



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

Wednesday 1 December 2010

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**LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE**

**29<sup>th</sup> Meeting 2010, Session 3**

**CONVENER**

\*Duncan McNeil (Greenock and Inverclyde) (Lab)

**DEPUTY CONVENER**

\*Bob Doris (Glasgow) (SNP)

**COMMITTEE MEMBERS**

\*Patricia Ferguson (Glasgow Maryhill) (Lab)  
\*David McLetchie (Edinburgh Pentlands) (Con)  
\*Alasdair Morgan (South of Scotland) (SNP)  
\*Mary Mulligan (Linlithgow) (Lab)  
Jim Tolson (Dunfermline West) (LD)  
John Wilson (Central Scotland) (SNP)

**COMMITTEE SUBSTITUTES**

Brian Adam (Aberdeen North) (SNP)  
Malcolm Chisholm (Edinburgh North and Leith) (Lab)  
Alex Johnstone (North East Scotland) (Con)  
Alison McInnes (North East Scotland) (LD)

\*attended

**THE FOLLOWING GAVE EVIDENCE:**

Colin Affleck (Scottish Government Housing and Regeneration Directorate)  
David Henderson (Scottish Government Local Government and the Third Sector Directorate)  
Alex Neil (Minister for Housing and Communities)  
John Swinney (Cabinet Secretary for Finance and Sustainable Growth)

**CLERK TO THE COMMITTEE**

Susan Duffy

**LOCATION**

Committee Room 5



# Scottish Parliament

## Local Government and Communities Committee

*Wednesday 1 December 2010*

[The Convener *opened the meeting at 09:15*]

### Private Rented Housing (Scotland) Bill: Stage 1

**The Convener (Duncan McNeil):** Good morning. Welcome to the 28<sup>th</sup> meeting in 2010 of the Local Government and Communities Committee. I remind members and the public to turn off all mobile phones and BlackBerrys.

Item 1 is oral evidence at stage 1 of the Private Rented Housing (Scotland) Bill. I welcome today's panel of witnesses. They are Alex Neil MSP, who is the Minister for Housing and Communities; Lisa Wallace, who is policy and consumers team leader in the Scottish Government's private housing unit; and Colin Affleck, who is a policy officer in the unit. Thank you for your attendance at this morning's meeting. I invite the minister to make some opening remarks.

**The Minister for Housing and Communities (Alex Neil):** The bill is part of my approach to building a stronger and more effective Scottish private rented sector. The sector has a clear role to play in helping to build mixed sustainable communities across Scotland, and in offering flexibility and choice in housing options.

Our review, which was published last year, highlighted high levels of satisfaction in the sector. I want to build on that good report card and to develop a strategic approach that sees the sector go from strength to strength. Last year I appointed the Scottish PRS strategy group to advise me on future policy direction for the sector. The group has considered a range of issues that were highlighted in the review, along with issues that have been raised by key stakeholders such as Glasgow City Council. It will continue to act as an important sounding board throughout the passage of the bill. The bill represents the first stage of that work, but broader reform of the sector is required. The group is taking a long-term view and will make recommendations to me next year on a future strategic direction that is focused on growth, sustainability, and quality.

In the bill, we need an approach to regulation that seeks to lighten the load on good lawful landlords and frees up local authority resources to focus on the relatively few unscrupulous players who are bringing the sector into disrepute. The bill

will benefit both landlords and tenants. For example, it will give landlords access to the private rented housing panel to help them to carry out their repairing standard duties. Key provisions such as the mandatory information pack will encourage the existence of better-informed tenants who know their rights and responsibilities and are empowered to challenge bad landlord practice.

Many of the powers for which the bill provides have been requested and welcomed by local authorities. For example, it will improve the enforcement of landlord registration by improving councils' evidence-gathering powers. It will allow them to request a criminal record certificate and it will strengthen attempts to catch unregistered landlords by requiring the PRHP to share information and by making the inclusion of registration numbers in adverts mandatory. The bill will put an end to agents charging unfair premiums by giving the Government powers to specify that only certain reasonable fees are allowed.

During the evidence sessions, stakeholders expressed concerns about the overall effectiveness of the landlord registration scheme. The scheme is not of this Government's making, but we are intent on making it work better. We must enable local authorities to use their powers in a way that improves the sector and offers a degree of consistency for landlords, while allowing sufficient flexibility to take account of local circumstances.

There is a lot of good practice, which is being shared and encouraged via the local authority landlord registration group. An excellent example is co-ordinated effort within councils, where landlord registration teams and housing benefit teams share information. That can help to identify unregistered landlords and, at the same time, stop benefit fraud. It is not right that unregistered, unlawful landlords should gain from the public purse, so I want the good practice that I have described to be rolled out across Scotland. I intend to highlight its benefits in the new statutory guidance that we will issue on landlord registration.

The bill tackles important issues on which action is required now. We are carrying out a high-level review of landlord registration to consider what future improvements are needed. The bill will increase maximum fines to £50,000, which will act as a further deterrent for landlords, and send a strong message to the courts about the weight that we attach to such offences. However, I hear what is being said about difficulties in gathering evidence for successful prosecutions, and about the length of time and significant resource that it can take to progress through the courts. The

improvements in the bill around councils' evidence-gathering powers that I have outlined will help with that, and I have instructed the strategy group to consider that further as part of its forward work plan.

I have also included provisions to tackle overcrowding, in response to local authorities' calls and the strategy group's recommendations. We know that there are serious cases of overcrowding in some parts of Scotland, affecting vulnerable groups such as migrant workers. People are living in dreadful and unacceptable conditions, and are creating serious risk for themselves and upset for neighbours. To allow local authorities to issue overcrowding statutory notices to private landlords will help to protect communities and tackle localised problems such as those in Govanhill in Glasgow.

During the consultation, local authorities stressed the importance of that power being discretionary, so that it can be used only in the most severe cases. I believe that that is the right approach to take. It is essential that vulnerable tenants are protected, so we will issue statutory guidance on the use of the overcrowding notice, and we will make it explicit that local authorities must give careful consideration to all the facts case by case before deciding whether to take action.

First, the local authority will need to be convinced that the overcrowding is having detrimental effects on tenants' health, or an impact on neighbours. It will then be expected to take account of the tenants' needs, the consequences for the local community, homelessness implications and the availability of alternative accommodation. It is neither my intention, nor is it that of local authorities, to ask for powers to swoop in and make people homeless. Rather, landlords will be given a period of time to comply, and the guidance will outline that tenants must have time to find another place to live. It is certainly not the intention that the provision should become a fast track for tenants to get on to social housing lists, although local authorities' statutory homelessness duties will apply in some cases. The guidance will make it plain that we will expect local authorities to act sensitively and to take a proactive multi-agency approach to providing advice and support for tenants.

The majority of landlords are law-abiding and are simply trying to make an honest living. Unfortunately, a small minority are providing unacceptable accommodation and employing poor management practices. As a result, tenants and communities are suffering, along with the reputation of the sector. The bill sends a clear message that unlawful landlords will not be tolerated and it will strengthen landlord registration

enforcement by adding to the toolkit of discretionary powers that councils can use flexibly. It will not place an unwanted burden on councils that have no need for such powers, so it should not create unnecessary expenditure or bureaucracy.

I am sure that many members will be aware from their constituency mailboxes that there is a real need to tackle antisocial behaviour among some private tenants. Such unacceptable behaviour might be endorsed and often made worse by negligent landlords. The bill makes it clear that local authorities are expected to take account of antisocial behaviour occurring in a landlord's property when applying the fit and proper person test. We know that good and lawful landlords will take the necessary steps to ensure that their tenants do not cause problems for neighbours, but it is right and proper that local authorities should have legislative powers to take action on landlords who do not. Where honest landlords are taking steps to deal with the problem, it is only fair that local authorities should have discretion in the use of the powers so that they can provide an apposite response.

I have found the recent meetings with committee members to be helpful and productive. I hope that we can continue to work together to improve and enhance the bill.

**The Convener:** Thank you, minister. We move to the first question, which is from David McLetchie.

**David McLetchie (Edinburgh Pentlands) (Con):** Some would say that the present landlord registration scheme was introduced with unseemly haste under the Antisocial Behaviour etc (Scotland) Act 2004. It had a very specific focus in that context rather than being focused more generally on the private rented sector. How would you assess the efficacy of the scheme as a whole?

**Alex Neil:** It has now been operating for three years. The first registrations took place in 2007, although the legislation was passed in 2004.

A number of clear issues have arisen during the first three years. The main one is the lack of proper enforcement in some local authority areas. In the bill, and in our review of the registration scheme, we want to consider, for example, ways of ensuring better standards of enforcement throughout the country. There are some very good examples of enforcement, but there are also some local authorities which, to be frank, have taken a more laissez-faire approach to enforcement than is desirable. There are variations across the country. We have learned lessons during the first three years, and through the bill and the review—and through the continuing work of the private

rented sector strategy group—we are, I think, making improvements to the system.

**David McLetchie:** A review of the registration scheme is being undertaken by the group to which you referred. Why is it necessary to enact interim measures to tinker around the edges of the scheme before we have a report on the scheme as a whole? That report might lead to more comprehensive legislation.

**Alex Neil:** The bill is largely based on the recommendations of the review of the private rented sector that we carried out last year. That review ranged widely across the whole sector; it dealt not only with issues of registration and enforcement but with wider issues related to the development of the sector. The vast bulk of the provisions in the bill arose from that review and from consequent consultations on its conclusions and recommendations.

The review of the landlord registration scheme, which we are now undertaking, focuses specifically on issues such as enforcement. As Mr McLetchie knows, we are asking in the bill for powers to provide statutory guidance; at the moment there is no statutory guidance procedure. Such a procedure would allow us to build in best practice, and that will be possible once we have received in March the conclusions and recommendations of the review of the specifics of the landlord registration scheme.

The bill is about much more than landlord registration; it is about the consequences and conclusions of the very substantial review that was undertaken last year. Some of the bill's measures on overcrowding, for example, arose from those consultations. Glasgow City Council asked us to reinstate provisions on overcrowding—provisions that had been in law before, but had been taken out. The council believes that it needs such powers.

**David McLetchie:** That answer wandered slightly off the issue of the landlord registration scheme. At its inception, the scheme was an adjunct to a bill that was intended to deal with antisocial behaviour. Some piecemeal reforms to the scheme have now come up in the context of a wider review of private sector landlords, which the minister has mentioned. Another review, of the registration scheme itself, is pending. Instead of having all these bits and pieces, which has been our experience since the inception of the scheme, would not it be better to have a focused review of the registration scheme, followed by focused legislation, if required?

**Alex Neil:** I would agree with you if we could turn the clock back to 2004. Rather than considering landlord registration legislation as an adjunct, as it were, to antisocial behaviour

legislation, we should have considered it in its own right. I think that most of us would agree with that. However, 2004 was six years ago, and we are where we are.

A strategic approach was outlined as a result of the wider "Review of the Private Rented Sector". A result of that was a highlighting of the need to do more on landlord registration and to improve the legislative framework. The bill makes improvements to the legislative framework for the landlord registration scheme. The March report will be more about operations: it will consider best practice, minimum standards, and so on.

