlords who seek registration. There are several other issues that we wish to be taken into account in relation to the fit-and-proper-person test, but those are covered in our response to the consultation.

**The Convener:** Several of the issues that you raise will be covered by members during our questioning.

**Cathie Craigie (Cumbernauld and Kilsyth) (Lab):** Mr Muir, when you say that all owners of property that is subject to let should be approved and registered, what type of property are you talking about?

**Derek Muir:** I am talking about owners of property that is subject to private let.

**Cathie Craigie:** Are you talking specifically about housing property, or do you mean commercial property, too?

**Derek Muir:** I mean housing property.

**Cathie Craigie:** So you disagree with the exemptions.

09:45

**Derek Muir:** We have a range of views on the exemptions, most of which align wholly with COSLA's response, and I suspect that they could be drawn out through discussion.

**Tricia Marwick (Mid Scotland and Fife) (SNP):** Are you satisfied with the list of exemptions? Should there be more of them or do you believe that some of those who are exempt should not be?

**Natalie Hoy (City of Edinburgh Council):** COSLA is comfortable with the exemptions that have been set out. I am not sure what the Fife perspective is, but COSLA is satisfied.

**Derek Muir:** We accept that holiday lets are exempt, pending further information being made available. We are looking for a timetable to be set for that information to be gathered. Ultimately, we would like holiday lets to be incorporated into the

registration arrangements. Where I come from in Fife, a number of the holiday lets quickly translate into mainstream lets between September and May, so we do not wish holiday lets to be treated any differently. We would also like properties linked to employment to be incorporated fully into the scheme.

**Tricia Marwick:** I understand that the Executive decided to exclude holiday lets from registration until further evidence had been gathered. We have heard Mr Muir's views about that, but do COSLA and the other councils share Fife's concerns about holiday lets?

**Robert Steenson:** We share concerns about exemptions overall. When one class of property is exempted from a registration scheme, that could be perceived as being disadvantageous to those property owners who are brought into the scheme. We have to remember that a brand new regulatory scheme is being introduced that will catch in its net the vast majority of landlords in Scotland. Local authorities do not have a difficulty with administering the scheme for those landlords who are not exempted, but we want to monitor the effect that the exemptions have on the overall scheme and review it at the end of three years.

As Mr Muir said, rather than asking for all classes of property to be included now, we would like a schedule for the gathering, monitoring and review of evidence by the Scottish Executive. We are comfortable with the exemptions at present as long as we address the issue of holiday lets at some future point to decide whether they have to be included in the regulatory scheme or whether others should be exempted.

**Natalie Hoy:** From Edinburgh's perspective, I agree with my colleague that we are looking for some timescale to be set out by the Executive for a review of the exemption for holiday lets.

**Cathie Craigie:** The act and the regulations allow the Executive to give the power to local authorities to give advice to landlords. Is the advice and information that the Executive envisages will be given by local authorities adequate?

**David Webster:** Although the regulations state that the advice given and the finance raised from fees must be confined to what is required for the purposes of administering the registration scheme, which is right and proper, there will obviously be pressure on local authorities to deliver a more comprehensive advice service. For example, the possibility has been raised of providing advice to tenants via the address list that we will acquire as a result of the registration scheme. There will be no finance for that from the registration scheme, so the question arises how local authorities will be

able to respond to the demands that will be made to deliver more comprehensive advice.

**Cathie Craigie:** Do local authorities give advice to private landlords at the moment?

**Natalie Hoy:** In Edinburgh, we provide a range of information to tenants and landlords and it is quite a resource-intensive undertaking. We would welcome some consideration of additional resources for that. We would provide information to tenants and landlords in the form of model leases, training programmes and so on. However, it takes a lot of staffing and resources to do that.

**Cathie Craigie:** But you do that anyway, so the regulations should not put much of an extra burden on local authorities.

**Natalie Hoy:** What we do at the moment is in a limited capacity. The potential numbers of landlords and tenants to whom we would have access through the new regime and any other actions mean that additional resources would be required.

**Robert Steenson:** Most advice and assistance will be common sense, and people would rightly expect a local authority that is administering a scheme to provide advice and assistance. However, at the moment, we do not provide detailed advice and assistance to people who are subject to enforcement under the regulations. What I am referring to is more than the broad advice and assistance that would be given to a private landlord operating in a regulatory regime; it is the advice and assistance that we are required to give if we serve notices on the landlord, or refuse or revoke their registration. The service that we want to provide to landlords would be resource intensive because the whole purpose of the regulations is not to prosecute and penalise people but to bring them back into line and get them to operate as responsible landlords. We feel that it is important to put the resource into providing such a service.

**Euan Robson (Roxburgh and Berwickshire) (LD):** Mr Muir, I did not pick up your point about disclosure checks. Are you suggesting that every landlord should go through the disclosure check process with Disclosure Scotland? I might have misunderstood what you were saying. How many pieces of paper do we need landlords to obtain? There has to be a certain proportionality in our regulations. Forgive me if I misunderstood what you said. Could you amplify the point that you made earlier?

**Derek Muir:** There is no misunderstanding. Fife Council is asking that disclosure checks are undertaken on landlords. We are concerned that the information that is currently required for registration through the self-certification process is not enough. The onus is being put on the local

authority to use its own resources and those of its partners to check whether there is any failure to disclose accurate information on the part of the landlord at the point of registration. That is an extremely time-intensive and onerous task for the local authority and if it is not properly undertaken, it could leave the council exposed if there is subsequently a problem with the landlord. It might even leave the council liable for its actions in approving a landlord. Certain tests should be incorporated as standard, and the Executive should regulate for them. A disclosure check is one of those tests.

**Euan Robson:** Is that COSLA's view or is it just the view of Fife Council?

**Derek Muir:** It is not a common view in COSLA.

**David Webster:** It is not the view of COSLA. COSLA's view is that the system needs to be kept as administratively simple as possible. Naturally, different local authorities have different perspectives. Particularly in Glasgow and Edinburgh, the private rented sector is large and dynamic. In Glasgow it has been growing at the rate of 2,000 a year. We know that it will be a big job keeping the registration exercise manageable for both sides. We do not want to complicate it unduly or do anything to obstruct the growth of the private rented sector, which is playing a constructive role in regenerating the city.

**Euan Robson:** There is a view, to which I do not necessarily subscribe, that we all ought to be disclosure checked, because people are calling for disclosure checks for virtually everything these days. However, Disclosure Scotland is having difficulty coping as it is, so to hear that landlords would all have to be disclosure checked is something to comprehend, particularly given the numbers of landlords that may have to go through the process. It is an interesting view, but I do not share it.

I take the point about liability. If you are saying that the council feels that it would somehow be liable if it accepted self-certification—for want of a better phrase—and something subsequently went wrong, the Executive ought to address that. I do not see that the council would necessarily be liable for a statement that has been made by others or that the council would necessarily have to check the statement. That should not be part of the council's duty. If subsequently a difficulty arises and the landlord has misstated or misled in its statement, surely the liability rests with the landlord for making a false statement, not with the council. However, if there is doubt about that, the committee ought to ask the Executive about it.

**Patrick Harvie (Glasgow) (Green):** I will pick up on that briefly. To an extent, I see where you are coming from, Mr Muir, but the concerns about

the pressure on the disclosure system are serious. Would having the facility to require a disclosure check when there was reason for concern about an individual go some way to addressing your concern?

**Derek Muir:** That would go some way towards addressing the concern. The other issue that we ask the Executive to consider is whether it could specify in clearer terms the aspects of the information that landlords are required to submit and certify to that are subject to follow-on checks and those that are considered more straightforwardly acceptable on a self-certified basis. That would help to bring a degree of consistency to the national position and would help to overcome some of Fife Council's concerns.

**Mary Scanlon (Highlands and Islands) (Con):** Information is one of the major issues that tie in with resources, bureaucracy and the time that councils will have to give to this. Many of you mentioned the light touch in your opening statements. What is needed is a balance between the light touch and getting sufficient information to weed out rogue landlords. I will continue with Euan Robson's line of questioning, while not repeating anything. We have been informed that a local authority can ask an applicant for a standard disclosure. As things stand—forgetting the idea of everyone needing a disclosure check—what is your understanding of the circumstances under which you could seek a disclosure check?

10:00

**David Webster:** It is important to realise that a local authority has sources of information other than the form that comes in from the landlord. There is quite a high level of interest among elected members in the registration scheme in Glasgow, as a small minority of tenancies are giving cause for concern. It is unlikely that a disclosure check would be asked for, except when some other reason has come to light why registration should be queried—that is, if the property is causing concern to complainants, who may be the police or a local community council.

**Mary Scanlon:** Is the current system capable of delivering that information to you in circumstances in which you may seek a disclosure check? Do you have access to sufficient information?

**David Webster:** Yes. The arrangements that are set out in the regulations are satisfactory and will enable us to follow up concerns.

**Mary Scanlon:** Does Mr Muir agree with that?

**Derek Muir:** We remain concerned that the council will be exposed to the risk that at a later date it will be perceived that it would have been reasonable—what is "reasonable" is difficult for a

local authority to define—for the council to have followed through and requested a check against the self-certified information. I agree with my colleague that a council, through its own resources and those of its partners, has a significant array of sources of information on which it can call. However, there are issues regarding the ways in which the different sources of information communicate with one another and can be relied on to throw up the right information at the right time, which is at the point of registration. That is a difficulty for us.

I agree with my colleagues that the process of registration will also, initially, be onerous on staff time and resources. There are issues relating to the financial framework that will support the process, at least during the initial years of its operation.

**Mary Scanlon:** Scott Barrie will address the issue of fees, so I will not stray into that area.

Mr Muir, you raised a point about directors of companies. I just had a quick look at schedule 1 to the Private Landlord Registration (Information and Fees) (Scotland) Regulations 2005 (SSI 2005/558). Paragraph 5 states that the identity of other joint owners has to be given, as well as

"which one of the joint owners is to be designated as the lead owner".

When the applicant is a company, the company registration number also has to be given. Is that still not sufficient information to trace rogue landlords? Should we require more information than is required in schedule 1?

**Derek Muir:** I am conscious of the fact that the views that have been expressed by colleagues in COSLA differ in their emphasis. Fife Council has expressed the view—to COSLA and to the Executive, through the consultation process—that there are risks associated with directors of companies operating their landlord business through agents. We do not think that it is unreasonable, in addition to the measures that you have outlined, to ask the directors of companies to be incorporated into the registration framework.

