

# **COMMUNITIES COMMITTEE**

Wednesday 7 December 2005

Session 2

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## COMMUNITIES COMMITTEE

### 29<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 ALSO ATTENDED:

Roger Harris (Scottish Executive Development Department)

Johann Lamont (Deputy Minister for Communities)

#### CLERK TO THE COMMITTEE

Steve Farrell

#### SENIOR ASSISTANT CLERK

Katy Orr

#### ASSISTANT CLERK

Jenny Goldsmith

#### LOCATION

Committee Room 6



# Scottish Parliament

## Communities Committee

*Wednesday 7 December 2005*

[THE CONVENER *opened the meeting at 09:31*]

### 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 welcome people to the 29<sup>th</sup> meeting of the Communities Committee in 2005. I remind members that mobile phones and BlackBerrys should be switched off.

I have received apologies from Christine Grahame. Mary Scanlon has another commitment but hopes to join us by 10 o'clock.

Item 1 is subordinate legislation. Before it considers any issues that it might wish to raise in its report to Parliament on the series of instruments that is before it today in relation to the registration of private landlords, the committee will take evidence from the Deputy Minister for Communities. Under item 2, the minister will move

the motion for the draft Private Landlord Registration Modification (Scotland) Order 2005.

I welcome to the committee the Deputy Minister for Communities, who is accompanied by Roger Harris and Maureen Rooney from the private sector housing team and James Shaw from the office of the solicitor to the Scottish Executive.

**Mr John Home Robertson (East Lothian) (Lab):** For the avoidance of doubt, I remind members of my entry in the register of members' interests that says that I am a very dormant partner in a family farming business that includes some privately rented houses.

**The Convener:** Thank you. The minister may now make an opening statement.

**The Deputy Minister for Communities (Johann Lamont):** Parts 7 and 8 of the Antisocial Behaviour etc (Scotland) Act 2004 support two policy priorities: dealing with antisocial behaviour and improving the private rented sector. Those issues are linked, because a poor landlord often fails to address antisocial behaviour, which exacerbates problems for the neighbourhood.

Part 7 gives local authorities an important tool in the form of the antisocial behaviour notice, which is to be used alongside other measures to deal with cases of antisocial behaviour. The registration scheme in part 8 will be a major step towards improving the quality of the private rented sector. In particular, it will be a powerful tool for dealing with the worst landlords, including those who ignore, condone or even encourage antisocial behaviour by their tenants.

The act provides the framework; the regulations and the order that are being considered today will provide the necessary detail to make the provisions work when they take effect on 31 March 2006. They will be complemented by adjustments to legislation through the Housing (Scotland) Bill and regulations that the United Kingdom Department for Work and Pensions will make.

The regulations and the order were prepared in the light of a full public consultation, which covered broader issues of registration and the intended approach to guidance. A range of views were expressed, but some provisions attracted more consistent comment, which led to the changes to the management of the public register in the Housing (Scotland) Bill, for example.

The most significant issues that arose from the consultation related to registration. Comments were received on the exclusion of the landlord's home, agricultural holdings and crofts, property in the temporary possession of a lender or executor and manse or equivalent houses. On fees, comments were made about having a fee structure rather than absolute fees and about the balance between fairness and complexity.

The consultation confirmed that antisocial behaviour notices should be a last resort following a landlord's failure to use advice and assistance, protection of tenants by giving advice and assistance and active engagement by local authorities when necessary, which will be reinforced by guidance on handling cases.

The overall aim is to have a package that minimises the burden for landlords and local authorities. Substantial work is being undertaken in parallel with the regulations and the order, including work on an internet-based application system and guidance for local authorities, landlords' agents, tenants and others. Information will be disseminated through networks and publicity. The regulations and the order will make an essential contribution to the overall package.

**The Convener:** You mentioned the dissemination of information, which is one issue that has been raised with the committee. We must ensure not only that landlords are aware of the new scheme but that tenants are aware of their rights under the scheme. Will you give the committee further information about how the Executive intends to publicise the scheme nationally?

**Johann Lamont:** Many of the existing networks of tenants organisations and landlords organisations that we have consulted will be a good place to start. Other networks involve local authorities and community organisations. We might want to flag up to MSPs the fact that they should provide information if they come across folk who have a problem.

We need to ensure that people know about the scheme and about what a tenant should do to find out whether their landlord is registered. You raise an important issue. There is no point in having a perfect scheme if no one can test its use. Perhaps we should consider some of the lessons about accessing information that we have learned from the licensing of houses in multiple occupation.

**The Convener:** We heard in evidence the suggestion that a national advertising campaign was needed to make people aware of their new rights. Some organisations were concerned that the most vulnerable tenants, who need the scheme's protection, might be the most difficult to reach, whereas the people who are most likely to know about the scheme will be those with landlords who comply. A national advertising campaign might reach vulnerable tenants more easily.

**Johann Lamont:** That may be so. A judgment would need to be made about the effectiveness of such a campaign. Some advertising campaigns, such as the one on domestic abuse, are more effective because people tune into them, as they

hear something that makes them react. An information campaign is not quite the same.

The scheme involves an issue of tenants' rights and of community rights. One difficulty is that people who have had problems with tenants of a property near them have been unable to find out who the landlord is and who to complain to. In the first instance, they go to the local council and the police to ask for help with the problems. It is important at that stage that the agencies know that they can check whether the landlord is registered. I am sure that we are all aware of people who have drawn a blank and been unable to pursue the matter. There will be a general information campaign. It is important that when people have difficulty and ask for help that information is provided to them.

**The Convener:** The Scottish Association of Landlords was particularly keen that there should be an easily understood, step-by-step guide to the legislation. It was concerned that while larger landlords would find it easier to engage with the new system, smaller landlords with only a couple of properties might find it more difficult. It is looking for something simple, such as a flow chart that lays out what landlords have to do to ensure that they comply with the new regulations.

**Johann Lamont:** That makes sense. We should examine that. I am clear that the registration of landlords in the private sector will strengthen the sector, rather than diminish it, because it will ensure that the reputations of those who provide a service in the sector are not tarnished by those who abuse the sector. We must ensure that people do not fall foul of the system through ignorance. The system should be relatively straightforward and easy for them to comply with. The big organisations such as the Scottish Association of Landlords will want to ensure that its members are informed, but we all know that there will be landlords with only one or two houses. It is important that they do not default by accident. We will have to examine how to get into the public domain information on the simple steps that landlords need to take to ensure that they are registered. In that context, we have to be clear that the system will help the sector, rather than attack it.

**The Convener:** The Scottish Executive is always keen to ensure that its legislation is equality proofed. What steps did the Executive take to ensure that equality issues were considered in the legislation? How will that feed into implementation?