If we require additional legislative measures through secondary legislation to further improve the scheme, we will have powers to do that through the bill, and we will be happy to do it. We are taking a strategic approach that has its roots in last year's private rented sector review.

09:30

**David McLetchie:** Thank you for that. I have two specific questions for clarification. On the overcrowding provisions, I was interested to hear your comment in your opening remarks that the service of an overcrowding statutory notice will not be a fast track on to the housing list. Can I take it, therefore, that you would reject the proposal or suggestion by bodies including the Scottish Council for Single Homeless, Consumer Focus Scotland and Shelter that a duty should be placed on local authorities to rehouse people who are displaced as a result of the service of an overcrowding statutory notice?

**Alex Neil:** Absolutely, I reject it. I think that there are enough duties at the moment, and the main duty is the homelessness duty. In extreme circumstances, some people might be subject to that duty. However, this is one of the reasons why I am not in favour of a national scheme. It is important that the local authority, in its various guises, operates in a co-ordinated fashion. There will be a section dealing with homelessness, a section dealing with housing allocations, a department dealing with landlord registration, a department dealing with landlord enforcement, and an environmental health department. It is important that, before any action is taken on an overcrowding statutory notice, the implications and consequences of issuing the notice are catered for by all those departments.

Typically, the overcrowding that has been cited to us is in migrant communities. Migrant communities from outside the European Union are not covered by the homelessness duty, so overcrowding in those communities has to be managed in a different way from overcrowding in

other situations, where there might be a homelessness duty.

We imagine—our discussions with local authorities bear this out—that if there was a need to issue an overcrowding notice, the situation would typically be managed through managing down the numbers in the overcrowded accommodation by finding alternative accommodation, in many cases in other parts of the private rented sector, for the people who were living in the overcrowded accommodation. Local authorities will be wary of people trying in any way to abuse the system. We have designed the legislation in such a way as to avoid any such abuse. An overcrowding notice is not a fast-track way to jump the queue in the housing list.

**David McLetchie:** Lastly, I will ask you about the provisions on pre-tenancy charges. The bill is intended to clarify what charges are legal. Will you tell us what is legal and what is illegal at the moment and what changes you propose?

**Alex Neil:** That is actually a very grey area at the moment. The Govan Law Centre in particular has done a lot of worthwhile work on the issue. A couple of examples of legitimate pre-tenancy charges would be a rent deposit and a charge for a credit check. It is perfectly legitimate to pass on those expenses. However, to say, “We are going to charge you £400 for keeping this place open for you,” would not be legitimate. We will use the powers that the bill will give us to issue an order. Our approach will be to list legitimate charges, and any other charges will be deemed to be illegitimate. We will do that as a result of the consultation.

It is not just the legitimacy of the charges that is important but also the level of the charges. The order will deal with both points—the legitimacy or legality and the reasonableness of the charges. It is clear from the excellent work that the Govan Law Centre has done that there are certain unscrupulous agents out there who are levying on fairly vulnerable people charges that, frankly, could not be justified under any circumstances.

**David McLetchie:** Are those placement charges for finding a tenancy in the first place?

**Alex Neil:** They could be. We do not regard large charges for that kind of thing as being legitimate.

**Mary Mulligan (Linlithgow) (Lab):** Good morning, minister. Some of us believed that the introduction of landlord registration under the Antisocial Behaviour etc (Scotland) Act 2004 was the correct thing to do in dealing with a specific problem. I have some sympathy with Mr McLetchie’s query. In looking at the private sector as a whole, this may not be the time to introduce

landlord registration as a subset of that. I heard the minister’s answer. I will reflect further on it.

My question is on the proposal for a registration number by which to identify landlords. We have heard in evidence that instead of a number something like a kite mark should be used. What is your view on that?

**Alex Neil:** I am very much in favour of using a number system. A number can be easily checked and would be unique to the landlord. Our experience is that it is very easy to copy a kite mark or to use somebody else’s kite mark, which makes it difficult to check whether the kite mark is legitimate. Obviously, we consulted on the proposal. Our view is that a number system is much more effective in enforcement terms; it is easy for people to check. I am always very conscious of the tenant or prospective tenant. If the landlord has a number, it is much easier for the tenant or prospective tenant to check the legitimacy and validity of the advert and the person who placed it than it would be using a kite mark.

**Mary Mulligan:** Having lodged and moved an amendment during the passage of the Housing (Scotland) Bill, in which I suggested the same thing, I have every sympathy with taking the numbers route. However, there is a problem that I did not think about at the time. For obvious reasons to do with reproduction and so forth, we will not put the landlord number on to let advertisement boards. That seems to remove the benefit that a number would have. Would not the kite mark be better in that regard?

**Alex Neil:** The crucial thing is that people can check the number with the local authority. It should be made as easy as possible for people to check whether the landlord is registered. As Mary Mulligan knows, we are introducing information requirements so that people can check whether the landlord’s application is pending or whether they have applied for registration and been refused. In terms of processing those enquiries through the local authority, the advice that we have received from authorities is that it is much easier, quicker and more effective to use a number than it is to use a kite mark.

**Mary Mulligan:** One difficulty in any landlord registration scheme is how to let people—landlords and prospective tenants—know about it. Has the Government any proposal to advertise the procedures? How will you make the landlord registration scheme better known?

**Alex Neil:** We will need to look at how to do that, which we will do once we see the committee’s stage 1 report. One constraining issue for everybody will, of course, be budgets.



There is a need to increase awareness among prospective tenants in the pre-information stage—I think that that is the stage to which Mary Mulligan is referring. The information pack, which will be a statutory requirement, will inform people about tenant rights, the availability of tenancies and so on. We will talk to the PRS strategy group and others about how we can increase awareness more effectively. That will be done on an on-going basis and not on the basis of a one-off advertising campaign. Obviously, there is a high churn in the sector, especially in some areas. We have to have an on-going way of making people aware.

We have now established a much closer working relationship with the Department for Work and Pensions in Scotland on a range of areas. As we know, a fair percentage of people in the private rented sector are on benefits. The DWP is therefore a possible way in which to disseminate information.

**Mary Mulligan:** I want to go back to your earlier responses to Mr McLetchie on overcrowding. Let me give an example. If there was a small flat with 10 Polish individuals, on which an overcrowding notice was served and some of the individuals had to be rehoused, would they be covered by the homelessness legislation as it stands and therefore offered accommodation in the public sector?

**Alex Neil:** That would depend on their status: they would need to fit the bill under the homelessness legislation.

I think that I am right in saying that there is a distinction between European Union and non-EU residents. By and large, EU residents have to be treated as if they are living in Scotland as part of the indigenous population, whereas non-EU residents do not. However, such people would also have to fulfil the requirements of the homelessness legislation, for example on whether they had made themselves deliberately homeless. We should remember that the overcrowding notice process is in stages. First, there is a pre-notice period during which the landlord has time to get everything sorted before a notice is issued, and then after that we would anticipate the local authority putting in place a plan to deal with the overcrowding. People may see an overcrowding notice as a way of jumping the queue, but if they deliberately make themselves homeless and are not compelled to do so, by definition they do not qualify under the homelessness legislation for the homelessness duty.

**Mary Mulligan:** I understand the difference between European Union and non-European Union nationals, which is why I used the example of Polish people. Clearly, if people are in a flat and the council states that there is overcrowding, they are not making themselves intentionally homeless.

You are saying to us that they would be eligible for rehousing under the homelessness legislation.

**Alex Neil:** No. Let us say that there are 10 people in the house and the ideal figure should be six—there are four people too many. We anticipate that the local authority would then say that it and the people together need to find alternative accommodation for four people. I imagine that the first line of attack would be to find alternative accommodation elsewhere in the private rented sector. In most areas, there is enough capacity to do that. If that is not possible, there may be other sources of accommodation. One possibility is sharing with other friends who are not overcrowded.

Someone would be made homeless as a result of an order only in extremis. We envisage the local authority, with the landlord, managing the situation down rather than just saying that by next Tuesday, for example, the landlord has to get rid of four people. If the council did that, the four people would have a legitimate case for saying that they were unintentionally homeless.

**Mary Mulligan:** I want to explore that a little further. You are saying that we are not going to put people out on the streets, and I appreciate that, but can you say a little about the timings once the order has been served? How much flexibility will the local authority have to find alternative accommodation?

**Alex Neil:** The local authority will have maximum flexibility, both in the pre-order stage and once it has issued the order. This is one reason why it is so important that the issue remains to be dealt with by local authorities rather than there being a national scheme. A local authority would need to employ the resources of various departments within it to identify alternative accommodation. If there was a social work issue, the authority would involve social work as well as other normal services.

We envisage the role of the local authority being to manage down the number over time. It might take two or three months, and in the meantime the landlord would not be allowed to bring any additional people into the accommodation. In the example that we are using, once the four people had been found alternative accommodation, the landlord would be told that the number needs to stay at six. If the landlord defied the local authority, I think that that is the point at which it would come in with a slightly heavier approach.

09:45

**Patricia Ferguson (Glasgow Maryhill) (Lab):** Good morning, minister, I had not planned to ask you this question, but it follows on from Mrs Mulligan's questions about overcrowding. Do the

referral provisions under section 5 of the Housing (Scotland) Act 2001 not apply to overcrowding in the private sector? I understand that, where there is overcrowding, in certain circumstances, people are considered to be, in effect, homeless—at least, they can enter the housing list at that point.

**Alex Neil:** Nobody would be prohibited from entering the housing list. One of the conditions for entitlement is that someone is unintentionally homeless. I am sure that most local authorities would not put people in a position where they became unintentionally homeless.

**Patricia Ferguson:** I realise that. However, that might happen by dint of overcrowding. I understand that section 5 of the 2001 act treats people who are in that position as being, in effect, homeless. Does that apply to people who rent in the private sector?

**Alex Neil:** It does. As I said in my opening remarks, the key issue is whether the health and wellbeing of either the tenants or the neighbours are being affected. In those circumstances, the local authority may decide that it does not have time to manage the situation down and must take some people out of it. In that case, those people would be homeless and would qualify under the homelessness duty. However, we would regard that as a fairly rare and extreme circumstance.

**Patricia Ferguson:** That is what worries me slightly. There now seems to be a different definition of when someone is homeless in that situation. At the moment, someone is already deemed to be homeless if they are overcrowded.

**Alex Neil:** Colin Affleck can perhaps clarify the position.

**Colin Affleck (Scottish Government Housing and Regeneration Directorate):** It is true that, if people are overcrowded and the overcrowding is affecting the health of the occupants, that can be regarded as homelessness. However, the local authority is not under an obligation to do anything unless the people apply for housing. The serving of the overcrowding statutory notice does not affect the existing position. The local authority does not have to serve a notice and, if it does not, the position is not altered. The people could apply for housing on the ground of being homeless because of overcrowding affecting their health. What we are doing here is giving local authorities an additional power that does not affect existing rights with regard to homelessness.

**Alex Neil:** That is my point. I do not see a local authority making people unintentionally homeless except in extreme circumstances. Let us say that there was a breakout of some infectious disease as a result of overcrowding and two people being in too close proximity, although that is probably a very unusual example. In those circumstances, the

local authority would need to move quickly to rehouse the people in temporary accommodation. They would almost certainly be deemed to be unintentionally homeless. However, in the vast bulk of the cases that we are dealing with, the local authority would not act in such a way that it made people unintentionally homeless.

