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Pàrlamaid na h-Alba

Official Report

LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

Wednesday 23 February 2011

Session 3

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LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE
6th Meeting 2011, Session 3

CONVENER

*Duncan McNeil (Greenock and Inverclyde) (Lab)

DEPUTY CONVENER

*Bob Doris (Glasgow) (SNP)

COMMITTEE MEMBERS

*Patricia Ferguson (Glasgow Maryhill) (Lab)
*Alex Johnstone (North East Scotland) (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)
Alison McInnes (North East Scotland) (LD)
David McLetchie (Edinburgh Pentlands) (Con)

*attended

THE FOLLOWING ALSO ATTENDED:

Ted Brocklebank (Mid Scotland and Fife) (Con)
David McLetchie (Edinburgh Pentlands) (Con)
Pauline McNeill (Glasgow Kelvin) (Lab)

THE FOLLOWING GAVE EVIDENCE:

John Baillie (Accounts Commission)
Fraser McKinlay (Audit Scotland)
Alex Neil (Minister for Housing and Communities)
Gordon Smail (Audit Scotland)
Stephen White (Scottish Government Directorate for Housing, Regeneration and Commonwealth Games)

CLERK TO THE COMMITTEE

Susan Duffy

LOCATION

Committee Room 2

Scottish Parliament

Local Government and Communities Committee

Wednesday 23 February 2011

[The Convener *opened the meeting at 09:30*]

"An overview of local government in Scotland 2010"

The Convener (Duncan McNeil): Good morning and welcome to the sixth meeting in 2011 of the Local Government and Communities Committee. I remind members and members of the public to turn off all mobile phones and BlackBerrys.

Under agenda item 1, the committee will take evidence from the Accounts Commission and Audit Scotland on "An overview of local government in Scotland 2010". I welcome the witnesses. John Baillie is chair of the Accounts Commission; Fraser McKinlay is controller of audit at Audit Scotland; and Gordon Smail is portfolio manager, local government, at Audit Scotland.

I understand that John Baillie wishes to make an opening statement before we ask questions. We happily agree to that.

John Baillie (Accounts Commission): Thank you, convener. My statement takes up just one page of A4, so I will not take long if I speak quickly.

The Convener: That is fine. We are onside then.

John Baillie: The Accounts Commission welcomes the opportunity to give the committee a briefing on key issues in local government based on our recent overview report, which sets out the main matters that arose from the audit work in 2010.

The commission recognises the significant challenges that councils face in the coming years from both reducing budgets and growing demands for services. Councils and councillors face extremely difficult decisions in allocating funds and prioritising services. In itself, that is not unfamiliar territory for councils, but the range and scale of the financial pressures that they face are new. Councils will need to consider radical changes in services, including the potential for more joint working with partners.

The councils that have made most progress in embedding strong performance management and establishing clear and robust systems of governance, accountability and scrutiny are best placed to deal with the challenges ahead. Those are the principles that underpin best value and, more than ever, it is essential now that councils have them in place if they are to manage the pressures that they face. Councillors need the right information at the right time to take sound decisions, ensure value for money, scrutinise performance and understand the effects of their choices on the communities that they serve. Our report highlights the importance of the community leadership role of councillors. Such leadership is crucial if they are to retain the support of the public and continue to ensure the success and wellbeing of their areas.

In short, councils have taken serious steps to address the pressures that they face, and they need to build on the improvements that they have achieved in recent years. The Accounts Commission will continue to support improvement through our audit work in councils, our joint audit work with the Auditor General for Scotland, and our key role in co-ordinating scrutiny in local government.

We are happy to take any questions that the committee has.

The Convener: I thank you for your opening remarks. Mary Mulligan will ask the first question on behalf of the committee.

Mary Mulligan (Linlithgow) (Lab): Good morning, gentlemen.

My questions are about pensions. The report notes that there is a widening gap between the assets and liabilities of council pension funds. The briefing that we have from the Scottish Parliament information centre says that that gap has gone from £3.8 billion to £9 billion. What is the current level of assets and liabilities?

John Baillie: I will ask Gordon Smail to talk about the detail of that in a moment. The principal point that I want to make by way of introduction is that, as members know, the liabilities are calculated on the basis of the interest rates that prevail at the time. The lower the interest rates, the higher the present value of the liabilities, of course. That sounds as though it does not matter, but it does, of course, matter if interest rates stay as they are. The mechanism means that the liabilities will move quite significantly if interest rates move significantly.

I ask Gordon Smail to continue.

Gordon Smail (Audit Scotland): One of the key issues is how to value the liabilities, but the main issue relating to pensions that should always be noted is that the figures that we provide in such reports are a snapshot in time. We look at the position on a particular day—31 March 2010 in this case. The liabilities and how we go about

discounting the amounts to a present-day value are one side of the equation. Mr Baillie has explained that. The other side of the equation is the value of the assets in the funds. That had gone up because the stock market had recovered quite a lot by that time, but not by as much as the impact of the interest rates on the liabilities. That was a much greater figure, and that is why the gap grew.

Pensions are a serious issue and there is particular interest in public sector pensions throughout the United Kingdom. Work is on-going. Our colleagues are currently giving evidence to the Public Audit Committee on the report that we recently published on pensions across the whole of the public sector in Scotland.

Mary Mulligan: I am not sure that I got an answer to the question that I asked. If I explain why I asked the question, you will see what it was that I was seeking. The increase from £3.8 billion to £9 billion sounds to me like a lot of money. However, if the levels involved are £100 billion, the significance of the gap is different from what it would be if they were £500 billion, if you know what I mean. Is it a change of 0.5 per cent or 10 per cent of the total? That is the answer that I was seeking.

Fraser McKinlay (Audit Scotland): Is it the assets in the local government pension scheme that you are particularly interested in?

Mary Mulligan: Yes.

Fraser McKinlay: The recently published pensions report to which Gordon Smail has referred says that the local government pension scheme has assets in management of more than £21 billion. That might be the number that you are looking for.

Mary Mulligan: It is useful to know that, as it puts the gap in perspective.

I will continue with my questioning on this issue, although Mr Smail might have gone some way towards answering the point. We have been told that the market value of pension scheme assets increased; more significantly, there was a 53 per cent rise in the estimated cost of future liabilities. How is it that there was such a huge increase in the estimated cost of future liabilities over a 12-month period? It might come back to the question of interest rates, but is there anything else?

Gordon Smail: There are two main factors. The first is the discount rate to which Mr Baillie referred. With the sort of figures that we are discussing, small shifts can make a big difference. The other part of the equation relates to actuaries' valuations and assessments of how long people are going to live. A number of things play into it. This is a complicated area.

John Baillie: As I am sure you know, the next triannual evaluation is due out next month, and that will bring everything up to date, including the cost of people living longer and so on—all the actuarial bits that go into the evaluation.

Mary Mulligan: That is useful to know—the committee will be interested in that.

My final question, and probably the most difficult, as it is not factual, is on how we address the challenge that we face. What options are open to people in local government who deal with the matter directly? What about the involvement of the Scottish Parliament in the issue?

John Baillie: As you know, the report by Lord Hutton is due soon, and it will no doubt greatly inform any debate and subsequent actions that have to take place.

Two things occur to me immediately. First—you will be aware of this—is the consideration of how much employees should put into pension funds.

The other point is that there seems to be quite a disparity in contribution rates across the six pension funds or schemes in Scotland. One of the recommendations from our joint work on the pensions report that we have all been speaking about is that it is worth considering whether there are valid reasons for the disparities among the six pension schemes in Scotland. If not, some rationalisation might help to cut the costs.

It is a thorny issue, of course, as five of those six schemes are pay as you go. Only the local government scheme is fully funded, and the rest of them involve paying money out as contributions come in.

Mary Mulligan: If the size of the workforce that is contributing decreases, that adds to the problem.

John Baillie: Yes, it does—that is exactly the case.

The Convener: Alasdair, do you wish to ask a supplementary question on that area?

