

LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

Wednesday 23 April 2008

Session 3

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LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

12th 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:

Zahid Deen (Scottish Government Enterprise, Energy and Tourism Directorate)

Stephen Garland (Scottish Government Planning Directorate)

Brad Gilbert (Scottish Government Housing and Regeneration Directorate)

John Swinney (Cabinet Secretary for Finance and Sustainable Growth)

Jackie Wilkins (Scottish Government Housing and Regeneration Directorate)

CLERK TO THE COMMITTEE

Martin Verity

SENIOR ASSISTANT CLERK

Jane-Claire Judson

ASSISTANT CLERK

Ian Cowan

LOCATION

Committee Room 5

Scottish Parliament

Local Government and Communities Committee

Wednesday 23 April 2008

[THE CONVENER *opened the meeting at 10:00*]

Subordinate Legislation

Non-Domestic Rating (Telecommunications and Canals) (Scotland) Amendment Order 2008 (SSI 2008/84)

The Convener (Duncan McNeil): Good morning and welcome to the 12th meeting in 2008 of the Local Government and Communities Committee. I remind everyone to switch off their mobile phones and BlackBerrys. Under agenda item 1, the committee will continue its consideration of the negative instrument before us. Members will recall that the committee considered the order last week when Jim Tolson said that he would lodge a motion to annul it. Where a Scottish statutory instrument is subject to such a motion, the committee has adopted the practice of holding an evidence-taking session with the minister and officials prior to the motion's being debated formally.

We welcome from the Scottish Government: the Cabinet Secretary for Finance and Sustainable Growth, John Swinney MSP; Laura Sexton, senior policy adviser in the non-domestic rates team; and Zahid Deen, head of the telecoms policy team. I invite the cabinet secretary to make any introductory remarks that he wishes to make.

The Cabinet Secretary for Finance and Sustainable Growth (John Swinney): Thank you, convener. I will try to keep my introductory statement as tight as possible, but you will appreciate that there is quite a lot of information of some complexity.

As the convener said, the committee took evidence from officials last week. I will set out why I believe that the order is the only sensible solution to the rating of fully unbundled local loops in Scotland.

The order provides for the continuation of an existing system that is straightforward and administratively efficient, allows BT to recover its full costs and increases competition in an expanding telecoms market to maximise the benefit to consumers in Scotland.

On efficient and sensible administration, assessors are required to value all lands and heritages for non-domestic rating unless they are expressly excluded by statute. The BT telecoms network is currently valued by the Valuation Office Agency and Scottish assessors as a single United Kingdom network and the value is apportioned among the four home countries. That has ensured harmonisation of valuation practice between Scotland and the rest of the United Kingdom. It has been necessary also because, historically, BT has been unable to disaggregate the information necessary to carry out valuations on an individual country basis. Not only is it not possible for the assessors to carry out a separate and distinct valuation of the Scottish part of the BT network with or without unbundled loops, but it is not possible for it to value fully unbundled loops, again because BT has been unable to provide the necessary information.

To obtain that information, Parliament would need to approve primary legislation to give the assessors the powers to require BT to provide the necessary information for Scotland, which BT has made it clear that it will provide only if required by statute. Even if that information could be obtained, the assessors would need to collect and collate information on the number of fully unbundled loops in each of the 1,069 telephone exchanges in Scotland. Valuations would then need to be carried out for the fully unbundled loops in each exchange and the resulting valuations aggregated into a single entry for each local loop unbundling operator for each council area where there is a fully unbundled exchange.

If there were 40 exchanges in a local authority area and each exchange had fully unbundled loops, 40 valuations would require to be carried out and then aggregated to form a single entry on the valuation roll. That exercise would have to be repeated for each separate local loop unbundling operator in a given area. An added complication would arise where an exchange lies in one council area and the customers' premises are located in another. In such cases, the assessors would have to identify how much of the loop lay in each area to apportion the value. Any change in any exchange would give rise to a right of appeal, both for the local loop unbundling operator and for BT in respect of the remaining network.

In summary, to resource the separate valuation of the fully unbundled local loops and the resultant appeals burden on an on-going basis, each of the 14 Scottish assessors would be required to staff the collection and analysis of local information and make and change entries on a regular basis. Resources would also be needed to deal with appeals. Telecoms operators routinely appeal any changes to their valuations and BT currently has 64 appeals awaiting hearing by the Lands Tribunal

for Scotland, of which half are as a result of unbundling. Resources would also be needed for consultants' fees for analysis of the valuation of the BT network and for legal fees and expert witness fees for tribunals before the Lands Tribunal for Scotland. One lands tribunal hearing is expected to last for at least two weeks. Those are the points on administrative efficiency, which explain the complexities that would arise if the order was not supported.

On the second point that I raised, in relation to BT's ability to recover its costs, local loops have been unbundled only since 2005, following a finding by the regulator that BT exercised significant power in the market for wholesale local access in the UK. The purpose of local loop unbundling is specifically to stimulate competition in the provision of broadband and voice services. The regulator, the Office of Communications, has set a ceiling charge that an unbundler must pay to BT for an unbundled loop. The charge allows a regulated return on the BT assets that are used in unbundling and covers overheads, including the rates paid by BT on those assets that are rateable.

Ofcom has written to the committee, setting out the basis for the local loop unbundling charge. There are two key points. First, historically wholesale charges have been set to allow BT full cost recovery, including the recovery of business rate costs. Ofcom is committed to ensuring that BT continues to recover appropriate costs, including those of business rates. Currently, the ceiling charge for each fully unbundled local loop is £81.69 a year per line, excluding VAT. Ofcom set that price on 1 January 2006, taking account of BT's business costs at that time. BT has charged annual rental of £80 since August 2005 and has never raised that charge; nor has BT approached Ofcom to review the ceiling charge. Secondly, Ofcom is currently reviewing BT's charges for local loop unbundling and for other products. The review covers business rates. BT is closely involved in those discussions, and Ofcom has provided written confirmation that, following the review, BT will continue to be able to recover its business rate costs in full.

The final area that I will cover is competition in the telecoms industry. If the order were to be annulled, that would bring uncertainty to telecoms operators in Scotland and would put our telecoms market at a disadvantage compared with the market in England. It would have a profoundly damaging impact on competition. For Scottish consumers, it would lead to a reduced opportunity to benefit from a choice of suppliers, the highest bandwidths and the lowest broadband prices.

I understand that the committee has received information from Carphone Warehouse, which is by far the largest unbundler of lines here, offering

services in exchanges covering 1.5 million Scottish households and businesses. Unbundlers such as Carphone Warehouse are making a real and positive impact on the broadband market here, especially as they offer a range of competitive—by some margin—broadband prices and packages. If the order were annulled, an operator such as Carphone Warehouse would be faced with, on the one hand, certainty on business rates elsewhere in the UK and, on the other hand, uncertainty, administrative costs and a potentially increased charge in Scotland. In that situation, I fear that unbundlers would stall their planned investment here and take their business south of the border and that their existing Scottish telecoms investment might be undermined.

That is not conjecture on my part. Carphone Warehouse confirmed that when it stated that if the order did not proceed, it could not justify rolling out any more exchanges and might have to close existing unbundled exchanges. That illustrates the potential negative effect on Scotland, especially the impact on consumers who are served by exchanges in different parts of the country. Access to the most affordable telecoms packages must be encouraged as part of the process.

I put those points on the record and I am happy to answer any questions that the committee may have. I appreciate the opportunity to make a more substantial statement than I would normally have made.

The Convener: I thank the cabinet secretary for his introductory remarks and call Jim Tolson to speak.