**Johann Lamont:** As with all Scottish Executive consultations, we consulted a range of equalities bodies, such as Age Concern Scotland, the Commission for Racial Equality, the Disability Rights Commission, Engender, the Equal

Opportunities Commission, Help the Aged, Ownership Options in Scotland, Positive Action in Housing, the Scottish Consumer Council, the Scottish disability and housing network, Scottish Women's Aid, the Scottish Women's Convention, Young Scot and YouthLink Scotland. Good practice was followed on the consultation. Some of the changes that we made in the Housing (Scotland) Bill, for example in relation to the register itself, were made in recognition of the comments of some of those groups.

**The Convener:** The Executive proposes that the scheme will have a light touch. I am interested in the balance between satisfying local authorities and satisfying landlords. Last week, we heard from local authorities that the scheme will be light touch, but we heard a contrary view from landlords, who were concerned that perhaps the scheme will not be as light touch as they had first anticipated. What is your view? Do you think that the Executive has struck the right balance and that the scheme will provide the necessary protection without being too onerously bureaucratic for landlords?

**Johann Lamont:** There is nothing in the system to make it bureaucratic and overly burdensome—local authorities would not want it to be like that, we would not want it to be like that, and it would not be in the interests of landlords for it to be like that. Some landlords do not want registration, so they will find whatever they are asked to do too onerous. They feel that the scheme is an unnecessary step. However, people who are resistant to registration would say that, would they not?

You will recall from the original discussions that private landlord registration was brought in as a direct consequence of the quality of service that was being provided to tenants in some communities, and because of the inability of communities to get help when properties were not being managed appropriately and antisocial behaviour was not being addressed. We need to be genuine in our commitment to a scheme that takes as light a touch as possible, but which fulfils the basic requirements to ensure that somebody who lets out a property is accessible and is expected to manage their property, provide a service, be accountable and be known. We were all shocked by the potential for tenants to find themselves in a situation of mayhem and not be able to get hold of the landlord who financially benefits from it.

Beside that is the need for a culture change. We are talking about a business not an investment. If a landlord runs a business and provides properties to let, responsibilities go with that. The debate is not about whether the scheme takes a light touch; it is about understanding the responsibilities of the

sector. I am confident that the scheme takes a sufficiently light touch. As the process is rolled out, we will keep in close contact with all the interest groups, including the landlords, on how the scheme is working on the ground and we will reflect on and review the scheme as we go along.

09:45

**Mr Home Robertson:** I am sure that everybody concerned will welcome the intention expressed by the minister and local authorities to apply a light touch to the scheme, but that kind of term is all too easy to use. It might be helpful if the minister would illustrate briefly the process that a landlord will have to go through. For example, if somebody were about to inherit one or two properties from a granny somewhere and was thinking about letting them, in a nutshell, what process would have to be followed? Will people simply fill in one form, submit it to the local authority, pay whatever fee is asked—we will come to that later—and the application will stay on the register until somebody takes it off, or is it a repeat process? Is there monitoring? Just how light will the touch be?

**Johann Lamont:** In the interests of clarity and so that we can avoid a bureaucratic system, I ask a bureaucrat to briefly capture what the process is. I will answer any further questions.

**Roger Harris (Scottish Executive Development Department):** In the background of all this legislation, we are trying to produce an internet-based information technology system around which the application process will centre. Those landlords and agents who are able to get access to and make use of an internet-based system—whether they use the internet regularly or go to the local library where there are usually IT facilities—will be able to apply online.

We are in the process of designing the system to make it easy for the person to understand what is required of them. It will take the form of a questionnaire, but will have information at appropriate points where they need to understand the import of the question being asked.

The way in which we are designing the system means that it should be easy to get on to the system to get registered. For the bulk of applications, if people answer all the questions satisfactorily and pay the appropriate fee online, it will result in automatic registration. There will be a tail end to the process, when the local authority will send out a letter to say, "This is what you have put into the system: is this correct?" That is a means of checking identity to ensure that the person does not represent themselves as somebody else. For most people, that ought to be the sum total of the registration process. If they are unable or unwilling to use the internet, they

can go to the local authority, where someone will print off the same form and enter the person's details on to the system so that the registration is then complete.

If there are doubts about the person's application, either because of what they entered on the form—for example, they might have relevant offences—or because the local authority already has information that leads it to think that it ought to consider the application more closely, the registration will not happen automatically and the local authority will investigate as far as it needs to, complete the registration and then notify the person.

Registration will last for three years. I suspect that we will come back with further regulations to refine the reapplication process towards the end of those three years, once we have learned from what has taken place over that time. In the meantime, a person will be obliged to notify the local authority if their circumstances change, which they will also be able to do through the internet.

To us, everything seems very complicated because we are in the middle of designing the system but, in most cases, the process should mean the applicant going on to the internet, going through one pass of an application form and registering. That should be it.

**Mr Home Robertson:** Thank you very much. That is helpful.

**Tricia Marwick (Mid Scotland and Fife) (SNP):** I congratulate you on thinking through the internet scheme, which is a great idea, but I have questions on behalf of the luddites who do not use the internet. I do not understand how people will know that they need to register. How will they know that the regulations are in force? Who will tell a private landlord who has rented for 30 years about the regulations? Who will flag up their need to register?

**Roger Harris:** I would like to develop a point, if I may. We have already discussed advertising and so on. Our experience from HMO licensing suggests that it can be difficult to catch or contact everyone, particularly as many landlords have only one or two properties. However, most landlords who are involved in the buy-to-let market, for example, receive certain mortgage products, so a route exists there. We are in discussions with the Council of Mortgage Lenders on disseminating information through such routes. Most landlords will deal with a professional at some point, so we have a number of ways of getting to them.

Our experience of HMO licensing is that such issues can often be significant for the local press. We think that the issue that we are discussing will be the same and that working with the local press,

through our press colleagues and particularly through local authorities' contacts with the press, will be a good way of getting editorials on the issues that are involved, which will probably have more impact. Most local authorities have their own newspapers, which they send to every household. That is another channel. A general advertising campaign may catch people, but it will not catch everyone. We are concerned to find ways of getting to people through the kind of routes that I have described because we think that they will be much more effective than other routes.

**Tricia Marwick:** Automatic registration seems to me to be a cost-effective process, but will there be a facility for spot checks on, say, one in 20 cases or one in 30 cases to ensure that all the information is correct and that nobody is at it?

**Johann Lamont:** To some extent, that will be a matter for the local authority. We want to work closely with local authorities to ensure that such issues are considered.

I take your point about how people will find things out. We must find a way in which things can become public knowledge and be understood. The issue begins to matter at points of crisis in communities and then it generates its own momentum. If a person is totally invisible to the rest of the world, that suggests that we should not deal with them as our first priority.