**Mary Scanlon:** Cathie Craigie has given the example of some people in her constituency who have earned money through selling drugs investing in properties and renting them out. They are not what we would call good landlords. Are you saying that the statutory instruments that we are considering today will not stop that? Are you saying that there is not sufficient information to weed out the landlords whom we are hoping to weed out, who exploit vulnerable tenants? Do you want further information to be made available in addition to what is required in schedule 1 to SSI 2005/558?



**Derek Muir:** I refer back to my previous statement. We would like the owners of property and the directors of companies—notwithstanding how they manage their landlord business—to be incorporated into the registration framework.

**Mary Scanlon:** In other words, you are saying that we are not achieving what we are setting out to achieve. You are saying that the information that we have may not be getting at the people whom we are attempting to get at.

**Derek Muir:** Yes.

**Mary Scanlon:** So you are saying that we are not achieving our objective. You are saying that there could be an agent or front man who would act for a company that has earned its money through illegal means, and the people behind that company can stand back and have the operation done by an agent without us being able to get at them.

**Derek Muir:** That is Fife Council's view, but our view—in emphasis, anyway—is at variance with the view submitted by COSLA.

**Mary Scanlon:** Your answer has been helpful. It is a matter of concern and we have to think about achieving balance and about how light a touch we want to have.

**The Convener:** Before we move on, we need to be clear that that is the view of Fife Council. Do any of the other council representatives take a different view from that which has been expressed by Mr Muir?

**David Webster:** We do. It is a question of what level of guarantee a local authority gives to the public in granting registration. It is important that people understand the process. We cannot guarantee that nobody will give us false information and acquire a registration that we would not otherwise have given. However, I reiterate that most of the information that will trigger refusal of registration or deregistration will come from knowledge about what is happening in specific properties. A case would be taken from there and all the relevant information would be acquired starting from that point, going into what the landlord did and did not disclose. We would then decide what further information we need about the landlord. We do not foresee any particular difficulty in carrying out that process in Glasgow, based on the regulations that the Executive has drafted.

**Natalie Hoy:** City of Edinburgh Council supports that position.

**Robert Steenson:** Offences are only a small part of the fit-and-proper-person test. There is a lot of other information that a disclosure check would not divulge to us, and to require a disclosure check of the vast majority of landlords—who are

law-abiding people who run businesses renting out property—would be to use a sledgehammer to crack a nut.

**Scott Barrie (Dunfermline West) (Lab):** As Mary Scanlon did, I want to explore the fees in the registration scheme. The Executive's intention is that the scheme will be self-financing. Will it be?

**Robert Steenson:** The intention is that the scheme will be self-financing, but it is clear that it cannot be self-financing from the outset. If it is to be self-financing, it will have to be dependent on fees from registration. A huge amount of preparatory work will have to be done before we will receive a single penny in fees, so start-up funding from the Scottish Executive will be essential.

Secondly, if the scheme is to be self-financing, local authorities must be able to estimate costs over the following three years and to set a licence fee according to the number of landlords in their area. As the scheme is set out at present, a principal fee will be charged. Landlords who have properties in different local authority areas will get a discount and there will be a discount for online applications. However, we do not have enough information to determine the number of applicants who will be eligible for those discounts so, in setting our fees, we will have to make an estimate. I do not agree that the scheme will be self-financing, especially in the first three years. It will be easier in the second three-year term because we will have more information on the number of landlords and we will know how many are eligible for discounts. I do not see how the scheme can be self-financing in the first three-year term.

**Scott Barrie:** Is that a common view?

**Natalie Hoy:** The City of Edinburgh Council agrees that fees for landlords need to be kept at a reasonable level and that the knock-on effect on tenants should be minimised. However, it is essential that local authorities be supported and that resources made available to implement the scheme. As my colleague Robert Steenson indicated, a lot of work is required before implementation, including gathering of information and assessment prior to registration of landlords. That work is resource intensive, so we are keen for the Executive to support local authorities on the matter.

**Scott Barrie:** On consistency, there is unlikely to be a flat-rate fee. Local authorities will determine their own fees within the framework that has been set. COSLA says that the fees must be seen to be fair to large landlords and to small landlords and between neighbouring local authorities. Will the framework help us to achieve that, or should it be more prescriptive?

**David Webster:** The biggest problem is that there are a number of uncertainties, particularly about revenue. On the cost side, it is not too difficult to work out a reasonable level of staffing and a reasonable cost, but the revenue that will come in from the fee structure is more unpredictable.

The Executive has usefully said in the regulatory impact assessment that one of the big uncertainties will be dealt with directly—I refer to the income that will be lost due to the 75 per cent discount that will be given to landlords who have properties in several local authority areas. They will have to pay the full principal fee only in the main area in which they operate. The Executive says that it will remove that uncertainty by making up that money to local authorities.

However, there are considerable uncertainties about the size and structure of landlords' portfolios in particular areas. In Glasgow, we usually get good information from national surveys, but the only information that we have on landlords' portfolios is pretty old—in fact, it is the information that the Executive used. The amount of money that will be produced by the fees that we set could vary by a fair amount. The Executive has said that it will meet start-up costs, although it did not say that it will meet 100 per cent of those costs, so we are a bit concerned about whether they will be recovered in full from the Executive. There are some uncertainties but it is possible in principle for the scheme to be self-financing.

**Cathie Craigie:** Mr Steenson, when you responded to Scott Barrie you said that the scheme will not be self-financing in the first three years. The Executive has been in discussions with local authorities about meeting the start-up costs. Did those discussions take into account the first three-year period?

10:15

**Robert Steenson:** Yes. The grant that the Scottish Executive has alluded to is to cover the first three-year period. In the main, the discussions have been about start-up costs and, latterly, about funding to cover the uncertainty of the 75 per cent discount fee. We are in discussions with the Executive about that, but we have had no discussions about the level of support that we will get for start-up costs or for the costs that we cannot reasonably estimate over the initial three-year period. As has been stated by both my colleagues, it is essential that we keep the registration fee as low as possible. However, we also have to ensure that we can cover the costs to each local council. The scheme has to be set up to be self-financing. We certainly want the Scottish Executive to ensure that the uncertainties are covered, and not to expect us either to include

them in the budgets of individual councils or to pass them on to landlords in the first three-year period.

**Scott Barrie:** Do you have any concerns that the fee structure as proposed may disproportionately affect some types of landlords, or will it adequately encompass the vast range of different landlords in Scotland?

**Robert Steenson:** The fee structure has been set to get as small a principal fee as possible. The fee will then be built up based on the number of properties a person has, which should minimise the impact on smaller landlords. A large principal fee and a small fee for property would unfairly penalise the smaller landlords. The fee structure goes some way towards addressing such issues.

**Natalie Hoy:** I support my colleague's comments. The initial concern was that a high principal fee might discourage landlords from coming in to private renting. The Scottish Executive has been able to strike a balance that we hope will encourage landlords still to come into the market.

**Cathie Craigie:** Other schemes that local authorities have to run for licensing regulation are self-financing. Why should private landlords be treated differently from other people who are in business?

**David Webster:** I think that we are agreed that in principle they should not. We are just saying that the uncertainties of running the registration scheme mean that it is quite difficult to change the theoretical objective at first try for the first three years.

**Cathie Craigie:** I move to the part of the regulations that will give local authorities powers in dealing with penalty notices as a result of registration or antisocial behaviour. Are the obligations that will be placed on landlords clear and appropriate? Do the proposals ensure that adequate support will be given to tenants who may be involved in the appeal process, particularly tenants who find themselves financially excluded?

**Robert Steenson:** The provisions in the regulations place a fair amount of responsibility on local authorities to ensure not only that they assist the landlords but that they assist the tenants of those landlords whenever we impose some form or regulatory control. From our point of view—and that of the working group that has been considering the registration schemes—action in respect of a rent penalty notice, for example, would only be taken after consultation of all the agencies that deal with housing benefit and debt advice. The effect on the tenant would also be considered carefully, because imposition of a rent penalty notice can be as much of a penalty on the tenant as it is on the landlord. No one would treat

that lightly and no one would consider that the regulations were too onerous in the burden that is put on councils to advise people, to give them direction and to put them in touch with all the relevant agencies before that action was taken.

In placing the burden of providing advice and assistance on councils, we are taking the right approach. It is right and proper not only that councils should provide advice on and assistance with the scheme, but that they should suggest to people that they should consider debt advice and housing benefit advice. We have no problem with that aspect of the regulations.

**David Webster:** We have no idea whether the rent penalty notice will be at all effective in cases where the tenant is not receiving housing benefit. In such cases, it would be up to the tenant to withhold the rent from the landlord. Although the notice would say that no rent was payable, it would not automatically follow that the tenant would withhold the rent—some tenants might decide that they do not want to get involved. Most of the concern about the position of the tenant relates to tenants who are receiving housing benefit and whose housing benefit will be cut off. As soon as the notice goes out, housing benefit is cut off and the tenant is in the thick of a conflict. Local authorities recognise that in such situations they will have considerable responsibility to advise and support tenants. The scenario may play out completely differently in cases where housing benefit is not involved.

**Cathie Craigie:** As Mr Steenson said, that situation is a long way down the road. The issue would have to be serious before a council would press for a notice to be issued. I presume that it would give the tenant advice on how they should proceed, so that the tenant supported the council's action.

**David Webster:** It would depend on the reason why registration was being withdrawn. A person might have such a bad criminal record that it was felt that they could not be registered, although their tenancies were not giving rise to problems. A tenant might be unaware that the landlord had a criminal record and might be wondering what the action was about. In such a situation, the tenant would have to be given quite different advice from that which would be given if they were the subject of complaints about antisocial behaviour and so on and were about to lose their housing benefit. Diverse situations could arise.

**Cathie Craigie:** I am sure that we will want to discuss that with the minister when he or she gives evidence in a few weeks' time.

The committee has heard concerns from witnesses about how a tenant who was not paying rent directly to their landlord could manage

withholding of rent. The committee hoped that a scheme would be devised to allow a third party to take the rent. The Scottish Executive believes that a range of practical problems would be associated with such an arrangement and that it is more important that tenants seek practical advice on money matters. What do you think about that? Should we leave it to the tenant, or should a third party be involved?

**David Webster:** I will say my piece before I hand over to my colleagues. There is a weakness in the regulations as drafted. Glasgow City Council suggested that, in the circumstances that you have described, the proposed national rent deposit scheme should be used as the repository for rent payments. That scheme would include all the administrative structures and procedures that would be required to hold rent securely under guarantees. It is unsatisfactory that there is no clear way in which the tenant will be protected from a situation in which they run up a lot of debt and have considerable subsequent problems.

**Cathie Craigie:** I will throw another question at you. You are all experts in housing. The Scottish Executive is telling us that there will be difficulties, but we do not yet know what they might be—we will question the minister. How could you work a scheme whereby a third party held the rent?