Alasdair Morgan (South of Scotland) (SNP): Yes. It is particularly on the funded scheme—the local authority scheme. You are right to say that a small change in the discount rate can make a huge difference in liabilities, and we could be talking about liabilities 40 years hence in some cases. Would it be putting words in your mouth to say that this particular sum would not necessarily give you cause for concern?

John Baillie: Any sum like that would always give me cause for concern. As with all risks, the important thing is to ensure that the risk is identified and properly managed. We should always bear in mind the extent to which the liabilities are dependent on interest rates. It is not

an artificial figure, but it will change with every change in interest rates. If interest rates go up again, as seems likely, the aggregate liability will come down.

Alasdair Morgan: Indeed. The other point that I wanted to make has escaped me for the moment. I might come back to it.

The Convener: That is fine.

John Wilson (Central Scotland) (SNP): I will continue on the pensions issue. You are right to say that Lord Hutton's report on the UK position is due out soon, but a debate is taking place at Westminster about increasing pension contributions, particularly from low-paid workers. That might have a negative effect because those workers might decide no longer to contribute and to voluntarily withdraw from the pension schemes, which would create other problems in the long term. What is Audit Scotland's view on that issue, particularly at a time when there will be increased demand on the local government pension schemes because of the voluntary redundancies that are taking place? There is also potential for a bigger hit on the pension funds when we get to a compulsory redundancy situation, if we reach that point.

John Baillie: It sounds a weak answer, although it is not meant to be, but all that Audit Scotland and the Accounts Commission can say in response to that point is that it is a matter of policy. All that we can do is flag up the issues and invite those who are in charge of policy to take a view on how best to deal with the matter. We can give advice on the consequences of particular policies, but policy itself is not something that we comment on.

John Wilson: You are right—it does sound a weak answer given the Accounts Commission and Audit Scotland's role in advising local authorities, particularly on the future liabilities scenario. For every voluntary redundancy, an additional contribution has to be made by the local authority, but at the same time there has to be an additional withdrawal from the pension scheme, depending on how the pension is calculated. In the future programme of Audit Scotland and the Accounts Commission, work is to be done to try to get local authorities to address some of those issues. However, the question is not just how local authorities will address the financial issues but how they will do so without putting too much of a burden on the low-paid workers who are the major contributors to the pension schemes.

Fraser McKinlay: When the Hutton report is published, there will be a lot of debate and discussion to be had about the implications in Scotland. The report on pensions by the Accounts Commission and the Auditor General is designed to help that discussion and debate in Parliament because, although a lot of pensions policy is set at Westminster, as you know, the Scottish Government has a degree of influence over how these things are implemented north of the border. I am sure that the issues you describe will be an important part of that debate and that, whatever solutions the Parliament comes up with, it will want to avoid the perverse incentives or disincentives that you said might exist for low-paid workers elsewhere.

What we as the Accounts Commission and Audit Scotland can do, particularly in relation to the local government report, is to set out the facts of how the schemes operate, what the benefits are, and what some of the issues and risks are. The Improvement Service is already leading a lot of work through what is called the pension pathfinder project to consider how the local government pension scheme in Scotland could be administered more efficiently and effectively. As you know, 11 schemes currently make up the local government pension scheme. The project is looking hard at whether the scheme can be improved. Within a national UK framework of pensions policy, there is quite a lot of scope locally in Scotland to change the way in which pensions work and to make them more efficient and effective for people.

09:45

John Wilson: I want to continue on the issue of local authority liabilities. Page 15 of the overview report states that, in 2009-10, 10 local authorities were granted permission

"to borrow £62.3 million to meet the costs of equal pay".

It also states:

"One further council was granted consent in December 2010."

I am not sure whether you are at liberty to say which local authority that was, but will you say what the consented level of borrowing was? Also, do the current consents to borrow involve any of the larger local authorities? The liabilities for local authorities are proportionate to their size and number of employees, so larger authorities might have a greater liability in relation to their equal pay settlement. I am interested in whether, in the view of the Accounts Commission and Audit Scotland, further consents to borrow are likely to be granted, particularly given the financial circumstances that we face.

John Baillie: Are you aware of the 11 councils that have been given permission?

John Wilson: Your report says that there were 10 councils and a further one in December 2010.

John Baillie: I think that the further one was Highland Council. I ask Gordon Smail to deal with the second part of the question.

Gordon Smail: We do not have that information with us, but we can provide it to the committee.

Fraser McKinlay: Mr Wilson, are you interested in which councils we are talking about?

John Wilson: Yes.

Fraser McKinlay: The list is Aberdeen City Council, Clackmannanshire Council, East Dunbartonshire Council, the City of Edinburgh Council, Falkirk Council, Glasgow City Council, Midlothian Council, North Ayrshire Council, Scottish Borders Council and West Dunbartonshire Council. After we had produced the report, we learned that, as John Baillie said, Highland Council had also applied.

John Wilson: According to the local authorities, are the borrowing consents that have been granted sufficient to cover any liabilities that they may face under equal pay settlements?

John Baillie: That is certainly the aim. Of course, it is all done on the basis of prudential borrowing.

A supplementary point is that the more councils borrow to fund revenue expenditure, the more they lock themselves into future interest and capital repayments, thereby losing a degree of flexibility. There is a general point I want to make later about just how much local authorities are storing up for tomorrow.

John Wilson: That point is well made and it is one that I certainly recognise. The more councils borrow now, the higher the liability will be as the years go on.

My next question ties into the point about local authority decision making. Page 7 of the overview report states:

"The councillor role is key; their effectiveness will have a significant bearing on how well councils cope with tough budget decisions and on how well they perform in delivering vital public services to local communities."

I agree that the role of the directly elected member in local authorities is vital. Are you satisfied that councillors are fully aware of the financial implications of the decisions that they are making and that they are being provided with the most accurate and understandable details on how local authority balance sheets operate and how the local authority finances work? I have commented previously in the committee that work remains to be done to get elected members—particularly those who are not in convenership or executive roles—to understand fully what they are being asked to decide on in making decisions about their local authority's future financial liabilities.

John Baillie: That is quite a big question, but I will try to keep my answer short.

Around half of all our councillors were new to the role at the last election—everyone here is aware of that, but it is worth making the point again. There has been quite a need to bring them up to speed in terms of their knowledge and expertise. As you also know, the Convention of Scottish Local Authorities has been conducting a large education programme in that regard.

The answer to your question is that we have been saying for some time now that all councils need better data on service performance and costs of service, including unit costs, the better to inform councillors so that they are able to reach proper decisions. That plays into the need for proper options appraisal. It is not sufficient for councillors to simply take the view that is presented to them by, for example, their executive. It is important that the options that are presented are fully costed and that the councillor is able to demonstrate to the voting public that they have taken a proper decision based on a proper options appraisal. There is a way to go on that yet.

John Wilson: I accept the point. However, as someone who could be classified as being like one of the new councillors who were elected in 2007, the position that you outline—that half of the councillors who were elected that year did not fully understand the balance sheets and other elements of the running of a council—is a bit disingenuous, given that some of the people in the new intake had experience of either local government or financial matters, which they brought with them into local authorities. That enabled greater scrutiny of some of the expenditure and programmes that were being proposed.

John Baillie: If I led you to believe that I was concentrating simply on new members, that is my fault; I must have explained myself badly. I was talking about all councillors and was simply reflecting on the fact that half of them had no experience of council business before May 2007. I take your point entirely. We have been saying for some time that the issue involves all councillors. Indeed, at last year's COSLA conference, I gave a presentation on the need for elected members to understand finance, to demand proper information and to understand that information when they get it. Understanding is not simply a matter of training; it is also a matter of councillors demanding the information that they want rather than being given all sorts of detailed information that takes too long to get through.

Fraser McKinlay: When I came to the committee for the round-table discussion in October, my sense was that councils had been preparing more thoroughly for the budget round

that was approaching at that point. In a funny kind of way, the financial pressures that they are facing have made the process more transparent and thorough, and I think that there has been real improvement in the involvement of local elected members in the process and in their understanding of that process. Managing a reducing budget, as opposed to an increasing one, is new territory for many councils, which has made it even more important to concentrate on those matters. There has been progress, but the situation is still patchy. As the chairman said, there is still more to be done on issues such as options appraisal and being clear about the impact and implications of decisions that are being made.