**Patricia Ferguson:** I would like to reflect on that area further. It is far more complicated—and is about to become even more complicated because of the provisions—than the minister accepts this morning. Perhaps he, too, would like to reflect on it.

**Alex Neil:** I am happy to get back to you with a legal clarification of which particular legislation kicks in if the bill is passed. That would clarify the matter. At the end of the day, it is about taking a commonsense approach. I think that it would be only in extreme circumstances that a local authority would serve overcrowding statutory notices in such a way that it ended up with more people on the homelessness list.

**Patricia Ferguson:** That is not my point, but maybe we can discuss the matter at another time.

What do you envisage would be contained in the tenant information pack?

**Alex Neil:** A range of information. The role of the Government is to provide almost a checklist of the minimal information. The really good landlords already provide tenant information packs, although many do not. I could sit here all day and list everything. It would include basic information on the tenants' rights and responsibilities, such as where they can go with complaints; issues relating to health and safety, including fire safety; and what to do in the case of any disputes over rent or tenancy deposits. All that stuff would need to be included in the tenant information pack.

**Patricia Ferguson:** Would the landlord be required to give the potential tenant not quite a guarantee but an assurance that, for example, gas and electrical systems were appropriate?

**Alex Neil:** They should do that anyway, irrespective of whether there is a tenant information pack. If a landlord were not complying with health and safety legislation and the various bits of legislation that cover gas and electricity connections, they would be prosecuted anyway. That would happen not under housing legislation but under other legislation, most of which is reserved at the moment. The tenant information pack should advise tenants about where they can go if they believe that the landlord is not complying with such legislation.

I envisage that the tenant information pack will contain a section on useful numbers to phone, which will include everything from the number for

the local accident and emergency unit to Scottish Gas, Scottish and Southern Energy or whoever the energy providers are. After consultation, we will lay an order about the minimal list of things that the pack must contain. My approach is this: if in doubt, put it in. If there is a question about whether to include something, my approach is to put it in because many of the recipients of the packs will be from the migrant community.

One of the issues that we will promote is the need for the packs to be available not only in English but a range of other languages. I mentioned Govanhill in my introductory remarks. I think that I am right in saying that, at the last count, 51 different languages were being used there. I am not saying that we will produce the packs in 51 separate languages but, to make them effective, we will need to print them in quite a number of languages.

**Patricia Ferguson:** I understand the point that the minister makes and I agree about the comprehensive nature that the piece of paper—or pack of papers, as it sounds as though it will need to be—will be required to have. I also make the point that Govanhill is not the only community where there are 51 languages.

**Alex Neil:** Absolutely.

**Patricia Ferguson:** There was a proposal to allow rent to be claimed back in the case where a house in multiple occupation was unlicensed or did not fit the bill. Is that provision no longer being considered? If not, why not?

**Alex Neil:** No. It was dropped because it was too complicated. Part 5 of the Housing (Scotland) Act 2006 becomes active in August. That contains a number of provisions, which means that the measure does not need to be in the bill because part 5 of the 2006 act is already being enacted. Part 5 gives local authorities more enforcement powers on HMOs—in particular, the ability to prevent rent from being payable for an unlicensed HMO without the need to go to court.

**Patricia Ferguson:** I do not think that it goes as far as allowing rent that has been paid to be returned. I think that that is what you originally proposed, so I wondered why that provision had been dropped.

**Alex Neil:** The provision was dropped because, after consultation, we were advised that it was unworkable—difficult to implement and enforce. I am happy to provide you with details of the objections.

**Patricia Ferguson:** I am surprised—or perhaps not—that complication is becoming an issue.

**The Convener:** Minister, you offered some clarification of the legal issues to do with homelessness and the overcrowding trigger. You

also mentioned in your introductory remarks that a local authority's statutory homelessness duties would apply in some cases of overcrowding. Has any work been done on how big an increase those cases would equal in the number of people in Scotland who are defined as homeless and given rights under the homelessness legislation?

Housing associations approach me about the provision under the Homelessness etc (Scotland) Act 2003 on disregarding the definition of “intentionally homeless”, which will come into force in 2012. I do not know whether that will cause another impact or whether it increases the risk of people jumping the queue and getting access to social rented housing when there is an extreme shortage.

**Alex Neil:** This point is not particularly to do with the bill, but it is a general point that touches on the valid point that you have just raised. Six weeks ago, I had a meeting with the local authority housing conveners. Believe it or not, some of those conveners seemed to be under the impression that if, for example, someone has been evicted for antisocial behaviour, they have to go straight back on the homelessness list and the local authority has a duty to rehouse them. There is no such duty. If someone is evicted under antisocial behaviour legislation, they are deemed to be intentionally homeless. The duty on local authorities does not apply to people who are intentionally homeless. I issued a clarification letter to every local authority in Scotland as a result of that meeting, which I would be happy to circulate to the committee.

**The Convener:** We would be happy to see that, but it again makes the point that the “intentionally homeless” definition that would prevent people from getting access to social housing unfairly is not being applied uniformly across the board.

You have mentioned Govanhill a couple of times. We have evidence from Glasgow City Council that it clearly believes that the new legislation and new overcrowding criteria would give entitlement to a number of residents, given that a cockroach and bed bug infestation would give them good reason. It would be interesting to know how many of those people would be entitled to social rented housing as a consequence.

**Alex Neil:** Historically, the figures for such situations are not high at all. We will provide the committee with any updated estimates that we have from local authorities, particularly Glasgow, because it is keen on reinstating the overcrowding provision. We are happy to provide the committee with any estimate of the impact that that might have on the homelessness figures. However, I stress that we think that the potential impact is minimal.

**Bob Doris (Glasgow) (SNP):** I listened with interest to suggestions that the landlord registration issue should be put off pending the wider review of the sector. I am reminded that, just a few months ago, some members of the committee suggested that the whole thing should have been dropped and drawn into the Housing (Scotland) Bill. They wanted to bring it forward with one breath and kick it into the long grass with the next. There seems to be an inconsistency there.

However, I want to talk about how the sharing of information between the DWP and councils could help to secure prosecutions of unregistered landlords. In the private sector, how often does housing benefit go directly to the landlord, and how often does it go to the tenant? That might have implications for whether the information can be used as evidence to secure a prosecution. Do you have information on that?

**Alex Neil:** On your first point, when I come before a committee, I never try to score political points.

I have two points on your second, more substantial question. I said earlier that we now have a good working relationship at operational level with the DWP in Scotland. Two or three authorities, one of which is the City of Edinburgh Council, are now working with the DWP and we intend to roll that initiative out, because all the evidence is that it has been extremely successful. Those authorities are comparing their databases, looking at landlord registration and claims for housing benefit. That is advantageous to both local authorities and the DWP because, by comparing their databases, they can identify properties where housing benefit has been claimed for somebody living there as a tenant but the landlord has not been registered. It is a very effective way of catching those unregistered landlords. It is also a very effective way of catching any housing benefit scams or fraud. Both the DWP and we are keen to roll that sharing of information out across the country because it has proved to be very effective in the two or three authorities that are doing it at the moment.

10:00

Secondly, there is a very contentious issue, as you know. About 18 months ago, the DWP changed the procedure for the payment of housing benefit. I can understand why that was done; I am told that it was the Prime Minister at the time, Gordon Brown, who insisted that it be done. As Bob Doris probably knows, instead of housing benefit always being paid to the landlord, housing benefit in the private rented sector is now paid to the tenant. The evidence—it is anecdotal but increasing—is that the bad debt ratio among

private landlords has risen significantly. Again, we are talking about relatively small percentages, because the vast bulk of tenants are paying their bills, but, in some areas, there has been quite a significant issue whereby tenants are getting the money but not paying their rent or not paying their full rent. That has led to real problems and I have spoken to some landlords who have told me that it has got to the stage that they are seriously thinking about not continuing in this marketplace. My understanding is that the new coalition Government is reviewing that procedure to see whether it is desirable to revert to the old system whereby housing benefit was paid directly to the landlord.

**Bob Doris:** You have pre-empted my question on the review, which will help to bring clarity. Is it outwith the realms of possibility to suggest that the DWP should be able to pay housing benefit only to a social landlord or a landlord who is registered with the local authority? Would that not at a stroke take out a lot of unregistered landlords and incentivise decent landlords who have yet to register to do so? Will you make representations on such a proposal?

**Alex Neil:** That is a sensible point. If the DWP reverts to the old system of paying housing benefit to the landlord instead of to the tenant, it makes sense for us to work with the DWP and use that as another way of identifying unregistered landlords.

**Bob Doris:** I have a final question. Previously in the committee, I have raised the possibility of local authorities retaining the court fine arising from any successful prosecutions of unregistered landlords. You have expressed concern about whether local authorities would have a conflict of interest in seeking a criminal prosecution and trying to make a profit, with all the dynamics within that. However, now that we have proposals from the UK Government to give more powers to Scotland, would you be open to the idea of criminal court fines in housing matters, if not going directly to local authorities, coming to the Scottish Government to be used as challenge funding, so that any revenues that accrued could be used to improve and drive forward standards in the sector?

**Alex Neil:** We have raised the issue, as I promised to do, with both the previous United Kingdom Government and the new coalition Government. I have to say that the prospect of the Treasury agreeing, even in the new Scotland Bill, to our retaining the revenue from fines as you described is not very high. However, we will continue to press on that. Although this is slightly different, cashback for communities is a good example of recycling back into the community funds that are sequestered as a result of criminal activity. However, those are very substantial funds

that come from the assets, for example, of convicted drug dealers and so on. As things stand, even with the Scotland Bill, the chances of the Treasury agreeing to look at this proposal let alone implement it are not high.

**Bob Doris:** Perhaps the Treasury is not as open minded and progressive as we are. I will leave it at that.

**The Convener:** You have alluded to some general issues. The figures that I have suggest that all the 1,300 or so people who rent in the private sector in my area will lose out by some margin as a result of benefit changes. The issue of bad debt ratios and rent arrears will come into that. You mentioned that housing benefit is now being paid to the tenant, which is another disincentive. There is the further legislation that you are proposing and the previous legislation that was introduced by Gordon Brown. The witnesses who gave evidence to us last week expect the review of landlord registration to lead to further legislation in that area. With all that, how will we ensure that enough people are prepared to run businesses in the private rented sector to provide tenancies to meet social need? Some evidence that we have received suggests that that might not be worth a candle. Will the issues that I have described have an impact on your overall ambition to make available more houses for rent in the private sector, where we cannot provide new build?

**Alex Neil:** You make a fair point. All of us must be conscious of the need not to place financial or regulatory burdens on good landlords, in particular, that will act as a disincentive to people coming into or remaining in the sector. With one or two exceptions, our proposals have carried the support of the main bodies that represent landlords, including the landlord associations. They are not happy about some specific things that they would prefer us not to do or to do slightly differently. The Government must balance the interests of landlords with the interests of tenants. We cannot always take one side or the other—we must seek what is best for everyone, on balance.