Jim Tolson (Dunfermline West) (LD): I lodged the motion to annul the order, which is to be debated under item 2 on the agenda, due to the failure of the Scottish Government to provide authoritative evidence on the matter and to compel the cabinet secretary to come to the committee to explain the position. The position that we heard about in last week's evidence session seemed to be rather flawed, and no justification was given for proceeding with the instrument. The Government failed to provide us with the information that was necessary to enable the committee to make an informed decision, and we were left with the following questions. What is the rateable value for local loops? How much does BT currently pay in business rates for those loops? How much does BT recoup from other providers for the use of the loops? What growth has been seen in the market under the current arrangements?

The Government's first line of argument appears to be that Scotland would be disadvantaged by taking a different approach from that of England and that the value of the assets cannot be assessed for Scotland alone. How does that fit in

with the Scottish National Party Government's stated preference for an independent Scotland?

What assessment has the cabinet secretary made to back up the Government's assertion that annulling the order could affect the telecoms market and investment decisions, and that—as the cabinet secretary has stated again today—providers might take their business to England instead? Has the cabinet secretary not considered whether changes might be made to make investment more attractive here than in England? After all, there is currently a huge market-led growth in broadband in Scotland.

Why, given the compelling views that have been expressed and given the fact that nothing need change from the existing position, has the cabinet secretary not proposed to extend the current arrangements until 2010, so that we can take a view on the matter then, when we have more evidence to hand? Is the cabinet secretary saying that the main reason to make the timescale indefinite instead of specifying 2010 is that that aspect of the arrangements alone could lead to a major shift in investment priorities? Does he recognise that that view is refuted by one of the major players in the market—BT? If he believes that certainty or otherwise about business rates is so important, why does he not seek to use that as a tool to encourage investment in Scotland? Such considerations come under his portfolio.

I seek answers to those questions. The letter from Ofcom takes things forward, although questions arise regarding the differences between BT and Ofcom. One says that the situation is black; the other says that it is white. We need answers from the cabinet secretary.

The Convener: There was a lot in there, but I invite the cabinet secretary to respond.

John Swinney: Mr Tolson made some specific points about the amount of non-domestic rates income that is generated in Scotland from the BT network. The information on that has been supplied to the committee—the total comes to £22 million. That was in the letter that came to the committee yesterday, I think.

I want to ensure that committees get the information that they require to let them make judgments. My attendance today is a measure of the committee's dissatisfaction with the information that it received last week. I am here willingly to address the relevant points. The rateable value point has been answered.

Mr Tolson made some further points—I suspect that they were not so much questions as political points—about the Government's political position. Of course, I would be happy to debate them, but we live in a devolved Scotland and we are operating within a framework in which the

Government is constrained in the policy areas that it can take forward. Therefore, we must find the most competitive position for Scotland within the United Kingdom framework. That is why our proposal is the one before us today.

Mr Tolson also spoke about the order putting Scotland at a competitive disadvantage and about operators perhaps preferring to invest in England, rather than Scotland. The answers to those questions are contained in the submissions that other operators have given to the committee. They say that they would have certainty. As far as I am aware—and there is nothing to suggest that this is not the case—the United Kingdom Parliament is intent on approving a complementary order. In fact, it might have approved it already.

Zahid Deen (Scottish Government Enterprise, Energy and Tourism Directorate): It is in the process of being agreed.

John Swinney: It is in the process of approving a complementary order for England and Wales. We can appreciate that operators in England, therefore, would have certainty that business rates were caught up in the charges that they pay, whereas operators in Scotland would not have that certainty.

To return to my argument about administrative efficiency, whichever way we look at the issue—and it is difficult to get a precise quantification of the impact—there will be more administrative complexity if the assessors must put in place infrastructure to manage and monitor the local loops, the unbundling of local loops and the recharging of the unbundled local loops to various operators.

The fact is that people chop and change their provider. Every time someone decides to move to Carphone Warehouse or BT, the required change would have to be monitored, managed and pursued by the assessors. That distinct task would increase administrative costs, which would have to be passed on to providers. As a result, provision would inevitably cost more in Scotland than in England, with—I suspect—investment flows going in much the same direction.

10:15

Kenneth Gibson (Cunninghame North) (SNP): You seem to be saying that if the order is annulled, there will be less choice and higher prices. What will be the cost to the Scottish Government and, indeed, the Scottish taxpayer? I note that in his grandstanding speech Jim Tolson did not mention the impact on the Scottish taxpayer or where the additional money would be found.

Last week, we heard that the estimated one-off cost to the taxpayer of setting up a charging system was £9 million with an annual cost of roughly £1 million. Do you have any further information on or details about that?

John Swinney: It is difficult to give precise numbers. Last week, my officials set out the two figures that you mentioned, which were based on a calculation. It is difficult to provide robust information or give a reliable estimate because, as I pointed out in my opening statement, we do not have access to disaggregated information about the BT network.

That said, as any objective analysis will conclude, more administrative complexity will result if we do not continue the existing arrangements. The 14 assessors would have to assess and make calculations based on the baseline position of the local loops; tabulate the figures for the 1,069 telephone exchanges throughout Scotland, which, of course, would mean examining a very wide array of areas; examine individual transactions to find out who was buying broadband from which provider; and then carry out a recharging exercise. Moreover, members of the public remain free to choose their own broadband provider—if, as I said to Mr Tolson, that choice is available. Inevitably, all that would mean increased costs, which I imagine would fall not on the Scottish Government but on local authorities. The Government's priority is to maximise the resources available to local authorities for delivering front-line services.

As we are all discovering, this is an area of some tension among operators, and introducing our own system would result in a significant number of appeals both by the operators of unbundled local loops and by the remaining party, BT. After all, if BT is not satisfied by the business rates valuation, it will appeal. Equally, an operator might feel short-changed in that respect and also appeal. Introducing our own system would make things far more complex, and I think that the arrangements that the Government has proposed deal with the issue more simply.

The Convener: I call David McLetchie, to be followed by Alasdair Allan.

Kenneth Gibson: Are we getting only one question each today?

The Convener: I will go back round the table.

David McLetchie (Edinburgh Pentlands) (Con): I wonder whether you could clarify your response to Mr Tolson on where matters stand in the rest of the UK. The impression that I—and, I think, other members—gained from last week's discussion was that the regulations governing unbundling and the rating system were already in place in England, and that we were simply putting

the Scottish marketplace on the same footing. From Mr Deen's response to Mr Tolson, I understand that that is not the case, and that the relevant equivalent regulations that will be applicable in England have not yet been approved by the Westminster Parliament. What is the situation?

John Swinney: The order has been laid at Westminster and it has to lie for 40 days, which expire tomorrow. There is no—

David McLetchie: That was my next question. No Ali Baba has lodged a motion to annul during those 40 days and 40 nights. Is that correct?

John Swinney: The sustained, interrogative inquiry into these issues that is expected in the Scottish Parliament is not used at Westminster.

David McLetchie: So no member of any political party at Westminster has tabled a motion of annulment on the equivalent statutory instrument that will apply in England. Is that correct?

John Swinney: The instrument came into force on 1 April—

David McLetchie: Unless it is annulled.

John Swinney: Yes.

David McLetchie: And no one has lodged a motion of annulment.

John Swinney: No, and the 40-day period expires tomorrow, although I suppose that we should touch wood.

David McLetchie: Indeed. Is this instrument part of the Scottish National Party Government's commitment to a single United Kingdom market?

John Swinney: It is a practical demonstration of the fact that this pragmatic Administration can use administrative efficiencies and straightforward processes without adding to business costs or undermining the competitive position of companies in Scotland.

David McLetchie: One of the arguments that we heard at last week's meeting, and which you have reiterated today, is that if we do not make the present temporary regime permanent, and if operators are on unbundled loops, that will impact on the growth and development of the market in Scotland. Do you accept my proposition that, during the past year, there has been a 351 per cent growth in the number of unbundled loops?

John Swinney: I accept that number.

David McLetchie: So if we have a growth rate in unbundled loops of 351 per cent in one year under the present temporary regime, why is it so essential that it is made permanent to generate

growth in the marketplace? Is 351 per cent growth unsatisfactory?