There is a general information issue and the crucial issue of letting agencies know about things for when people are looking for help. The system cannot fall into disrepute because the safeguards that you have highlighted do not exist. As I say, we want to work closely with local authorities, but at some point there might be a role for the committee in revisiting the issue and considering whether it has picked up something different. The Parliament wants us to pick up on practicalities.

**Scott Barrie (Dunfermline West) (Lab):** What was the rationale for the range of exclusions in the draft Private Landlord Registration (Modification) (Scotland) Order 2005?

**Johann Lamont:** Let me find my notes so that I get this right.

During our considerations, the question arose whether there needed to be exclusions at all. In the Housing (Scotland) Bill, holiday accommodation is exempted, and we have considered other situations case by case to decide whether an exclusion is justified. For example, a convincing case has been made for not regarding a manse as a tied house, because a manse is linked to pastoral care and is the office of a minister of religion who is a leader of a congregation. Therefore, we felt that an exclusion was justified.



The other main exclusion was for resident landlords. If I remember correctly, in discussions during the passage of the Antisocial Behaviour etc (Scotland) Bill, people were uncomfortable with the idea that somebody who took in a lodger would then have to register as a landlord. If there were three lodgers, the HMO legislation would come into play. We felt that that was sufficient safeguard.

**Scott Barrie:** You suggested that there is a distinction between manse and other more traditional forms of tied housing. In its evidence, the Scottish Rural Property and Business Association appeared to suggest that greater clarification was required on the different forms of agricultural tenancies, because agricultural and crofting tenancies are excluded but tied housing is not.

**Johann Lamont:** We always want to be clear and to avoid doubt. During the passage of the Housing (Scotland) Bill, we debated why people felt that tied houses should be covered. A tied house is not like a free house; it is something that people pay for, in some cases with their labour. I acknowledge that there are technical distinctions that we have to be aware of. Agricultural and crofting tenancies are excluded but tied houses are kept in. In the debates in committee and in the Parliament, people seemed to be happy with the balance that we struck. However, we are always alive to the need to ensure that things are as clear as possible. When people seek advice on whether they need to register, they have to be given clear advice.

**Mr Home Robertson:** The draft Private Landlord Registration (Modification) (Scotland) Order 2005 provides for an exemption for a house that is

“owned by an organisation which has the advancement of religion as its principal purpose and the regular holding of worship as its principal activity”,

and is

“occupied by a person whose principal responsibility is the leading of members of the organisation in worship”.

That is fine, but I am vaguely conscious that there are some fringe quasi-religious organisations whose members may have slightly eccentric lifestyles. Some of their neighbours may interpret those lifestyles as being antisocial—although I do not wish to sound like the classic grumpy old man. Could the provisions in the draft order be used as a loophole?

**Johann Lamont:** We would not encourage the use of loopholes and we would keep an eye out for that. We wanted to capture what a manse is but we acknowledged that the definition had to be broader than that. In any court, the word “manse” would signify what we are talking about, but it is

important that we couch the order in broader terms. However, we are alive to the issues that you raise. We will keep an eye on them.

**Cathie Craigie (Cumbernauld and Kilsyth) (Lab):** I want to move on to Scottish statutory instrument 2005/557 on private landlord registration, and SSI 2005/563 on antisocial behaviour notices. Both instruments deal with advice and assistance to landlords. Will the quality and range of advice to landlords and tenants be consistent throughout the country? Concern has been expressed that local authorities might go off and do their own thing or do as little, or as much, as possible. Are you confident that quality advice and assistance will be provided throughout the country?

10:00

**Johann Lamont:** It is important that the advice should be consistent, but it will also have to be appropriate to each area. As Scott Barrie mentioned, some local authorities will need to be much more versed in the technicalities of tied housing than Glasgow City Council may have to be. We will ask local authorities to ensure that the advice is appropriate for their area and that it is consistent. We will issue guidance on that, because we would not want people to be able to say that they operated out of ignorance, because although they sought advice, it was not helpful or appropriate. The guidance will aim to ensure consistency and a clear understanding of what advice should encapsulate, while recognising the differences throughout the country.

**Cathie Craigie:** Local authorities have also raised a concern about resources—they feel that the advisory role will have implications for local authority budgets. How will we ensure that local authorities are adequately resourced to take on that role?

**Johann Lamont:** We have taken powers to support grant allocation to local authorities. We need to work closely with the Convention of Scottish Local Authorities on how the resources will be distributed among local authorities. It is clear that start-up costs may be involved and we accept that those should be funded. Funding has been identified, as it is not in any of our interests if a scheme fails because it is not adequately resourced. We must have a clear idea about what the resource is and where the pressures will be.

**Cathie Craigie:** In general, do local authorities give advice and assistance to private landlords at present?

**Johann Lamont:** Some do, although I cannot comment on what every local authority does. Some areas have private landlord forums, but they are often mainly about how the housing benefit

system is organised and run. Many local authorities accept that they need to engage with the sector. I hope that the sector will understand that it needs to engage with local authorities on more than simply the housing benefit system. We have an opportunity to build on that work. We want to work closely with COSLA to ensure that the advice schemes are effective.

**Tricia Marwick:** Will a tension arise because local authorities will be the advice giver—to tenants who have problems and to landlords when they register—and also the enforcer? Local authorities will give advice to all parties, but they will also be asked to take an enforcement role if private landlords come up short. Are there inherent tensions in that?

**Johann Lamont:** I do not think that a tension will arise, because the same applies to a range of services for which local authorities are responsible. For example, on HMO licensing or environmental health issues, local authorities provide information, but they also have an enforcing role. I do not see those roles as contradictory, given that local authorities' responsibility is to the general good—I am not sure of the technical term.

**Tricia Marwick:** Well-being.

**Johann Lamont:** Local authorities are responsible to the general good and well-being. They have an important role, because the private rented sector operates inside the local authority area. People live in houses provided by the private rented sector, people provide a business in it and people live beside it, so local authorities have a general role in relation to the sector. There is no contradiction between that and intervening to say, "But you do not meet our standards." That applies in other situations.

It is also the case that landlords and tenants can go to other organisations, in particular in the voluntary sector, to get support. It will not be compulsory that the only organisation that they can listen to or get advice from on those matters is the local authority, but the local authority is a very good place for people to start. It is important for the local authority to recognise that it has a key role.

**Cathie Craigie:** I will move on to SSI 2005/558, which deals with costs, fees, information and matters of that nature for the registration of private landlords. I understand that the regulations prescribe the information that will be required to be given to local authorities so that they can determine the application for registration. One item that has been left out is that the applicant does not have to declare any information on spent convictions. Is enough information required to be given by the landlord to allow a local authority to

determine whether they are a fit and proper person to act as a landlord?