In my view, the biggest threat to the sector is the benefit reforms, especially the reforms of housing benefit. I will highlight two or three areas of particular concern. The overall cap that the new Government has introduced is not a big problem in Scotland, because even the highest rent level in Scotland stands at only 60 per cent of the cap. The cap will affect people in London and the surrounding area, but it will not be an issue in Scotland. I am concerned about some of the more detailed and technical changes.

I will give members two examples of changes to housing benefit—in addition, there is the issue of to whom benefit is paid—that could be detrimental

to individuals and the private rented sector. The first is the automatic withdrawal of 10 per cent of housing benefit from someone who has been on jobseekers allowance for a year. In the more remote parts of Scotland, in particular, but also in many urban communities, the prospects of getting a job even after a year are not great at the moment. Automatically taking away 10 per cent of housing benefit after a year on jobseekers allowance could be extremely detrimental both to the individuals concerned and to the private housing sector.

Secondly, the qualification age for the single room allowance has increased from 25 to 35. As we know, 60 per cent of the people who are homeless and rely on housing benefit are single people; another 25 per cent are single people with children. There are many potential downsides to forcing people to share up to the age of 35, which could have a negative impact both on the individuals concerned and on the private rented sector.

We have made two points to Lord Freud, Iain Duncan Smith and the other ministers in the department—indeed, Keith Brown and I had a meeting with Chris Grayling last month. First, given that housing is devolved, we should have been consulted before the housing benefit changes were introduced and, secondly, although we all share the ambition of getting people off welfare and into work, some of the reforms will be damaging and detrimental.

**Mary Mulligan:** You referred to the majority of responsible landlords who have taken part in the registration scheme. However, the committee heard evidence that some have become disillusioned with it and that those who are due their three-year renewal might not go through with it. Are you aware of the issue and, if so, how might you address it?

**Alex Neil:** I think that some of that disillusionment has arisen because of lack of enforcement on the bad guys. However, the bill will go after them without adding to the burden. Actually, I have tasked those reviewing the registration scheme to find ways of lightening the load on the good guys and free up resources to chase the bad guys. If any can be found, we should put them in place. I am not after the good guys, who are doing a good job and are providing a very valuable service in Scotland.

There is undoubtedly anecdotal evidence of landlords failing to reregister. We will not really have the total picture until about April next year, but the desk work that we have done so far and the available statistics suggest that about 20 per cent have not reregistered. However, we are talking about the big landlords who tend to reregister in bulk and, as a result, we do not think

that there is the kind of big problem that has been suggested to the committee. That said, we are keeping a close eye on the situation. After all, failing to reregister is in itself an offence and we will make that very clear to people.

It is a valid point. Some landlords have become disillusioned because they see the guys who have not stepped up to the plate getting off scot free while they have to pay the cost of abiding by the rules. Of course, after the bill is passed, the other guys will not get off scot free.

**Mary Mulligan:** I am grateful for that response and will be interested in the review panel's suggestions on approaching the different landlords in the sector.

Finally, do you have any proposals for registering letting agents?

**Alex Neil:** Having considered the issue, particularly in relation to Patricia Ferguson's Property Factors (Scotland) Bill, I have to say that the history of it is interesting. I understand that the previous Scottish Executive considered the registration of letting agents in the 2004 legislation but the legal advice was that the registration of such agents—and, for that matter, property factors—was reserved under consumer legislation. However, the penalties that we have built into the bill for letting agents who do not provide certain information apparently do not fall into that category. I am told that it is a very fine legal point. The Presiding Officer has, I am glad to say, given Patricia's bill written certification that it is within the Parliament's competence and, assuming that the Advocate General raises no objection to that bill, I see no reason why the registration of letting agents should not be in the same position.

Being realistic, I do not think that the issue can be tackled in the bill—it will need to wait for the next session of Parliament. However, as I have said, the previous Executive considered the issue and took the advice that it was not within the Parliament's competence.

10:15

**The Convener:** That response seems to have encouraged Patricia Ferguson herself to ask a question.

**Patricia Ferguson:** But not on that issue, convener.

Going back to the earlier discussion with Mary Mulligan about whether there should be a registration number, some form of kite mark or whatever, I believe that certain trade bodies have kite-mark-type logos for approved individuals that also incorporate a registration number. I presume that the purpose is to enable people to check the registration, but those of us who look through

"Yellow Pages" for a good plumber simply want the reassurance of the kite mark. Would it be possible to have such an approach, which would allow people to check easily whether someone is registered while also allowing the local authority to dig deeper and check who the person in question is, where they have been registered and so on?

**Alex Neil:** I am not going to go to the barricades over this issue. I will be happy to take any guidance that the committee might provide in its stage 1 report and lodge any necessary amendments at stage 2. If the committee feels that a combination of a kite mark and a number is the ideal solution, I am perfectly open to that suggestion.

**Alasdair Morgan (South of Scotland) (SNP):** The problem that has been highlighted to the committee is that, unfortunately, the circulation area of the local newspapers in which these landlords might advertise do not neatly coincide with local authority boundaries and, because the registration number is unique to each local authority, adverts might have to carry several such numbers.

I hear your comments about making it easier for people to check details but, leaving aside allegations that the national website is never available for people to check numbers anyway, I wonder whether the problem is that the vulnerable people who are more likely to be exploited by landlords will simply not be familiar enough with the procedures or will not have access to information technology facilities and that, no matter how many numbers are on the advert, they will not be able to check them.

**Alex Neil:** It is the same old story: you can take the horse to the trough but you cannot always make it drink. No matter what provisions you make, there will always be people who will not use them to most effect.

If having listened to all the evidence on this—and quite rightly so—the committee thinks that our approach is slightly wrong, I will be happy to take whatever recommendation it makes on these very valid points. We think that we can overcome the issue of individualised local authority numbers but, as I have said, if the committee feels that it would be better to have a combination of kite mark and number I am perfectly open to that suggestion.

**Patricia Ferguson:** I understand the deterrent intention behind the proposal to increase the potential fine with regard to HMOs but wonder whether, on this issue and on landlord registration, you can do anything to encourage sheriffs to understand that the fine in any situation is potentially £50,000—or whatever figure is decided—and not simply to fine these people £200 or £300, which seems to be the policy of Glasgow

sheriffs in relation to the current legislation. I guess that this comes back to my usual complaint that although people can be evicted for drug dealing, sheriffs seem very reluctant to take that course of action when cases come to court. How can we collectively influence those who take such decisions? I ask because I genuinely do not know the answer.

**Alex Neil:** The issue is extremely delicate because the judiciary are extremely jealous guardians of their independence and the last thing they want is for us to tell them what to do. Indeed, such a move would be likely to cause a counter-reaction.

Patricia Ferguson's point is valid not just in relation to HMO legislation but throughout housing. Many local authorities tell me that they often do not pursue legal action because they "know what the result will be." As you know, in his report last year on reform of the court system, Lord Gill recommended the introduction of a dedicated housing court. After considering the various ways in which disputes in the housing sector are or are not settled, I personally feel—I stress that this is not current Government policy; whoever is elected in May will have to address it—that we should have not necessarily a dedicated housing court but a dedicated housing panel that would incorporate the private rented housing panel. It would be a kind of housing tribunal. That would be more cost effective, reach decisions more quickly and comprise people with expertise in the field and experience in case work who might be better able to consider the various aspects of a case, the consequences of decisions and so on. That is a debate for another day, but it might be useful for the committee to highlight the issue in its report and perhaps, in doing so, send a message to sheriffs that certain cases perhaps merit higher fines than are currently being imposed.

**Patricia Ferguson:** A panel that with any luck will be introduced in the near future might well be ripe for expansion into that very field.

**Alex Neil:** Absolutely.

**Patricia Ferguson:** But that is another story.

**The Convener:** Has the issue been raised with the private rented sector strategy group, with which, as we know, you have been discussing possible changes to the tenancy regime?

**Alex Neil:** That is a separate issue, convener.

**The Convener:** So what has been discussed with that group?

**Alex Neil:** As you know, Shelter has been arguing for changes to tenure legislation. The details of their proposals are not absolutely clear, but the gist of them is to ensure the provision of longer tenancies. I have asked the private rented

sector strategy group to examine whether the proposals are viable and to come back to me with advice. However, as I say, that is separate from how we adjudicate disputes in the housing sector.

**The Convener:** Apart from longer tenancies, which Shelter has raised, is the group looking at anything else?

**Alex Neil:** I am not aware of any other specific proposals for tenure changes. It is primarily Shelter that is pressing for further changes and, as with any other organisation in the field, we should give due consideration to its ideas and proposals, even if at the end of the day we do not always agree with them.

**The Convener:** Would the group agree with meeting the cost of the tribunal that you described in response to Patricia Ferguson's question?

**Alex Neil:** Lord Gill recommended a dedicated housing court in his report. I am thinking more of a dedicated tribunal, which would not necessarily be confined to the private rented sector. For example, the eviction cases that at the moment go to the sheriff court might be better dealt with by that kind of housing tribunal.

**The Convener:** And the justice system would pay for that tribunal to deal with such disputes?

**Alex Neil:** A lot of the detail would need to be discussed. At the moment, it is just an idea that builds on Lord Gill's recommendation. I am sure, convener, that the manifestos of our respective parties will set out recommendations.

**The Convener:** Indeed. I am sure that your colleagues will have their own views, minister.

As members have no other questions, I thank the minister and his official for their attendance and the evidence that they have provided and I suspend the meeting.

10:24

*Meeting suspended.*

11:28

*On resuming—*

## Draft Budget Scrutiny 2011-12

**The Convener:** I reconvene the 29<sup>th</sup> meeting of the Local Government and Communities Committee. I remind members to turn off all mobile phones and BlackBerrys.

Item 2 is oral evidence on the Scottish Government's draft budget 2011-12. I welcome the witness panel: John Swinney MSP, Cabinet Secretary for Finance and Sustainable Growth; David Henderson, head of the local government division; and Graham Owenson, team leader for local government finance. All are from the Scottish Government.

I invite the cabinet secretary to make any opening remarks that he wishes.

**The Cabinet Secretary for Finance and Sustainable Growth (John Swinney):** Thank you convener, and good morning. I apologise to the committee for my delayed arrival, which was due to the somewhat challenging weather conditions between here and Perthshire.

I welcome the opportunity to discuss the Government's draft budget for 2011-12, including the provision that we have made for local government. The context of the budget is of course the scale of the financial challenges that we face, which include the largest reduction in public spending that has been confronted by any Scottish Government in any one financial year.

Over the next four years, the Scottish budget will fall by £3.3 billion in real terms, which is an 11 per cent cut, and our capital budget will fall by £1.2 billion in real terms, or 36 per cent. The largest annual reduction takes place in 2011-12; the Scottish budget is due to reduce next year by £1.8 billion, or 6.3 per cent in real terms. Our capital budget will be hit the hardest; it will fall by more than a quarter.

11:30

For many of the reasons that are associated with the challenges of the longer-term position, the Government has established the Christie commission, which will review and make recommendations on the delivery of public services in Scotland. The commission will report next September.

I delivered to Parliament on 17 November a balanced budget for 2011-12 that prioritised and protected a number of areas of public expenditure. We set out the protection that the Government would apply to the health service, and we proposed an approach to local government

finance that involves a much smaller fall than the average across non-protected areas of the Scottish Government's budget.