The Convener: We have spent a bit of time on equal pay and pensions. I suppose that it might be helpful to broaden out the discussion by asking what the Accounts Commission considers to be the most significant risks that face local authorities in the short term. Are you satisfied that local authorities are dealing appropriately with those risks, including the risks around pensions and equal pay?

John Baillie: The obvious risk is the one that we are all aware of, which arises from the funding problem—the risk of budgets not being met, having been agreed and set in the past couple of weeks.

Linked to that one, the next risk relates to whether local authorities can achieve full value for money. A culture of continuous improvement demands that councils try to achieve best value for money. That is something that we will never stop saying. I will not repeat what I said a moment ago, but proper data on service performance, and on the costs entailed, are required. I am going over ground that I have just covered, but councillors will have to scrutinise properly the information that is put before them. Their decisions will have to be based on proper information. They will also have to show leadership. Among other things, that will entail their working closely and well with other councillors as well as with the council executive.

There is a balance between having legitimate political differences and getting lost in a mire of point scoring. We have seen an improvement in that; many councils are beginning to consider the issue. The best-performing councils are the ones that have good professional working relationships among the councillors and between the councillor group and the executive group.

The Convener: How prevalent is that good practice? You have spoken about everything that is necessary in order to meet budget requirements, but are you satisfied, in general, that councils across Scotland are meeting those requirements? Are you satisfied or dissatisfied?

John Baillie: As Fraser McKinlay said a moment ago, there has been improvement, but we are not satisfied yet. The better-performing councils are doing the right things, but others are lagging behind.

The Convener: What proportion of councils are you satisfied with, and what proportion are you unhappy with?

Fraser McKinlay: It is very difficult to give a precise answer to that question. Different councils are good at different things, and auditors will never be completely satisfied with any council, because we are always looking for improvement. That is at the heart of best value.

In exhibit 12 on page 19 of the overview report, we have tried to summarise the risks that local authorities face, which are a combination of demand pressures and resource pressures—with the councils squeezed in between, if you like. As committee members know, we produce an overview report annually. There is no doubt that this one reflects a greater degree of satisfaction than previous ones. Real progress has been made on issues such as asset management and workforce management—the issues that underpin a council's ability to take difficult decisions. The number of councils that we might categorise as high risk is, I think, decreasing. That is very welcome. Processes and structures are improving, and councils are focusing much more on outcomes and on working with partners. However, there is still a long way to go, and the situation is still very patchy.

As well as the work with individual councils, a lot of work is going on nationally. The Improvement Service and COSLA are working with their partners at a national level to consider issues such as how council resources can be shifted away from dealing with the negative effects of poor outcomes, when things are not working, and towards early intervention—preventing those things from happening in the first place. In the current economic situation, everyone acknowledges that big wins will occur if problems can be dealt with at source, rather than if the effects of negative outcomes are dealt with further down the line.

We have a picture of individual councils dealing with local situations, but a lot of work has also been done nationally in considering how local authorities, as a whole, can make progress.

The Convener: I will ask the question in another way. Does the Accounts Commission consider that any local authorities are likely to experience significant financial difficulties? Will they require—now or in the near future—early intervention to prevent them from falling into serious situations?

10:00

Fraser McKinlay: The work in the report is based on the financial year that finished in March 2010, but one of the interesting things about the report is that we are reporting a pretty stable financial situation. Councils are in pretty good shape, as are reserves. We can never say never, but I do not think that Audit Scotland and the Accounts Commission have concerns that some councils out there are really going to struggle to make ends meet in the next year.

Having said that, I think that the issues are significant, particularly on the demand side. The falling amount of money is one issue but, in the medium term, councils will have difficulty with the increasing demand for services. As members will know better than I do, demand for services goes up when we are in a recession, and that will come on top of an ageing population and all the other issues that we are familiar with. Therefore, it is not only about managing money but about redesigning services, targeting resources differently, and prioritising things more acutely. That is why the issues to do with options appraisal and the decision-making process are so key. Councils are having to do that differently now from how they did it before.

Patricia Ferguson (Glasgow Maryhill) (Lab): Although I represent a Glasgow constituency, the committee's remit is much wider than its members' constituencies. I am intrigued by the fact that Shetland Islands Council seems to have an on-going difficulty with the certification of its accounts. Could you elaborate on the issues with those accounts that give you cause for concern?

John Baillie: Yes. We can fill in the other issues, but I will concentrate on one in particular. There is an accounting standard that requires the consolidation and inclusion of linked bodies in the group accounts. The standard provides criteria to define what a linked body is. For five years now, the principal issue with the accounts has been that, in the opinion of Audit Scotland and in the opinion of the previous firm of auditors, PricewaterhouseCoopers, the Shetland Islands Council's group accounts have not included the Shetland Charitable Trust—a significant trust—and its assets and liabilities. The auditors have therefore said that the council's accounts are not entirely true and fair. They are considered to be true and fair except for the inclusion of the Shetland Charitable Trust. That, in essence, is the issue.

When we had our public hearing with the council, the representatives tried to explain what enabled them to take the view that they did. The circumstances are unusual. The councillors of Shetland Islands Council are almost all trustees of the trust, although there might have been a slight change in that since the meeting. The councillors, meeting as the council, took the view that the trust should provide them with its accounts. The council then sat in session as the trust and decided that they could not allow themselves, as the council, to get the accounts. That is the essence of the situation.

We are watching the situation closely; we have not lost sight of it by any means. The council is working with a Queen's counsel that it has appointed to look at the situation and see whether there is a way through it.

Fraser McKinlay: Our slight concern about the QC is that our problem with the situation is not a legal one but an accounting one. For some time, we have been trying to help our colleagues in Shetland to understand that we have a specific issue about a specific accounting problem to do with Shetland Charitable Trust, but there are strong local views that the trust is independent and that it would lose that independence if it were grouped as part of the council's accounts.

Patricia Ferguson: I am struggling to see how independent it is of the council in the circumstances that you have described.

John Baillie: If I may say so, you have hit the nail on the head. At the public hearing, I asked the specific question about how councillors could negotiate with themselves as trustees when it came to issues such as the provision of services. I did not get an answer.

Patricia Ferguson: I am intrigued, as I do not know the situation in Shetland, to find out exactly what the Shetland Charitable Trust does.

John Baillie: I will start and others can fill in.

In essence, the trust provides some of what might be called the non-statutory services. There is a comprehensive provision for those services in any council, including Shetland Islands Council. Fraser McKinlay might want to elaborate on that.

Fraser McKinlay: The Shetland Charitable Trust had at the last count about £250 million in assets, which it uses for a wide variety of things. The council's position is very strongly that the trust does not use that money to support core council services; it is additional.

We have some difficulty with that explanation, however, because the money is used to support care homes for the elderly and a very high level of provision of leisure facilities. While that is all great news for the people of Shetland, the provision of such services costs quite a lot of money. The money is coming from the Shetland Charitable Trust, but if the trust were to say tomorrow, "We're not doing that any more," the council would find it very difficult just to withdraw the services.

There are a couple of issues around the degree of control that the council has over the trust. One issue relates to the governance of the trust: as John Baillie said, the same people are on the council and the trust board. The other issue concerns the nature of the services that the trust provides.

The trust also invests in longer-term infrastructure projects that are very big and very controversial: for example, it is seeking to invest in the on-going Viking Energy project up in Shetland.

The new chief executive is very keen to resolve the qualification, as he really does not want to have his accounts qualified for the sixth year in a row. We hope that we will find a way this year to get to a place where we can remove the qualification on the accounts, but we shall wait and see.

Patricia Ferguson: I presume that the money came from oil revenues at an earlier stage.

Fraser McKinlay: Yes.

Patricia Ferguson: I wonder how the democratic accountability issues are resolved. We always talk about the fact that the one sanction that we have for elected people is that we can vote them out. Presumably, if someone is unhappy about the care home service or the leisure facilities, they have to complain to the trust. If they have an on-going issue with the trust, where do they take it?

Fraser McKinlay: Therein lies part of the complication. I am not sure that people would automatically think to complain to the trust: they would think that a care home is a council service.