**David Webster:** Tenants would have to co-operate in such a scheme—a tenant could just refuse to pay their money into the scheme. Ideally, we would offer the tenant an easy system for depositing the rent, so that they would not notice anything happening. It would be awkward and expensive for each local authority to set up some kind of fund or trusteeship to hold rent in the circumstances that we are talking about; there would not be many such cases. We cannot see why the national rent deposit scheme should not be used. It would be an open door. It is, as they say, a no-brainer.

**Euan Robson:** There is scope to interpret the parameters of some management control orders. Are you content with the definitions in respect of improvements to bring a house to the tolerable standard? I want to hear your preliminary views on that before I ask you a few more questions about the tolerable standard.

**David Webster:** We had a bit of debate about the tolerable standard. It is simply an option for the local authority to bring a house up to the tolerable standard. That has been included to avoid a situation whereby the local authority has responsibility for a property but is operating it in a condition that is not acceptable to the public. In such circumstances, the regulations give the local authority the option to raise the house to the tolerable standard.

We were concerned about the opposite problem in that the costs of raising a house to the tolerable standard could well be large; to do so could be totally impractical. If we were talking about a single flat in a tenement, there would have to be a comprehensive scheme to make the whole close tolerable, which could not be undertaken in the available time. The drafting is all right, because it does not impose an obligation.

However, there is for COSLA an important issue about recovery of costs in relation to management control orders. The clear view from COSLA is that the costs that will be incurred should be recoverable through a charging order. That would require an amendment to the Housing (Scotland) Bill, which is going through Parliament, but no such amendment has yet been lodged. We do not know whether the Executive intends to do so, but we definitely want that to happen. Charging orders are contained in two amendments that the minister has lodged for stage 3, but they would apply only to the exercise of powers in the Housing (Scotland) Bill. In order for the charging orders to apply to the recovery of costs in relation to management control orders under the Antisocial Behaviour etc (Scotland) Act 2004, another principal section would have to be added to the housing bill.

**Euan Robson:** That is intriguing, because the Housing (Scotland) Bill will be debated at stage 3 tomorrow and the time to lodge amendments has passed, so I am not able to address your point specifically.

I see the point that you are making about the tolerable standard. However, let us say that you have to take over a house. As I understand it, the period for the order could be up to one year, but that encompasses the winter. If I remember correctly, there has to be some form of heating in a property to allow it to reach the basic tolerable standard. You then discover that, for example, the gas central heating system breaches gas safety regulations and will cost £3,000 to £4,000 to replace. Are you content that, in such circumstances or in circumstances in which there might be a danger of discovering dry rot or some such thing, the council can recover its costs? I am not convinced in that respect. Are you also quite clear about where obligations rest in such circumstances? For example, do the regulations or any guidance that has been issued allow you to know where the boundaries lie?

10:30

**Robert Steenson:** It is right and just for local authorities to have the power to bring a house up to the tolerable standard, which is, after all, a minimum standard. As for the example that you highlighted, the council would not be required to

replace the central heating system. Instead, it would be required—quite rightly—to make the system safe, which might mean decommissioning it, and then to provide a different form of heating such as space heaters in a room. It would simply bring the house up to a minimum standard in order to make it habitable.

The tolerable standard requires houses to be “substantially free from rising and penetrating”

dampness. As a result, minor dampness issues would not be addressed. However, if water is pouring in through someone’s roof, it is not right and proper for the council to continue to generate an income from that property while leaving it in such a condition.

On recouping our work costs, we would not refurbish properties and then charge people tens of thousands of pounds. Instead, we would simply keep costs to a minimum by ensuring that the house met the minimum expected standard. It is only right that we can recoup such costs from the landlord. As one of my colleagues said, COSLA feels that a charging order should be placed on a property if a landlord refuses to pay those costs.

**Euan Robson:** I agree entirely that you must be able to recover costs and that you are required to raise the house only to the minimum standard. However, do you believe that—how can I put it?—the definitions not only give you flexibility in certain circumstances, because after all each situation is different, but ensure that you are not drawn into refurbishment issues? In other words, are the definitions sufficient to ensure that there is little ground for dispute over what a council has or has not done in a house?

**Robert Steenson:** The definitions are certainly sufficient at the moment. After all, the landlord can challenge our decisions, because we cannot carry out works without his knowledge or without providing him with information about what we intend to do.

**Tricia Marwick:** I do not know whether it is just me, but I am getting confused about the whole subject. We are discussing management control orders that are made under antisocial behaviour legislation. The authorities can apply for a management control order only when a landlord fails to comply with an antisocial behaviour order. Given that the management control order is expected to last for only 12 months, is it reasonable to expect the local authority under the terms of the order to carry out repairs in such a short time to bring a property up to the tolerable standard?

**David Webster:** The order will last for 12 months, so, no, I think—

**Tricia Marwick:** The thrust of my argument is that the issue centres on antisocial behaviour, not on the standard of a property. Other legislation will deal with the latter issue. Is it reasonable to use a management control order made under the terms of antisocial behaviour legislation to improve radically the standard of a property?

**David Webster:** First, I should say that we think that the regulations have been correctly drafted and that we need them. As you say, the object of introducing management control orders is to deal with antisocial behaviour. However, if the local authority is responsible for managing the property, it cannot be open to criticism that it is running a totally unsatisfactory property. We cannot run substandard properties, except in circumstances that are clearly beyond our control. If we are responsible for a property, we must take reasonable steps to make it reasonably habitable. That is why there are such provisions. In practical terms, I do not think that we foresee any difficulties in operating them.

**Euan Robson:** I am sorry to dwell on the point, but the Executive's note on the regulations states:

"If the house is below the tolerable standard ... there may be cases where the work is not sufficiently urgent to justify their carrying it out during their short term responsibility for the property".

All kinds of judgments must be made, but you are saying that you are content that there is capacity to make those judgments either to repair or not to repair in certain circumstances and that you do not think that there will be potential for many disputes because the regulations are adequately worded. Is that fair?

**David Webster:** Yes. We do not think that there will be many disputes. We must see things in context. Unlike many other local authorities, Glasgow City Council still has a substantial number of properties that are below the tolerable standard anyway, so nobody is expecting everything to be dealt with overnight.

**Scott Barrie:** Is the range of actions that local authorities can take to recover costs under the Antisocial Behaviour Notice (Landlord Liability) (Scotland) Regulations 2005 sufficient to address the nature of antisocial behaviour?

**Natalie Hoy:** COSLA's general view is that the range of actions would be sufficient to recover costs, particularly with the local authority providing professional witnesses, for example. The provisions would be reasonable if a landlord was not providing assistance to the local authority.

**Scott Barrie:** You believe that recovering costs through the normal debt process is okay.

**Natalie Hoy:** Yes.

**The Convener:** I have questions about the Antisocial Behaviour Notice (Advice and Assistance) (Scotland) Regulations 2005. Will the advice and assistance that it has been proposed should be provided to landlords be sufficient to allow them to address antisocial behaviour before there is an obligation on, or the need for, a local authority to introduce an antisocial behaviour notice?

**Robert Steenson:** I think that the answer to that question is yes. Before a local authority serves a notice, the regulations put an obligation on it to work with and try to advise and assist the landlord. Any responsible local authority would do that anyway, so the regulations merely state what our good practice should be.

In North Lanarkshire, we would certainly work with a landlord before we decided at any point to go down the route of taking enforcement action because, as we discussed earlier, taking enforcement action has ramifications that go far beyond those that affect the landlord—such action will affect the tenant and it could affect the property itself. Therefore, it is the last resort and we would certainly try to advise the landlord using our mediation services, advisers, antisocial behaviour teams and housing strategy teams. In North Lanarkshire, most of the people who do not behave responsibly do so because of a lack of knowledge rather than a lack of will. The vast majority of landlords will start to behave in a proper manner if there is advice and assistance and if they can see the ultimate sanction coming down the line.

**Natalie Hoy:** I agree with the comments of my colleague in that most landlords with particular problems whom the City of Edinburgh Council has approached have been keen to be provided with information or to attend any training sessions that we might be able to provide. There is a commitment that, in the majority of cases in which the local authority provides support, landlords will benefit from having access to that support.

**The Convener:** In my experience, the antisocial behaviour unit in North Lanarkshire is highly effective, so I assume that it would have the capacity to provide effective assistance to private landlords when antisocial behaviour issues arose. If North Lanarkshire Council had sufficient capacity to do that, would COSLA say the same about all Scottish local authorities?

**Robert Steenson:** If we are talking about capacity, the first point of contact for a landlord in that position would probably be the team that deals with registration, which would give the landlord advice on properly managing their lets. North Lanarkshire Council would have sufficient capacity to deal with cases involving antisocial behaviour. Most councils have antisocial

behaviour teams that are dealing with rogue landlords at present, without the back-up of the proposed regulatory regime, so I think that the new regime will bolster the action that councils are already taking.

**The Convener:** I think that Tricia Marwick has some general questions.

**Tricia Marwick:** They are about holiday lets, which I dealt with earlier. Are you content that the subject of holiday lets will be left to consultation or do you think that there are issues that need to be addressed in the short term?

**Natalie Hoy:** COSLA's view is that we are satisfied that there will be a review of the holiday lets situation and that any loopholes that might be created by their exemption will be closely monitored. Local authorities will assess whether landlords are using the definition of a holiday let to avoid registration and will report back. If there are any antisocial behaviour aspects to such practice, they will be monitored and reported on, too.

**Cathie Craigie:** The panel has suggested ways in which the regulations could be improved. However, the committee and the Parliament can only agree to the regulations or disagree to them. From your experience, do you think that it would be better to agree to them now and have the review in three years or to hold out to have the minor amendments made?

**David Webster:** The concerns that we have are probably not about the wording, so we would support the regulations and urge the Executive to continue to be as good as it has been up to now in listening to and responding to our concerns. We emphasise that implementing the registration scheme will be an on-going problem. The scheme will not be signed and sealed simply as a result of the completion of the legislative structure; that is when the implementation problems will start. We will need continuing support from the Executive.

**Robert Steenson:** In most cases, the devil is in the detail. The detail will emerge in the guidance that is provided to local authorities on how to apply the regulations. It is important that the Executive should acknowledge that by ensuring that the guidance is clear and explicit and that it takes on board the comments that we have made today.

**The Convener:** Shelter Scotland has suggested that the guidance should clarify the relationship between the private rented housing panels and local authorities. What is your response to that? Do you share Shelter's concerns?

**David Webster:** There is some concern about the matter. We will need to liaise closely with the panels because, in instances of disrepair in which health and safety are involved, local authorities will still have some powers to take immediate action.