In each of the past three years we have increased local government's share of the Scottish budget. For 2011-12, we have maintained the 2010-11 share, at 34.5 per cent of the Scottish total. That share equates to a much lower cut than for the rest of the Scottish budget. While the health budget rose slightly, the resource settlement that we have offered local government has been cut by 2.6 per cent in comparison with 2010-11. That compares with an average reduction of 6.4 per cent across all other portfolios.

The Government engaged in substantial discussion with the political group leaders of the Convention of Scottish Local Authorities during the summer and autumn, and we reached an agreement with the COSLA leadership. That is the subject of a joint letter that I issued with the president of COSLA to the leaders of Scotland's 32 local authorities, which contained the details of the Government's proposals. That letter has been made available to Parliament; I assume that it is with the committee today, so I will not rehearse the details of the proposal.

Councils have been asked to indicate by 21 December whether they wish to take up the proposals that the Government and COSLA's political group leaders have set out. We have said in the proposal that if local authorities decide not to participate in the agreement, the alternative is that their budget will reduce not by 2.6 per cent on average but by 6.4 per cent, which is the average across other areas in the Government.

To sum up, we have presented to local authorities an offer that recognises the key role that local government plays in delivering vital public services and that is focused on delivering improved outcomes for the people of Scotland. We recognise the role of local government in supporting economic recovery and promoting economic growth, and we will provide the financial support to enable that to happen. COSLA's leadership has accepted that the offer represents the best that could be achieved for local government in Scotland and, on that basis, I am happy to answer any questions that the committee has this morning.

**The Convener:** Thank you for that opening statement, cabinet secretary. I have some bids from members for specific questions, but I have a couple of general questions on the consequences of your statement for local government and what the Christie commission can achieve.

Do you believe that, in these times in which we are dealing with reduced budgets, there is now an increasing conflict of interest between your



position as the purse holder and your position as a spending minister who identifies where large amounts of money will go, which has consequences for various parts of local government?

**John Swinney:** There is a serious and substantial structural question—which is not for me, but for the First Minister—as to whether any finance minister should have responsibility for any areas of departmental public expenditure. I address it by compartmentalising my actions on the Government's budget and spending proposals.

When I make recommendations to Cabinet, I make them on a collective basis, having discussed various issues with my colleagues in my capacity as finance secretary and having discussed with senior Government officials some of the challenges that we face in my portfolio area. A large part of that portfolio area is the responsibility for local government, for which the dialogue is not necessarily internal in the Government but with third parties through the Convention of Scottish Local Authorities.

My recommendations to Cabinet are based on a corporate approach that reflects the debate in Cabinet on where our priorities should rest. When it comes to the exercise of my departmental responsibilities, I have a duty to the corporate sense in Cabinet in that I have to accept the conclusions that the Cabinet arrives at, but equally I must be prepared to challenge my own portfolio as relentlessly as I challenge the portfolios of others to ensure that public expenditure is deployed effectively. It is on that basis that I take forward the commitments.

I accept that you raise a legitimate and substantial point about whether, particularly in a time of greater financial challenge, it would be better for the finance minister to be only the finance minister and have no other responsibilities.

**The Convener:** Is that just a personal reflection, or is it something that you have discussed with your Cabinet colleagues?

**John Swinney:** I have not discussed it with my Cabinet colleagues or the First Minister; it is a personal response to your question.

**The Convener:** For the next six years, there will be a reducing budget.

**John Swinney:** You make a fair point, and it is one that should be considered.

**The Convener:** Thank you.

**Alasdair Morgan:** Some of the evidence that we have taken, which has been backed up by our recent survey of local authorities, seems to indicate that the movement towards sharing services between local authorities is slow, if it

exists at all. Most of them do not seem to have made much effort in that direction. There has been plenty of talk but little action.

At least one of our witnesses—I cannot remember who—suggested that a stick would have to be taken to authorities before they began to deliver anything in shared services. Have you given any thought to the problem? Indeed, do you think that it is a problem that is using up public resources unnecessarily?

**John Swinney:** I accept that progress on shared services has been slower than would have been desirable, but there are examples of shared services around the country and local authorities have co-operated in a number of different areas. For example, in the procurement agenda, with the establishment of Scotland Excel, a good and effective shared service has been put in place for the procurement of different products and services used by local government.

In a number of different parts of the country, very good developmental work has been undertaken on the concept of shared services. The west of Scotland local authorities commissioned Sir John Arbuthnott to do good work in analysing where the opportunities lie, and Sir John's work was robust and substantial. What has been lacking is real impetus to take forward Sir John's recommendations. Equally, some joint work has been undertaken by neighbouring authorities in the east of Scotland. It has addressed the theory of delivering shared services but not necessarily the practice.

I suppose that the question that follows from that is: why has there not been as much progress as we might have envisaged? I suspect that that is largely to do with the fact that there has been no financial incentive because budgets have continued to increase. As the convener highlighted in his opening question, there will be a sustained period of reductions in public expenditure. Many of the opportunities to deliver savings through shared services will become an awful lot more obvious and it will become more essential to pursue them. In that context, we should expect there to be a greater move towards shared services.

**Alasdair Morgan:** I have one supplementary question. As you said in your opening remarks, it could be argued that the settlement to local authorities is more generous than it is to other departments in the Government—although local authorities will obviously not say that. To the extent that there is some truth in that, do you think that it reduces the incentive for them to move more quickly to make the savings that you are talking about?

**John Swinney:** I do not think so, for this reason. Mr Morgan is right—the reduction in the

revenue budget for local government is 2.6 per cent while for most other areas of Government, excluding health, it is 6.4 per cent; statistically, therefore, the local government settlement is more generous than has been offered in other areas of Government—but local government is wrestling with a number of increased demands on its services. The burden—no, that is the wrong word—the implications of demography and the consequent requirements for services to be delivered for individuals in society increase the commitments that are required from local authorities. Therefore, although the cash provision may be reducing at a less significant rate than it is in other areas of the public sector, the demands on local government for the provision of essential services continue to increase significantly. In that context, the local authority community still has the incentive and impetus that is required to address the issues of shared services that Mr Morgan has raised.

**Mary Mulligan:** Good morning, cabinet secretary. We all acknowledge that the single biggest cost to local authorities is the pay bill for the workforce, and a number of issues have arisen in how local authorities will manage that. When you made your announcement last week, you stated that there would be a public sector pay freeze, except for the £250 extra for those who earn under £21,000, and that you want to introduce a living wage of £7.15. How do you think those aims will play out for local authority employees?

**John Swinney:** I am pretty sure that I made the point in my statement that local authorities are responsible for their own pay settlements. The pay policy that I set out applies to a broad range of public sector organisations, but it expressly does not apply to local authorities, which are responsible for their own pay settlements. Clearly, it is a matter for local government to decide exactly what to do in pay settlements.

Local government negotiates separate deals with its own trade unions. It works with the Government in some areas, particularly in relation to teachers, police services and fire services, but it is really up to local government to decide, having heard what I have had to say, its view on pay policy. I have no ability to mandate local authorities to follow a particular direction.

**Mary Mulligan:** I understand that you are not in a position to mandate local authorities' pay policy, but do you have a view on it?

11:45

**John Swinney:** The thinking that has gone into the Government's pay policy has at its heart the acceptance of the view, expressed by the

independent budget review, that there is a direct relationship between what happens to the pay bill and what happens to head count. In my approach to pay policy, I have tried to do all that I can to protect head count. I do not come from the ideological position that thinks that the size of the public sector needs to be reduced—that is not my view of the world—but I have to balance the budget. I accept the IBR view that if we do not constrain pay we will have to go to head count. I want to avoid that at all possible costs. There will clearly be real pressure on pay to protect head count in the local government approach. I think we have seen that in the local government pay settlements and in the Government's settlement.

The other feature of pay policy, which I have deployed throughout my term in office, is to do as much as I possibly can to assist low-paid individuals. For example, in the Scottish Government the lowest paid member of staff is now paid 25 per cent more than the national minimum wage whereas when we came to office those individuals were paid 5 per cent more than the national minimum wage. That has happened because over the past three years we have taken sustained action to try to improve the position of low-paid staff. That is reflected in the pay arrangements that I have put in place with the minimum commitment to a £250 increase for staff who earn less than £21,000 a year and the commitment to the national living wage.

I suppose that what I am saying in short is that the characteristic of the Government's pay policy, which I am obliging certain public sector bodies to follow and encouraging public sector bodies where I do not have absolute control over the process to follow, is an approach that is designed to protect head count and support those on low incomes. I think that those are quite important principles that I would encourage others to follow.

**Mary Mulligan:** The head count is where I want to go next. The committee sent a questionnaire to local authorities about their planning for the budget. One of the questions was about how to manage staff. I think that almost all the responses—which was 18 or 19 out of the 32—foresaw a reduction in their head count but said that they would manage that through freezing of vacancies or voluntary severance. What is your view of compulsory redundancy? Many authorities have said that they do not want to do it, some have said that they foresee it and others have said that it would be a last resort.

**John Swinney:** My view—as set out in the budget statement—is that the Government has acknowledged the significant value to the development of our approach to efficiency of having a no compulsory redundancies arrangement for the past three years. It has

helped us to develop good working practices and staff participation in the efficiency agenda, which has been very welcome. We want to continue that approach, although I have flagged up the fact that for us to be able to do that we need to capture flexibilities within the workforce. I will be working extremely hard to ensure that that is the case.

Local authorities have never committed to there being no compulsory redundancies. Equally, however, I am led to believe that local authorities have never deployed compulsory redundancies, either. On the committee's questionnaire, I suppose that detailed responses would have been predicated on the financial settlement—I assume that the questionnaire was issued before the financial settlement was known—and on other things that local government would not have known at that time. An example is where we are heading on pay policy: the Government has significant involvement with local government on teachers pay. We have now set out our position on that.

In all my discussions with local government, I have detected absolutely no enthusiasm, desire or priority to deploy compulsory redundancies. Local government is determined to manage the workforce. I think that it sees, as I do, the value of having a motivated workforce in working with other public authorities in trying best to manage a difficult financial situation. Local government's approach is helped by the level of financial settlement that has been offered and by the willingness to find ways in which the workforce can be configured to a size and level that is appropriate to the financial circumstances.

Mary Mulligan made the point that most local authorities expect their head count to reduce. On previous occasions before the committee, I have said that my expectation is that the public sector workforce will be smaller at the end of the period than it is today. I return to the point that I made earlier: my view is not ideologically that that is a great thing, but that it is an inevitable consequence of the spending pressures that we face. From all my dialogue with local government, my sense is that authorities want to avoid compulsory redundancies if possible. Certainly, as I outlined in my parliamentary statement on the budget, I have given a commitment that I will encourage all public authorities to take the same approach that the Government proposes to take on compulsory redundancies. To that effect, weather permitting, I will see the Convention of Scottish Local Authorities and the Scottish Trades Union Congress tomorrow to take forward the discussion that I made clear to Parliament I would be having.

**Mary Mulligan:** Clearly, there is a cost of severance, whether it is voluntary or compulsory.

Do you have any plans for capitalising on the cost? Will you offer assistance in that regard?