**Johann Lamont:** The judgment has been made that that is sufficient information. We take the view that what we are asking for is sufficient for the purpose of the registration scheme. The information must be sufficient to determine two matters. One is whether the person is a fit and proper person to be a landlord. The other is that they are accessible and accountable for the service that they provide. That could be important in dealing with someone who is deemed to be fit and proper, but who over time begins to neglect the property and the area. I think that we have got the balance right on the information that is being sought.

**Cathie Craigie:** Fife Council's evidence expressed concern—it was Fife Council's opinion and it was not shared by COSLA—that the onus of responsibility for determining the application falls on the council; if there was information that it should have been aware of, it could be liable for any damages that were caused as a result of the failure to pick up on that information. Fife Council therefore felt that a disclosure check should be the norm across all applications. I presume that that option was considered. Why was it ruled out?

**Johann Lamont:** Again, we judge that sufficient information is being sought. The provision does not preclude anybody who enters into a contract with a private landlord from seeking further information from them. The contract is between a landlord and a tenant, so the tenant has a responsibility. It is not the same as the situation in which a local authority lets properties from the private sector and sublets them to their own tenants. That is a different relationship.

On the suggestion that the local authority could potentially be exposed to liability, the point is that it is a registration scheme; it is not a form of licensing. The local authority does not guarantee that the person meets standards; it makes a judgment. If the fit-and-proper-person test that has been identified indicates that the person is not a fit and proper person, the local authority should take appropriate action promptly. That probably gives sufficient cover. The proposal to go for a full disclosure check is perhaps moving too far in that direction. As I have said, the primary relationship is between the landlord and the tenant. The tenant, as an adult, must take responsibility for entering into such a contract.

**Roger Harris:** At an early stage, we considered having a full disclosure check for every applicant for registration. That would be a substantial undertaking that would be relevant to only a few people. What is possible is that a local authority could ask an applicant whether they have any reason to suspect that there might be a relevant

history or it could ask the applicant to obtain a relevant disclosure check. We are in the process of dealing with colleagues to make the necessary adjustments to the legislation to allow that. If the applicant says no, that would in itself be a cause for the local authority to be suspicious. At that point, there would be an opportunity to go further. However, that did not need to be allowed for in these regulations, as it would be on a voluntary basis.

**Cathie Craigie:** Earlier, Tricia Marwick asked about local authorities doing spot checks. I suppose that, if a local authority had a suspicion about something, it would be entitled to seek further information from the applicant.

**Roger Harris:** Yes, the corollary of the fact that it is easy to be registered is that it is easy for the local authority to act if it has suspicions. As has been said, checks could also be made on a random basis.

**Cathie Craigie:** Applicants will be able to make one application, even though they might have properties in more than one local authority area. I am pleased that the legislation enables local authorities and other authorities, such as the police, to get information about landlords in a simple way. How easy will that be? What arrangements have been made in relation to cross-boundary property portfolios?

**Johann Lamont:** We will work closely with COSLA on that issue. Certainly, it will be possible for local authorities to exchange information through the system.

**Cathie Craigie:** How will that work? If a person has properties in, for example, North Lanarkshire Council's area and Glasgow City Council's area, but makes only one application, how will that be administered? Will it be bureaucratic or will it be simple?

**Johann Lamont:** It is sometimes possible to be bureaucratic and simple at the same time. Computers do remarkably complicated things without requiring big piles of paper to be used. My understanding is that an applicant would apply on one system and that that would match that person with the various local authorities, which would be able to pull in that information.

**Cathie Craigie:** Karen Whitefield and Tricia Marwick asked about guidance for tenants. We all want the system to work, but there is concern about how we can get the information out to people. Obviously, we MSPs will do our best to let our constituents know that the system is up and running. However, I feel that the Scottish Executive should take a lead role in making up leaflets that can be used to get information to tenants. If a tenant's landlord is not registered, how will that tenant know what to do about that?

There is a need for publications to be produced that could be issued to citizens advice bureaux, tenants' information places and the local press and media, which Roger Harris spoke about earlier.

10:15

**Johann Lamont:** There is a need for general campaign material that will let people know that this is something that matters. However, what is critical is that people who need help know about the register and that they can find out who the landlord is. It is not so much, "I would be quite interested to know who owns the property up the stairs," as "I need to get hold of this person because there is a problem."

The organisations that provide help to people will need to be well versed in the new arrangements. Whether a person's point of contact with the system is a citizens advice bureau, a local authority, the police or—in the case of many of my constituents who are housing association tenants who have a private rented property beside them—a housing association, it is important that they deal with people who are well versed in the new system. We need to ensure that the people in those organisations know about the register so that they do not simply shrug their shoulders and say, "Well, how do you expect me to know?" That is what happens too often at the moment because people just do not know how to get that information.

Although we do not want to abandon people to find their own way through the system, we must also ensure that basic information is available in, for example, libraries, so that those who want to do things on their own can get the information. People will be able to access the national register to establish whether the property above them is registered and who the landlord of the property is. However, we need to ensure that people are given advice by whoever they ask for help after finding out that information. If people are experiencing a problem, they will make contact with someone to try to get some help to resolve it. Therefore, it is important that, as well as ensuring that basic information is available at different points, we are creative about the range of people to whom we give information.

All sorts of things would need to be discussed with local authorities about the type of leaflet that we might provide. We need to consider how to spend that money in a way that provides the best benefit and greatest impact. I doubt that providing a generalised leaflet to go through everybody's door along with their council tax bill would make a difference. It is more important that, when people require help, the person to whom they turn is able to provide the right information and point them in the right direction or even take them there.

I am sure that locally elected members, MSPs and MPs will all have an important role to play. Active community councils may also be able to provide the information, as such issues can find their way on to the agendas of community councils and tenants groups. We need to ensure that all those organisations also have that information.

**Cathie Craigie:** I do not expect the minister to make any spending commitments today, but it would not cost a lot for the Executive to prepare for tenants and landlords a concise step-by-step guide—it need be only a couple of sides of A4—that local authorities could adapt to their needs.

**Johann Lamont:** We are doing that.

**Cathie Craigie:** Very good.

My final question—I know that the minister has an interest in this issue—is whether local authorities will be able to share the information that they hold with other organisations. I appreciate that such information sharing might raise issues under data protection legislation, but concerns exist that private landlords whose tenants are in receipt of housing benefit might not register their property. I know that housing benefit is a reserved issue on which discussions have been on-going with the relevant department, but I hope that the SSIs that we are considering today will allow for any change in future that enables local authorities to take into account information that they hold on properties in which tenants are in receipt of housing benefit. At the moment, local authorities are not able to do that.