John Swinney: I do not follow the logic of your question, Mr McLetchie.

David McLetchie: It is perfectly logical.

John Swinney: The instrument that is before the committee today will continue the regime that has delivered a 351 per cent increase in one year. *[Interruption.]* Convener—

The Convener: Yes, I was about to intervene, but surely you do not need to plead for my help.

John Swinney: I do not, but it is a bit difficult to concentrate.

The Convener: I accept that there is too much talking going on. I ask you to proceed, and I remind colleagues that they will all get their turn.

John Swinney: The instrument will allow the regime that has delivered a 351 per cent growth increase in one year to continue. If the committee decides that we should not continue with that regime, we will then have to go to the other scenario, which means assessors and a separate valuation, which will build in an element of complexity to the arrangements. Why would we interrupt a system that is delivering a 351 per cent increase?

The Convener: We are going to have to move on.

David McLetchie: The logic is that the argument or debate on the options in the consultation was not between continuing and not continuing the present regime; it was between the option to continue with the present regime until 2010—which is the temporary arrangement that has seen a growth rate of 351 per cent in the market—and a permanent, indefinite regime, which is what is proposed. My point, therefore, is that if the present temporary regime, with temporary continuations, which might await a recasting of the rates system throughout the UK, has not deterred operators and has generated 351 per cent growth in the past year, why would not continuation for two more years generate a continued growth in future years?

John Swinney: That would be fine were it not for the fact that the order that came into force on 1 April in the rest of the UK is an indefinite order. That means that people in the marketplace will say, “We have absolute certainty about investment south of the border but, in Scotland, there is only a small window before the situation becomes uncertain.” That proposition would be used in the marketplace in a way that would be damaging for Scotland.

Alasdair Allan (Western Isles) (SNP): Could you give us some information about the contact

that you have had with assessors about the issue? The Scottish Assessors Association has told us that it would not be possible to carry out a separate valuation of the Scottish part of the BT network, including or excluding unbundled loops, based on the information that is currently held. What view have assessors been giving to the Government on that question?

John Swinney: The assessors made a submission to the Government’s consultation process, and quite clearly expressed a preference for the order that is before the committee. The Scottish Assessors Association has made it clear that it cannot undertake to make a separate valuation because the necessary information is not available, and primary legislation would be required to ensure that that information could be made available to assessors. That position has been confirmed in information that has been given to the committee by BT.

Alasdair Allan: Therefore, from a practical point of view, what would the Government have to do if this legislation were to be annulled today?

John Swinney: We would have to take steps to put in place a valuation regime that we do not currently have primary legislation cover for. That would be, even for this Administration, a bit of a challenge.

Johann Lamont (Glasgow Pollok) (Lab): There is certainly plenty of legislative space for you to do it, so that would not be an issue.

The committee is wrestling with a difficulty that is caused by the fact that serious people are arguing the case on both sides. One of the problems for the Government has been that it has overstated the consequences of not supporting the amendment order—we have been told that there will be an apocalypse or a total meltdown but, under the temporary regime, that has not happened. On reflection, might it have been better to have had a fallback position in which the temporary regime was continued while the Government considered the evidence that serious people are raising about their concerns?

On practical issues, you say that, if the order does not go through, you will have to implement a ratings regime and so on immediately, and that there would be appeals and so on. However, BT says that, based on “practicality and past precedent”, the appeals would be

“processed annually, or at most twice yearly.”

Clearly, BT is not currently engaged in a hugely convoluted process by which it establishes rateable value and raises money. Is it not fair to say that you are not comparing reasonable alternatives, because nobody is in favour of the apocalypse? Quite frankly, there has been

assertion rather than evidence about the consequences of moving to a different regime. If you had decided to continue with the temporary regime, you might have been able to explore the issues further.

10:30

John Swinney: While we have had a temporary regime in Scotland, there has also been a temporary regime in England, so the playing field has been a level—if temporary—one. England has now opted for an indefinite approach, which creates certainty for operators in England.

Johann Lamont made a point about BT not having a convoluted process. In a sense, that makes my point. BT is the owner of the wires. It is involved in the process already. I am trying to avoid getting 14 assessors involved in the process, because they do not really need to be involved in it. I accept that administrative efficiency is a question of judgment. The point that I would make on the Government's behalf is that we quite simply do not have the information from BT to say what the degree of complexity would be. I accept that for that reason we cannot evidence firmly either the apocalyptic scenario or the administrative efficiency scenario. The argument that I am trying to marshal is that, given the volume of possible contacts that are involved, on balance, we favour the status quo for reasons of administrative efficiency.

Johann Lamont: There are two issues. First, it is convenient to get someone else to do things for you when they already have the information, but that is not necessarily to say that they should do those things. Perhaps if you had given yourself space, you could have explored the position further. That might have been reasonable, given BT's concerns.

Secondly, the fundamental point that you seem to be making is that where a market operates across the United Kingdom, it is a risk for Scotland to take a different position. That argument would apply regardless of whether there was an independent Scotland; the regulatory framework in the rest of the UK would determine your position. The core argument is that it is too difficult to get involved and that BT has all the information already—although you could ask for the information—and, critically, if something is happening elsewhere, we cannot be different. That is an interesting place for you to put yourself. A market will apply across the UK, whether there is a devolved or independent Administration in Scotland.

I have a final wee point.

The Convener: Please make it a wee point.

Johann Lamont: One of the assertions that BT makes is that the operators who are coming in are taking the attractive stuff. What is the Government's policy on encouraging, incentivising or rewarding those who are willing to go to the places that are less attractive? Are there any plans to use the tax regime to do that? It seems to me that you are saying no at the moment.

John Swinney: There are pragmatic arguments about convenience, which it should not be surprising that the Government takes forward. Why on earth should we volunteer to add cost burdens to the businesses of Scotland? Why should we add burdens to the costs of local authorities when we are part of the United Kingdom and have the opportunity to argue for this proposition? That is the type of pragmatism that I thought that people would welcome, rather than complain about.

The question is whether there is a value in adding complexity to a measure that, on the basis of all the evidence that I have seen, is working in a relatively straightforward fashion at this time.

I turn to the issue of the access of other operators to the process. Mr McLetchie made a point about a 351 per cent increase. However, we are still talking about numbers that are a reasonably small proportion of the total number of opportunities. There is plenty of opportunity for market growth for different providers.

Patricia Ferguson (Glasgow Maryhill) (Lab): My questions have been asked.

Kenneth Gibson: Can I ask my other questions now, convener?

The Convener: You can, Kenny, but I thought that I might be entitled to ask a general question.

Kenneth Gibson: Indeed.

The Convener: On the question of costs, cabinet secretary, you said in your evidence that there will be a debate between BT and Ofcom on the issue of BT recovering its costs in full. A particular question was raised at last week's meeting and by Johann Lamont earlier in this meeting. What will be the Scottish Government's involvement in the process? How will it assess the impact of the increase, given that there has not been one since 2005? What impact will the debate between BT and Ofcom have on Scottish business and consumers? I presume that BT will increase costs, as there has been no uplift since 2005. Am I wrong to expect that? If that is the case, what effect will it have on consumers and businesses?

Many years ago, when John Swinney and I were on the Enterprise and Lifelong Learning Committee, we considered e-business and e-commerce in Scotland, and the job opportunities that they presented for the remotest parts of

Scotland, which can access jobs and work by those means. What is the Government's view on the possible effect of increased costs on that? Surely it is not neutral on that. Surely the Government cannot say that a decision about costs being passed on is not a decision for it but one for Ofcom and BT.

