

LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

Wednesday 5 March 2008

Session 3

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LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

† 8th Meeting 2008, Session 3

CONVENER

*Duncan McNeil (Greenock and Inverclyde) (Lab)

DEPUTY CONVENER

*Kenneth Gibson (Cunninghame North) (SNP)

COMMITTEE MEMBERS

*Alasdair Allan (Western Isles) (SNP)

*Bob Doris (Glasgow) (SNP)

*Patricia Ferguson (Glasgow Maryhill) (Lab)

*Johann Lamont (Glasgow Pollok) (Lab)

*David McLetchie (Edinburgh Pentlands) (Con)

*Jim Tolson (Dunfermline West) (LD)

COMMITTEE SUBSTITUTES

Robert Brown (Glasgow) (LD)

Rhoda Grant (Highlands and Islands) (Lab)

Tricia Marwick (Central Fife) (SNP)

Margaret Mitchell (Central Scotland) (Con)

*attended

THE FOLLOWING GAVE EVIDENCE:

Rachel England (Scottish Government Housing and Regeneration Directorate)

Stewart Maxwell (Minister for Communities and Sport)

CLERK TO THE COMMITTEE

Martin Verity

SENIOR ASSISTANT CLERK

Jane-Claire Judson

ASSISTANT CLERK

Ian Cowan

LOCATION

Committee Room 3

† 7th Meeting 2008, Session 3—held in private.

Scottish Parliament

Local Government and Communities Committee

Wednesday 5 March 2008

[THE CONVENER opened the meeting at 10:02]

Housing and Regeneration Bill

The Convener (Duncan McNeil): I welcome everyone to the eighth meeting this year of the Local Government and Communities Committee.

Members have received copies of the legislative consent memorandum that has been referred to the committee for consideration. There is also a cover note providing background information. Legislative consent memorandums are a mechanism through which the United Kingdom Government seeks to get the approval of the Scottish Parliament to legislate on issues that impinge on devolved powers. The memorandum that we are dealing with today, LCM(S3)10.1, concerns the Housing and Regeneration Bill that is being considered by Westminster.

With us for this item we have the Minister for Communities and Sport, Stewart Maxwell, and Rachel England, a policy analyst in the social housing division of the Scottish Government.

Minister, you may make some introductory remarks.

The Minister for Communities and Sport (Stewart Maxwell): This LCM is proposed for the purpose of tidying up housing legislation and repealing what is, in effect, a defunct power that was introduced more than 20 years ago and which reflects pre-devolution ideas about how housing regulation would operate across the UK.

As the memorandum explains, the Housing and Regeneration Bill will restructure the provision of housing investment and regulation in England. The Housing Corporation will cease to exist and its powers will be divided between two new housing agencies in England.

Amendment of section 33A of the Housing Association Act 1985 is the only provision identified that impacts on Scottish legislation and requires the use of an LCM. It will end the power of the Scottish ministers, the Housing Corporation and the Welsh ministers to enter into agreements to provide services in connection with the regulation of social housing. That power is unused and no circumstances are anticipated in which the Scottish ministers would want to use it, so its repeal will have no practical effect on how the

Scottish ministers conduct housing regulation. The Scottish ministers and the Housing Corporation co-operate with each other on regulation issues on the basis of a memorandum of understanding. That arrangement will continue and is unaffected by the amendment.

It makes sense to repeal this minor power and to tidy up redundant housing legislation. The use of an LCM to take the opportunity that the Housing and Regeneration Bill presents is a proportionate and efficient use of parliamentary time.

The Convener: Thank you for that, minister.

I invite questions from the members to the minister and Rachel England on the legislative consent memorandum.

David McLetchie (Edinburgh Pentlands) (Con): Will the minister explain to me the technical difference between agreements for services—the power to enter into which is the statutory provision that is being repealed—and working together on the basis of a memorandum of understanding?

Stewart Maxwell: The memorandum of understanding is non-statutory. Section 33A of the 1985 act is a statutory provision, but it has never been used by any minister since devolution or, in fact, before devolution.

David McLetchie: Agreements for services are legally binding agreements for the provision of services. “You give us some data and we will give you some money,” is an agreement for services. Working together is not a legally binding agreement for the supply of services in anything like the same way, is it?

Stewart Maxwell: The power has not been used since it was introduced. The memorandum of understanding is the method that has been used up to now. It has provided an efficient way of operating and has produced no difficulties in managing the relationship between us, the English and the Welsh. Given that the Housing Corporation will cease to exist because of the change to legislation in England, it seems perfectly sensible to tidy up a redundant power.