The point about democratic accountability is interesting. The make-up of the trust is set down as comprising the members of the council, the headteacher of the high school and the lord lieutenant of Shetland. Because the charities regulator has some concerns about the governance of the trust as a charity, the trust is looking at that and considering whether the make-up can change significantly so that it can bring on board more independent members and that type of thing. The question whether councillors can easily fulfil their roles as councillors and as trustees of the Shetland Charitable Trust is a very hot topic locally.

Gordon Smail: Just to widen the discussion out a wee bit, we are concerned about that issue across councils. If we look at the arm's-length external organisations, we see that accountability and governance are central. We are working on guidance for councils that will probably be published in late spring.

Patricia Ferguson: I am sure that that will be very interesting.

I do not want to labour this particular element of the issue, as there are other elements that we could easily discuss. However, it strikes me that although we sit here and deliberate on the remit and job of the Scottish Public Services Ombudsman, which would be the logical place for someone who was in dispute with a council to take a complaint that had been exhausted, someone who was in dispute with a trust would presumably begin and end their complaint with that trust.

Fraser McKinlay: There is the Office of the Scottish Charity Regulator, which is the regulating body for the Shetland Charitable Trust. In a sense, as Gordon Smail said, the situation with the trust is an extreme version of things that we see in a lot of places. It is interesting to note that lots of other councils have ALEOs. That is increasingly the case and they are made up in lots of different ways. Some are trusts, some are limited liability partnerships and some are companies limited by guarantee. There are some important principles of governance that we believe are essential in this area because, however they are made up, ALEOs use public money, and the ability to follow that public money is key.

John Baillie: For some time, we have been going on about following the public pound and insisting that the same standard of governance that prevails in a council should prevail for the public money that is invested in an ALEO, despite the conflict of interest if the same people are company directors of the ALEO.

Patricia Ferguson: I agree. I note that the Accounts Commission has expressed concerns about a list of things at Shetland Islands Council—leadership, vision and strategic direction, governance, financial management, and accountability. Are those concerns connected to the trust or are they about other things?

John Baillie: Those are general issues about the council, although they are linked to some extent with how the trust is operated, how the funding comes through, how they get on with each other or not, and how they manage or not. That is why we gave the new chief executive and the council a year and a half to look at how to turn things round, because the list of issues is a long one.

Patricia Ferguson: This is not really a question, convener, because I am conscious that I have had at least my fair share, but I wonder whether the committee might want to mention the issue in its legacy paper and suggest that any incoming committee that has a similar remit might want to take it on board. It sounds as if the issue is becoming intractable if the new chief executive is not able to make some headway on both of the elements.

John Baillie: We will wait and see how things develop later this year when we have another look at it.

Patricia Ferguson: Thank you.

Jim Tolson (Dunfermline West) (LD): I want to look at local authorities' reserves. Your report notes a slight underspend by local authorities in 2009-10 and increasing levels of reserves. To what extent have local authorities used up much of their reserves in recent years, particularly with the costs of single status and equal pay, some of which may be on-going and therefore undesirable, and how are local authorities placed to deal with the use of those reserves in the future?

John Baillie: I will make a general comment about reserves and then go on immediately to make a point that I wanted to make today, if I may. We have always taken the view that it is for councils to set their reserve policies at whatever level they believe is appropriate in the circumstances. Our concern has always been that they explain that policy, and we have now seen quite a lot of success in that councils are indeed explaining their policies, the better to be transparent in reporting to people in their area. As we state in the report, reserves have grown a little over the year.

A moment or two ago, in response to a question from the convener, we talked about whether councils are in a good position and whether what they are doing is sustainable. We discussed those things in relation to the next year, which is of course important, but what I fear is what I sometimes refer to as the dangling debit for the medium to long term and for the next generation. We have a backlog of repairs to roads of £2.25 billion and rising, after the last winter; we have a property repairs backlog of just under £2 billion; we have borrowing to fund revenue expenditure on equal pay and single status, among other things; and we have the pensions issue that we have talked about. All those things aggregate to a sizeable sum of money that the next generation—and perhaps some of us, too—will have to face and pay for in some way, and I fear that councils will lose a lot of their flexibility because of the need to do something about those things.

Forgive me for taking the opportunity to make that general point. I now invite Gordon Smail to talk about reserves.

10:15

Gordon Smail: As you say, the reserves are holding up. Mr Baillie is right that not that long ago we did not know too much about council reserves. Through our work on the report and in local audits we have been able to get behind what the reserves represent and bring out just how much money is available and, importantly, what proportion of general funds is set aside for the future and what proportion is unallocated and kept for a rainy day. That is the type of thing that we have been able to trend over time. The trend shows that the unallocated amount is similar to last year. However, over the past five years, there has been an increase across all councils from 1 per cent of net cost of services to 1.8 per cent of net cost of services. That gives us the evidence to allow us to say that councils will be better placed to deal with budget pressures over the next few years.

You asked about what is earmarked. Part of the earmarked amount—£424 million—is for residual areas such as equal pay. The overall unallocated amount is about £218 million across all councils. It is very much for councils to determine against their overall financial policies what they should set aside. It is interesting to note in exhibit 9 the variation across councils in that regard. I know from speaking to councils that it is helpful for them in their own context to look at what other councils have set aside for a rainy day.

Jim Tolson: You made an interesting point about the levels of reserves. That was a partly helpful answer to my question and it shows that the issues of single status and equal pay are part of the burden that has been taken up by the reserves in recent years.

Looking back across several years, my recollection is that most local authorities' reserves—speaking generally of the Scottish context—were quite high in the past, dipped significantly over the years and are now slowly beginning to build up. I am sure that your organisation will have a fixed idea of what is a reasonable amount of reserves for a local authority to hold in general terms; I understand that there is a need for flexibility. Given the increase in reserves that you noted from 1 to 1.8 per cent of the overall budget, are local authorities' reserves low for what they need in order to cope with pressures along the line?

Gordon Smail: We are often asked that question, but we are not keen to be drawn on it, because as soon as the Accounts Commission or Audit Scotland says that the reserves figure should be, say, 1.5 or 2 per cent, that becomes set in stone. We are reluctant to do that because we strongly believe that it is for local councils to look at their local financial position and work out what is best for them. That said, as part of our assessments of individual councils' overall financial position, we flag up risks. In cases such as those at the lower end of exhibit 9, where the amount of unallocated general fund is relatively low, local auditors will ask, for example, "Is this right for this council? Have you got plans to build

back up to what you consider to be your policy?" One of the things that we have managed to achieve is that all councils have a policy for their reserves nowadays. Those are the types of question that we ask individual councils.

I am sorry if I am not answering your question directly and being drawn on what we consider to be the correct percentage for reserves, but I think that this is the right position to take on that particular topic.

Fraser McKinlay: Gordon Smail is right that there is no right answer, but we expressed concern about two councils last year—West Dunbartonshire Council and Midlothian Council—because they both reported having no unallocated reserves at all and we did not think that that was a particularly healthy position to be in. Both councils have increased their unallocated reserves this year, which makes us feel more comfortable. We do not think that there is a right answer to the question of reserves percentages, but we know that there is a wrong answer, which is when a council has nothing at all to deal with unexpected events. It was pleasing to see that some councils have taken action in the year to address that.

Jim Tolson: There certainly seems to be an improving picture on reserves across Scotland, and Mr Baillie made a good point about councils having policies in that regard and ensuring that they follow them through.

Alex Johnstone (North East Scotland) (Con): I want to return to a general issue that we discussed earlier and ask about a particular point. My question is about the efficiency of the provision of public services through local authorities. On page 24, the report states that, although some work has been done on shared services,

"Overall, progress in delivering projects has been slow, and significant savings in the short term are unlikely."

In a time when sharing services should be such an obvious opportunity, why have local authorities been so slow to consider that?

John Baillie: I will start off and Fraser McKinlay will probably want to come in on the detail.