John Swinney: I will invite Zahid Deen to make a few remarks in a moment. However, on the overall position, Ofcom has a regulatory responsibility in the marketplace—that is why it was set up. It must assess whether pricing structures are reasonable and credible, and decide on parameters within which companies can operate. As I said in my opening evidence, BT currently charges £80 plus VAT, but it could charge £81.69 plus VAT. The ceiling already provides room for manoeuvre. Obviously, the Government wishes to do all that it can to minimise the costs and burdens on business, which is why we are reducing business rates for small companies and why we have done so much to help the competitiveness of the small business community in the Scottish marketplace. Obviously, we would argue that we do not want prices to increase to an extent that they become a burden on Scottish business, and we would make appropriate representations to Ofcom on that. Ultimately, though, Ofcom is a regulator that exercises independent functions. However, we will do all that we can to try to persuade it not to—

The Convener: But have representations been made to Ofcom at this stage?

John Swinney: I think that we have made representations.

The Convener: Have we?

Zahid Deen: Ofcom has not opened the consultation on that yet. However, I should put the issue in context. As has been pointed out, BT can negotiate an increase in the charge at the moment, but it has chosen not to do that. If the charge goes up, it will go up marginally and will be spread over 12 months—the monthly increase will be a matter of pence. However, there would be a big impact on costs if there was an impact on local loop unbundling investment. For example, the Carphone Warehouse offers broadband packages that are £12 to £15 cheaper than BT's packages, which means a saving of about £150 a year for consumers. The Carphone Warehouse is in Greenock, Gourock and Pollok in Glasgow just now. If it pulled that investment, that would mean that consumers in those exchanges would lose the £150 a year advantage that they gain from the Carphone Warehouse. That is the kind of impact on costs that exists. The unbundling charge that BT negotiates with Ofcom is trivial in the wider scheme of things. In addition, I must point out that BT is a huge and great organisation that has

revenue of £27 billion a year and makes a £2.7 billion annual profit. BT negotiates with Ofcom on a daily basis. The idea that BT, with its huge lobbying power and huge resource, cannot negotiate the charge with Ofcom, an independent regulator, is nonsensical.

The Convener: I have one further question. Is the £81.69 being levied across the UK?

Zahid Deen: Yes.

The Convener: The increase will impact across the UK rather than being concentrated in Scotland, so Scotland will benefit from that.

John Swinney: Well, we are where we are, convener.

The Convener: It seems a good deal.

John Swinney: Provided, of course, that the committee is minded to support the order. In other circumstances, there would be a formidably different position.

The Convener: There is one more question, which is from Bob Doris, who has not had an opportunity to speak.

Kenneth Gibson: I have been able to ask only one question; everyone else has asked loads.

The Convener: Bob Doris has not been able to ask one at all; I do not want to cause a fight between colleagues.

Kenneth Gibson: David McLetchie asked about seven questions but I got to ask only one and have a couple more that I want to ask.

Bob Doris (Glasgow) (SNP): My question is an extension of the points that have been raised. It appears to me that, ironically, BT does not want the temporary arrangements to continue; its ultimate goal is for them to end altogether and for an entirely different rating system to underpin the network. It must want that for one of two reasons. The first would be that it was not recovering the full cost. If BT is charging £80 plus VAT but is able to charge £81.69 plus VAT, it must be recovering the full costs; why would a private company not maximise its income for full cost recovery?

Is there a second reason why BT would oppose stability in the market? I can only imagine that, if BT was to change the system, it might put other companies at a structural disadvantage. As Mr Deen said, the other companies are competitive at the moment; to put them at a structural disadvantage would make them uncompetitive and it is only natural that BT would like to be the dominant player. If the system was to change in the way that BT would like, would that give it a structural advantage within the marketplace?

The Convener: I do not know whether that is a question for the cabinet secretary, but I will allow him to attempt to answer it.

John Swinney: I simply reiterate the point about full cost recovery. The strong view that Ofcom has expressed is that the arrangements provide for BT to recover the full costs. That approach is well evidenced by the information that we have seen so far. There is a discussion between BT and Ofcom about the pricing mechanism. As Mr Deen highlighted, it is tied up with a range of other factors, but the point on full cost recovery appears to me to be pretty strong.

The Convener: Everyone has had their opportunity to ask a question or questions. I am trying to get to the point at which we will ask Mr Tolson to move the motion to annul but, if Kenneth Gibson has a question that has not been asked, I will allow him to ask it. After that, I will give Jim Tolson the opportunity to ask one last question. I will then ask for the committee's co-operation in moving to the debate on the motion.

Kenneth Gibson: Thank you, convener. I want to get to the crux of the matter: the impact on the consumer and, indeed, the Scottish taxpayer. My understanding is that, if the arrangements do not continue indefinitely, the pricing structure for BT will remain throughout the UK, so there will be no benefit to consumers but we will still have to pay the £9 million set-up costs and the £1 million a year running costs; there will be chaos among assessors and a disincentive to invest in Scotland. I realise that, pragmatically, the Scottish Government accepts that the system will work best at a UK level. Some issues have been raised on independence with regard to that, but I am sure that the cabinet secretary agrees that it is a small price to pay to ensure that we do not have to send our troops to Iraq or accept Trident and to ensure that we get control of Scottish oil.

The Convener: That was obviously a question that had to be asked. It is a question that has never been asked before and it was certainly not worth waiting on, but you can make an attempt to answer it if you want to, cabinet secretary.

John Swinney: I have always loved the dispassionate way in which you assess Mr Gibson's questions, convener.

I hope that the committee will take my answer in the spirit in which it is meant. I was never motivated to support independence by local loop unbundling, which was never high on my list of concerns. However, a pragmatic approach will allow the business community and individuals in Scotland to have access to services, and the Government is right to pursue it.

10:45

The Convener: With the co-operation of the committee, the next question will be the last. I see nods of agreement, although I am ignoring Kenny Gibson. We need to proceed, but first I invite Jim Tolson to ask any further questions that he wishes to ask.

Jim Tolson: Thank you, convener. Cabinet secretary, you have mentioned full cost recovery a number of times. We discussed several points last week and the issue of full cost recovery is crucial. It is fair that businesses that profit from a system are charged the rates accordingly, but we heard last week that many businesses that profit from local loop unbundling are not paying the rates. That seems extremely unfair; the rates are being charged to BT. Is that more convenient? Yes. Is it fair? It did not seem so.

The committee needs a detailed explanation of the chain of events for the payment of rates from local loop unbundling. Who pays and when? How is BT able to recover the money that you and Ofcom claim it can in full? That is the crux of the matter for the committee today.

John Swinney: My officials will correct me if I get this wrong. As I understand the collection mechanism, BT pays a business rate over its entire network. A negotiation or discussion takes place between the Valuation Office Agency and the Scottish Assessors Association over the distribution in the constituent parts of the United Kingdom. A utility approach has driven the mechanism; particular assessors in Scotland deal with one utility, which is not an uncommon arrangement. The negotiation takes place and then the income becomes part of the non-domestic rates income of Scotland and is distributed to local authorities.

I cannot do an audit trail of all the financial data within BT because much of the information is private and I have no access to it. I rely on Ofcom for information on full cost recovery. However, if there has not been full cost recovery, why is BT not charging to the ceiling? I know that the difference is only £1.69 but, as Mr Deen said about charging issues, the margins are measured in pence. So, a lot of pence are involved—169 of them, to reassure the committee about my remaining arithmetic skills. There is therefore some room for manoeuvre if full cost recovery is not being delivered, but I am advised that BT has not used that room for manoeuvre.

The advice of Ofcom, combined with the fact that BT has not raised its charge to £81.69, suggests that the balance of evidence is that full cost recovery has been delivered.

The Convener: Thank you to all who participated in our question session.

We now move to item 2. I invite Jim Tolson to move, or not, motion S3M-1726, and to speak to the motion.

Jim Tolson: This has been another long evidence session, and I appreciate the cabinet secretary coming along to clarify many points that committee members raised last week. A major concern of mine was apparent unfairness in the charging of business rates. On balance—to use a word that the cabinet secretary used—I am now convinced that BT is not disadvantaged, because it will be able to recover its rates fully now and in future. I therefore do not intend to move motion S3M-1726.