There is certainly an issue about routeing—we do not want a situation to arise in which tenants go through the lengthy and complicated process of going to the private rented housing panel when they could get immediate action from the local authority. Excellent signposting will be necessary, which will involve the panel and the local authority working together closely.

**The Convener:** I thank the members of the panel for attending today's meeting and for the evidence that they have given to us, which we will reflect on before the minister appears before us on the same subject. I suspend the meeting to allow for a changeover of witnesses.

10:46

*Meeting suspended.*

10:52

*On resuming—*

**The Convener:** On our second panel of witnesses, we have: John Blackwood, director of the Scottish Association of Landlords; Brian Adair, chairman of the Scottish branch of the Association of Residential Letting Agents and the chairman of its national council; Sarah-Jane Laing, the housing strategy officer for the Scottish Rural Property and Business Association; and Mike Stimpson, the chair of the National Federation of Residential Landlords. I thank them for joining us this morning.

Do you believe that the Executive has now consulted widely enough on the package of regulations and has listened to the concerns that were raised during the consultation process?

**John Blackwood (Scottish Association of Landlords):** Yes.

**The Convener:** It has been said by the Executive and by those who have expressed an interest in this area, including our last panel of witnesses from COSLA and individual councils, that it is important that the regulations are not overly onerous and that there is a light touch. Has that light touch been achieved?

**Sarah-Jane Laing (Scottish Rural Property and Business Association):** No. The last panel described the scheme as onerous and as requiring extensive staff time and resources. That demonstrates that the light-touch approach that the Executive intended to take has not been achieved.

**The Convener:** Members of the panel might have said that there will be resource implications for local authorities, but that does not mean that there will not be a light touch in how the regulations operate for the private rented sector in Scotland.

**Sarah-Jane Laing:** The sanctions and the proposed fee structure in the regulations and the guidance cannot be referred to as having a light touch either. The SRPBA has always contended that landlord registration and regulation was to have a strict aim and that a light-touch approach would address that. I do not think that having a mandatory register with severe sanctions for non-compliance can be viewed as being a light touch.

**Mike Stimpson (National Federation of Residential Landlords):** In the opinion of the National Federation of Residential Landlords, a light touch would involve dealing with problems, not with everyone. If we are talking about issuing 100 antisocial behaviour notices a year and registering a minimum of 40,000 landlords, in no way is that proportionate or a light touch.

**Cathie Craigie:** Will you expand on that? I cannot understand why you say that the approach is not a light touch. Is it because there is a fee attached to it?

**Sarah-Jane Laing:** There should be a fee, but the proposed fee structure does not reflect a light touch, especially the supplementary fees per property.

**Cathie Craigie:** How much are they?

**Sarah-Jane Laing:** The supplementary fee is 20 per cent of the principal fee, so it depends on what the principal fee is.

**Cathie Craigie:** What is your idea of what the principal fee would be?

**Sarah-Jane Laing:** If it were, say, £100, each supplementary property would have a fee of £20. Some of our larger members, who might be involved in accreditation schemes, have 350 or so properties, which means that they will pay quite a substantial fee.

**Cathie Craigie:** Constituents of mine who are bothered by the fact that they are unable to find out who a private landlord is and who know that the private landlord is getting something like £375 a week in rent would say that even £100 or £150 a year is not a lot to ask a landlord to pay to enable us to police the private landlord sector better.

**Sarah-Jane Laing:** That goes back to a point that we made during the consultation process. If there are specific problems in specific areas, a selective licensing approach could be taken. That would be a light-touch approach because it would concentrate on areas in which bad landlords exist. A tougher line could be taken against them and a lighter touch could be taken throughout Scotland.

**Cathie Craigie:** I see the regulations as giving private landlords protection from the rogues who are dragging everyone down. In the area that I represent, people see private landlords as a beast

that they want to drive out of town. We have been unable to make rogue landlords—who I accept are in the minority—comply with their obligations under the existing regulations. The regulations will give us a way of doing that, but your organisations feel that having to pay £100 or so every two or three years is heavy handed.

**Sarah-Jane Laing:** That is not what I said at all.

**Cathie Craigie:** That is how what you are saying comes across.

**Sarah-Jane Laing:** I apologise. Perhaps I should go back and answer the original question, which was to do with whether I view the approach as being a light touch. As I said, the representatives of local authorities said that the approach was onerous and will use an extensive amount of staff resources.

There is a need for such regulation and I support the intention to drive rogue landlords out of Scotland. We need to protect tenants and to ensure that the private rented sector has adequate standards of physical quality and management. My organisation wholly supports that aim. However, we feel that the proposed fee structure and certain provisions relating to non-compliance do not constitute a light touch.

**The Convener:** Obviously, you have given your view that the approach is not light touch. That is your answer to the question that we asked. However, I think that you heard only part of the evidence that the previous panel gave. I point out that, when the representatives of COSLA were asked a similar question, they did not at any point say that they did not believe that the approach was a light touch. Later, they said that they had concerns about the burdens that it would place on local authorities, but they did not say that they did not believe that the regulatory burdens were a light touch. They said that they believed that the Executive had got the approach right. You have a legitimate right to disagree with that, but you do not have a right to put words into the mouths of a previous panel of witnesses. We need to clarify that point and to get it on the record.

11:00

**John Blackwood:** The concept of a light touch has been lost when it comes to allowing local authorities to interpret the conditions for their registers. Landlords throughout Scotland who have properties in different authorities tell us that they will have to jump through many different hoops in different authorities simply to register. The line is blurred on the issue of a light touch. The measures come across as being onerous; whether they will be at the end of the day has yet to be seen, but that is the concern, and we must reflect it.

**Brian Adair (Association of Residential Letting Agents):** On the Executive's figures, we are talking about 100 antisocial tenants out of 170,000 tenants, which is about 0.04 per cent, and, one presumes, the figure will decrease when the legislation begins to bite. Given that figure, we suggest that a light touch is required. We sympathise with the problem of landlords who are difficult, but the local authorities will likely know who they are. Therefore, it seems unnecessary to go into landlords' backgrounds in terrific detail.

**The Convener:** I think that you will find that local authorities often do not know who the landlords in their areas are, which is one reason why the regulations have been produced. The committee will have to take a view on whether that is the case.

**Euan Robson:** I want to ask Mrs Laing about landlords who have multiple properties. Intuitively, I know that some landlords will have two or three properties, but how many have more than 50? I am thinking of rural communities, where the bill for a registering landlord might not be as high as one would expect because a number of their properties might be exempt if they are holiday cottages or tied cottages or houses. Can you give us a sense of how many of your members have multiple properties that will qualify and of the scale of the bill for them?

**Sarah-Jane Laing:** No. One of the prime benefits of the landlord registration scheme is that it will give us a much better handle on the scale of the portfolios that landlords hold throughout Scotland. Information on the private rented sector is not available at present; the provision of such information will be a benefit of the scheme.

**Euan Robson:** So there is a benefit in registration. The fee element is a difficulty, but it does not detract from the necessity of having a scheme.

**Sarah-Jane Laing:** Yes.

**Mike Stimpson:** There seems to be a view that the cost of registration is the matter that concerns many landlords, but it is not the only one. Where possible, that cost will be passed on to tenants. That must be clearly understood and has been explained. However, the regulatory impact assessment makes no comment on the effect of complying with the regulations—such as the work that will be required on application forms—nor does it compare the measures with what happens in England and the rest of Europe. Landlords who invest in property do not generally invest in a particular place; they look for a good return and a good atmosphere. The message that is coming from Scotland will not create such an atmosphere. The issue is about not just money but what the regulations will require landlords to do. They will

have to register as a fit and proper person before they buy a property in Scotland while, in many other areas, that will not be necessary. People will not turn to Scotland to invest. The issue is whether the committee wants that to happen.

As has been mentioned, if a landlord draws £X in rent a month, tenants will think that they should be able to afford the fees. However, as members know perfectly well, the cost of properties in Scotland has increased considerably and is still increasing. In Glasgow, 23 per cent of new investment in housing is for buy to let. People will get a return of possibly 5 or 6 per cent gross on their investment, before we even think about all their other obligations. That is often forgotten. They do not simply get £350 a month for doing nothing; it is a £350 investment on the property that they buy.

**Euan Robson:** Do you predict disinvestment, in that case? What will all the landlords in Scotland do—migrate? Will there be no rented sector? What are you implying?

**Mike Stimpson:** Many landlords in Scotland will have to comply with the regulations, and they will still be landlords in Scotland. However, if you wish to encourage new landlords, better landlords and buy-to-let investors, the regulations in Scotland should be no more onerous than they are elsewhere in the world, particularly in Europe. They should be fair, reasonable and proportionate.

**The Convener:** The committee must judge, Mr Stimpson, whether the regulations are reasonable and proportionate and what is in the best interests of the people of Scotland. After all, that is why we are democratically elected by the people of Scotland and why we sit here today. I also ask panel witnesses to respond to the questions, because that will allow the committee to consider the matter effectively.

**Tricia Marwick:** I thought for a moment that we were returning to the arguments about the legislation—it is a fact that a registration scheme will be required. We are discussing now the regulations that will put that into effect. Is the panel satisfied with the types of properties that the regulations exempt from registration?

**John Blackwood:** We have considered that in depth, and we consulted on it a lot as part of the working group. We feel that the provisions are adequate at the moment. However, landlords in rural communities in Scotland have different issues, such as agricultural tenancies. The Scottish Rural Property and Business Association might be better versed in that. There are some discrepancies, but we concur with the previous panel, which felt that the provisions should be left as they are.



**Sarah-Jane Laing:** I feel that the regulations have addressed the agricultural tenancy issue, which was raised during the consultation. Possibly some authorities will need further guidance to identify which tenancy is which. Obviously, the agricultural holdings tenancy laws are not always known to housing professionals, and further guidance on that is needed.

During the consultation process, our organisation said that tied properties should be excluded from registration. We understand that no other organisations in the process supported that view, and we are happy that the Executive has listened to the responses that it received.

**Tricia Marwick:** Have any groups been excluded that you would have liked to have seen included? I am thinking particularly of holiday lets. That was an issue for the previous panel. Do you have any views on that?

**John Blackwood:** Originally, we were concerned about holiday lets being excluded, for a number of reasons; we are conscious that a lot of private landlords invest in property to provide holiday accommodation, especially in built-up areas such as Edinburgh. There are numerous reports from dissatisfied neighbours about rowdy parties and stag and hen parties, which are becoming more common, particularly in Edinburgh. However, on consultation, we felt that those periods of tenancy—or occupancy, if that is the best way to perceive it—are very short and the accommodation is not the tenant's principal home. Negotiation, perhaps with the local authority and the particular landlord, might address that situation; including such properties in the registration scheme might not work.