**Johann Lamont:** We continue to engage in dialogue with the DWP on people's right to housing benefit to meet their rent liability when the landlord to whom the benefit is given is committing an offence. It is not easy to solve that problem, but I very much recognise the need to find a way of addressing the issue. Given that local authorities will have access to the national register and will know whether a landlord is on the register, we need to do some hard work on whether anything would prohibit people from consulting the register whenever someone makes a request for their rent liability to be met. However, it would be dishonest of me to say that it is obvious that the problem has been sorted, as other issues can arise. For example, we need to consider whether a person's entitlement to have their rent liability met should be separate to them as an individual rather than be dependent on the property. I assure you that we are continuing to explore the matter, because, as you have pointed out, it is important. If a local authority can bring together the different bits of information, it would certainly inform housing benefit decisions and allow determinations to be made. However, more work needs to be carried out on that.

**Tricia Marwick:** COSLA and other witnesses have expressed some scepticism about the Executive's intention for the registration scheme to be self-financing. For example, they have pointed out that, although the Executive has said that it will meet the set-up costs, it has not made it clear whether it will meet 100 per cent of those costs. I imagine that the local authorities will want that to be clarified.

**Johann Lamont:** We acknowledge that the scheme will incur costs that will have to be supported. The scheme's running costs will be met by the fees, and we will negotiate with COSLA on what the real set-up costs will be. I should point out that, given our commitment to introducing an effective system, it would be perverse to put ourselves in a position where we say, "We can't do this because we haven't got the money." It is not a default position; as I have said, it is a matter for negotiation. We want the system to work. We will deal with the issue of fees once the scheme is up and running; however, we need to explore the balance of costs with COSLA, which is content to be party to that negotiation.

**Tricia Marwick:** Your response on the set-up costs will probably provide some comfort to the witnesses who gave evidence last week.

However, concern was also expressed that, although local authorities are able to work out how much it will cost to put staff in place, they cannot anticipate how much they will receive from fees in order to fund the scheme's on-going costs. Do you have any views on the difficulties in which local authorities genuinely feel they will be placed?

**Johann Lamont:** We must continue to discuss the matter with COSLA and individual local authorities that find the situation particularly problematic. If the proposed fee mechanisms do not achieve what we want them to achieve, we will have to revisit the matter. After all, as I have said, our policy is to set up an effective registration scheme.

If the scheme is effective, it will have huge benefits for local authorities. Indeed, I can think of somewhere in my area that, if the private landlord problem had been managed, it would not have gone into a spiral of decline and been destroyed. One part of the private sector—albeit a very small part—is not managing people or properties; property values are becoming depressed; and the people in those communities are walking away from the matter.

Moreover, even at a marginal level, local authorities incur costs by having to investigate complaints and concerns that they ultimately find themselves unable to do anything about. Because the scheme will deal with the problem, that money will probably be released.

I accept the point about start-up costs and the claim that the proposed fee structures seem challenging. If they prove to be too challenging, the dialogue will continue. People have talked about this scheme as being simply another level of bureaucracy; however, its intention is to identify something that has been destroying the benefits of public investment because it has not been dealt with properly in the past. The issue is as much about community regeneration as it is about quality of life. Such regeneration is constantly being undermined by the fact that we have not dealt with a part of the sector that does not see itself as a business, as providing a service or as being accountable to anyone. I am confident that the registration scheme will be able to support work being done on that problem. The cost will not be all one way.

**Tricia Marwick:** You have addressed some of the points that I was going to raise, one of which was about the fees. The regulations propose a fee structure in which each local authority will set its own fee. First, what happens when landlords' portfolios straddle several local authority areas? Secondly, does the Executive believe that there should be a cap on the fees? What process could be followed if it was felt that a local authority had set its fee unjustifiably high? As you have recognised, if the fees were unjustifiably high, that would undermine the system that we hope to put in place.

**Johann Lamont:** We want to work with the grain of local authorities in establishing fees, and local authorities will give us estimates of what they believe would be reasonable costs. If we set a maximum fee, all local authorities would set their fees at the maximum. We will try to ensure that the fees are reasonable through the scheme that is operated. Local authorities are aware that we could regulate again to cap fees, if necessary. In relation to HMO licensing, people felt that there was huge variation throughout the country. Some of that is down to the complexity of what people are dealing with. Consistency is not the same as uniformity. We are keen to work with local authorities on the basis of what they think is appropriate; however, we reserve the right to regulate again to cap fees if we observe the problem that you have identified.

**Tricia Marwick:** I have one final point on the subject. The Association of Residential Letting Agents thinks that landlords whose properties are managed by professional firms that are members of ARLA, the Law Society of Scotland and the Royal Institute of Chartered Surveyors should not have to pay fees. ARLA believes that, because those premises are managed well by professional agencies, they already meet the standard to which the Executive aspires for private landlords. Does that position find sympathy with you, minister? If

not, can you explain the Executive's thinking a bit more?

**Johann Lamont:** We take the view that the owner of the property is ultimately responsible and must be part of the scheme. Although people might make a case for exemption, we feel that consistency across the board is more important.

**Mary Scanlon (Highlands and Islands) (Con):** The consultation paper states that the basic fee will be £50, with a £10 supplementary charge. Given the fact that you have had considerable dialogue with COSLA since the consultation paper was issued, and bearing in mind Tricia Marwick's questions and the need for the scheme to be self-financing, does £50 still seem a realistic figure?

**Johann Lamont:** That is something that we need to talk to the local authorities about. The figure that we started with was the figure that you have identified, and we will talk to local authorities about whether that is a reasonable figure.

**Mary Scanlon:** So, you do not know, at the moment, whether that figure is realistic?

**Johann Lamont:** Well, we are getting information and it seems to be a reasonable starting point. It is stated in the consultation paper, which people have looked at. It is a preliminary figure based on a reasonable assumption; however, we are not going to scaffold against the possibility of changing it if people can persuade us that certain things have not been taken into account. We want the scheme to work, so we want the fee system to work, but it must not be unfair or too onerous.

10:30

**Euan Robson (Roxburgh and Berwickshire) (LD):** Schedule 2 to SSI 2005/558 contains no provision to cover what might be called de minimis cases in which a very small property is being let for a notional sum. In such cases, the registration fee might exceed the monthly rental. I presume that the implication of schedule 2 is that the local authority has discretion when setting the fee level and can take such circumstances into account. They will occur from time to time.

**Johann Lamont:** As in any business, people will make judgments on what is worth their while. The registration is for three years, and nobody is compelling anybody else to do anything—to rent out their properties or to do so at a certain level. Because the scheme is for three years, the fees should not be unduly onerous. We do not want to include something in the system that means that it is in people's interests to find ways of avoiding registration.

**Euan Robson:** Another interesting subject about which there has been discussion concerns

the situation if a landlord is not allowed to charge rent because of a court order. If a sheriff then overturns such a ruling, should there be a way in which tenants can pay into what might be described as a third-party fund, with an independent third party managing the rent for the property during the period when the landlord's right to raise rent is discontinued? Why did the Executive reject the idea of a third party being able to hold money on behalf of a tenant? That would ensure that, in case a subsequent appeal against an order was upheld by a sheriff, the tenant had not used the money for other purposes.