In the past, there has been reluctance to consider shared services as a real money saver. That is partly because of a belief in some quarters that shared services will not save a lot of money, although some of it is down to the need to cede control. A council that already has a good service might not want to mix it with something that it regards as inferior. That kind of reluctance has been in the background. By the time that a shared service is achieved, time will have gone by and there will have been consequent costs, such as those involved in reducing staff levels, so in the short term there is perhaps outflow rather than inflow. Shared services should come into their own in saving money in the medium to long term.

Fraser McKinlay: I support everything that Mr Baillie said. We still think that sharing services is a good thing to do, but people need to go into that with their eyes open to the complications and the fact that it will not save money next week. Inevitably, most such exercises involve investment up front, with a payback period over a longer term. Good shared services projects will save money and improve services, so it is important that people think about such exercises not just as a way of saving money, but as a way of redesigning a service for the good of the local community. There are many good examples of that. An obvious one is the Clyde valley partnership, which followed on from work that Sir John Arbuthnott did. However, it is worth reflecting on the fact that the partnership will save about £70 million. That is not an insignificant amount of money, but nor is it a huge amount. That scheme goes across a pretty wide range of services in eight councils.

Mr Baillie touched on barriers to sharing services. Those are about political will and leadership. There is a need to understand what services cost now—which does not always happen—so that a sensible business case can be pulled together to show whether a new model will work.

Some interesting recent developments on shared services have involved the front end of service delivery. For example, Stirling and Clackmannanshire councils are considering joining their education services. The approach is not just about the traditional or back-office functions such as finance, personnel and procurement, although more can always be done on that. Councils are beginning to consider how services are provided to citizens at the front end. It will be interesting to see how that pans out in the next couple of years.

Alex Johnstone: The obvious geographical synergies that exist in some places in Scotland are blocked by the fact that there are lines in the sand—or lines in the land, so to speak—that people are unwilling to cross for all sorts of reasons. Do we have to deliver real financial opportunities and incentives for local authorities to make changes or do we just have to wait for the finances to get a bit tighter, and they will begin to move?

John Baillie: That partly goes into policy. The idea of financial incentives that are additional to any that come out of shared services is interesting. I had not considered that in quite the way that you put it, but it occurs to me that, if a shared service does not present a business case, that suggests that a financial incentive would be an artificial misallocation of resources. That would be the line that I would want to pursue.

The Convener: To recap on equal pay, the figure that you give in the report for the cost of settling claims is about £180 million. We have heard in evidence over a long period that local authorities have what they describe as conceded claims—ones that they know that they will have to concede—and claims that they will rightly contest because they do not believe that there is a case to answer. Have you broken down that figure into the genuine liability in conceded claims and the amount for contested claims? If not, why have you not done so to get a true figure?

Gordon Smail: When we came to the committee last year to discuss last year's overview report, the committee was clearly interested in the overall figures. We were able to bring those together in the report that we are discussing. We have figures for the amount that has been paid and the amount that is still in the system in the accounts. That is the point that I want to make.

The figures that we have are drawn from the audited accounts. Local auditors do the financial audits each year and they look at what councils have done relative to the financial reporting standards. There are rules about what would be included as expenditure and as provisions—that is, money that is set aside—and what would be a disclosure as a contingent liability. That approach has been taken consistently against generally accepted accounting practice across all councils. The auditors challenge councils. They say, "You've included these amounts in your accounts. How did you come to them?" They will rely on things such as their own legal assessment of whether money has to be paid or set aside.

I am trying to explain that there is an underlying technical position that leads us to the figures, which are big figures in local authorities' balance sheets. Auditors look at the area each year when they do financial audits in councils.

The Convener: I do not intend to spend a lot of time on the matter, but I would like to follow it up briefly. Have you examined the evidence that has been brought to the committee? It is clear that there is consistent recognition in all the evidence that there are conceded claims—in some cases, they have been described as conceded claims—and contested claims, but a technical application is applied that rolls all of them up into a figure that is bigger than it really should be, and that is the reason why we do not make progress.

Fraser McKinlay: We do consider the evidence. I am regularly in touch with colleagues in Unison in particular. Obviously, they have a lot to say on the matter; indeed, they have a lot to say about what Audit Scotland should and should not do around it. We are always happy to consider whether there is more that we can do.

Gordon Smail set out our audit position. It is difficult for us to second-guess the legal advice that councils have received so, at the moment, our job is to satisfy ourselves that that legal advice has been given, that it appears to be sound, that the council has followed a proper process, and that all of that figures in the accounts. We certainly keep a close eye on the matter and we will be interested to see what happens with equal pay claims over the next 12 months.

The Convener: Do you have a figure for conceded claims and a figure for contested claims? Do you recognise that those are two different things?

Fraser McKinlay: We recognise that, but we do not have those figures. We have not done that breakdown.

The Convener: You do not have the figures.

Fraser McKinlay: No.

The Convener: So why are global figures being produced if we know that they are, at best, misleading?

Fraser McKinlay: I am not sure that they are misleading, convener. Gordon Smail explained our job as auditors working with accounting standards and guidelines. That is the extent of our role and remit and £180 million was the figure that we came up with.

The Convener: I might be misunderstanding, but Inverclyde Council, for instance, can come along and tell me that there are 200 conceded claims and there is a value on them. Therefore, we have conceded claims, a number and the equal value, but the Accounts Commission does not.

Fraser McKinlay: We can clarify that, convener.

Gordon Smail: We can come back and clarify that. The principal issue is that there is liability for conceded claims and a legal requirement for the council to meet them, so they will be included in the balance sheet as provisions—that is, money set aside. Contested claims will involve the likelihood that they will come to fruition and they will be disclosed as contingent liabilities. We have the figures available, but we do not have them with us today. I have only the aggregate figures drawn from the information that we have received from auditors.

John Baillie: We can provide the figures to you.

John Wilson: The issue of common good fund assets comes up continually. Before the meeting, the committee was provided by somebody from Scottish Borders Council with arguments that indicate that common good fund assets could be anything up to £1 billion in value, although they contest that those assets are not being properly

accounted for and recorded by local authorities in their annual audits. Do you wish to comment on that?

10:30

John Baillie: As you will know from our report, common good assets are about 0.7 per cent of the total assets that are under the control and ownership of councils. That does not answer the question, however. I think that your contact is saying that the assets are seriously understated. The council's problem is that the records go back into history. Councils have taken a view to identify ownership at the point of any sale. That does not mean that they cannot identify existence and list it—they should be doing that already—but if councils were to pursue every possible common good asset in terms of ownership, it would take an awful lot of resources and the work might not make good use of the available time and the resources.

Gordon Smail: We know that this has been an area of interest to the committee for a while, following the receipt of petitions by the Public Petitions Committee. The matter has been of concern to us, and we in Audit Scotland have been made aware of a lot of interest from people, including members of the public, about this small but important part of the assets that councils manage.

As we note in our report, professional guidance is available on what is expected of councils. The common good issue has risen up councils' agendas, and councils have taken reasonable steps and made reasonable progress—as the guidance requires—to ensure that their assets are recorded, in the first instance. They have been making good progress towards differentiating between assets under common good ownership and assets that form part of the general fund assets overall.

A pragmatic approach is being taken. Taking account of the current circumstances, some councils are doing the work at point of sale—they are spending the money and getting the legal advice that they require to determine whether land or buildings have come through the common good in history, or whether they are part of their general fund.

The Convener: You mentioned guidance. Generally, councils have taken action to comply with guidance. Do you wish to comment on that further? Do you have any views on the variations that exist? You say that councils "generally" comply. Does that mean that some are not complying or are not following the guidelines as satisfactorily as you would wish?

Fraser McKinlay: We have not done detailed work to assess exactly how many councils are or are not doing so, but as Gordon Smail said, all external auditors will consider the issue locally. Our sense is absolutely that councils are making progress.

I would be very surprised if any councils are not following the guidance at all. Some councils will be making better progress than others, and that is what we mean when we say that they are "generally" taking action. As of today, we are pretty satisfied with the progress that is being made, while recognising the complexity of the matter, recognising the scale of the common good asset in relation to councils' overall assets and recognising that the issue is important for the public.

The Convener: Is there a small contradiction in that? The overview report said:

"Councils have generally taken action".