David McLetchie: Yes, but the mechanisms are two fundamentally different things. An agreement for services between A and B is a legally binding contract between two corporate entities for one to supply services to the other in exchange for payment or reciprocal services. A memorandum of understanding is an agreement about joint working arrangements, but not a legally binding contract; it is not about the supply of services between A and B. Therefore, we are talking about two different legal entities, are we not?

Stewart Maxwell: The practical effect is that—

David McLetchie: I am not interested in the practical effect. My question is technical and I

would like a technical answer, because that is the stage that we are at. An agreement for services is a legally binding contract between the Scottish ministers and an entity—in this case, the Housing Corporation—for the supply of services in exchange for money or a reciprocal undertaking to supply equivalent data or services in the other direction. A memorandum of understanding is not a legally binding agreement for services; it is a document setting out joint working arrangements. The two are technically not the same. Is that correct?

Stewart Maxwell: Technically, of course, they are not the same. Perhaps Rachel England can help you with the answer.

Rachel England (Scottish Government Housing and Regeneration Directorate): David McLetchie is right that they are not the same. The issues for which it was anticipated that the regulators would require a legally binding contract when the power was put in place in 1985 have, it turns out, never come to pass. The way that regulation has operated north and south of the border has turned out to be quite different from how the Westminster Parliament originally thought that it might be. Both regulators are able to share information with each other and work together on matters of mutual interest as and when required. They agreed the memorandum of understanding, which sets out the sharing of information and how they will work together. It is proportionate and reflects the good working relationship that exists. Now that housing regulation in Scotland is devolved—it is quite separate from the system in England—that seems to work well, because there is no circumstance in which we would ask the Housing Corporation to do work on behalf of the Scottish ministers in Scotland. We can do that ourselves and the Housing Corporation looks after England.

David McLetchie: Okay.

Johann Lamont (Glasgow Pollok) (Lab): Given that, at some point, the role of our regulator will be developed and that there is no pressure on legislative time—I understand what you said about the efficient use of parliamentary time, but I am sure that everyone will agree that we are awash with it at the moment—would another option be to consider developing the role of the housing regulator and to consult on a new regulatory role in Scotland and how it will relate to what is going to happen in England? The Government's "Firm Foundations: The Future of Housing in Scotland" document says that more of the large housing associations might move into Scotland from south of the border. Rather than using an LCM, would this not be the ideal opportunity to spend a bit of time considering the Scottish process?

Stewart Maxwell: This is a minor piece of technical legislation that is, in effect, redundant. It

has never been used. We envisage no set of circumstances in which it would ever be used.

The consultations on "Firm Foundations" and the work on the regulation of housing in Scotland will carry on. They are not affected by the change.

Johann Lamont: It is just that part of your argument was about the inefficient use of parliamentary time, which is not an issue. Would it not have been helpful to have this discussion in the more general context of housing in Scotland?

Rachel England: Possibly, but the regulator's role in England is being developed as we speak. The bill is going through now and arrangements for the new regulatory body are being put in place, so it would be quite hard at this stage to reflect on the possible relationship between the Scottish and English regulators. The people will be the same, so their relationships will remain in place, but matching policies will be quite difficult because quite a lot of work is still being done in England, and there is still work to be done up here.

Johann Lamont: Fine, but I am under the impression that whereas we are moving from a model in which an agency—Communities Scotland—develops our housing regeneration work to one in which that work goes back to being done within the Executive, England is moving in the other direction. Is that right? England is moving towards having an agency that has a broader community regeneration role, and the regulatory role is part of that.

Stewart Maxwell: England is moving in a different direction. The Housing Corporation's role is being split between two new organisations, the office for tenants and social landlords—Oftenant—being one of them. They are going in a different direction of travel, but regulation will remain separate and at arm's length from Government. There are similarities, but in any case the LCM does not affect any of those matters.

Patricia Ferguson (Glasgow Maryhill) (Lab): My question might be more to do with the principle of LCMs than anything else. Why has this LCM come up at this time? I always thought that one of the reasons for using an LCM was that there was no imminent possibility of Scottish legislation covering the issue. In other words, if legislation on the issue was pending, we would wait and legislate in Scotland. The LCM that we are considering seems to be quite separate. Does that mean that no housing legislation is imminent?

Stewart Maxwell: It means that there is no current legislative vehicle suitable for this particular piece of tidying-up. The Housing and Regeneration Bill is currently before the United Kingdom Parliament. The position is as you have said: nothing is before the Scottish Parliament at

the moment to which the issues covered by the LCM could be attached.

Patricia Ferguson: Therefore, the presumption must be that nothing is likely to come before the Scottish Parliament in the near future.