**Johann Lamont:** That is a really important point. In action against landlords, we did not want to create situations in which people who have limited incomes could get into financial difficulties because they do not have to pay rent for a while. It is important that people are advised early about such situations and that they are directed towards advice on money. Advice organisations have to be geared up for that. People have to find ways of holding on to money that they are not paying, in case the landlord's appeal is successful.

We considered the possibility of requiring the landlord to offer a joint account to the tenant, but we understand that such accounts take about three weeks to establish and that the most vulnerable people would be least likely to be accepted by banks because of new regulations on opening bank accounts. We are, however, considering a national rent deposit scheme.

We have to work hard on the matter because it is important. As I say, appropriate money advice is likely to be the most effective measure and we should include information on that in guidance. Money Advice Scotland, Citizens Advice Scotland and others should be alert to such situations. Perhaps a letter to a tenant that says that their landlord is appealing against an order should also inform the tenant of the consequences and should direct them towards money advice. It would be most unfortunate if tenants got into difficulties because of action against landlords.

**Euan Robson:** A sheriff will obviously take circumstances into account; it may be that the sheriff will say that rent during the period of the appeal should not be paid. However, it is important to ensure that support and guidance are available, and I imagine that citizens advice bureaux would be particularly helpful in that regard. I understand that the Executive will produce guidance for local authorities, and material that could be distributed through citizens advice bureaux to assist in informing tenants.

**Johann Lamont:** That is important; we need to progress that work. However, just because a landlord is in difficulties and is being dealt with, that does not mean that the tenant has no

responsibilities. The landlord should not be liable to receive the rent, but that does not mean that the person living in a property should expect not to pay any rent. We have to get away from that, so we must support people and ensure that they are putting aside money to meet their responsibilities. We recognise that people are under pressure with their incomes and that such things can happen, so people need appropriate advice and support about where that money could go.

**Tricia Marwick:** Like the minister, I believe that the issue concerns every member of the committee. Many people who are in private lets are vulnerable; they are among the most vulnerable people in our communities. The make-up of the private rented sector is changing, but a number of older people and people who are vulnerable for other reasons still live in private rented accommodation. The minister said, "We would write to the tenants." That worries me, because I do not think that writing to tenants to tell them about their landlord will be sufficient in all cases. Could you consider further engaging local authorities, particularly for face-to-face visits, if such circumstances arise?

Where a tenant's rent is being paid directly to the landlord through housing benefits, what steps would be needed to discuss with other authorities the need to stop the rent being paid directly, and what mechanisms would then be in place for the rent to go elsewhere in the meantime?

**Johann Lamont:** That second question is one that we are in dialogue about; those things are all wrapped up together. Some of the processes around housing benefit are quite important in relation to what we are discussing, and we have seen people getting into bother in the past because they were deemed to be in arrears when, in fact, it was the system itself that was problematic. Tricia Marwick makes a fair point.

I would be reluctant to say that what I have described would happen in every circumstance. We do not think that it is going to happen every week, so we can invest some time and energy in getting things right, but we must still ensure that the system is not onerous. It would be onerous on local authorities to tell them that the consequences of pursuing a case would be so great that we will not pursue it. We would want flexibility to identify cases in which a person is already receiving social work support or has health care workers coming in. There has to be some intelligence about that, and people have to be alert to individual circumstances to ensure that the appropriate advice is given. In certain circumstances, a face-to-face visit may be needed, but I would be reluctant to provide for so much of that kind of advice that it would overburden the system.

Tricia Marwick's point about vulnerable people who live in the private sector also supports the

case for the importance of the sector's being one in which people can be safe: that is an argument for the registration scheme, which will allow for transparency about who landlords are in cases where people may be vulnerable and may not be able to exercise their rights as tenants, or their neighbourhood rights against landlords who try to use unusual methods of resisting complaints. I do not want us to lose sight of the big picture. Vulnerable tenants who live in private sector properties will be in a better position in a regulated sector for which there is registration than they would be without registration.

We need to strike a balance with a registration scheme that people will sign up for, so that they have an incentive to be involved and so that we can identify those who are reluctant to sign up or who are difficult landlords, and who can then be put out of the sector. It is in the interests of the very people whom Tricia Marwick mentioned that that be done. We want to achieve a balance and take a light touch not because we want to make life easy for people, but because we need them to sign up to the scheme and to engage with it. After all, the scheme's goal and the possible gains are very important.

**Roger Harris:** I have a technical point about the housing benefit issue, which has arisen from a discussion on protecting people when there is an appeal against a rent penalty notice. If rent is paid through housing benefit and the rent liability ceases, then the housing benefit entitlement ceases. We are in close discussion with the Department for Work and Pensions about the mechanics of ensuring that that is communicated—we will produce joint guidance. The DWP is working on minor adjustments to the housing benefit regulations in order to catch particular difficulties that might arise. If a landlord whose tenant is on housing benefit makes a successful appeal, the back payment that would be required in that circumstance would be dealt with by the housing benefit authorities as a back payment—a new claim would not be needed.

**Cathie Craigie:** I am pleased that discussions are on-going about the possibility of a third party holding the rent in such situations. I appreciate the minister's point that few people will probably be affected, but the issue is important nevertheless. Under the regulations, sheriffs will be responsible for deciding whether a rent penalty notice will be given. Will sheriffs also have the power to take into account the circumstances of the tenancy? Perhaps—to avoid the need for legislation on the matter—sheriffs could decide that the rent should be paid to a third party or into a bank account.

**Johann Lamont:** Advice on that would come at an earlier stage, before the matter went to court. People need to understand that a case is important if it gets to court. A judicial awareness-

raising process may be necessary. However, when such matters get to court, the tenant might not be there and the issue might not affect them. We need other parts of the system to be much more proactive when necessary. We need good advice from Money Advice Scotland and others, and we need triggers so that they know that they need to talk to people and think about the options for them.

**Mr Home Robertson:** I want to return to the fee level, which Euan Robson mentioned. The minister explained that the first stab at the level is a basic fee of £50 for a three-year registration. It is important to be reasonably clear on the matter, because it is a fair bet that the fee will be passed on to tenants. I want to approach the issue from a different angle. In informal discussions with my local authority, it was suggested that it will probably be necessary to appoint an extra member of staff and to provide support, certainly to set up the scheme, and probably to keep it going. I have no idea how many private rented properties there are in East Lothian. To establish the cost and the fees that will have to be charged to break even, we first need an idea of how many private rented houses there are in Scotland. We need to work out how many staff will have to be paid for, and the other costs for local authorities, and then do the calculation to come up with a figure. Has that work been done?