When we ask for specifics on that, you say that you have not really done the detailed work. How do we get a general reassurance that councils are complying with the guidelines if we have not tested that or examined the issue? Have we?

Fraser McKinlay: Yes, we have. I am sorry, convener: I should have been clearer. The work in the overview report is based on the work of local auditors, and they will be generally satisfied. My point is that it is more difficult to say in an overview report exactly how well each individual council is meeting the guidelines. As I say, they are all taking account of the guidelines, and we are satisfied with progress on that.

The Convener: Can you do more work on that?

Gordon Smail: We will ask auditors to continue to work on that. To give the committee some assurance, I can say from looking back at the individual reports that we do on all 32 councils that common good features in just about every single one. Although common good accounts for a relatively small amount of work in terms of its value relative to overall assets and so on, because of the public interest from a number of angles, it features in just about every report that auditors make to councils. It is certainly on the agenda, and things are happening.

Mary Mulligan: There has been an increase in the Public Works Loan Board rate and, as Mr Baillie said earlier, it is likely that interest rates will start to increase. Do you have any comments on the increasing level of borrowing?

John Baillie: My only comment would be a refinement of what I said earlier about dangling debits in general. If you have increased borrowing and increased rates of interest, the repayments are the first call on expenditure in the future,

before you consider how you are going to provide services. That reduces flexibility for councils. Anything like that makes me slightly anxious.

Mary Mulligan: The report refers to wide variations in patterns among local authorities. Are there any in particular about which you might be concerned?

John Baillie: I do not think so.

Fraser McKinlay: I am not at the moment, but it is interesting that there are wide variations. Clearly, it is up to individual councils to set their own policies, but there would be merit in councils considering why that variation exists.

The other thing that is worth drawing attention to as part of this debate is the fact that, along with the increase in borrowing, the nature of the funding schemes is changing. In our report, we mentioned tax increment financing. At the time of writing that report there were one or two examples of that and a couple more have emerged since then. That is a tightly regulated scheme and it involves lots of hoops being jumped through. However, it is quite a different approach and is based on the council bearing the risk of bringing in non-domestic rates in the future. To some extent, that comes back to the point that Mr Wilson made about ensuring that elected members are absolutely clear about the liabilities that they are taking on through such arrangements, particularly as the PWLB becomes slightly less attractive as a source of borrowing.

John Baillie: In a period of financial stringency, the asset values that might otherwise be realisable as surplus assets cannot be realised, which also pushes up the need for borrowing.

The Convener: That concludes this evidence-taking session. We appreciate your attendance and the evidence that you have given. We look forward to hearing your conclusions about the arm's-length organisations, which I am sure will be interesting.

10:37

Meeting suspended.

10:41

On resuming—

Private Rented Housing (Scotland) Bill: Stage 2

The Convener: We move now to agenda item 2, for which we are joined by Pauline McNeil MSP and Ted Brocklebank MSP. We will be considering stage 2 amendments to the Private Rented Housing (Scotland) Bill.

I welcome Alex Neil, the Minister for Housing and Communities. The minister is accompanied by Colin Affleck, senior policy officer of the private rented sector policy team; Rachel England, policy analyst with the housing supply unit; Willie Ferrie from the office of the Scottish parliamentary counsel; and Stephanie Virlogeux from the Scottish Government legal directorate. Welcome.

We now turn to our marshalled list.

Sections 1 to 5 agreed to.

Section 6—Duty to include certain information in advertisements

The Convener: Amendment 7, in the name of the minister, is grouped with amendments 8, 9, 10 and 11.

The Minister for Housing and Communities (Alex Neil): The main effect of amendments 7 to 11 will be to limit the requirement for the inclusion of landlord registration numbers in advertisements when landlords are advertising private rented property in cases where houses are in multiple ownership. I am aware that some landlords have expressed concerns that, should the bill require the inclusion of multiple registration numbers in advertisements where there are two or more owners of a property, that could increase the advertising costs for landlords. In response to that concern, the Scottish Government has lodged amendment 9, which provides that, where there are two or more owners of a property, the duty is complied with by the inclusion in the advert of the registration number of any one of the landlords. In other words, only one registration number will be required in the advert.

Amendment 10 seeks to ensure that landlords will not incur excessive costs in cases in which there are joint owners and one or more is registered and one or more has a pending application. In such cases, the duty will be complied with by the inclusion of either the landlord registration number of one of the landlords or the statement "landlord registration pending".

Amendment 11 is a consequential amendment that will apply the definition of "advertisement" to the provisions that are proposed in amendments 9 and 10. Amendments 7 and 8 clarify the meaning of "registered person" in proposed new section 92B of the Antisocial Behaviour etc (Scotland) Act 2004, as would be inserted by section 6 of the bill.

I ask the committee to support amendments 7, 8, 9, 10 and 11 in my name.

I move amendment 7.

Patricia Ferguson: I understand the intention of the minister's amendments, and I support the principle behind that intention. However, in his closing comments, will he clarify whether the provisions will simply mean that only one of two individuals who are landlords of a property will register, while the other will decide that there is no compelling reason to do so?

Alex Neil: I can confirm that both will have to register; the only issue is what appears in the advertisement. In essence, what appears in the advert is a control mechanism for enforcement officers in local authorities. We have consulted them widely and they are content that the provisions will in no way diminish the effectiveness of enforcement.

Amendment 7 agreed to.

Amendments 8 to 11 moved—[Alex Neil]—and agreed to.

Section 6, as amended, agreed to.

Sections 7 to 12 agreed to.

Schedule agreed to.

Before section 13

10:45

The Convener: Amendment 28, in the name of Alex Johnstone, is in a group on its own.

Alex Johnstone: It is not my intention to speak at great length since the subject was brought to my attention by my colleague Ted Brocklebank. The experience that Ted reports is a problem that is associated with the high density of houses in multiple occupation in the town of St Andrews.

I apologise to anyone who has been concerned about the nature of amendment 28. I know that it has frightened a few horses in some areas, but it was designed to put the matter on the agenda during our discussion. I am aware that a great deal of fine tuning is necessary, and I hope that we can deal with any side effects during the passage of the bill. It is a matter that I wish to see aired, and I look forward to hearing what the minister and Ted Brocklebank have to say.

I move amendment 28.

Ted Brocklebank (Mid Scotland and Fife) (Con): I begin by drawing the committee's attention to my entry in the register of members' interests to the effect that I own two properties in St Andrews that are let for rental. Technically, they are not HMOs since each property is occupied by only two tenants, but by any definition I am a landlord. I assure the committee that what I have to say today in support of amendment 28 is unlikely to be endorsed by the Scottish Association of Landlords.

Simply, the purpose of amendment 28 is to manage concentrations of HMOs that have been shown to be destructive to social cohesion and sustainability of communities. I speak with direct experience of the situation in St Andrews, which is a small town with a fixed population of around 16,000. Additionally, there are around 8,000 students and 1,120 licensed HMOs. They account for 93 per cent of the total for the whole of Fife.

The HMO problem is severest in the historic core of the town. In what has been described as the best surviving example of a medieval township in Scotland, approximately 85 per cent of the population are students. The 155 permanent residents are a diminishing group as market forces ensure that most houses and flats that come on the market are bought by absentee buy-to-let landlords who are guaranteed to have tenants and a reliable income. I assure the committee that the properties that I own are not in the town centre, nor am I an absentee.

By any measure, St Andrews city centre is not a balanced community. The remaining permanent residents' lifestyles are directly affected by the lifestyles of a younger peripatetic student community, and the buy-to-let properties are not maintained at anything like the same level as those of the permanent residents. I am being neither anti-student nor anti-landlord; I am simply reflecting the facts.

To tackle the problems in the historic core, Fife Council has recently introduced for consultation a draft policy that would limit further HMO development in the town centre, but the policy cannot be fully effective as it covers only houses and flats that require planning permission, and a large number of premises, including many listed buildings, are outwith the scope of the planning legislation. The situation that I describe is replicated with variations in many parts of Scotland, including Glasgow, Edinburgh and Aberdeen.