The Convener: Thank you—and I thank the cabinet secretary and the other witnesses who have given us their time this morning.

I will suspend the meeting for a minute, hoping that nobody will run off too far.

10:50

Meeting suspended.

10:52

On resuming—

Housing (Revision of Scottish Planning Policy 3)

The Convener: Under item 3, the committee will take evidence from Scottish Government planning officials on the revision of Scottish planning policy 3. I welcome Stephen Garland, head of planning infrastructure and enforcement; Nicola Hay, senior planner; Brad Gilbert, head of the housing supply unit; and Jackie Wilkins, head of strategic planning.

I give Stephen Garland an opportunity to make introductory remarks on SPP 3. I will then invite questions from members.

Stephen Garland (Scottish Government Planning Directorate): Thank you for the opportunity to come to the committee today.

The consultative draft of SPP 3—“Planning for Housing”—sets out the Scottish Government’s policy on the identification and allocation of land to meet identified housing requirements and on the delivery of that housing. With the review, we have reacted to reported difficulties in bringing forward land for housing and tried to respond to them to ensure that the planning system reacts more effectively to the need for housing.

The draft also reflects wider Scottish Government housing priorities, such as those that are set out in the discussion document “Firm Foundations: The Future of Housing in Scotland” and those that have emerged from the housing supply task force, as well as the modernisation of the planning system that is being brought about through implementation of the Planning etc (Scotland) Act 2006.

The review was undertaken by Scottish Government planning officials in conjunction with housing officials, and my colleagues on the panel this morning reflect that joint approach. That said, SPP 3 is a planning document. It is concerned with improving the way in which planning authorities identify housing requirements and allocate land for the purpose of housing. It is not concerned with wider policy on funding for housing.

We have emphasised the links between assessed housing demand and need, using the new guidance that the Scottish Government published recently. On development planning in particular, the consultative draft strengthens the integration of local housing strategies and development plans. It also reinforces the link between identified housing requirements and the release of land to meet those requirements. We

believe that the revised draft will encourage quicker and more responsive release of land and that it will allow local authorities to react to housing pressures and market changes.

We have taken the opportunity to strengthen planning policy on affordable housing. Planning advice note 74 established a benchmark figure for affordable housing on new developments of 25 per cent. That benchmark has been incorporated into the revised draft of SPP 3, thereby strengthening the commitment to assisting the provision of affordable housing through the planning system.

We have also set out policy guidance on quality, including matters such as site selection, design, energy efficiency and sustainability. The revised draft contains additional policy guidance on carrying out housing land audits, which will create welcome consistency and allow individual local authorities and the Scottish Government to monitor housing land more effectively. The draft also provides additional planning policy on houses in multiple occupation.

The document was out for consultation between 7 January and 31 March this year and we received more than 100 responses, which we are analysing. Once the analysis is complete, we will redraft SPP 3 accordingly, with a view to publishing a final revised version in the summer.

Johann Lamont: Thank you, and welcome to the committee.

The document states that a stakeholder group assisted in developing the policy. Were student groups and representatives of the housing supply task force represented on that group?

Stephen Garland: There was no representative of student groups on the stakeholder group, which dealt largely with issues in the main part of the document. In asking about student groups, the member is probably interested in the annex on HMOs, on which we undertook a parallel exercise that involved engaging with relevant groups. We had several one-to-one meetings with organisations, including student groups, and we organised a seminar that brought together various stakeholders from community groups and which involved the National Union of Students and several student associations.

Johann Lamont: Did that happen prior to the publication of the consultation document?

Stephen Garland: The one-to-one meetings were held prior to the publication of the document. The seminar was held during the consultation exercise.

On the point about links with the housing supply task force, several people were members of both the housing supply task force and the stakeholder group. Some organisations that are represented

on the housing supply task force were represented on the stakeholder group—Homes for Scotland and the Scottish Federation of Housing Associations, for example.

Johann Lamont: It might be more appropriate for me to put my next question to the minister rather than to officials, but you can decide that. Can you explain the rationale behind producing a planning document on the key issues of housing and land supply, given that the housing supply task force has the remit of wrestling with those issues? You have published the consultative draft of SPP 3 ahead of the findings and recommendations of the housing supply task force—I do not think that it is going to produce a report. How does the housing supply task force fit in with the timetable for this planning policy?

Stephen Garland: The housing supply task force focuses more on short-term issues. It considers developments that are coming through the planning system or are in a plan, how they are being taken forward and where there may be blockages and problems. For example, it might look at a situation in which permission has been granted, but there are difficulties with delivery. The task force has a shorter-term focus in the work programme that it has developed for itself. SPP 3 has more of a medium-term focus, as it informs the development of development plans, which has a longer timescale. However, there is interaction between the two processes, and the task force can have an impact on the consultation exercise involving SPP 3.

Johann Lamont: I am not sure that the housing supply task force's job was described in that way previously. You make it sound as though it is a problem-solving group that will consider developments that are sticking in individual communities. That is certainly not the way in which it was described previously. However, I accept that that issue is not necessarily for you.

I have a final question for the moment, although with the convener's permission I may come back in again later. If land is identified for affordable housing, will it have to be made available, for example to housing associations, at less than market value? Is that an issue and, if so, how will it be dealt with? Is it the Government's intention to say to local authorities that, if they identify land for affordable housing, they can make it available in that way? If so, could that lead to tension in the context of the broader land supply issue? If you are saying that a local authority can identify land for affordable housing, does it have to make that land available at less than market value? I am thinking of the pressure on local authorities to maximise income from the sale of land.

11:00

Stephen Garland: Are you referring to the release of public land?

Johann Lamont: In paragraph 81 of SPP 3, you say that you want authorities to identify land from both the public sector and the private sector for affordable housing. Is that aim meaningful if you do not also give them the power to make land available at less than market value? Also, is it realistic, given the pressure on local authorities to maximise income from the sale of assets?

Stephen Garland: To a degree, the reference is to quotas under PAN 74, which set the 25 per cent benchmark and gave guidance on the transfer and valuation of land.

On the handing over of public sector land, I understand that the best-value provisions allow for the transfer of land to meet broader considerations. Obviously, it is for local authorities to decide how they wish to dispose of land.

Johann Lamont: I welcome the fact that you have transposed the 25 per cent benchmark into draft SPP 3. Has there been any monitoring of the effectiveness of setting such a benchmark? For example, "Firm Foundations" makes no mention of it. The test in other policy areas such as HMOs is whether policy really delivers. What work has been done on that?

Stephen Garland: You make a valid point. Having come through only in 2005, the benchmark is still a relatively recent development in planning policy terms. We have undertaken a monitoring exercise to assess its impact, and the results will be released shortly. We will take account of the findings in formulating the final version of SPP 3.

David McLetchie: I understand that the Government's objective is to increase the rate of construction of new housing in Scotland from the present level of about 25,000 houses a year to 35,000 houses a year by 2015. Is that correct? Is that the policy background?

Stephen Garland: That aspiration was set out in "Firm Foundations", and responses to it are being analysed. A decision on the final policy will be announced later in the summer. The aspirational target was 35,000 by the middle of the next decade.

David McLetchie: Right. To what extent is the target achievable in relation to the local development plans that are in force and the amount of land that authorities have allocated to or earmarked for housing development?

Stephen Garland: Your question brings into play issues in the consultative draft of SPP 3, including the process of allowing greater focus on the identification not only of affordable housing

need but wider housing requirements. A more generous approach to identifying the land that is required to meet such need has been taken. The new housing need and demand assessment guidance that will be incorporated in the revised SPP 3 will drive that forward. The Government will keep under review the question whether the 35,000 aspirational figure can be met by the middle of the next decade. We will monitor that.