10:45

**Johann Lamont:** It is a chicken-and-egg situation. We are creating a private landlord registration scheme in the first place because we need to establish the size of the sector and to identify the problem areas that cause all the disjuncture in local communities. We could estimate the size of the sector but, if the registration scheme is effective, that might give us a far better picture.

It is important that we do not die in a ditch over the fee level, but it is also important that we set fees at a level that does not mean that it is cheaper to avoid them than it is to engage with the process. It is a job for landlord organisations not only to acknowledge the system, but to advocate it as a way of strengthening the sector and of driving out the people who give them a bad name. In some communities, such as my own, people hold the private rented sector in contempt. That is not because all private sector landlords deserve it—far from it; theirs is the accommodation of choice for many people—but people's direct experience of individuals is that they really just masquerade as landlords: they do not provide a service to their tenants and are not accountable to their local communities.

We will have technical discussions about fees, which have to be set at a reasonable level.

Nobody is in the business of creating a system that is so onerous that it is better to be out of it. I genuinely hope that people will buy into the fact that the scheme is not only in the interests of those of us who have thought for a long time that it would be a good idea not for its own sake, but because it will address a serious problem. It is in the interests of the private rented sector to advocate and to be open about the scheme. If bits of the scheme do not work well, we will have to be open about that and talk to the sector about how we can sort it. The scheme is also in the interests of local authorities, because of community regeneration. It is in the interests of the private rented sector to rid itself of the marginal group of landlords who give it as many problems as they give communities. Dialogue is important, and fees will be part of that.

**Mr Home Robertson:** I think that we are all agreed on that. It is a question of clarifying the level at which the fee is likely to be set. Have the minister's officials had a stab at calculating the overall cost in relation to the approximate number of private rented houses? Does that relate back to the £50 figure that we are talking about? If it does, that will be fine.

**Roger Harris:** As the minister said, it is a chicken-and-egg situation for local authorities as well as for us, because we are trying to estimate something while moving into new territory. We have established a lead contact in every authority, and we will build a network with them. Those contacts will exchange good practice. We have asked them to estimate their costs; they will start with general information from census data and so on on the size of the sector in their areas, which is not particularly helpful, but it will give them an idea. We gave them a lengthy walk-through of what staff will have to do at various stages of the process, and we have asked them to put against that their estimates of time and cost according to the number of registrations that will be needed and the amount of enforcement work that will be necessary.

We have been receiving those estimates which—as you would expect—vary enormously, but at least we have been going through the same process for each authority. Some of them have not had to approach anything in this way before, so it is novel for them. We are, as we speak, considering the information that is coming in so that we can determine the variation. From an initial viewing, there are clearly large variations in how people have approached the issue. We will have a meeting of the lead officers later this month to start the network going and to have an exchange about the sorts of assumptions that they have made. We will move from that into discussions with the Convention of Scottish Local Authorities.

**Mr Home Robertson:** At this stage, no alarm bells are ringing in relation to the £50 fee.

**Roger Harris:** The figure of £50 was an example around which to talk about the structures. We gave clear signals that it was not based on our estimate of what the scheme was going to cost. It would be fine if the fee was at that level, but we will not be surprised if local authorities come back to us and say that that amount would make things difficult. The equation involves their costs, the start-up funding that we will contribute and what the fees should be. It is quite a complicated equation, and we are still working through it.

**Mr Home Robertson:** When a landlord fails to comply with an antisocial behaviour order, local authorities will have to intervene and take steps, which will involve costs. COSLA has made the case to the committee that a charging order mechanism should be established that could recover costs from defaulting landlords. As things stand, authorities will have to recoup charges through the normal debt process. Have you given any further thought to that?

**Johann Lamont:** We hope that charges would be recouped through the normal system. We need to consider further the issue of potential charging orders. That issue is neither out nor in. We can see the case for it, but we need to do more work on it because there may be other implications to consider before we can say that we will definitely look at it. Again, we need to be in dialogue with local authorities about that, and we need to know whether there are legal implications that would have a knock-on effect elsewhere.

**Mr Home Robertson:** You could consider the matter in the future, if necessary.

**Johann Lamont:** We are considering it. We can see the argument for such a mechanism, but we need to be sure that there are no unintended consequences if we choose to go down that road.

**Mr Home Robertson:** There is always the risk of wild discrepancies in what different local authorities will charge for the same sort of services. Does the Executive intend to keep an eye on that and to apply any kind of regulation?

**Johann Lamont:** Yes. We need to keep a close eye across the local authorities to ensure that there is consistency, that the legislation is applied appropriately and that there are no obvious discrepancies that cannot be explained.

**Mary Scanlon:** Holiday lets were mentioned. Such lets are obviously a huge issue in the Highlands, and many people hope that holiday lets will not be included in the guidance. Is there evidence to substantiate the inclusion of holiday lets, or are you happy to leave them well alone?



**Johann Lamont:** Unlike the other exemptions, Parliament made the decision to exclude holiday lets. Therefore you would have to justify to Parliament revisiting the issue, which would obviously happen if there were evidence to support such an exemption. If there was compelling evidence, I am absolutely sure—even if the Executive is not—that the Executive would have to take a view on it. You could not say that at some point it will not be considered; it would be considered if there were demand. However, it weighs heavily that Parliament has already decided that holiday lets should be excluded.

**Mary Scanlon:** That is fine; thank you.

**Mr Home Robertson:** On that specific point, I would like to draw to the minister's attention the examples of holiday lets or properties that are holiday lets for part of the year and so are covered by the exemption but that are not holiday lets for the remainder of the year. I can think of a number of such examples in my constituency. There are holiday lets on golf courses all through the summer that can, in the winter, be more conventional short-term lets. That could give certain people scope to take advantage of an exemption that might not be appropriate.

**Johann Lamont:** The legislation talks about properties that are let for holiday purposes. If lets are changed so that they are for occasional holiday purposes only, we would need to consider the legislation. The scheme cannot be undermined by folk seeking loopholes. That is the kind of change to which we must be open, and we should consider further regulation if necessary.

**The Convener:** That concludes the committee's questions. I thank you and your officials for engaging with the committee. The committee will be aware that the Subordinate Legislation Committee has already considered the instruments and has commented on the issues of drafting and meaning in one of the Scottish statutory instruments.

There are no issues on any of the individual instruments or on the group of instruments that members want to raise in the committee's report to Parliament, so do members agree that the committee does not wish to make any recommendations in relation to SSI 2005/557, SSI 2005/558, SSI 2005/559, SSI 2005/560, SSI 2005/561, SSI 2005/562, SSI 2005/563 and the draft Private Landlord Registration Modification (Scotland) Order 2005 in its report to the Parliament?

**Members indicated agreement.**

**The Convener:** Agenda item 2 is consideration of motion S2M-3564, in the name of Johann Lamont MSP, on the draft Private Landlord Registration Modification (Scotland) Order 2005.