The Private Rented Housing (Scotland) Bill will improve matters by empowering local authorities to require planning permission before considering a licence application. However, not all HMOs

require planning consent, so consequently the planning system cannot prevent concentrations of HMOs. The requirement for planning consent for some HMOs but not others will have the effect of concentrating HMOs in house types and areas for which there are no planning controls, thus defeating the very intention of the legislation.

Amendment 28, as lodged by my colleague Alex Johnstone, would make all HMOs subject to planning consent and remove that problem at a stroke. I do not believe that it would prove onerous for local authorities to administer, but would simplify matters through introducing one rule for all.

Mary Mulligan: I am grateful to Mr Brocklebank for his explanation of amendment 28.

When the committee took evidence at stage 1, we were made very aware of the situation in St Andrews in particular. However, I am not sure that the planning system is the way to resolve issues of density.

I would be interested to hear the minister's comments on amendment 28, its effect with regard to the way in which planning can control the problem and how we can meet the increased demand for HMOs that is likely to occur in the foreseeable future. If there is a demand, it needs to be serviced somewhere.

I recognise what Ted Brocklebank says about the proliferation of HMOs in a given area, but if the provision is not to be there, it needs to be somewhere else, and I am not sure how the interaction would arrive at that.

I would be interested to hear the minister's response as to whether amendment 28 would achieve what Mr Brocklebank suggests it will achieve.

Alex Neil: I empathise with the issue that Ted Brocklebank has raised in relation to St Andrews, but I also share Mary Mulligan's concerns that amendment 28 is not the best way to deal with the problem of density.

In fact, amendment 28 would have the extreme opposite effect, in that it would have hugely negative repercussions for the whole HMO sector throughout Scotland. It would mean that every HMO in Scotland would need planning permission, whether or not it is subject to planning control at present, and it would cost local authorities, private landlords and the Scottish Government millions of pounds.

Those costs and the additional unnecessary red tape are likely to affect HMO businesses and significantly to impact on supply by driving good landlords out of the sector and encouraging bad landlords to operate without licences.

As Mary Mulligan said, there will be expanding demand for HMOs. We estimate that as many as 7,500 young adults will require HMO accommodation in Glasgow and Edinburgh in the near future. We are working to drive up standards in the HMO sector and have already included in the bill powers that will help local authorities in that regard. Unfortunately, Alex Johnstone's amendment 28—which is in a sense Ted Brocklebank's amendment—would mean that there would most likely not be enough HMOs to go round, which would create a dire shortage.

If access to HMOs is to be substantially reduced, where are vulnerable tenants to go? Where will the 7,500 young people aged between 25 and 34 find single rooms if HMOs are disappearing, in the light of the welfare and housing benefit reforms that have been announced? Even worse, what would happen if people end up living in dangerous, substandard and unlicensed HMOs because of the pressure that amendment 28 would put on the supply?

As the committee pointed out in its stage 1 report, we need to ensure that young people have access to safe and secure accommodation. In that spirit, I ask members to consider carefully the ramifications of amendment 28, which I unfortunately cannot support. I urge Alex Johnstone to withdraw it.

Alex Johnstone: As I conceded, my objective in lodging amendment 28 was to put the matter on the agenda for discussion. I was aware that it is a blunt instrument and I was aware of some of its potential consequences—other consequences have been brought to my attention since I lodged it. I am glad that we have had the opportunity to discuss the matter and I welcome the minister's acknowledgement that there is a problem in St Andrews and perhaps one or two other places in Scotland. As a consequence, it would be appropriate at this stage to seek leave to withdraw amendment 28, so that I can consider the matter further.

Amendment 28, by agreement, withdrawn.

Section 13—Amendment of HMO licensing regime

The Convener: Amendment 29, in the name of Jim Tolson, is grouped with amendments 1 to 4, 30 and 6. If amendment 29 is agreed to, amendments 1 to 4 and 30 will be pre-empted.

Jim Tolson: Many people think that amendment 29 is very much focused on students in Scotland. However, although the National Union of Students Scotland was instrumental in taking forward the approach that is proposed in amendment 29, members will be aware that the Scottish Council for Single Homeless, Crisis and

other organisations provided briefings in which they sympathised with the proposed approach.

The concern of those bodies, which I share to a large extent, is that the bill—and the amendments in Pauline McNeill's name—might make the situation worse, particularly in relation to the need to solve Scotland's homelessness problems. The Government's approach will not achieve many of the aims of the bill. In particular, the link with planning will reduce local authorities' flexibility. I would rather put in place a more commonsense approach, which would allow flexibility to permit HMOs, where they are required and where there is no huge, detrimental impact on permanent residents—I know about the extreme cases in St Andrews, which Ted Brocklebank rightly mentioned.

It is certainly not a case of one size fits all for HMOs throughout the country. Flexibility is important for local authorities and local councillors, who are much more aware of the situation on the ground in their areas. Restricting supply could be the wrong thing to do, particularly at this time, as Mary Mulligan and other members said. It would put more pressure on not just students but the many people who might lose their private homes and need to find other accommodation. If not enough rented accommodation is available, there will be problems in many areas and there will be an effect on homelessness in Scotland, which is an issue that we all want to solve.

The bill and the amendments in Pauline McNeill's name would put more pressure on honest landlords and do not focus on solving the problem of rogue landlords. I would rather that we produced legislation that focused on rogue landlords.

The HMO licensing scheme is imperfect and needs to work better, but a requirement for planning permission could be counterproductive in many ways, particularly if it led to more subdivision by certain landlords. The organisations that I talked about are concerned, as am I, about the impact on not just the type and suitability but the safety of accommodation.

In all likelihood, a shortage of HMOs would push up costs. I draw members' attention to the situation in Aberdeen, where renting is much more expensive. I am not sure that many of the students who plan to go to the University of Aberdeen or other institutions in the city are aware of the bill's implications for them.

I move amendment 29.

11:00

Pauline McNeill (Glasgow Kelvin) (Lab): I lodged amendment 1, which I do not intend to press, simply to enable the committee to debate whether the bill should require local authorities to implement the approach in section 13(2), rather than provide that they "may" do so, as the bill says.

I will explain what I wanted to achieve by lodging amendments 1 to 4, 30 and 6. First, as we have often heard in the Parliament, high concentrations of HMOs in parts of Scotland are making some communities unsustainable, as Ted Brocklebank said. I represent an area in which that has been the case for many years. As always, I place it on record that I support HMOs as part of the housing solution, but they cannot continue to be unregulated.

I turn to Jim Tolson's amendment 29, which is set up against my amendments. His analysis is wrong because the bill does not at all reduce flexibility for local authorities, but instead gives them a choice—I recognise the progress that Alex Neil has made on that. Proposed new section 129A of the Housing (Scotland) Act 2006 states that local authorities can "refuse to consider" an application. The wording in the bill gives local authorities a power that they may or may not use. Therefore, it certainly does not reduce flexibility.

I am sure that other members have argued that there should be strategies for homeless people, student accommodation and migrant workers. Universities should not be let off the hook, and nor should local authorities. However, to have an unregulated HMO system as the only solution would continue to grow the problem throughout Scotland, rather than reduce it. Jim Tolson fails to take into account the concentrations of HMOs in some areas. I can tell him directly that, in my communities and probably in Patricia Ferguson's constituency, families are leaving. People who were born and bred in areas such as Hillhead and Partick are pleading for us to do something because their communities are unsustainable. The tenement properties that I have particular experience of were not built to allow 35 people to live in one close, as is the situation next to my office. The amenity is not sustainable with that number of people.

Through my amendments, I want to give local authorities clear grounds on which to consider whether an HMO licence should be granted and to expand the grounds on which local authorities can refuse a licence. It is important to emphasise that the issue is not about planning regulation. My amendments would allow local authorities to use certain provisions to refuse applications; their use would be a matter for local authority licensing committees.

Amendment 2 relates to the variation of a licence. Under the bill, a local authority will be able to refuse to consider an application, so it would

make sense and be consistent with the bill to allow an authority to refuse to consider the variation of a licence if it so wishes.