**Tricia Marwick:** So you are quite happy that holiday lets are excluded from the regulations. The Executive will consult further and you will make your views known during that consultation period.

**John Blackwood:** Exactly.

**Mike Stimpson:** We believe that the exclusion of such groups is necessary to ensure the introduction of a reasonable registration scheme that does not apply to a greater range of properties than is necessary at the first stage. Therefore, we are in favour of the Executive's recommendation.

**Patrick Harvie:** I have no wish to reopen the discussions about whether the Parliament was right or wrong to pass the legislation—which I supported—but I want to ask about the place of the registration scheme within what is now the Antisocial Behaviour etc (Scotland) Act 2004. As the committee discussed at the time, registration has the purpose not only of tackling extreme forms of antisocial behaviour but of providing other, wider benefits. I think that the Scottish Association

of Landlords agreed with me on that point at the time.

For example, one factor that local authorities can take into account in the fit-and-proper-person test is whether a landlord has engaged in unlawful discrimination. Does the Scottish Association of Landlords have any concerns that its members might be held to account for unlawful discrimination on the ground of sex, age or, when the legislation comes into force, sexual orientation, whereas a religious organisation that might be guilty of the same kind of discrimination—it has happened before; it might happen again—would be protected from the law in that situation?

**John Blackwood:** I agree that discrimination is discrimination regardless. That certainly needs to be taken into consideration in the regulations.

My concern is not so much about how landlords perceive the register but about the process by which they become registered. Whether landlords perceive that process to be user-friendly is an issue of which we need to be very conscious within the industry. However, I think that local authorities will be reasonable. At the end of the day, local authorities are not in the business of getting rid of private sector accommodation—the situation is quite the opposite—so they will try to work with landlords. It has already been made clear that, even in cases in which a local authority has intelligence to the effect that a landlord has been known to flout the law in a certain way, the local authority will not automatically discount a landlord on that ground alone but will work with the landlord to address the issue.

Many authorities are already seeing that, as a by-product of the requirement to register houses in multiple occupation, landlords who were previously not deemed to be good landlords are beginning to toe the line and to work with the authority. Some of those are now licensed HMO landlords who are perceived to be quite good landlords. That is quite a good result from a piece of legislation that we were not necessarily in favour of at the time. If that can come out of HMO licensing, I am confident that something equally good can come out of the registration of private landlords.

**Mike Stimpson:** The National Federation of Residential Landlords has noticed that a number of the accreditation schemes that have been introduced in Scotland require a landlord not to discriminate against those who receive housing benefit. That means that landlords cannot refuse a housing benefit tenant accommodation if that tenant is suitable in other respects. We believe that housing benefit has nothing to do with discrimination and should not be included within such schemes. The type of tenant that a landlord takes should be a matter for the landlord.

Obviously, we agree that the usual discriminatory matters should apply, but we believe that using housing benefit as an indication of discrimination is taking matters too far. We believe that the Executive should reconsider any regulations or accreditation schemes in which housing benefit is used as a measure of discrimination.

**The Convener:** Before I let Cathie Craigie move on to the next line of questioning, let me clarify that I would be grateful if all witnesses who want to respond to a question would indicate that they wish to contribute. As convener, I will then use my judgment in deciding who will speak. We need to get through our lines of questioning in the time that is available.

**Cathie Craigie:** The Private Landlord Registration (Advice and Assistance) (Scotland) Regulations 2005 will require local authorities to advise on good practice for letting and to provide advice to any landlord who has been refused an application for registration or whose registration the authority seeks to remove. Do the regulations go far enough, or should local authorities be required to provide further information? At the outset, there was to be a light-touch approach.

11:15

**John Blackwood:** This is a major concern for us and for our members. We have branches throughout Scotland, including three in the central region, in Stirling, Clackmannan and Falkirk. Over the past couple of weeks, we have held meetings with landlords and at each meeting the same issues have been raised: landlords have asked us, "How do we know what to do, as landlords?" and "What information is available to us?" The previous witnesses said that local authorities will try to engage positively and proactively with landlords, but the reality is often quite different. There are good local authorities that provide a lot of advice and information, but others do not, and many landlords join organisations such as ours to get that advice and information.

Therefore, we advocate having something more in the regulations. The regulations should state that a local authority must engage, before antisocial behaviour notices or whatever are issued, by providing good practice information and advice. Local authorities giving that advice would avoid many problems arising further down the line. Such engagement is a major concern for us, and we do not feel that there is enough of a requirement for it in the regulations.

**Cathie Craigie:** I assume that you will be involved in discussions with the Executive through your membership of the working group. Are you confident that that work is moving in the right direction?

**John Blackwood:** We have made it clear to the Executive that such a requirement is not in the regulations or that there is not enough of a requirement in the regulations. The Executive has said that the regulations are not the place for that and that the matter should be stated in guidance for local authorities. The Executive has taken on the point and has said that the requirement will be made more explicit in the guidance, but I will not know whether that is enough until the guidance has been produced.

We often hear from landlords that they feel responsible for their tenants' behaviour. The legislation does not say that, but that is the implication. The way to alleviate that—we are trying to do this at branch meetings—is to say, "In reality, this is what you do." There is nothing written down: no formal advice or guidance is given to landlords, other than by us, to say what practical steps they should take. Some local authorities might develop a good practice handbook that can be sold to other authorities, but the Executive needs to be proactive in making information and advice available locally, rather than centrally.

**Sarah-Jane Laing:** I agree with what John Blackwood has said: the regulations do not go far enough. However, if the Executive gives a commitment to deal with the matter in guidance, that might go some way towards allaying the fears of landlords.

**Brian Adair:** We manage people's properties to a code that is more comprehensive than most local authorities' management schemes, so we do not have any problems.

**Cathie Craigie:** Can we see a copy of your code?

**Brian Adair:** Yes.

**Cathie Craigie:** Not today, but perhaps you could get a copy to the clerk.

**The Convener:** That would be helpful.

**Mary Scanlon:** I share Patrick Harvie's concern that the Executive's guidance for local authorities should be equality proofed, including proofing against discrimination on the ground of sexual orientation and religion or belief. The matter is covered in schedule 1 to the Private Landlord Registration (Information and Fees) (Scotland) Regulations 2005.

My questions are on information. What is the likely impact on landlords of the requirement to find and produce all this information for local authorities in order to register?

**John Blackwood:** We offer an information and support service to our members as well as to the public in general—to tenants as well as to

landlords—and our statistics show that in the past month we received around 1,000 inquiries by e-mail, telephone or letter, 15 per cent of which were inquiries from landlords who were concerned about registration, largely because of the lack of information that is available at this early stage. Landlords are asking, “How can I sell up and when do I need to do it?” They are looking to get out of the market. In previous months, that sort of query would account for 1 or 2 per cent, because generally we get some such comments or questions from landlords. It is alarming that the incidence of such questions has increased so noticeably.

**Mary Scanlon:** What is the main reason for so many landlords wanting to come out of the market? Is it the information that is being sought?

**John Blackwood:** That relates to an earlier question. The bulk of our membership consists of small-time landlords rather than large corporate landlords. They perhaps own only two or three properties, which are near each other but are in different authorities. The biggest concern that landlords express is that there will be different rules in different areas and that there will be an onerous fee structure for only three properties.

**Mary Scanlon:** Is it fair to say that their concerns are about the administration, the cost and the resources involved rather than the information that is being sought?

**John Blackwood:** Yes, but again there is no information about the registration process at this stage. A lot of scaremongering is taking place. We are trying to alleviate that but it is very difficult, especially when we are seeing more and more about the fee structure—I am sure that we will come back to that. Landlords look at the fee structure and say, “Why should I do this?” They can understand the principle of registration, but we seem to have gone beyond that. Why do we need to take further steps? Why should there be differences between authorities? They feel that it is unfair that owing to the geographical location of their properties they have to go through various different tests. I think that that feeling is justifiable.

**Brian Adair:** When the HMO regulations were introduced, we did some research into why clients left us over a two-year period. The research showed that 16 per cent left because of the HMO regulations. There is no evidence of landlords leaving us now, because they do not know what the regulations will mean. However, there is always a general fear among landlords who look to the past, when tenants had security of tenure and the value of their property was decimated. It is possible that landlords might leave us, but there is currently no evidence of that happening.

**Mary Scanlon:** That is very helpful.

I know that most of the panel members sat through the discussion with the previous panel about companies, agents and so on. Will the information required in the regulations be sufficient to identify who the landlord is?

**John Blackwood:** I believe that it will be sufficient. The regulations are fine as they are.

On the question that you asked earlier about different principals within a company, I do not feel that more information should be required than is required in schedule 1. In essence, one person will deal with the issue or will take the management decision; it should be a representative of the company or the trust. Some issues might arise. For example, one of our members is a large religious organisation in Scotland. In some cases, ownership of the property in effect lies with the membership rather than with directors because the organisations are not limited companies. The requirement that was suggested would imply that every member would have to be checked. There is no need for that. We must think the stages through and decide whether they are reasonable. I believe that what is in the regulations is enough.

**Mary Scanlon:** As I said to the previous panel, what we are trying to get at is whether the landlord has earned their money illegally and is investing it in houses, exploiting vulnerable tenants and so on. Can you confirm that the legislation will be sufficient to identify exactly who the landlord is?

**John Blackwood:** Yes.

**Mary Scanlon:** Do the other panel members agree with that?

**Brian Adair:** Are you asking me whether I agree?

**Mary Scanlon:** I am asking whether anyone else wants to comment.

**Brian Adair:** If someone wants to get round the rules, they will do so. We have to deal with the law as it is.

**Sarah-Jane Laing:** The prescribed information that is listed in schedule 1 would be enough to identify who the private landlord is, but my worry is that the landlord might not register in the first place so we would not get that information. The landlords whom we may have to chase for registration are the very landlords to whom you refer.

**Mike Stimpson:** Our concern is that there should be the lightest of touches in ensuring that one person is responsible for the property and that that person signs a declaration that he is so. There should be severe penalties if that person tells untruths. The way to take a light touch is to make random checks. The lighter the touch, the more random checks there could be. Then local

authorities would be able to devote their time to looking for the landlords you are talking about, who will find ways around the regulations. We should not spend too much time dealing with them; we should do so in another way.

**Scott Barrie:** I have picked up from the panel's earlier comments that there is some concern about the fee structure for the registration scheme. Will you articulate those concerns?

**John Blackwood:** There are a couple of points in principle. I will give you an example to put the issue in real terms. An individual landlord might own three properties. Because of the way local authority boundaries are drawn in Scotland, it is perfectly possible for three properties, perhaps within a 4-mile radius, to be in up to three different local authority areas.