As members are aware, the instrument is subject to the affirmative procedure. The Deputy Minister for Communities is therefore required, under rule 10.6.2 of the standing orders, to propose by motion that it be approved.

*Motion moved,*

That the Communities Committee recommends that the draft Private Landlord Registration Modification (Scotland) Order 2005 be approved.—[*Johann Lamont.*]

*Motion agreed to.*

**The Convener:** Do members agree that we will report to Parliament on our decision on the order?

**Members indicated agreement.**

**The Convener:** I thank the minister and her officials for attending the meeting for agenda items 1 and 2. The meeting will now be briefly suspended to allow the minister and her officials to leave.

10:57

*Meeting suspended.*

10:58

*On resuming—*

## Petition

### Sewage Sludge (PE749)

**The Convener:** Agenda item 3 is consideration of petition PE749, on spreading of sewage sludge. The petition was lodged by Geoffrey Kolbe on behalf of Newcastleton and district community council. The Public Petitions Committee has referred the petition to the Communities Committee for consideration, because the petition requests that legislation be initiated to discontinue the current exemptions for spreading sewage sludge and to ensure that spreading is subject to planning control, including a public local inquiry.

The petition has also been referred to the Environment and Rural Development Committee, which considered it on 16 November 2005 and advised that the strategy for sewage disposal is a matter for Scottish Water. As Scottish Water is reviewing its sewage sludge disposal strategy, the Environment and Rural Development Committee agreed that it would delay further consideration of the petition until the results of that review are known.

The Communities Committee has made a commitment to monitor several other petitions on various planning topics and has agreed to encompass them in its work on the proposed planning bill. The committee is therefore invited to agree that the planning related issues that other committees raise during consideration of the petition will be included in its scrutiny of the forthcoming planning bill and that the committee should take no further action on the petition because the issues will be taken into account as part of that process.

**Scott Barrie:** I have no problem with considering the petition when we discuss the planning bill. However, I draw the committee's attention to an answer that I received from the Deputy Minister for Environment and Rural Development a couple of months ago, which was that the Scottish Executive was about to publish its sewage sludge strategy, so we should note that not only Scottish Water, but the Scottish Executive, will produce a sludge strategy. I hope that, by the time we discuss the planning bill, that strategy will have been published—I expected it before now.

**Euan Robson:** The recommendation is right. Newcastleton is in my constituency and Geoffrey Kolbe is the past chairman of the local community council. The entire village signed the petition. What happened was that, one day, people woke to the thunderous noise of lorries travelling through

the middle of the village. They had no idea what the lorries were doing until they discovered that, 5 miles north up the valley, where the watercourses all head towards the village, sewage sludge—allegedly treated—was being dumped.

The problem is that under planning law, no forewarning for such action is required. The community council was not consulted and the village did not know about the spreading. The ostensible reason for spreading the material was to fertilise the ground. Fertilisation requires a certain depth of spreading—I think that it is up to a few inches—but the height of the material that was spread was in some places many centimetres, if not metres, because the undulating ground was covered to a level.

The cause of concern is adequately described in the committee paper. The policy behind planning law is never that planning law should duplicate what might be in regulatory procedure, but the issue is whether such spreading can be construed as controlled development. Where is it fertilisation and where is it a development because the landscape and the topography have been changed by the volume of material that has been applied?

The committee would be well advised to take into account the strategy that Scottish Water eventually comes up with and the Scottish Executive's strategy, and to keep open the question whether the proposed planning bill should deal with circumstances such as those that my constituents have experienced.

**Patrick Harvie (Glasgow) (Green):** I am happy to agree that we should take the petition into account when we consider the planning bill. The Environment and Rural Development Committee's position is understandable, given that strategies are to be produced that will be subject to strategic environmental assessment, which is one of the most important procedures that Parliament has agreed to recently.

We could, however, do something that might otherwise slip between the two committees. If we are to consider the petition later, perhaps we could ask the Executive for information that will be useful at that stage. As when we examined mineral extraction and so on, one problem is people's perception that different contractors or operators have different standards of practice. Could we, for example, ask the Executive whether it has asked the contractors to follow simple practices such as informing communities about vehicle movements in advance? That would not require regulation or legislation, but it would show willing on the part of the contractors.

**The Convener:** Some of that information is already available. The Public Petitions Committee

has gathered quite a lot of information; the clerks will arrange for it to be passed to us when the matter comes before us again. Although we probably all have an interest in the subject, we must be careful not to duplicate work and questions that will be asked by other committees. We must keep to the tight remit of determining how the issue can be dealt with through the planning process. Nevertheless, Patrick Harvie has raised valid points.

**Tricia Marwick:** We must ensure that, in our consideration of the forthcoming planning bill, we do not lose sight of the petition, although we must accept that other committees—especially the Environment and Rural Development Committee—have a role in scrutinising Scottish Water's disposal of sewage sludge. Our consideration of the issue will be limited, but we must ensure that it is not lost sight of altogether. The problem is that, in the past, the issue has not fitted within any regulatory framework. We must use what opportunities we have to consider it, although we recognise that the Environment and Rural Development Committee has a key role to play.

**The Convener:** The clerk has reminded me that the Environment and Rural Development Committee will receive a copy of the *Official Report* of our meeting and will be able to reflect on what has been said.

**Mary Scanlon:** I want to go from the specific to the general. The issue has been around since the first session of Parliament, when George Reid was vocal on the issue of Blairingone.

On the point about not duplicating others' work, I note that the Public Petitions Committee raised the question whether a health impact assessment should be carried out, which is something that we have spoken about in relation to planning. The health issues relating to planning seem to be more to the fore now—for example, in consideration of mobile phone masts, landfill sites, pylons, wind farms, genetically modified crops and so on. Given that the planning bill will come to the committee next week, I am content to work with the other committees and to accept the proposals that are before us today.

**Mr Home Robertson:** I am grateful to Euan Robson for explaining the local considerations relating to the issue. I was puzzled when I first read the petition. Perhaps I should declare yet another interest because of my agricultural background. Ever since time began, people have been applying organic waste material to the land as fertiliser—and why not? Nevertheless, I appreciate that what we are talking about are large quantities of a different material.

At first sight, the issue seems to have more to do with environmental controls—in particular, health controls—than with planning. It would be bizarre if planning consent was required to apply organic waste to a garden or a field. I do not think that anyone is suggesting that. I now have a better understanding of what the concerns were in Newcastleton and in Fife, or wherever. My hunch is that the issue might be better considered by people with specialist interests in environmental protection and health protection. No doubt, we can come back to planning.

**The Convener:** It has been agreed that the committee will return to the generalities of the issue when we consider the forthcoming planning bill.

That concludes the meeting. I remind members that there will be no committee meeting next week.

*Meeting closed at 11:09.*



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