David McLetchie: That was not my question. I asked whether the 35,000 aspirational figure can be met from within the housing element in local development plans. Having looked at all the local authority development plans that are currently in force, is it the Government's view that the target can be met? If not, will changes have to be made?

Stephen Garland: Changes will need to be made, because the plans that are currently in force in effect provide for land over a five-year period, whereas the 35,000 aspirational figure is to be met by the middle of the next decade.

David McLetchie: But is enough land being made available under current plans to meet that target by 2015, or will more land need to be allocated?

Stephen Garland: At this stage, I cannot say whether under current plans sufficient land will be provided to meet the 35,000 target. I can come back to the committee with a more precise answer.

David McLetchie: What I am trying to get at is that, as part of the roll-out of the Planning etc (Scotland) Act 2006, development plans are supposed to be updated. Obviously, areas for housing are allocated in those local development plans. No doubt the Government's aspiration is that those allocations will allow it to meet its 35,000 a year target.

The target of 35,000 new houses a year from 2015 seems to be an indefinite target, in that it seems that it will remain in place for the foreseeable future. Is that assumption correct?

Stephen Garland: In the current plans, sufficient land is allocated to meet identified housing need, according to the current processes. In draft SPP 3, we propose the use of new methodologies for assessing housing need that take account of broader housing requirements. The expectation is that local authorities will use that methodology to allocate in new plans more land than is currently allocated.

David McLetchie: So more land for housing will be allocated in the new plans in order to meet the target. That is the point that I was trying to get at.

Stephen Garland: The new plans will allocate more land in order to meet the identified need and the identified housing requirements.

David McLetchie: But that need is perceived by the Government to be 35,000 a year.

Stephen Garland: That is the aspiration for the national figure—

David McLetchie: What is the point in having an aspiration that is not needed? If we do not need 35,000 houses a year, what is the point of having such an aspiration?

Stephen Garland: Perhaps the issue comes down to terminology. In planning terms, need is described as affordable housing need—people who need housing. We refer more broadly to housing requirements in terms of need and wider market demand.

The Convener: The committee might agree to put some of those questions to the minister.

Brad Gilbert (Scottish Government Housing and Regeneration Directorate): Perhaps I can shed some light on the 35,000 figure. In June last year, the Government published a housing market review, which concluded that not enough houses were being built and that housing supply was not sufficiently responsive to market conditions. As the committee has previously heard, house prices were 72 per cent higher in 2006 than they were in 2002, while levels of new build increased by only 2 per cent. The proposed goal of building 35,000 new houses a year reflects a range of analysis and evidence that were drawn together in the market review. The review concluded that a substantial increase in housing supply could be sustained by the market and would have a significant impact on affordability. The 35,000 figure—an increase of 40 per cent over current levels—is consistent with that. The point is that the proposed goal will set local authorities, developers and builders a challenge to increase supply by 10,000 a year by the middle of the next decade. We are setting an aspiration and we are looking to local authorities, developers and others to respond by ramping up supply.

David McLetchie: Is that goal achievable in the context of the roll-out of local development plans? Will more land need to be released for housing outwith the roll-out of those plans—separate from all the accompanying community engagement processes—in order to meet the target?

Brad Gilbert: Stephen Garland might want to add to this, but I think that SPP 3 includes a facility to accelerate the release of land where that is required to meet identified need. That can be done.

David McLetchie: Can it be done outwith the local development plan?

Stephen Garland: There is provision for that. The key point is that the new methodologies and guidance that are being put in place for the next

round of plans should take account of wider housing requirements and should result in the allocation of sufficient land to meet those requirements. The processes that have been put in place by SPP 3 to ensure greater consistency in the use of housing land audits and to monitor the plans will form part of how we assess whether the aspiration to provide 35,000 new houses will be met or exceeded. The issue will be taken into account as we move forward into the next round of plans.

Alasdair Allan: Recently, there has been some interest in the HMO issue. What evidence has the Government gathered from people who are for and those who are against HMOs, especially in relation to the concentration of HMOs in particular areas?

Stephen Garland: There is evidence on studentification from Universities UK, which looked at the potential difficulties that are associated with having large numbers of students in communities. The cities that it mentioned were Brighton, Canterbury, Loughborough, Manchester and Nottingham. The University of St Andrews also commissioned a study of the housing market in St Andrews. Both studies focused on the impact of having a concentration of students in an area. There has also been extensive engagement with stakeholders, including many elected officials, who have put forward their constituents' views on HMOs. We have had face-to-face discussions and have held a seminar with a number of interested stakeholders from community groups and representatives of the users of HMOs.

Alasdair Allan: Is the Government's view, as set out in draft SPP 3, that local authorities should not be encouraged to pursue licensing of HMOs, or does it intend to leave that option open to them? Does the Government take a view on licensing?

Stephen Garland: Licensing is an entirely separate issue and is a legislative requirement that is to do with the quality of HMOs and the way in which they are used. Planning relates more to the amenities in local areas and to the concentration of HMOs. Draft SPP 3 advises local authorities that they already have powers that enable them to consider issues relating to the concentration of HMOs and that, as part of their wider housing policy, they should consider using those powers, where appropriate.

HMOs provide a valid and valuable form of housing for a wide range of groups—not just students, but migrant groups and young professionals. Any problems associated with them are concentrated largely in a few major cities and one or two smaller towns with student issues.

Alasdair Allan: You rightly understood that I was thinking of planning, rather than licensing. Am I right in saying that the size of an HMO determines whether it falls under the licensing regime or the planning regime?

Stephen Garland: Different definitions are used for licensing and planning. The Government takes the view that applying the same fixed numerical threshold for planning purposes that applies for HMO licensing purposes would require a change to the definition of "development" in the Town and Country Planning (Scotland) Act 1997. It is clear from experience that not every increase in occupancy involves a material change of use. Having a fixed threshold at which planning permission was required might lead to the anomaly of there being nothing for the planning system to consider in cases in which no material change of use was involved, although the number of people in a house had increased.

Alasdair Allan: How does what you are doing fit in with the Government's wider review of the private rented sector?

11:15

Stephen Garland: Our work, which is solely concerned with planning, is parallel to the review of the private rented sector, which is about licensing and housing policy issues. HMOs have been raised as an issue because of their concentration. Draft SPP 3 gives wider guidance on the operation of licensing to inform planners as part of their wider remit, but it is specifically concerned with whether authorities should give consideration to having a policy on the concentration of HMOs in a particular area.

The Convener: I understand that many members have received representations about HMOs. Alasdair Allan has covered a lot of ground, but does any member want to ask a specific question about HMOs before I go back to my list of members who want to speak?

Jim Tolson: Yes.

Patricia Ferguson: Yes.

The Convener: Fine. Jim Tolson will be followed by Patricia Ferguson. Bob Doris indicated previously that he wanted to ask some questions on this area.

Jim Tolson: It is certainly a concern that the Government's "Firm Foundations" consultation document seeks not only to make greater use of the private rented sector, but to limit the number of HMOs in particular areas. I contend that that would worsen the situation, with a greater push for accommodation being experienced in more areas. Where does the Government think that the students will go if not into areas where HMOs are

already concentrated? The need will still be there, regardless of whether a cap is put on certain areas.

Stephen Garland: First, I should say that we are not talking about imposing quotas. Some cities already have policies on the concentration of HMOs. A balance will have to be struck, and in deciding what is appropriate for their area, local authorities will have to take into account their wider housing concerns and the concerns that might be expressed by local communities.

We are not proposing that local authorities should take a particular approach. Local authorities should take account of the fact that they have the ability to use their powers. They should take a view. If the local authority does not wish to impose a policy on the concentration of HMOs, that is fine, but the issue should be considered when the authority is developing a local housing strategy in its development plan.