Stewart Maxwell: The fact is that nothing is before the Parliament that would be appropriate, but there is an appropriate bill before the UK Parliament. If we do not use that vehicle, once the Housing Corporation has ceased to exist we will have a redundant piece of legislation on the statute book for no reason. It is entirely reasonable to make a minor technical change and to tidy up the statute book at this point and in this manner.

10:15

Patricia Ferguson: I wonder why ministers did not consult on this matter as part of the consultation process on "Firm Foundations". Your paper for the committee states specifically:

"Scottish Ministers have not consulted on the proposed repeal."

It would have seemed sensible to me to have at least mentioned the matter in "Firm Foundations".

Stewart Maxwell: As I say, it is a minor technical matter that has no practical impact on any of the other parties that deal with housing in Scotland. There have been discussions between officials from the Scottish Government, the UK Government and the National Assembly for Wales, which have dealt with any issues that needed to be dealt with. As the proposal has no impact on housing regulation in Scotland, it seems reasonable to me to go ahead on this basis. It was not necessary to have a wide-ranging consultation on a minor technical measure that has never been used at any point by any minister.

David McLetchie: Does the minister agree that, if Parliament agreed to the motion on this legislative consent memorandum, although the change would be a minor one, the Parliament would have voted to end the executive competence of Scottish ministers in this area, as set out in the Scotland Act 1998? In common parlance, is the Scottish National Party Government recommending that the Parliament gives up a power that it presently exercises? That will be a delicious irony when I call for a division on the motion in the chamber. I will take much pleasure in watching all 47 SNP members voting for such a resolution. Will the minister confirm, for the record, that the purpose of the legislative consent memorandum is to end a statutory power that is presently available to Scottish ministers through the devolution settlement?

Secondly, on a slightly wider issue, will the minister tell us how many similar powers might be

lurking in the undergrowth of the Scotland Act 1998 within his departmental area, which, like this one, are apparently redundant, unnecessary and requiring to be pruned? Will he be coming to the committee in the future with more motions to reduce the burden of regulation and red tape by further tidying up the statute book in this way?

Stewart Maxwell: As I am sure Mr McLetchie is aware, we are keen to reduce the amount of overly burdensome, bureaucratic regulation in Scotland. That is something that we will pursue across the Government.

On his first point, for clarity on the record, I advise Mr McLetchie that he is incorrect. We are not handing back powers to the UK Government and we are not giving up powers in the way that he outlined. I understand why he would want to be mischievous on that point, but the fact is that an LCM cannot, under any circumstances, hand powers back to Westminster—it cannot supersede the Scotland Act 1998. If, at some future point, we decided that we required to legislate in this area, we would introduce such legislation—the power remains here for us to use or not use. This is just a minor, technical, clearing-up exercise involving a provision that has never been used.

David McLetchie: With respect, minister, I think that you are wrong. The paper that the Scottish Government has prepared for the committee says that the legislative consent memorandum concerns provisions that

"Alter the 'legislative competence' of the Scottish Parliament (its powers to make laws) or the 'executive competence' of Scottish Ministers (their powers to govern)."

Furthermore, paragraph 7, on page 4 of the legislative consent memorandum, says:

"If accepted, the provision in the Westminster Bill will end Scottish Ministers' statutory powers to enter into agreements for services regarding provision of cross-border housing regulation."

By any measure—by your own admission—the legislative consent memorandum will end a statutory power that is presently available to Scottish ministers. You have said it yourself, although you are attempting to cover it up.

Stewart Maxwell: No, I am afraid that you are incorrect. We can take and repeal powers in areas in which we have competence. We will retain competence in this area. We are agreeing to repeal the provision because it is unnecessary. I would have thought that, as a member of the Conservative party and as a lawyer, you would agree that tidying up the statute book is a positive and correct measure. It does not change the Scotland Act 1998 in any way, as we retain competence in this area. If we want to introduce primary legislation in this area in the future, we will be able to do so.

David McLetchie: Nonetheless, you have acknowledged that you are allowing Westminster to pass a bill that will end a statutory power that is presently available to Scottish ministers. Is that not what the legislative consent memorandum says?

The Convener: Points have been made and some responses have been provided. Next week a report will be made to the committee that will reflect this discussion. I presume that we will have to agree that report, so the committee will have the opportunity to express a view on it.

Bob Doris (Glasgow) (SNP): Does the LCM amend the Scotland Act 1998 in any way?

Stewart Maxwell: No.

Bob Doris: If ministers wish to take back legislative powers in this area, can they legislate in the Scottish Parliament to reverse the measure?