**John Swinney:** We have been able to offer assistance to local authorities on the capitalisation of some costs in relation to equal pay, but not in relation to severance—

**David Henderson (Scottish Government Local Government and the Third Sector Directorate):** We have done so with severance as well.

**John Swinney:** We have done that with severance. Essentially, those initiatives are a product of our dialogue with Her Majesty's Treasury. The UK Government is taking much the same spending approach as we are. I remain open to local government in terms of bringing forward capitalisation initiatives that would assist in managing the problem. As I said, the challenge is applicable to the United Kingdom Government as much as it is to ourselves and the Scottish local authorities.

**The Convener:** We read yesterday, in a report from another committee, about increments remaining in place for teachers, fire fighters and police, who will not suffer a wage freeze. Given the situation with redundancies, is it not extremely unfair that low-paid local government workers will subsidise an increase for fire fighters, police and teachers? That is the inevitable consequence.

**John Swinney:** I am not sure that I quite understand the point. If it is about progression, the Government pay policy assumes that progression will continue to be paid. That is based on the fact—with which the convener will be very familiar—that there is in almost all, if not all, circumstances a contractual entitlement to progression. Essentially, progression is wrapped up in the employment rights of the individual. Paying progression and paying a basic award increase are not two peas in the same pod; they are fundamentally different. We have a contractual obligation to pay progression. That applies just as much to lower-paid staff as it does to any other staff. If I understand your point correctly, convener, you are encouraging me to stop progression at the higher end in order to provide additional support at the lower end, or something like that.

**The Convener:** I imagine that progression in local government careers applies more to white-collar staff than to the manual grades, given that they are pretty much fixed at the lower end. However, costs in salaries equals job losses. At the same time, we have a pay freeze, and those at the bottom of the scale are not being offered the £250 or part thereof in compensation.

**John Swinney:** I return to my point to Mary Mulligan about the local government settlement.

Local government pay policy is a matter for local authorities. We must be careful about where we go with questions about individuals' employment rights. Interfering with and interrupting contractual entitlements will get us into very difficult territory. We must also ensure that we take proper account of our equalities duties and obligations.

If we stand back from that and consider a progression payment to somebody who earns, say, £40,000 compared with that for somebody who earns £20,000, we will find that the numbers are likely to be very different in cash terms. Of course, there will also be people at the top of their salary scale who will be entitled to no progression payment. There are a number of difficulties in trying to pursue the approach that the convener mentions.

**The Convener:** I accept that there will be some difficulties with equalities provision and the law, but the law does not apply differently to the health service and local government. Therefore, the same problems would apply to the health service, which will be given, for instance, support in provision of the wage freeze plus the £250. That will apply to people for whom you are directly or indirectly responsible.

On a wider point, I accept that the local authorities and their employees negotiate agreements, and that it is within the remit and powers of local authorities to negotiate agreements. However, the same applies to the council tax. You have taken a policy decision and have put in place an encouraging mechanism to ensure that you implement the Government's policy with regard to the council tax. If the Government's policy is to have fairness at the heart of the budget, and equalities and protecting the low paid are important to it, how will you use the same level of encouragement to ensure that the very lowest paid people in local government do not suffer disproportionately with respect to pay?

**John Swinney:** I have done the most constructive thing that I can do; I have given local government a settlement that, relatively speaking, is much better than most areas of the Scottish Government have received. Local authorities have at their disposal the largest sum of money that I can possibly allocate in the spending round so that they can properly and effectively remunerate their staff and address the issues that you have raised relating to people with low incomes.

The second thing that I can do is enable local authorities to exercise a broader range of flexibilities to ensure that their resources can go as far as they can. Essentially, that drove my decision in 2007 to relax ring fencing in order to provide greater flexibility at local level.

Those two things will help local government to address the point that you have raised, convener.

**The Convener:** Does that mean that you are not prepared to do any more about pay for the lowest paid in local government, other than have a meeting with Pat Watters or the STUC? How can you implement a Government policy that protects the lowest paid?

12:00

**John Swinney:** I have mentioned what action we have taken to support that, but there has also been a good willingness on the part of the trade unions and COSLA to discuss workforce issues with the Government. I welcome that, and there is a good prospect that we will be able to achieve a great deal. The issues that we will discuss in that process will be beneficial for local government employees, and especially for low-paid employees. That is a very constructive way in which to proceed.

**The Convener:** I do not think that such co-operation was evident last week, but that might have been a particularly difficult meeting. Is the purpose of your meetings with COSLA and the STUC to discuss the wage freeze and the £250 or are they to discuss wider implementation of the living wage?

**John Swinney:** They are to discuss my commitment to encourage all areas of the public sector to agree to the approach that the Government is taking on compulsory redundancies. The primary focus of the discussions is to ensure that there is dialogue round the table with the Government, local authorities and trade unions about how we can get to a point where all areas of the public sector are prepared to sign up to the Government's approach on avoiding compulsory redundancies. The discussions are also an opportunity for us to pursue some of the issues that I responded to Mary Mulligan about, in relation to how we can take forward an agenda that maximises head count. That will be a fundamental part of the discussions.

**The Convener:** So, how we might broaden the impact of the living wage into areas that are not already covered, and protection for low-paid workers who earn less than £21,000 are not on the agenda with the STUC and COSLA.

**John Swinney:** I am happy to discuss those issues. Some local authorities have already gone for the living wage proposals, such as West Dunbartonshire Council and Glasgow City Council. I am certainly happy to discuss those issues with the relevant bodies.

**The Convener:** However, the Government has no plans to discuss those issues with the STUC or COSLA.

**John Swinney:** I have discussed the issues—

**The Convener:** Either you have plans or you do not.

**John Swinney:** I discussed the issues with the STUC over the summer, and out of that dialogue has emerged the Government's approach on pay policy. I am happy to continue those discussions and to identify what further steps we can take in that respect.

**The Convener:** But it is up to them to raise the issues with you.

**John Swinney:** No. I am saying that I have had that discussion with the STUC already. As I said, some local authorities have gone for the living wage proposal, and I remain happy to continue that dialogue.

**The Convener:** So, you have had those discussions with the STUC with regard to local authority pay and the protection of workers who are paid less than £21,000.

**John Swinney:** The STUC has been keen to ensure that dialogue on head count, salary and all the other issues are not just with Government but with all areas of the public sector. I have given a commitment to try to ensure that that is brought about, and that is why we are having a discussion with COSLA.

**The Convener:** Are the numbers available for those who earn less than £21,000, who will benefit from the £250 payment, and the numbers who would benefit from the £7.50 living wage?

**John Swinney:** It is £7.15.

**The Convener:** I am sorry—I got carried away and gave them another increase.

**John Swinney:** Just slightly, convener.

I do not have the numbers in front of me, but they are available, so I will write to you with them.

**The Convener:** That is fine. It is commendable that the Scottish Government and, indeed, local authorities do whatever they can to maintain jobs in our communities, but we had different evidence last week from the voluntary sector. Despite your view, we heard from Mr Beveridge that job protection schemes are never a good idea and that they are a block and a barrier to fundamental change. That view, which has been expressed in both written and oral evidence to the committee, completely contradicts what you have said. You have said in evidence today that you believe that that kind of agreement allows you to make the

change that is necessary in redesigning public services.

**John Swinney:** There are some substantial points of difference between that view and what I am saying. First, I have said to some committees—I am pretty sure that I have said it to the Local Government and Communities Committee—that I expect the level of public sector employment to fall. That does not sound like job protection to me. Secondly, the Government is committed to giving a guarantee that there will be no compulsory redundancies, but we need to achieve flexibility within the workforce. That means change to enable us to maintain the head count. That does not strike me as an impediment or a barrier to change and redevelopment in public services. The whole approach that we are taking with the Christie commission acknowledges that there will have to be fundamental change in the way that public services are delivered.

I would not want to say that anything that I am setting out to the committee today shows anything other than a determination to maximise employment; however, that employment will involve a certain amount of change in how people have to exercise their responsibilities.

**The Convener:** We have heard in written evidence and from the survey of local authorities that that position cannot be maintained. What we heard from Unison last week was not disputed by the Society of Local Authority Chief Executives and Senior Managers or by COSLA representatives—that up to 40,000 jobs are going from local authorities over the next few years.

**John Swinney:** We have to be careful with such predictions, convener. As I said to Mary Mulligan, some of the predictions in your questionnaire feedback would have been supplied by local government without knowledge of what the local government settlement was going to be. We have seen all sorts of number being bandied around. The priority for me is to encourage the public sector to attach a premium to maintaining employment in the public sector, which is the approach that we are taking.

**The Convener:** Is that not difficult with the one-year budget? Workforce planning is difficult in those circumstances. We do not expect the budgets to be bigger in the future to allow us to retain and employ more people.

**John Swinney:** I return to my point about flexibility. Public services do not stand still; they are being reformed and reconfigured all the time. There are good examples all over the country of employees working with public authorities finding better ways of delivering services. The local authorities provide support to many more individuals in their homes than they ever did

before because new ways of working have been constructed to enable that to happen. The key point is that the process of public sector reform remains relentless in ensuring that we can deliver public services that meet public expectations in a difficult financial climate. That is exactly what we all face.

**The Convener:** I am sure that we will come back to the Christie commission, efficiencies and shared services, et cetera.

**Bob Doris:** The convener has talked about the policy of there being no compulsory redundancies. At our meeting last week, the representative from the voluntary sector wondered whether one of the unintended consequences of that might be that, in order to retain staff, local authorities may outsource fewer jobs and, instead, retain the jobs within themselves. There are always unintended knock-ons whenever these things are done.

I want to ask you about the Christie commission, which you mentioned in your opening statement, to clarify a couple of things. First, when do you expect the Christie commission to report? Secondly, will the Christie commission look just at local authorities, or will it look at police, fire services and health boards? How wide will the review go?

**John Swinney:** The Christie commission has a wide remit to consider all aspects of public services. It is not just a local government review—to think that would be entirely to misconstrue the remit of the commission, which will be very broad. The remit has been published. I assume that it has been supplied to the committee, but if it has not I will ensure that that is done. We expect the Christie commission to report in June 2011.

**Bob Doris:** We do not know what the commission will recommend. Do you anticipate that some of its recommendations will require primary legislation, or is it expected to recommend that whoever is finance minister simply uses budgets differently? What will you be fleet enough of foot to achieve via different budget lines, and what will take time to achieve?

**John Swinney:** I am sure that you appreciate that it is difficult for me to surmise what the commission will recommend. Anything that requires legislative change takes more time than something that just requires budget flexibility. Service redesign can be undertaken in a reasonable timescale but still takes time. No doubt a range of measures can be taken forward over the short term, but some measures will require to be taken forward over the medium term.

The point of the Government's commitment to the Christie commission is that we acknowledge that we face a number of years of financial challenge, so the recommendations and proposals

that emerge from the commission will be fundamental to informing the medium-term debate. I do not think that we will need to take all the actions immediately, because there will be a period over which we will have to realign and redeploy public expenditure to meet the much-diminished public spending envelope.