We are concerned that that landlord will have to pay a principal fee, as determined by the regulations, in whichever of those three authorities is determined to be the lead authority. For the other two properties, the landlord will have to pay 25 per cent of the principal fee to register in the other two authorities. A landlord who just happens to have three properties in the one local authority area will have to pay less.

If we think about income streams and money from rent, a landlord is being penalised by having to pay more because their properties are in different local authority areas. We feel that that is unfair, despite the fact that there might be different tests in different local authorities.

**Sarah-Jane Laing:** I agree absolutely with Mr Blackwood on that point. On a positive note, I refer to the 100 per cent discount to holders of accreditation status and HMO licences. My organisation supports that fully.

I mentioned fees per property. We suggest that there is either capping or banding of the fees per property. The act of registering is really just a matter of putting the address on the register. We do not know why the fees for it should be so high for landlords with large property portfolios.

**Brian Adair:** I agree that landlords who are accredited should not have to pay any fees, because they will have been checked out already, but landlords whose properties are managed by professional firms that are members of the ARLA, the Law Society of Scotland or the Royal Institution of Chartered Surveyors should also be passported and not charged fees.

We have trained staff who have to sit exams in management. We have a bonding scheme for the funds of landlords and tenants so that if a firm goes bust the landlord and tenant are assured of getting their money. We have model leases that are accepted by the Office of Fair Trading. We

have tenants deposit schemes that are run by a third party. We have to have indemnity insurance and we have to have our client accounts audited. Those standards are far higher than what is required to become an accredited landlord and they should be taken into account if the Scottish Executive and the Parliament want standards of management to rise. It would encourage more people to join professional firms.

**Mary Scanlon:** I note that the regulations provide for the local authority to charge an additional fee when it has made two separate requests of the landlord to register, and that that fee is 200 per cent of the principal fee. Have you had any thoughts about that? I realise that the Executive is trying to encourage good practice, but I wondered whether that provision was a concern. For example, in Moray, many Ministry of Defence personnel might rent out their houses while they are away in other countries. I thought that that provision might be a bit frightening. Do you think it is reasonable?

11:30

**John Blackwood:** It is certainly a concern. There is also a knock-on concern. When it determines the principal fee, the local authority can take into account a percentage or nominal amount for enforcement. We believe that it is fundamentally wrong that a proportion of the fee that is paid by law-abiding citizens—landlords who agree to be on the register and do everything they can—should be used to catch those who are not.

We should bear in mind that there is a facility within the fee structure to charge those who make late applications or are caught by the system. It is right that they should be charged a hell of a lot more than those who have applied voluntarily in the first place. That principle is echoed in HMO licensing arrangements south of the border. Although we do not need to do that here, it is commendable. We must be cognisant of the fact that the legislation is a bit like a sledgehammer to crack a nut and deals with a minority of landlords. Again, the majority is being required to pay for that, which is fundamentally wrong.

**The Convener:** Mr Barrie—

**Mike Stimpson:** I—

**The Convener:** I remind Mr Stimpson that I am chairing the meeting.

**Mike Stimpson:** I am sorry—I did not hear you. I thought that you nodded to me.

**The Convener:** No—I invited Mr Barrie to speak.

**Scott Barrie:** Sarah-Jane Laing said that she thinks there should be an upper limit. What do you

think the limit should be? How would it be calculated?

**Sarah-Jane Laing:** We have said that there should be a cap on any additional fee. You might decide that the fee should be capped at 50 properties. That would be 50 times 20 per cent of the principal fee, which would still be a substantial fee.

**Scott Barrie:** So the additional fee would be capped, instead of a payment being made for each house.

**Sarah-Jane Laing:** Yes.

**Cathie Craigie:** I move on to the regulations that deal with appeals against decisions on rent payable. The regulations place certain obligations on landlords. Do you think that those obligations are clear and that the regulations are understandable? Do you believe that there will be enough support for landlords in dealing with their obligations?

**Brian Adair:** If we as management had a tenant who was antisocial, we would go to see them, give them a written warning and point out that, if the problem was not resolved, they would receive notice to quit. That is all that we can do to bring such problems to an end. We do not have to deal with many cases of that sort. Unfortunately, when we have given tenants notice, the local authority has not been supportive in any way and has encouraged the tenants to remain in place. That is odd. If antisocial behaviour is such a problem, why are local authorities not helping us to sort it out? There is nothing in the regulations that would help landlords to do that. They provide landlords with no powers to deal with antisocial behaviour.

**Cathie Craigie:** Other regulations encourage local authorities to work much more closely with private landlords and to support them by providing advice and assistance. Is that not to be welcomed?

**Brian Adair:** If they do not have agents, that is fine. However, we can help landlords to comply with the law—that is what we are trained to do.

**John Blackwood:** I echo the point that was made earlier—the regulations are not clear enough and something needs to be done about that. The principle is fine, but it does not come across in the regulations.

**Cathie Craigie:** You are saying that the principle is fine, but that it must be made clear in guidelines. Presumably, it would help if the Executive issued some material in plain English to landlords. Earlier you indicated that people do not quite understand what is happening. Perhaps the Executive, rather than local authorities, should take on the role of providing that clarification.

**John Blackwood:** The Executive can do it quite easily. A range of media are now available to the Executive. Many landlords use the “Better Renting Scotland” website, and we can direct them to it. I am afraid that we are seeking step-by-step guides to all the legislation. At this stage, there is a lack of information and clarity. Unfortunately, that causes confusion and disarray in the sector and gives rise to the feeling that no one is doing anything to help us. That problem could easily be addressed.

**Mike Stimpson:** If a landlord fails to carry out specific instructions, the sanctions—

**The Convener:** There is a problem with the sound. I suspend the meeting until the problem has been sorted out.

11:35

*Meeting suspended.*

11:38

*On resuming—*

**The Convener:** Mr Stimpson was about to make a point.

**Mike Stimpson:** The point that I was making is that the sanctions in the act are all criminal sanctions against the landlord. It therefore follows that the regulations by which landlords are to abide must be clear, so that people understand exactly what they are required to do. The regulations should obviously be the same throughout Scotland; they cannot differ from one area to another, because there is a criminal sanction. We would like there to be clear instructions as to what is expected of a landlord in relation to acts of antisocial behaviour by a tenant, so that there is no misunderstanding.

**Cathie Craigie:** I have a final point relating to the earlier evidence given by the COSLA witnesses, who raised the issue of rent payable. Concern has been expressed about how a tenant who was financially excluded would cope. Some witnesses—perhaps also those from whom we shall hear later—feel that there should be a scheme whereby a third party is involved to take rent. Do you have any views on that?

**Sarah-Jane Laing:** I have concerns about circumstances in which an appeal may take place. Tenants need to be fully aware of the implications of the outcome of an appeal. That might be a situation in which a holding account would be entirely appropriate.

**John Blackwood:** There could be different scenarios. For instance, there could be a tenant who is involved in antisocial behaviour and a landlord who is doing nothing about it. A common symptom of antisocial behaviour is that the tenant

does not pay rent; the two issues often go hand in hand. If the landlord is failing to do anything about it, creating a rent abatement notice or order might not necessarily help, because the tenant might not be paying the rent anyway.

Another concern is that although a tenant and a landlord might have a perfectly good relationship and be carrying on quite well, with repairs getting done and so on, the landlord might not be registered. The regulations would allow sanctions to be taken against that landlord just because they were not registered, and that could mean that the tenant would not have to pay rent. That would put an undue burden on the tenant, because they are not party to that process—they should be informed of it, but they are not party to it—and they have a continuing liability, by virtue of the agreement between both parties, to pay rent. A third-party holding account might be the place into which that rent could be paid, so I can see the benefits of having a third party involved in such a scenario, but I think that we must recognise the fact that antisocial behaviour and non-payment of rent tend to go hand in hand.

**Brian Adair:** In practical terms, if there is antisocial behaviour, the landlord or agent will give the tenant notice. He will want to get his property back so that he can relet it. He is unlikely to face a situation where his rent stops and he has a problem with a tenant who is in place, so the question is slightly academic.

**John Blackwood:** I hate to come back on that point, but there is a potential issue that I would like to mention. If the landlord is subject to an antisocial behaviour notice, that notice must, under the regulations, be explicit as to the action that is to be taken by the landlord. If the landlord begins that action, the tenant, quite rightly, would seek advice from the local authority as to what their rights are, and the local authority could advise them that the best option for them is to stay put in the property, even though a notice to quit has been issued. The period between issuing the first notice and the time when the landlord, through the sheriff court, regains possession of the property could be months, or even the best part of a year.

My concern is about what happens in that interim period. I do not believe that the regulations address that. The sanction exists, and there could be rent abatement for that period, but the landlord may be doing everything he can under the law, so his hands will be tied. In giving information and advice to the tenant, the local authority would be quite right to say, "It is in your interests to stay put. Don't move, because only the sheriff can evict you." From a landlord's point of view, that is not productive or conducive to resolving the situation, but that would be proper advice from the local

authority. There is a conflict there, and different departments in the council will deal with the situation in different ways.

**Euan Robson:** You probably heard the earlier discussion on management control orders. I would like to return to the definitions. I appreciate that management control orders are used at the end of the process when everything has gone wrong and the local authority comes into the property, but can you say from your side of the debate that you are confident about the definitions and parameters that describe when your members have to pay for the repairs that local authorities carry out to bring the house up to a tolerable standard? Are you content that the regulations, as proposed, are proportionate and workable?

11:45

**John Blackwood:** To be honest, it will be difficult for local authorities to use management control orders. As you rightly say, they will be a last resort. Local authorities will be reluctant to use them because they will not want to take on the responsibility. Technically, within the 12-month period of the order, the tenant could insist on repairs being done to the property—you alluded to that when you asked the first panel the same question. If the tenant were properly advised, they could go to the private rented housing panel and ask it to address the situation and the local authority would be dragged before the panel to justify why it had not done the repairs or to explain what it was doing about the situation. I foresee a conflict, so I do not think that the system will work in practice. Management control orders will be a last resort for local authorities.

**Euan Robson:** They are an unworkable last resort. Councils will not want to use them because of their liability for the work. Is that a fair comment?

**John Blackwood:** That is a fair and reasonable deduction.

**Brian Adair:** I do not know what practical problems local authorities have, but in Edinburgh a statutory notice on a building can take more than a year to be sorted out. We are just getting licences for houses in multiple occupation that we applied for a year ago. Given that those things take a year and that councils have only 12 months to deal with management control orders, it seems to me that they are not practical.