Stewart Maxwell: We can introduce primary legislation in the area, because under the Scotland Act 1998 it still falls within our competence.

Bob Doris: So the measure makes no change to the powers of the Scottish Parliament. We are choosing to pass over a power that we can take back at any point.

Stewart Maxwell: The measure makes no change to the Scotland Act 1998. We could legislate in the Scottish Parliament to repeal the provision in question, but we have decided to use this vehicle to do so, because it is available at the moment and a minor technical matter is involved. The power has never been used and we can envisage no reason for using it. However, if in the future circumstances arise that cause us to decide that it is necessary for us to have a similar power, we can legislate to introduce one, because competence in this area is retained by the Scottish Parliament.

Bob Doris: Do you look forward to welcoming the conversion of the Scottish Conservatives to supporting a Scottish referendum on independence, so that we can end altogether the use of LCMs?

Stewart Maxwell: I certainly do.

Bob Doris: Excellent.

The Convener: That was an entertaining start. I have received no further bids for questions, so I will call an end to this session. A draft report on the memorandum will be prepared for consideration by the committee next week. I invite the witnesses to remain with us for the next item.

Subordinate Legislation

Housing Support Grant (Scotland) Order 2008 (Draft)

10:23

The Convener: The Subordinate Legislation Committee did not draw the Local Government Committee's attention to this order. The instrument is laid under the affirmative procedure, which means that the Parliament must approve it before its provisions come into force. It has been normal practice to give members the opportunity to ask ministers and their officials questions prior to the start of the formal debate on such instruments. The minister may also make some introductory remarks on the instrument, if he wishes.

Stewart Maxwell: I will make some brief remarks, which may be of help to the committee.

The draft Housing Support Grant (Scotland) Order 2008 sets out the amount of grant that is payable in 2008-09. The purpose of the order is to provide grant to any local authority that would not be able to balance its housing revenue account without raising rents to unaffordable levels. Only Shetland, because of its very high housing debt, continues to qualify for grant. In 2008-09, it will receive around £1.6 million. Shetland is an exceptional case and, without this grant subsidy, its rent levels would have to increase from the current average of about £54 per week to around £70 per week. The average rent in Scotland is currently about £48 per week. All other councils are able to balance their housing revenue accounts from rental income.

The Convener: There are no questions from members, so I thank Ms England for her attendance.

Agenda item 3 is the formal debate on the motion, which will last no more than 90 minutes—I hope that it will take less time than that. I invite the minister to move motion S3M-1364, in the name of Nicola Sturgeon.

Motion moved,

That the Local Government and Communities Committee recommends that the draft Housing Support Grant (Scotland) Order 2008 be approved.—[*Stewart Maxwell.*]

Motion agreed to.

The Convener: I thank the minister for his attendance.

**Housing (Scotland) Act 2001 (Alteration of
Housing Finance Arrangements) Order
2008 (SSI 2008/28)**

**Non-Domestic Rate (Scotland) Order 2008
(SSI 2008/32)**

**Housing Revenue Account General Fund
Contribution Limits (Scotland) Order 2008
(SSI 2008/34)**

The Convener: Agenda item 4 is consideration of three negative instruments. A negative instrument will come into force unless a motion to annul is lodged in the Parliament. Members have received copies of the instruments. No concerns have been raised on the instruments and no motions to annul have been lodged.

Do members agree that the committee has nothing to report to the Parliament on the Housing (Scotland) Act 2001 (Alteration of Housing Finance Arrangements) Order 2008?

Members indicated agreement.

The Convener: Do members agree that we have nothing to report to the Parliament on the Non-Domestic Rate (Scotland) Order 2008?

David McLetchie: I have an observation to make. According to my quick arithmetic, it looks as though the increase in the non-domestic rate between 2007-08 and 2008-09 from 44.1p to 45.8p in the pound is an increase of approximately 4 per cent. Although there will be a welcome reduction in rates for smaller businesses, it is perhaps worth pointing out the contrast between a freeze in council tax bills and an above-inflation increase in the business rate.

Kenneth Gibson (Cunninghame North) (SNP): The increase is only for some businesses, because the business rate is being abolished for small businesses.

David McLetchie: Yes, but businesses with a rateable value of more than £15,000 will face a 4 per cent increase in rates.

The Convener: Do members agree that we have nothing to report to the Parliament on the order?

Members indicated agreement.

The Convener: Do members agree that we have nothing to report to the Parliament on the Housing Revenue Account General Fund Contribution Limits (Scotland) Order 2008?

Members indicated agreement.

The Convener: As we agreed previously, we will now move into private session for agenda item 5.

10:28

Meeting continued in private until 13:08.

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