**Bob Doris:** The commission's short timescale might constrain its ability to consult widely. How important is it to consult trade unions not just at Scottish Trades Union Congress level but at individual union level, to get workforce views on service redesign? When local authorities consider service redesign they often come up with their conclusions first and inform the workforce afterwards. I hope that the culture of the Christie commission will be such that it has a worker-first attitude to considering service redesign, because sometimes the best ideas for structural change come from the shop floor.

**John Swinney:** I agree absolutely with your final remark. There are excellent examples of service design, including in my constituency, where employees in the local authority or the health and education sectors have come up with good initiatives, which did not have to wait for a senior manager with a clipboard to come along and decide on. The more such initiatives we have the better, and the more we will have a basis for redesigning public services. There should be every opportunity for the Christie commission to be able to capture such material and input in its dialogue with wider Scotland.

**Bob Doris:** If you are returned to Government next year, will you regard the commission's recommendations as binding? Would another finance minister do so?

**John Swinney:** The question of recommendations being binding is a difficult one. We would not set up the commission if we were not going to take seriously the recommendations that emerge, as we did with a substantial proportion of the independent budget review panel's recommendations.

Such organisations are set up to do a job of work but not to do the Government's job; the Government must decide on certain things. The commissions undertake their analyses, from which the Government takes its conclusions.

**Bob Doris:** The committee has often considered the effectiveness or otherwise of community planning partnerships. There is anecdotal evidence that CPPs work better in some parts of the country than they do in others. For example, I think that Glasgow has community planning partners and gets something like £45 million, which is now rolled up into the local government settlement. Will the Christie

commission look at CPPs and their responsibilities and consider how effectively they work and whether they need to be incorporated on a more statutory basis? More important, will it consider how effectively they use money at local level to support communities?

12:15

**John Swinney:** Those are all substantial issues for the Christie commission to consider. I think that I have said to the committee before that community planning partnerships hold many of the keys to resolving some of the institutional barriers to working in various areas of the public sector, which I was being asked about by the Finance Committee yesterday. I would be the first to acknowledge that institutional barriers still exist and that we do not have the co-operation and collaboration across public sector boundaries that we should have. Community planning partnerships have been enabled by the Scottish Government to deliver as much of that as possible, so I look to them to do that.

**The Convener:** You made the point that commissions and review bodies do not do the job of Government. Why does Government not simply do what is required? We have had the Howat review and the independent budget review and we now have the Christie commission. Why do you not do it yourself?

**John Swinney:** As a point of fact, I never commissioned the Howat report—that is not one of mine, although I think that I published it.

The independent budget review and the Christie commission are designed to encourage the widest possible dialogue about particular options and opportunities. They exist to engage a wide audience and gather information, which will be used in the Government's decision making. That is a pretty well-worn path by which Government goes about its business—listening to people, discussing with people and coming to conclusions.

**The Convener:** Consumer Focus, SOLACE and others have said that they are incredulous about the possibility that the Christie commission—the remit of which I note that you have added to this morning—can produce a redesign of the public sector by June next year, which is a short period of time. Do you believe that it can do that?

**John Swinney:** Yes.

**The Convener:** And have all the engagement? For example, it has not notified this committee that its representatives are available to come to speak to us or given us an indication of its remit—

**John Swinney:** As I have said, the remit is publicly available.

**The Convener:** I have got it here.

**John Swinney:** I thought that you said that you did not have the remit.

**The Convener:** I have the remit, but it might be a good idea to get Campbell Christie along to the committee, given that he has all of this responsibility.

**John Swinney:** I am absolutely certain that Mr Christie would accept an invitation from the committee to attend a meeting.

**The Convener:** I have read the three-page remit, which is why I tend to support Consumer Focus and SOLACE when they say that they are incredulous about the idea that the commission can come up with a redesign in that timescale, given Alasdair Morgan's earlier point about the lack of pace in change.

**John Swinney:** Does that not suggest that there needs to be some real impetus? Is that not Mr Morgan's point? If you say, "Right, we'll give it 18 months," it will take 18 months. However, why do we not just get on with it? That is my view of the world—let us get on with it.

**The Convener:** Yes. Not convinced.

**Patricia Ferguson:** I am sorry, but I have not seen the remit, so I do not know whether it covers this point. Can you tell us who, apart from Mr Christie, are members of the commission?

**John Swinney:** I cannot give a complete list just now, but the membership includes Councillor Watters from the Convention of Scottish Local Authorities; Alison Elliot, the chair of the Scottish Council for Voluntary Organisations and the former Moderator of the General Assembly of the Church of Scotland; Ruth Wishart; Jim McColl; and Alex Linkston, the former chief executive of West Lothian Council, who has recently retired. That is not all of the members, but it is a reasonable cross-section. I will ensure that the committee is furnished with all the names immediately.

**Patricia Ferguson:** That would be useful. Do you know whether the STUC is represented on the commission?

**John Swinney:** I think that an invitation has been sent to the STUC, and that the STUC is confirming its participation.

**Patricia Ferguson:** Does the remit that has been provided to the members of the commission give them parameters within which they should work, with regard to what you think the financial situation will be, or have they been given a blank sheet of paper?

**John Swinney:** This gets to the nub of the debate that we had in the chamber last Thursday,

regarding the question of four-year budgets. The Cabinet considered the issue yesterday, and I wrote to the convener of the Finance Committee to say that the Government will give its response to the debate shortly. If the committee will forgive me, the Government is still considering the detail of that question.

The UK Government has given us departmental expenditure limits in resource and capital expenditure and annually managed expenditure for the financial years up to 2014-15. Those figures are subject to change, but that information is published and available. Obviously, I would be happy to interrogate that for the Christie commission.

The view that I expressed in last Thursday's debate, and which I have maintained throughout this discussion, is that, if we set definitive budgets up to 2014-15, they might become obstacles to tackling the way in which budgets are deployed. Patricia Ferguson will appreciate, from her own experience, the possessiveness that particular areas of the public sector can sometimes attach to budgets.

Allowing as much freedom as possible to consider how the global sum of money—which will be of the order of £28 billion or £29 billion—can be deployed most effectively to meet the expectations and ambitions of Scotland is a better way of proceeding than delineating exactly how the money is to be parcelled out. However, as I said, the Government is considering the debate that the Parliament had on Thursday, and I will shortly reply in full to the convener of the Finance Committee on that question.

**Patricia Ferguson:** I take your point, but it would be difficult for the commission not to pay attention to the likely financial situation.

We have heard evidence that redesigning public services is not without its challenges, not only in terms of the logistics of doing so but in terms of the budgets that might be allocated, because change seldom happens without there being some investment of funds. Have you factored in that aspect, or will you just have to wait and see what the situation is like once the commission reports?

**John Swinney:** I do not subscribe to the view that you get change only if you spend money. There are plenty of examples of services being redesigned and outcomes being improved while money is saved. If we accept the premise that we get redesign only by spending money, we will have to accept that redesign cannot be delivered in the forthcoming period—it just cannot be done.

In this year's budget, in relation to health and social care and early years activity through the voluntary sector, we have taken steps to identify sums of money through which we can support the

development of new models that will fundamentally save public expenditure. The change fund within the health and social care field is designed to get us to a position in which we do not have to spend as much money on acute services as we are currently spending because we can redeploy expenditure into community care and deliver better outcomes.

There will be instances in which we can deploy funds, but there will be numerous other instances in which we will simply have to ensure that the money is spent more effectively.

**Patricia Ferguson:** I accept entirely that it is not always a case of investing money to achieve change, but the cabinet secretary gave an example in which money is being invested to achieve long-term change.

**John Swinney:** I accept that.

**Patricia Ferguson:** We will not be able to reduce acute spending in the health service until we sort out many of the problems at the other end.

**John Swinney:** Equally, we can make other policy interventions to reduce burdens on the health service. The good work that the previous Administration did on the smoking ban undoubtedly and immediately reduced demands on the health service because of the improvement in passive smoking levels for members of the public. There are plenty of good, tangible examples of policy interventions to change fundamentally the burdens on public expenditure and we have to identify more of them.

I accept that the change fund on health and social care is an example of our having identified resources to enable change to happen. However, I refer to some of the questions that Mr Morgan has raised about shared services. When I became a minister in 2007, there was a modernising government fund of about £100 million to support such activity, and I regret to say that I did not see much evidence of it.

**Patricia Ferguson:** I am sure that there is some; I can remember one or two examples at least.

When will the commission first meet?

**John Swinney:** I had better not say that that has already happened, but I think that it might have met. I will confirm that detail to the committee in case I gave you incorrect information.

**The Convener:** Will you give us an indication of the wider engagement that you hope will take place? Much of the commission's work will consider outcomes and priorities from, I presume, a consumer's point of view rather than a trade union or business point of view.



**John Swinney:** A central hallmark of the Government's agenda over the past three and a half years has been to concentrate on improving outcomes for the people of Scotland. That is the focus that we have given to the Christie commission, the destination of which is an improvement in outcomes for people in a diminished financial envelope. We have to find the mechanisms to get to that point, which is the core of the Christie commission's remit.

As I said, I expect the commission to formulate its approach to wider engagement, and I am sure that that will be a comprehensive process.

**The Convener:** You mentioned the £100 million for the change fund and the disappointing evidence that it was not successful enough.

**John Swinney:** It was the modernising government fund.

**The Convener:** The local government settlements in the past couple of years have focused on outcomes. Has there been an analysis of that that the Christie commission can consider to find out where we have fallen down and where money that has been made available for certain outcomes has produced results similar to those of the modernising government fund?

**John Swinney:** The Government has the national performance framework, which is reported on regularly on an as-live basis on the Scotland performs website. That identifies the areas in which the Government thinks that it has tangible measures to determine whether we are making progress towards achieving the national outcomes. That is all publicly available and, obviously, the Christie commission will be able to consider that information and determine whether sufficient progress has been made in all those areas to meet public expectations.

**The Convener:** In your discussions with the commission, are you steering it in the direction of areas in which progress has been made or in which there has been insufficient progress?

**John Swinney:** We will certainly provide the Christie commission with any information that it requires to ensure that it can fulfil the remit that we have given it.

**The Convener:** Will the commission consider how we can measure the outcomes?

**John Swinney:** It will, yes.

**Alasdair Morgan:** To switch the topic, you announced in your statement that you are going to increase non-domestic rates for large retail properties. Can you tell us a bit more about exactly how that net will be drawn?

12:30

**John Swinney:** I will shortly set out the approach that we are taking. The initiative will be driven by the rateable value of particular properties in the retail sector and will apply a supplementary business rate level to the business rates that have been paid to date. That will focus on ensuring that we raise revenue by increasing business rates for large retailers.

**Alasdair Morgan:** So effectively you are going to look at the current rateable value of retail properties and anything over a certain level will see an increase. Is that correct?

**John Swinney:** That is right.

**Alasdair Morgan:** Have you any idea how much revenue you hope to raise?

**John Swinney:** I expect to raise about £30 million.

**Alasdair Morgan:** It seems to be a little bit discriminatory within the retail sector, and compared with other sectors of the economy, to pick out one particular set of businesses for special treatment. Are there any legislative barriers to that? How will the measure get through Parliament? Will it be in a statutory instrument?

**John Swinney:** A draft statutory instrument will set out the details, and we will publish it shortly. The legislative hurdle will be getting Parliament to agree to it.