Patricia Ferguson: How does the Government see the licensing regulations for HMOs interacting with planning regulations? Sometimes there is a problem with those two different parts of the system not necessarily complementing each other, or dovetailing well with each other.

Stephen Garland: Each system is designed to do different things. Planning focuses on the availability of services and amenities, and licensing focuses on ensuring that HMO properties meet certain safety, physical and management standards. Some local authorities have difficulties in enforcing both processes, but it is for them to set their fee levels to cover enforcement costs.

The consultative draft of SPP 3 incorporates guidance that was issued several years ago to encourage better joint working and information sharing between licensing and planning offices, which should improve enforcement. The wider issue might be around enforcement in relation to the two processes rather than bringing them together, because they are intended to do different things.

Patricia Ferguson: I accept that they are meant to do different things, and quite rightly so. Licensing HMOs was introduced to prevent tragedies such as the one that happened in my constituency when two young men died.

Has any thought been given to allowing the two different parts of the system to have a more obvious point at which one might trigger action on behalf of the other? Could that be more streamlined and made easier to understand by those who are involved?

Stephen Garland: Planning and licensing officials from different authorities attended the seminar that we held during the consultation

exercise. A good amount of discussion took place about using internal processes and having greater interaction between the two areas. The impression that I took away is that internal processes provide a facility for dealing with such matters. Positive moves may already be taking place in some cities, which we encourage. We want to examine them and take the issue further.

Patricia Ferguson: The Government could certainly take a lead and encourage local authorities. In places where quotas are being suggested or recommended, what should trigger a decision on that?

Stephen Garland: The local authority should take a balanced decision that reflects the impact on wider amenity and services in the community—that applies not just to housing for students, but to housing for other uses—and the area's housing requirements. You have strongly raised a concern that we all have, which is that action should not push a problem away from the licensing regime. We must not end up with HMOs being created without any licensing control. We have been aware of that concern in discussions with local authority officials. The issue involves a balance. Although it is something for local authorities to take account of, they should do so on the basis of advice from their planning and licensing enforcement officials.

Patricia Ferguson: That is helpful. My experience is that although some communities identify genuine problems with the operation of some HMOs and perhaps with the quantity of HMOs, a bigger problem is the unlicensed HMO—that is a problem for the community and the HMO's occupants. Anything that can be done to show that nothing will happen to push operators of such premises down an unlicensed route would help. We would all be concerned about any move in the unlicensed direction.

Stephen Garland: That point has been made during the consultation exercise and we are reflecting on it in drafting the final policy.

Bob Doris: My concerns are similar to Patricia Ferguson's—perhaps some of the same people go to our surgeries. Some residents have told me that when they contact the council about an issue with an HMO, the council might tell them that the HMO does not have planning permission, although it has an HMO licence. Communities lack understanding about how the whole system works and whether there is any correlation between planning and licensing. The idea of making a lack of planning approval a reason for not issuing a licence is seductive, but I understand that the danger of that is that fewer HMO landlords might seek licensing approval and safety standards might not be maintained. I am curious to know whether any scoping exercise has determined the

knock-on effects of linking planning with licensing in that way.

Stephen Garland: I am not aware of data on the knock-on effects of linking planning and licensing—I assume that you are suggesting that a licence would not be granted if planning permission had not been given.

Bob Doris: Yes. That could be a reason for refusal.

Stephen Garland: I am not aware of data on that. As I have said, the issue relates to enforcement of the two regimes and ensuring that, when an HMO that does not have planning permission should have it, planning enforcement action is taken to bring that HMO into the system.

As part of the planning modernisation exercise, new enforcement regulations have been proposed. They provide increased powers through fixed-penalty notices and other measures that will be available to authorities to use in such situations. That package should start to address the issue.

Bob Doris: That almost pre-empts my next question, which is about enforcement. I have received feedback from councillors who have been working with constituents on HMOs that do not have planning permission but are licensed. Constituents might ask local authorities what they are doing about a particular HMO that does not have planning permission. There are issues about the speed with which authorities can move to enforce licensing provisions. The level of fine at the end of the process might not be sufficient to deter a rogue landlord, who might not really care about planning or licensing. The process has to be speeded up, rather than there just being a heavier fine. Have you given any thought to how to make the process quicker?

Stephen Garland: Your question is largely about broader planning enforcement issues. The 2006 act provided for new powers to issue fixed-penalty notices, which are designed for the kind of situation to which you are referring. Under the proposed regulations, where a rogue landlord or occupier does not intend to respond to a notice, the authority will be able to issue a fixed-penalty notice instead of having to go to court.

In the consultation exercise, we suggested a range of fines for the fixed-penalty notices. We are currently analysing the responses, including any concerns about the level of the fines and the rate at which they are stepped up.

Bob Doris: Is any further guidance being given about what constitutes a defined block for HMOs for a local authority? I have been working with residents of an area in Glasgow who have asked the council how many HMOs there should be in

that area. The council will give a percentage for the area. The residents want to know what constitutes their area—is it their street, their block, their stair or their postcode?

Stephen Garland: It depends on the local circumstances. In Glasgow or Edinburgh, a tenement stair might be the main focus. In one of the smaller towns, such as St Andrews, it might be a street. We will consider the consultation responses on that issue. My first thought is that that is an issue on which local circumstances will have to be taken into account.

Johann Lamont: Am I right in thinking that the issue of quotas would be addressed through the local housing strategy and the development plan? That is the stage at which it would be identified whether there should be a quota, how much the quota should be and where it should be. Are you asking local authorities to be as explicit as that?

Stephen Garland: Local authorities currently have that power. Some of them already undertake such an exercise.

Johann Lamont: When a local authority is mapping housing need across its area—sometimes such mapping exercises are undertaken with other local authorities where there is a crossover—it would identify whether it needed a quota and what that quota should be. I am quite surprised that you are suggesting that authorities would be looking at individual closes in deciding what the quota should be.

Stephen Garland: It is up to the local authority. I understand that Glasgow City Council already has a policy on that. I cannot tell you precisely whether it focuses on blocks or stairs, but—

Johann Lamont: We need clarity on that. There are anxieties about local authorities being expected to identify a quota.

Stephen Garland: Perhaps we need to be clearer about that in guidance. We are saying in the consultative draft that local authorities should be expected to consider whether they need a policy on quotas. It is up to the local authority to decide that.

Johann Lamont: There are two issues around enforcement on which I would welcome your comments. The first is quotas. My understanding of the problem is that authorities can identify a quota and have a licensing scheme, but the two things never come together. Even where authorities say, in general terms, that they want a community to be a mixed community and that there ought not to be more than X per cent of HMOs, they cannot take that into account when they grant licences for HMOs. How will what is in the draft SPP make a practical difference in

bridging that gap? I do not think that people are clear about that.

Secondly, the charge that is made is that a consequence could be that landlords will, in effect, go underground and that we will put people who are in HMOs more at risk because the HMOs will not be part of a licensing scheme and there will be no scrutiny of them. That sounds like a serious argument. What is the answer to it, given that private landlord registration is not moving quickly enough and there are always pressures on it? What is being done to bring that into the system and to ensure that local authorities commit sufficient funding to HMO licensing and private landlord registration, given the end of ring fencing?

My last question concerns good practice. How do you expect local authorities to engage with those who are most interested in HMOs on the development of local housing strategies and the housing bit of their development plans? What are your expectations for dialogue before those policies are determined?

11:30

Stephen Garland: The serious charge that the policy may create unlicensed HMOs, which Patricia Ferguson also raised, is valid. A careful balance needs to be struck when a local authority decides whether to have a policy on concentrations and when the licensing officers and others give their views on whether it will create unlicensed HMOs.

On your question about local authorities committing sufficient funding to enforce the licensing regime, as I understand it, the authorities that we have been dealing with in the exercise take enforcement seriously. It is a statutory responsibility for them.