**Sarah-Jane Laing:** As Mr Blackwood said, management control orders should be a method of last resort, but if a situation has deteriorated to the extent that a last resort is required, we support the necessary costs being incurred by the local authority. The schedule to the instrument clearly identifies the permitted expenditure. However, I

have some concerns about the operation of the recovery of costs from the landlord and I suggest that a vehicle such as a charging order should be incorporated in the instrument to deal with that.

**Scott Barrie:** Mr Blackwood mentioned the fact that, when a landlord fails to comply with an antisocial behaviour notice, the local authority may take the steps that it deems necessary to deal with antisocial behaviour. That is described in the Antisocial Behaviour Notice (Landlord Liability) (Scotland) Regulations 2005. What is your view on the provisions in that instrument?

**John Blackwood:** We worked with the Executive on those regulations for obvious reasons of information dissemination. We said that the regulations needed to be clear and we are confident that they are. It is now a question of moving the provisions from the regulations into good practice. That is where our concern lies, but the provisions are enshrined in the regulations.

**Scott Barrie:** Do you think that, if there are problems, local authorities will not take direct action at an early stage but will work with the landlord to try to improve tenants' behaviour? Do you agree that the regulations are there to aid that process rather than to be used as a hammer at any opportunity?

**John Blackwood:** Yes. Every local authority now has an antisocial behaviour team, so there are people in post who are trying directly to address antisocial behaviour in local communities. From our experience of running SAL branch meetings, dealing with landlords and bringing along people who are involved in antisocial behaviour teams, we are clear that they are saying, "Listen, don't come to us only when the situation is out of control. We are here to give advice and assistance." The teams are trying to be proactive. They are saying to landlords, "If you have a suspicion about a tenant or something is not going quite right even though it is not out of control, call upon our expertise and our experience." That is invaluable. Landlords are saying, "Great. For the first time, we are actually getting positive co-operation from antisocial behaviour teams."

If a tenant has been served with an antisocial behaviour notice, that information will be on record and the team will have it. They say that they are happy to disclose that information to landlords and to work with them to address the matter. In any given area, local authorities have intelligence about who the bad landlords are, but they obviously know who the bad tenants are. Often, they are former local authority tenants who have migrated into the private rented sector. We recognise that that information, which until now has never been available to private sector landlords, is invaluable.

I promote and encourage involvement at an early, pre-emptive stage. I want to say, "You need never come across these notices, because they will be superfluous." That is what we are hoping for.

**Scott Barrie:** That is an encouraging response, given some of what was said during the passage of the Antisocial Behaviour etc (Scotland) Bill. Your aim was the intention of the measures.

**John Blackwood:** Although the reality might be quite different.

**Scott Barrie:** But it is useful to hear that that is what your members said and that you want to work with local authorities to achieve it. The difficulty in the past has been that we have come across situations only when they have gone on for a long time. It is great to hear what you say.

**John Blackwood:** Before, there was a them-and-us situation between the private rented sector and local authorities. Engagement resulted from desperation on the authorities' part to provide accommodation to people in their locality. The good thing is that we are moving beyond that now. All the legislation is forcing both sectors to work together. I hope that that will continue to be the case—I am an eternal optimist.

My concern is where authorities, especially small ones, do not have antisocial behaviour teams or sophisticated private rented sectors. Unless there is clear guidance or the regulations are clear, they will use the regulations just to slap on an antisocial behaviour notice. They could use information on that to refuse future registration, which would be completely counterproductive, but I can see it happening. It happens with other forms of licensing, so why should it not happen here? I do not want that to happen, so anything we can do to avoid it is worth while.

**Mike Stimpson:** I back John Blackwood. Our organisation believes that we should work in partnership with local authorities to stop or reduce antisocial behaviour. The problem is that if you read the consultation paper, the police and local authorities are described as partners, but landlords are not. The message needs to go out from the Scottish Parliament and the Executive that most landlords want to work with local authorities to deal with problems. The message needs to be clear that we are partners, not simply targets for antisocial behaviour notices.

**The Convener:** Thank you for your attendance. Your evidence will be reflected upon. We are grateful to you for giving up your time to assist us with our deliberations on these matters.

The committee will suspend to allow for a final changeover of witnesses.

11:53

*Meeting suspended.*

11:55

*On resuming—*

**The Convener:** I welcome our final panel of witnesses. We have been joined by Jennifer Wallace, the policy manager for housing, local government and education in the Scottish Consumer Council; Rosemary Brothie, the policy officer for Shelter Scotland; James Alexander, the deputy president of the National Union of Students Scotland; and Jamie Ballantine, the assistant director of the Tenant Participation Advisory Service Scotland. Thank you for joining us, particularly those of you who sat through our earlier evidence-taking sessions.

I will start by asking a general question about consultation. Do you believe that the Executive has consulted effectively on the regulations?

**Rosemary Brothie (Shelter Scotland):** I thank the committee for inviting me to give evidence today. Shelter has been very happy with the consultation process so far.

**Jennifer Wallace (Scottish Consumer Council):** Initially, the Scottish Consumer Council had some concerns about including the regulations in the Antisocial Behaviour etc (Scotland) Act 2004. However, I was a member of the working group and I must say that I think that the regulations reflect the fact that the Executive has listened to what all its members had to say, so we are very happy.

**James Alexander (National Union of Students Scotland):** I echo the thanks from Shelter Scotland. We feel that we have been adequately consulted.

**Jamie Ballantine (Tenant Participation Advisory Service Scotland):** As far as I am aware, my organisation is happy with the consultation. My only observation is that I asked the clerks whether the Scottish Council for Single Homeless had been invited to give evidence.

**The Convener:** There has been contention over the issue of light touch and whether the regulations guarantee that a light touch will be taken. What views do your organisations have on whether that light touch has been achieved in the regulations?

**Jennifer Wallace:** The Scottish Consumer Council views the regulations as taking a light touch. We are concerned that regulation in this area should be proportionate and we feel that self-certification, backed up by further checks if a local authority thinks that that is necessary, is a light touch that should protect tenants.

**Rosemary Brothie:** I agree with that comment. Suffice to say that if registration is to achieve the numerous objectives that have been set out for it, only a few of which have been mentioned during the meeting so far, we will have to come back and consider, review and monitor it.

**Tricia Marwick:** Those panel members who were present for the previous panels' evidence will know what my question is. Are you satisfied with the exclusions to the registration scheme?

**Jennifer Wallace:** Yes, I think that we are satisfied with them, particularly the exclusion of resident landlords. However, as we said in our written evidence, we hope that the position of resident landlords will be reviewed within, say, two years of the scheme's implementation.

**Rosemary Brothie:** Again, I echo that. Because of the complexity involved in identifying resident landlords in the first instance, we are very happy with the logic of excluding them at this point, just to get registration up and running smoothly. However, we would not want that issue to be lost. The consultation paper made the point that there is an increased potential for tenants of resident landlords to experience problems with their tenancy. We are concerned to ensure that such tenants do not become second-class tenants who do not benefit from rights that are afforded to others.

The RIA that accompanies the regulations says that resident landlords may apply a "higher standard" because they are resident. We recognise that that can apply to physical standards, but the case is not so clear for management standards. We support the exclusion of resident landlords in the first instance, but we would like that to be re-evaluated at a later date, to ensure that evidence that might appear on whether resident landlords should be included is considered.

12:00

**Tricia Marwick:** Is the exclusion of resident landlords a particular issue for the National Union of Students?

**James Alexander:** Not really. Most students live in accommodation that is provided through a letting agency or private landlord. We are keen, as Shelter suggested, that the issue be looked at in future, but at the moment we are happy with the arrangements.

**Jamie Ballantine:** We echo Shelter's view. For the purposes of getting started and in the spirit of the light-touch approach, it is a good idea not to involve resident landlords at this point. However, the position could be reviewed in three years.



**Jennifer Wallace:** The working group reflected on the possibility of non-resident landlords pretending to be resident landlords. Apparently, there have been instances of that; they have locked rooms in flats and so on. One reason why we would like a strategy for monitoring implementation is to make sure that that does not happen.

**Tricia Marwick:** The Executive is also committed to taking evidence on and to reviewing the situation of holiday lets. Is there any particular issue that the panel would like to raise about the exclusion of holiday lets from the scheme? Do you see any potential problems for tenants?

**Rosemary Brotchie:** We need to be careful about making a licensing or registration regime such as this cover all sorts of different purposes. There may be problems with holiday lets that would be better dealt with in a different way than through registration. However, we will look at the experience of HMO licensing, which was introduced originally as part of more general licensing powers. We need to gather more information on holiday lets before we decide whether it is appropriate to include them in the registration system.

**Cathie Craigie:** Is the requirement on local authorities to provide advice and information to tenants when they decide to take action against a landlord adequate?

**Rosemary Brotchie:** Are you asking specifically about tenants?

**Cathie Craigie:** I am asking about advice and information to tenants.

**Jamie Ballantine:** Advice and information are essential to the success of the scheme. I would even go as far as saying that it would be good to have a national information campaign as well as local ones. If the registration scheme is to be a success, private tenants need to be aware of it from the outset. Rather than a tenant finding out about the scheme from their landlord, there should be a solid information campaign to make people aware of the scheme and to enable them to make inquiries locally.

I echo the comments of the previous two panels about the operation of the scheme. The scheme provides an opportunity to be quite prescriptive about the sort of information that local authorities should put out. That would help local authorities in working out what they should do locally.

**Jennifer Wallace:** We are satisfied with the provision on advice and information where registration has been refused or removed or a no rent payable order has been issued. However, we are disappointed that it does not go wider to

include a general duty to provide information and advice to tenants. We would like such a duty.

**James Alexander:** Tenants should be informed about all their rights under the new registration scheme. That is particularly the case with regard to any dispute or potential loss of licence, so that tenants are fully aware of exactly what is happening and can make a judgment.

**Cathie Craigie:** I would like to pursue the question of information. The Scottish Consumer Council and Shelter have raised the issue of what happens when rent is not paid directly to a landlord. There was concern that a tenant who was financially excluded or who did not have the wherewithal to manage their money might find themselves owing a great deal of money if an appeal by a landlord was successful. In their submissions, both organisations raised the fact that it is not proposed that there should be a rent deposit scheme or that a third party should be empowered to hold that money. The Scottish Executive says that there are difficulties with such proposals, but we do not yet know what they are. We will ask the minister about that, but before we do, would you like to put on record what you think about rent being held separately?

**Rosemary Brotchie:** I echo the concern that the local authority representatives on the first panel expressed, which I think the landlords also mentioned. The regulatory impact assessment considered only one method of holding the rent in a separate account, whereby the money would be put in a joint account for the tenant and the landlord, unless there were practical problems with that. I think that we recognise what those problems are, but I am curious about why the Executive did not investigate other options. A tenancy deposit scheme or a scheme in which local authorities would hold the rent as a third party could be considered. Such solutions might not be appropriate in every case, but they should be an option for some tenants to ensure that they do not lose out as result of action involving the local authority and the landlord.