On the question of how the initiative is focused, I arrived at the judgment that, despite the economic challenges that we face, the large retail sector is still performing extremely well. There is an opportunity for us to capture additional revenue. The budget that I have to balance arises from a combination of limited opportunities to raise revenue and the need to reduce public expenditure. This measure will raise additional revenue, and it can be sustained by a sector that is performing well, despite the economic difficulties that we are facing.

**Alasdair Morgan:** You can understand why the sector might feel a bit aggrieved. It is performing well, delivering profits and money for the Exchequer—albeit not your Exchequer—through corporation tax, and creating employment, but it is being faced with an increased tax burden, whereas a manufacturing business in the industrial estate next to the retail park, which might be doing equally well, is not being faced with a similar burden because its rateable value has a different basis.

**John Swinney:** We can always compare sectors, but business rates in total for most of the retailers that we are talking about will account for about 2 per cent of turnover. We are talking about

a cost that is at the periphery of the cost base of many of the organisations.

**The Convener:** Bob Doris has a supplementary question on that point.

**Bob Doris:** I have a brief point. I listened with interest to the questions and answers. I support the tax increase, but will it be applied to individual units' business rates or will it be aggregated across the local authority area? I am conscious that large supermarkets such as Tesco open a 24-hour superstore and then open a network of small Tesco Metros—they use their economies of scale to come into local high streets and decimate other stores. This tax has the potential to rebalance that competitiveness for small businesses in local communities, so I am keen for it to be aggregated across the retail footprint of individual companies rather than individual stores.

**John Swinney:** It must be driven by the rateable value of individual sites. If we establish a threshold at which the supplementary business rate is charged, it must relate to individual properties.

**Bob Doris:** I understand that businesses that have two or three stores qualify for the small business bonus scheme only on an aggregated basis. Am I wrong about that? I am happy to be corrected.

**John Swinney:** There is a maximum threshold under the small business bonus scheme. If a company has a number of properties and their combined rateable value exceeds that threshold, it does not qualify for the scheme. That is important, because the scheme is what it says on the tin—it is for small businesses. If a business has a chain of stores, it is not exactly a small business. The proposals for the retail sector are based on a threshold of individual rateable values for individual properties.

**Bob Doris:** The aggregation principle has been conceded in relation to the small business bonus scheme, because we add up the rateable value of multiple stores. I do not think that you would say that a Tesco Metro is a small local business.

**John Swinney:** No, but we are looking at the issue from the wrong end of the telescope. The small business bonus scheme is about exempting people from payment; the retail sector scheme is about getting people to pay more. If we aggregated, we would get them to pay even more, which would be difficult to rationalise.

**The Convener:** You mentioned that you hope to raise £30 million. When do you expect that money to be available to the Scottish Government?

**John Swinney:** During 2011-12. It is part of the assumption on non-domestic rates income that I have made in the budget.

**The Convener:** What discussion has taken place with the retail sector on the issue?

**John Swinney:** The sector has asked for dialogue with me about it. I will certainly take that forward.

**The Convener:** Has any calculation been made of how the scheme might influence investment decisions in Scotland by the retail sector?

**John Swinney:** Business rates account for about 2 per cent of the turnover of large retailers, which is a peripheral sum of money in total. I am talking about a small increase for retailers. In my judgment, it will have no negative investment implications.

**The Convener:** So the Scottish Government made a calculation before it looked at the proposal and decided that it would not influence investment decisions unduly, would not impact on construction jobs in the building of stores and would not impact on food prices for Scottish customers.

**John Swinney:** In my judgment, the measure is sustainable. I will discuss it with Parliament and with the sector.

**The Convener:** I am sure that you discussed all of the issues before you announced the measure. I am looking for the workings behind your decision.

**John Swinney:** I have considered all of the issues that you have raised.

**The Convener:** Fine.

**Mary Mulligan:** I am conscious of the fact that Mr Swinney is not the housing minister, but what is his response to statements by the likes of Shelter and the Chartered Institute of Housing in Scotland about the cut in the housing budget, which they suggest is disproportionate to cuts elsewhere in the budget?

**John Swinney:** Mary Mulligan may have to forgive me on some of the detail; I will do my best, but I may have to caveat what I say.

**The Convener:** We understand that.

**John Swinney:** I will check the details and reply to the committee if I get any of them wrong.

If my recollection is correct, the reduction in the housing budget is in line with the overall reduction in the Scottish Government's capital budget which, between 2010-11 and 2011-2012, is about 26 per cent. My recollection is that the reduction in the housing budget is at that level.

I understand the worries about capital expenditure; I totally share them. Over the past couple of years, we have seen the effectiveness of expenditure on housing, particularly given the collapse of the private housing market. We had

the ability to supplement that market by increasing the available resources for affordable housing developments. I completely accept the argument. Notwithstanding that, the capital budget has gone down by 25 per cent, and I cannot avoid the fact that there will be negative implications in some areas.

**Mary Mulligan:** Cabinet secretary, the budget figures that you have in front of you indicate a 19 per cent reduction in the housing budget, but you said the reduction was about 26 per cent. If you take account of the £120 million that was accelerated, the reduction is over 30 per cent, which is more than the cut in capital expenditure.

You referred to the impact on jobs and sustainability in the construction industry. Will you reconsider this budget line, given the impact of its reduction on jobs?

**John Swinney:** After a quick mental calculation, I think that my numbers are correct, but we will come back to the committee on them, just to be absolutely certain.

There is no doubt that the affordable housing sector provides us with a significant and beneficial opportunity to support construction employment, as do a range of other areas of activity. Essentially, the budget strikes a balance between supporting economic activity through maintenance and capital activity. We need to bear it in mind that this and the previous United Kingdom Government dramatically reduced capital budgets. I am happy to consider any representations on the question. We have set out the balance of our capital programme. If there are alternative views, the Government will, of course, be happy to consider them.

**Mary Mulligan:** I appreciate that you may not have the information to hand, cabinet secretary, but it would be useful for the committee to know the level of development funding for Edinburgh and Glasgow. I know that that is treated separately—in fact, it is part of the local government settlement—but do you have the figures for next year?

**John Swinney:** We do not have the numbers with us, but we will communicate them to the committee.

**Mary Mulligan:** I am grateful for that.

My final question is on the energy assistance package. Last week saw publication of the “Progress Report on the Scottish Fuel Poverty Statement 2002”, which showed an increase in the number of households across Scotland that suffer from fuel poverty. In fact, 770,000 households—a third of Scotland’s total—are now in that band and yet £21 million is being taken out of the budget. That is a 21 per cent reduction. Is the time when

fuel poverty is increasing the time to reduce the budget?

12:45

**John Swinney:** I acknowledge the issue that Mary Mulligan raises, and the Government will remain open to dialogue on such questions, but I simply point out that if we are to increase resources in some areas, we have to take them away from somewhere else.

**The Convener:** I have a general question on housing and regeneration, and an additional question on equality issues.

You struck a balance and reduced the capital monies available, and you decided on major infrastructure projects that would go ahead. Did you consider the sustaining of jobs in local economies when you struck that balance? You decided that, at this particular time, it was better to go ahead with large projects on which you would spend X amount of money and produce X amount of jobs. Why did you decide to do that, as opposed to spending a similar amount on housing, which would tick all the boxes for social benefits, jobs in the construction industry, and apprenticeships? Did you examine what measures would have the greatest impact in terms of sustaining jobs in the Scottish economy?

**John Swinney:** That kind of analysis runs through all the work that the Government undertakes on the theme of economic recovery, and it has been an essential part of the judgments that we have made since the summer of 2008. We have tried to reconstruct our budget to address the collapse of the private housing market. Over the past two years or so, we have taken a set of decisions on the theme of economic recovery.

For this budget, another set of issues arose. We have asked what the correct judgments would be to ensure the strategic development of the Scottish economy. A principal issue has been the Forth replacement crossing. On the information and advice that has been made available to me, the correct judgment is that we should pursue the construction of the Forth replacement crossing. Without the replacement, we jeopardise the possibility of having a usable crossing. Losing that crossing would lead to significant negative impacts on the Scottish economy. Indeed, the unusability of the Forth crossing was why I was so late this morning.

We have had to consider the additional strategic priorities that we have to fulfil. We have tried to address the question of what to do with the diminished capital budget—reduced by 25 per cent in one year. The reduction will move towards 36 per cent over the course of the spending review period.

**The Convener:** Does the same principle apply to the new Southern general hospital, or to any other projects, such as the bypass? Did you calculate that, if you spent X million pounds on particular projects, it would be good for the Scottish economy? But what about local economies? We have seen social advantages, construction jobs and apprenticeships spread right across Scotland by programmes to build houses, but many people would argue that most of the current spend will focus on Fife. Those people would debate with you, at least, about how that will impact on the wider Scottish economy.

**John Swinney:** It is beyond peradventure that our being unable to fulfil our commitments on the Forth replacement crossing would have a negative impact on the Scottish economy. In the capital programme—

**The Convener:** And the Southern general hospital?

**John Swinney:** We have carefully considered the huge impact of the Southern general hospital on construction employment in all the surrounding parts of the west of Scotland, and in Scotland in general. In our capital programme, a range of different interventions will provide economic benefits in all parts of the country. It has been one of our priorities to ensure that our public spending—resource spending and capital spending—has been allocated in a fashion that is beneficial to local economies.

**The Convener:** We have corresponded on the equalities issue and the disproportionate impact that the current situation with budgets will have on communities, such as mine, that are still recovering from the previous recession and in which an above average number of people are on low pay, an above average number are unemployed and an above average number work in the public sector because we have lost all the manufacturing industry. The blanket approach will harm us significantly in house building, regeneration and benefits and through cutbacks in the public sector. What provision can be made to ensure that communities such as mine do not slip back in the progress that they have made over the past four or five years?

**John Swinney:** You will be aware that an equality impact assessment is carried out on the budget. I am happy to engage in dialogue about that assessment.

There are a range of different measures in the Government's budget, including support to meet the training needs of individuals, support for educational opportunities, the approach to affordable housing and the steps that we are taking in relation to the core local government settlement. The local government settlement is

being reduced by 2.6 per cent rather than 6.4 per cent, which will have a consequential beneficial effect on the Inverclyde area that you represent, convener. All those factors show how the Government is taking forward an agenda that is designed to avoid the negative economic consequences that, I agree, were experienced in the 1980s and from which many communities have yet to recover.

**The Convener:** Some recently published research about local authorities shows that Inverclyde has areas that are in the most deprived 20 per cent in the UK, as do Dundee, Dumbarton and other local authority areas. Does that give the Scottish Government pause to reflect and work with those communities in addition to providing the equalities statement, given the fact that we recognise that those communities are more vulnerable?

**John Swinney:** The Government's interventions and programmes do exactly that. You used the word "blanket", but the Government's programmes are not deployed on a blanket basis; they are deployed where they respond to need. Need underpins the entire local government distribution formula into the bargain.

**The Convener:** We have had questions and answers on that in the past, as well. That is another issue that needs to be resolved in local government.

There are no further questions. I thank the cabinet secretary and his officials for their time.

12:53

*Meeting continued in private until 12:58.*

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