Private landlord registration is moving forward. I am afraid that I do not have information on how quickly it is moving, as other colleagues deal with it. In the seminar that we had, the enforcement officers stated that it would assist them in discharging their duties.

You asked about good practice on consultation in drawing up local housing strategies. My colleague Jackie Wilkins has been working on the development of new guidance on local housing strategies, so perhaps she can answer.

Johann Lamont: How would the mechanism by which the planning quota affects the granting of a licence work?

Stephen Garland: That goes back to closer working practices between planning and licensing officials. Bear in mind that it would not affect a situation in which it could be said that there is an overconcentration of HMOs. It is not about taking

back licences but about going forward, and many of the concerns are about existing areas of HMO concentration. There is scope for closer working between the two parties. Policies are in place and seem to be working, but there is an issue with enforcing them when an HMO is found not to have planning permission. I did not make it clear earlier that the mechanism is about forward planning permissions, not about reversing a situation.

Perhaps Jackie Wilkins could talk about the process for creating local housing strategies.

Jackie Wilkins (Scottish Government Housing and Regeneration Directorate): We are in the process of preparing new guidance for local authorities for the next round of local housing strategies. We will encourage local authorities to consider houses in multiple occupation as they prepare those strategies.

To support that, we have recently published guidance on how to undertake housing need and demand assessments. Within that guidance, there is a section that flags up all the things that local authorities will need to think about in relation to HMOs and other communal establishments. We hope that local authorities will work fairly hard to get together a robust evidence base and determine what the issues are on their patches. Through doing that, they will have consulted a range of stakeholders—private landlords and potential users of HMOs. Therefore, we expect local authorities to have reviewed the matter fairly thoroughly for their areas, to have identified what the key issues are and to demonstrate how they are going to address them in the local housing strategy.

The local housing strategy guidance sets out clearly the level of consultation that local authorities are expected to engage in. The document also contains quite a lot of references to good practice on standards of community engagement. We will look fairly critically at the level of engagement that has been entered into when we eventually receive the strategies.

Johann Lamont: So if it appeared that local authorities were jumping to quotas, the local housing strategies would be resisted on the basis that there was no evidence that the quotas were necessary.

Jackie Wilkins: Yes. Through the housing need and demand assessment process that local authorities are being encouraged to undertake, it would be evident if policy conclusions had been reached that were not supported by what was happening on the ground. We are encouraging local authorities to put together a robust evidence base, from which they will be able to work out the practical responses that they need to make. We should not have a disjuncture between what is

actually happening and what a local authority intends to do to resolve the issues.

Kenneth Gibson: Mr Gilbert talked about the assessment of the housing market that was made in June 2007. There had been a 76 per cent increase in house prices in a four-year period but only a 2 per cent increase in supply. He said that the Scottish Government took the view that there was an opportunity to increase supply by about 40 per cent by 2015 to tackle the high demand in the system, which is forcing up prices. However, it is surely time for a reassessment of the situation because of the horrendous problems that have been caused by the collapse in the banking system on the American side of the Atlantic and the shock waves that have hit over here. If people have great difficulty getting mortgages or if they have to pay 25 per cent mortgages, that will impact on demand and, as a result, supply. Has the Scottish Government assessed, or does it plan to assess, the impact of the changes in the past few months so that its plans can be revised accordingly, if necessary?

Brad Gilbert: Yes—assessment is being carried out as we speak. The Scottish housing market review to which I referred predicted the general slow-down that has been witnessed in the Scottish housing market. Most commentators expect that to be the general picture in the coming year. The rapid tightening of credit in recent months and the banks' reduced ability to lend were less predictable when the review was carried out. As we are all aware, the situation has resulted in reduced mortgage choice and lenders managing down demand by tightening lending criteria, increasing price and withdrawing mortgage products.

The current fluctuations do not diminish the need to respond to the underlying long-term requirement for higher levels of housing, particularly given the forecast growth in the number of households of about 13 per cent to 2.5 million between 2004 and 2024. Therefore, the proposed goal of increasing supply to 35,000 a year by the middle of the next decade remains relevant and looks beyond the current market fluctuations. There is no doubt that an increase in supply and supply responsiveness would reduce house prices in the long term and help to achieve greater price stability.

Kenneth Gibson: How will the policies in draft SPP 3 enable an increase in house building, given the changed circumstances?

Brad Gilbert: SPP 3 seeks to ensure that there are sufficient land allocations to meet assessed local housing requirements. It is designed to deal with the need for a more responsive planning system, which is a precondition for ensuring that

we get the appropriate land allocations and the requisite housing supply.

Kenneth Gibson: If there is much higher demand in one area than in others, will the plans be flexible enough to enable targets to be met, given the issues of land supply that Mr McLetchie raised?

Stephen Garland: SPP 3 proposes a more robust process for identifying the housing requirements of development plan areas, which should be taken into account fully in the land allocations in development plans. Plans should be responsive to data on housing requirements.

The Convener: Committee members may agree that it would be useful for us to take evidence from the Minister for Communities and Sport on that point, which goes to the heart of the issues of availability and affordability. Although we have concentrated on the link between houses in multiple occupation and students, we need to remember that HMOs are also used by groups such as incoming workers, which has an impact on our communities. The concerns relating to that issue are similar to those that arise in relation to HMOs used by students. It all goes back to the availability of land and our ability to create affordable housing, especially in a market where it is becoming more difficult for people to afford a first home and a mortgage. We could have a useful session with the minister on that point. I thank our witnesses for their attendance today and for the evidence that they have given.

Petition

Eco-villages (Planning Policy) (PE903)

11:41

The Convener: Item 4 is consideration of petition PE903, on eco-villages. Members have received copies of the petition and the relevant correspondence. I invite members to comment on the correspondence that we have received from the Scottish Government on the petition, and to agree to note the correspondence, to forward it to the petitioner and to close the petition.

David McLetchie: We should accept the recommendations in the committee paper.

The Convener: Do members agree to the recommendations in the paper?

Members indicated agreement.

Mainstreaming Equal Opportunities

11:42

The Convener: Item 5 is on mainstreaming equal opportunities. The convener of the Standards, Procedures and Public Appointments Committee has written to all committees on whether committees should be obliged to report periodically on how they have built equalities considerations into their work. I invite members to consider the letter and to agree a response.

Kenneth Gibson: I think that we should make such reports.

David McLetchie: There are two issues. First, should we incorporate reference to this aspect of our work into our annual reports? I have no objection to our doing so, as I think that the committee takes equal opportunities matters properly into account. Secondly, do we support a change in standing orders to make that a statutory requirement binding on all committees of the Parliament? I am not disposed to changing the rules to that end. There is no need for us to do so—we should just follow existing good practice.

Johann Lamont: The problem is that bad practice is developing in committees. We may need to discuss the issue further, as there are already examples that concern me. We are awaiting an equality statement from the Government on what was agreed at the turn of the year. The Government decided to declutter the landscape by merging the Mobility and Access Committee for Scotland with the Public Transport Users Committee for Scotland, without subjecting the decision to an equality impact assessment; it is now carrying out such an assessment.

When we ask questions about policy development, scrutinise the Government's work and conduct inquiries, we should be alive to the fact that we need to raise equal opportunities issues. At our round-table session on child poverty, we discussed whether poverty impacts differently on different groups. Whether we need to change the rules is a judgment call, but we should discuss the issue. The Equal Opportunities Committee could give us further advice on the matter. The committee seems to be suggesting that unless we—by which I mean all committees—are required to take equal opportunities into account, we will not do so. If that is the judgment of the Equal Opportunities Committee, I would support obliging committees to report on their work in the area.

Alasdair Allan: Remarkably, I agree with every word that Johann Lamont has said.

The Convener: That looks like a consensus that is binding on us. We accept the Equal Opportunities Committee's recommendation.

That ends committee business for today. I thank members for their attendance and participation.

Meeting closed at 11:45.

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