**Jennifer Wallace:** I echo that. I think that we were concerned that, as the Executive note explains, consideration was given to joint accounts, but not to third-party accounts or alternative solutions to the problem. We want such suggestions—especially the idea of a national rent deposit scheme—to be given further consideration.

**James Alexander:** We certainly agree that it is crucial that tenants are aware of the possibility that they might have to pay back-dated rent. In future, we would like the Executive to set up a system such as the one that Shelter has described, whereby tenants could pay their rent to the local authority or to another third party.

**Jamie Ballantine:** We agree with that. It is essential that tenants should have a scheme into which they could pay their rent while issues were being resolved. They should not be left in a position in which they have to make their own arrangements.

**Cathie Craigie:** If such a proposal were not included, would you reject the rest of the regulations or would you be happy for the matter to be examined in future, as James Alexander suggested?

**Rosemary Brotchie:** As they stand, the regulations are very comprehensive, but local authorities should consider offering as an extra a scheme such as the one that we propose.

The panel of local authority representatives mentioned the fact that if the regulations are to become effective, the tenant must not pay their rent. If a third party held the money, the tenant could carry on paying the rent under the tenancy agreement and feel reassured that that was happening. It would then be for a sheriff or the local authority to decide whether that rent should go back to the tenant or should be paid to the landlord following an appeal.

**Mary Scanlon:** I want to ask about the information that will be required under the registration scheme. Bearing in mind the scheme's light-touch approach, should any other information be prescribed?

**Rosemary Brotchie:** Shelter accepts that the system should use self-certification if it is to run smoothly, but I echo some of the points that were made earlier. A check should be carried out on a small proportion of the applications that are made to ensure that the system is credible in the eyes of tenants and responsible landlords, who will have something to gain from registration. There must also be confidence that registration will pick up cases in which bad landlord practices take place and that the landlords concerned will be excluded from letting.

**Mary Scanlon:** But you are quite happy with the information that will be sought from landlords—you do not think that any further information should be provided.

**Rosemary Brotchie:** That is right.

**Jennifer Wallace:** We are quite happy with the information that will be sought, but in the consultation paper, reference was made to the importance that should be attached to complaints from tenants. Given the particular difficulties in the relationship between tenants and landlords, we would like further information to be provided, perhaps in the guidance rather than in the regulations, so that local authorities have a model complaints system for tenants.

**Mary Scanlon:** Do you think that the information that will be sought and the scheme itself will protect tenants from the minority of bad landlords?

**Rosemary Brotchie:** The information that will be sought is a minimum to ensure that registered landlords have no serious criminal convictions, and it will give the local authority the ability to apply a fit-and-proper-person test on grounds that it will establish. However, the process cannot just end there. Because registration will be self-certified, the retrospective analysis and assessment of landlords will be very important. Tenants should feel that they can come forward if they have complaints about or problems with a landlord. Although registration is a one-off process, it will have to be renewed every three years. If a tenant has a problem with a landlord, they should feel that they can complain and that mechanisms are in place to allow them to do that.

**Mary Scanlon:** So you think that tenants, rather than take up their problem with their landlord, should be able to let the local authority know that the landlord may not be a fit-and-proper person. Should the scheme go that far?

**Rosemary Brotchie:** It is not an either/or situation—a balance must be struck. With some landlords, the tenant should go to them in the first instance if they have a problem, but that will not be appropriate in some instances. If a landlord is bad and has been accused of harassment, the tenant might need to seek the intervention of a third party.

**Jamie Ballantine:** A practical difficulty that occurred to us is that, as the registration scheme will be dependent on people's co-operation, it is not clear what course of action tenants should take if they think that their landlord has not registered with the local authority.

**Mary Scanlon:** That is a good point—it was also raised earlier.

**Scott Barrie:** What comments do you have on the proposed general framework for fees for the registration scheme? Will it allow the scheme to achieve what it is designed to do?

**Jennifer Wallace:** We heard concerns earlier about the impact that the fees will have on rents and on the market. The Scottish Consumer Council has concerns about that, too, but the estimates that we have heard so far that the fees will be between £50 and £250 per landlord per property do not seem to us to be unnecessarily high. However, a maximum has not been set. The Executive note suggests that, if ministers feel that fees are "unjustifiably high", they will make further regulations. We would prefer to have information on what that phrase means, particularly in relation to the possible effect on the market.

**Rosemary Brotchie:** Registration should not be so expensive that landlords have a disincentive to register, as the system will rely on landlords coming forward to register in the first instance. We support fees if they are set at a level that the market can support, but we are not happy with the concept that registration should be entirely self-funded or self-financing. In our experience, HMO licensing gives local authorities a strong incentive to pursue landlords who are easy to contact, which means that they do not concentrate their efforts on landlords who seek to avoid registration. One justification for the scheme is that a better-quality private rented sector will take pressure away from public funded housing and give better value for the housing benefit that is channelled into the private rented sector. In effect, that means that registration is a public good, so the Executive should support the cost of running it.

**Scott Barrie:** Shelter's response to the consultation states that there is a need

"to ensure that landlords are encouraged to register voluntarily".

Will the scheme as proposed do that?

**Rosemary Brotchie:** Landlords who are aware of their responsibilities and are keen to be established as good, responsible landlords will register voluntarily. The fees as they stand are not a great disincentive, but some landlords will seek to avoid registration. Others will seek to self-certify and pass through into registration in the hope that their past practices or record will not emerge. The onus will be on local authorities to investigate landlords and to be aware that some landlords might not have a clean record and that tenants might complain about them.

12:15

**Euan Robson:** The panel may have heard the earlier debate on management control orders, which will probably be few and far between. As representatives of tenants, do you have any views on what local authorities ought to be doing if they find, for example, heating systems in the houses that they take over under such orders to be either dangerous or manifestly substandard? On bringing properties up to the tolerable standard, do you wish local authorities to take more initiative than is set out in the regulations or to take the same sort of initiative as is set out in the regulations, or should there be no regulation in that area?

**Jennifer Wallace:** Tenants have a right to live in accommodation that is above the tolerable standard. If a landlord is responsible for a property and receives rent for it, they should be responsible for ensuring that it is above the tolerable standard.

**Euan Robson:** In this context, therefore, you think that the local authority should have that

responsibility when it takes over a property under a management control order. At what level should the tolerable standard be set?

**Jennifer Wallace:** We do not have a policy on that.

**Rosemary Brotchie:** I understand that the tolerable standard is an absolute minimum standard below which a house is not habitable. Therefore, it is entirely reasonable that if a local authority takes over the management of a property that is below the tolerable standard, it should bring it up to the tolerable standard as quickly as possible.

**James Alexander:** Under no circumstances should tenants live in an unsafe property, such as the one that Euan Robson described with a dangerous heating system that needs to be repaired. It is perfectly reasonable for the local authority to ensure that the property is safe and habitable for the tenants who live there.

**Jamie Ballantine:** I agree with all those comments. In addition, I suggest that the guidance points to the need for joined-up working and thinking between council departments and housing associations. There might be circumstances in which, rather than do up a particular property, the most appropriate solution would be for the local authority to encourage people to apply to join the local authority housing list or a local housing association waiting list. The guidance should point to situations in which such a solution might apply. It might not apply to student accommodation, but if someone has lived in a property for a long time, it might apply to them.

**Euan Robson:** I have a question for Mr Alexander. Let us imagine a gas central heating system in student accommodation that presents the risk of carbon monoxide poisoning. That property clearly does not meet the tolerable standard. Is it appropriate for the local authority to replace the system or, as was suggested in earlier evidence, simply to provide an individual appliance for each set of rooms? Which would you prefer? Where does the balance lie?

**James Alexander:** Where students have moved into a property that has a certain heating system, that system should be retained and maintained. The local authority, as the body responsible for the property, should ensure that the heating system is of an adequate standard and poses no risk to the tenants who live there.

**Scott Barrie:** I do not know whether the witnesses wish to comment on this, but we asked the previous two panels about the Antisocial Behaviour Notice (Landlord Liability) (Scotland) Regulations 2005.

**The Convener:** It appears that none of the witnesses wants to comment on that, in which case I will ask a general question about antisocial behaviour. Under the regulations, local authorities will be obliged, if tenants are antisocial, to provide information to landlords on how they can address the situation before an antisocial behaviour order has to be considered. Are you confident that the information that local authorities will have to provide will assist landlords sufficiently?

**Rosemary Brothie:** I was encouraged by the comments of an earlier panel of witnesses on landlords and local authorities working together. I support the regulations and those comments.

**James Alexander:** Any group of young people living on their own for the first time will need time to adjust to a new way of living. In such cases, most, if not all, problems or examples of antisocial behaviour can be resolved through speaking to those people. In very few circumstances will formal procedures be necessary.

The ways of dealing with student tenants are perhaps different from the ways of dealing with other tenants in the private sector. It may be possible to speak to the university or college where they are studying in an effort to find informal ways of dealing with a problem.

**Jamie Ballantine:** If a local authority is planning to serve an antisocial behaviour notice on a landlord because of a particular type of behaviour, the regulations say that that would normally be in addition to action—such as an antisocial behaviour order—from the local authority that is aimed directly at the antisocial behaviour. Would the antisocial behaviour notice on the landlord have to be accompanied by legal action against the tenant? Alternatively, could it be accompanied by one of the other options in the toolkit for dealing with antisocial behaviour, such as an acceptable behaviour contract or a course of mediation? If so, that might be a point for the guidance.

**The Convener:** In its evidence, Shelter Scotland made a point about the private rented housing panel. You suggest that guidance is required on the interaction between the private rented housing panel and the local authority. Why do you believe that that would be necessary and helpful?

**Rosemary Brothie:** For registration to be effective, an effective way will have to be found of increasing confidence in the private rented sector. Tenants need to feel that their concerns are being addressed. We welcome the proposed amendment to the Housing (Scotland) Bill that would require the private rented housing panel to inform the local authority if it was taking action against a landlord.

We also welcome the approach that local authorities seem to be taking; they acknowledge

the need to work with and have a close relationship with the panel. It would be a good idea if the network of registration officers proposed in the guidance had regular meetings with the president of the panel so that they could keep each other informed of their work.

**The Convener:** That concludes our questions. Thank you very much for taking the time to come along. We are very grateful to those of you who sat through all the evidence this morning.

The committee will hear further evidence on these instruments from the Deputy Minister for Communities on 7 December.

*Meeting closed at 12:23.*

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