On amendment 3, when I think back to the panels that were put together after the introduction of the 2006 act, in relation to which I, Iain Smith, Mike Pringle and others debated the thinking on HMOs, I remember that there was discussion about the 10-year lawful-use rule. I would not go to the wall on the issue, but it is important to recognise that, under planning law, a landlord who does not have a legal HMO but who can provide evidence that the property has been used as an HMO for 10 years must be granted consent. People should not be rewarded for breaking the law. Even in cases in which a property could legally be an HMO, that should still be a matter for planning law and landlords should not be given consent simply because the property has been used in that way for 10 years.

The evidence that landlords provide in claiming that their property has been used as an HMO for 10 years can be patchy. I cite as an example a property in Glasgow that I owned in 2001 and for which the current landlord applied for a licence under the 10-year lawful- use rule. I had to write to the local authority saying that I could show it the title deeds and details of the sale. It is important to acknowledge that, as greater reliance on HMOs is possible for the reasons that Jim Tolson outlined, that rule will be used more often.

My main amendments are 4, 30 and 6. The committee has heard evidence that, in some cases, the subdivision of rooms leads to overcrowding and noise nuisance. My constituency has many conservation areas where we might be concerned about what is happening to properties, but I am more concerned about landlords cramming in tenants by basically putting a wall in the middle of a room and splitting a window in half or not having a window.

It could be argued that, in such circumstances, local authorities can use the guidance, but I think that such adaptation should be clear-cut grounds for refusal. Authorities will be able to choose whether to use that power. I worry that if such a provision is not in the bill, local authorities will lose appeals. We should not forget that plenty of appeals are made against local authorities that have refused to grant HMO licences.

The same is true of stacked services in tenements where the water amenities are aligned. Landlords who want to put in more tenants will move the kitchen or the bathroom, which causes problems for tenants who sleep below those kitchens or bathrooms, which could be prone to leaks. It seems to me that it would be quite legitimate for a local authority, in circumstances in which it thought that a landlord was maximising the rental stream by cramming a kitchen, a toilet or too many bedrooms into an amenity that could not sustain it, to say, “We are not happy to grant the licence until you change that.”

The same should apply in relation to communal space and amenity. The focus is very much on tenemental properties. To achieve what we are trying to achieve on recycling in Glasgow, it is necessary to have space in the back court. Back courts are not big enough to sustain all the bin bags and recycling for 35 people who all live in one tenement. A local authority should be allowed to look at that issue when it considers licence applications. I re-emphasise that we are talking about licensing law rather than planning law.

Finally—I am getting there—the minister knows from the many letters that I have sent him on the issue and the many discussions that we have had about it how frustrated I am about the length of time that it took for the provisions of the 2006 act, which I think are good, to come into force. I have consulted widely with my local authority, Glasgow City Council, and COSLA, and have reassured them that my intention is to give local authorities the power to act at their discretion.

I feel strongly that whatever legislation we end up with following stage 3 should come into force immediately. We should certainly not have to wait as long as we waited for implementation of the 2006 act, although I know that the minister will say that there were reasons for that, from which I hope that lessons have been learned about the construction of legislation. I make a plea: wherever the committee goes with it, the bill is needed. Local authorities will have the discretion to act. I argue that more local authorities will need to be able to regulate such matters.

Patricia Ferguson: I speak against Jim Tolson’s amendment 29 because in lodging it he forgets the rationale for HMO licensing, which was very simple. We recognised the situation that the tragic deaths of two youth students in my constituency highlighted—the circumstances in which too many of our young people, particularly students, and too many vulnerable people in our communities, such as migrant workers, were living. HMO licensing was developed to protect those people.

In future, given the uncertainties that exist because of the changes that are being made to the benefits system, the likelihood is, as the minister said, that the number of people who seek to live in such accommodation will increase. To my mind, that makes it even more important that we have proper and robust legislation in place that protects those people, and that is exactly what the bill aims to do. I have some concerns about whether it does that in the way that I would like it to, but that is what it aims to do.

I support Pauline McNeill's amendment 4, in particular, because the subdivision of properties, particularly properties in tenemental buildings, is, as she rightly identified, a huge and growing concern in areas of Glasgow that we are very familiar with and which we work with cheek by jowl. I am extremely frustrated by the lack of opportunity that exists to help people who, as a result of the legislation that is there to protect vulnerable people, find that their communities are being adversely affected by the concentration of HMOs and by the adaptation of HMO properties within communal properties. Pauline McNeill has given examples of windows and sewerage, drainage and other pipework being affected.

In some properties fire doors are quite rightly provided. Unfortunately, because of the number of people who come and go in those properties, the noise created at certain times of the day by fire doors closing becomes an adverse factor for others who live in the close. They might find that their traditional-style flat is now surrounded by flats in which the bedrooms, kitchens, bathrooms and front doors no longer marry up. I am keen that we try to ensure that the legislation makes it safe for people to live in HMOs, and that it also makes it possible for the community to be as balanced and as mixed as possible.

We have to have a serious conversation with the UK Government about the situation that is going to be created by the benefits changes. Perhaps closer to hand, we also have to have a serious conversation with the universities and colleges about the way in which they have to take responsibility for some of the situations that exist. I speak as someone whose constituency, as well as containing a number of HMOs, contains the largest student village in Europe. I am proud of that, because the young people who inhabit that village are an asset to the community. However, their needs and the needs of the indigenous community have to be balanced and both have to be safeguarded.

Mary Mulligan: I will not repeat what Patricia Ferguson has said about Jim Tolson's amendment 29 other than to say that I do not think that it is the right way to go. I support the idea that we need to have a more comprehensive study of the housing needs of young people and students in particular. Whatever happens after the coming election, it would be prudent to consider that.

On Pauline McNeill's amendments, I am attracted to amendment 4, which deals with stacked services. That issue was raised with us in stage 1 evidence. It causes inconvenience—perhaps worse than that—for people who live in those areas. The amendment has a point and I am interested to hear the minister's response to it.

Likewise, I am interested in the continual operation issue, which is dealt with in amendment 3. It is wrong that we should reward people for bad behaviour. Regardless of how long someone thinks an HMO might have been operating, if it has not been registered and they know that it should have been, something is wrong. I am interested to hear what the minister thinks should be our response to that issue.

There is a general point to be made. At the beginning of our consideration of the bill, we knew that it would deal with the HMO issue. I remind the committee that the HMO provisions were removed from the Housing (Scotland) Bill and put into the Private Rented Housing (Scotland) Bill, but we still have not arrived at a satisfactory situation for all those who are involved in HMOs. We have not addressed the concentration levels within certain areas in our towns and cities or the concerns that have been expressed about that issue by people who have lived in those areas for many years. We are now faced with a potential increase in demand, and there is an issue about how to build such an increase into our system.

Apart from the complaints about levels of HMO concentration, the main problem seems to be with management. I am not sure that the bill puts the right measures in place. The minister might have other ideas, but it seems to me that we are making small changes to the existing legislation. If, as Pauline McNeill suggested, local authorities are not pursuing bad management or other bad situations, that is because they feel that they are not going to be able to win the cases. Is the bill going to change that situation? Can we tell people that they will be able to address the problems that have been flagged up to us? Despite the amount of time that we have had to deal with the issue, I do not feel confident that we will have the right legislation in place. I understand why the amendments that we are dealing with were lodged. We are trying to deal with the problem, but in a piecemeal way. We might need to remove the provisions on HMO, decide that the system needs a complete overhaul and take it back to the drawing board. At the moment, I am not sure that we are resolving the problems of anyone who is involved in the sector.

11:15

Alex Neil: We must have a balanced approach in ensuring that there is effective regulation and enforcement of regulation, and that must be done sensibly and at the right time in order not to reduce unintentionally the supply of good-quality HMOs. Having listened to the debate, I feel that members perhaps do not fully appreciate the powers that are already available to local

authorities, for example to deal with the management of HMOs.

Let me deal with the amendments in more detail, starting with Jim Tolson's amendment 29. Section 13 of the bill amends the HMO licensing regime in part 5 of the Housing (Scotland) Act 2006, which will commence on 31 August this year, to give a local authority power to refuse to consider an HMO licence application if it considers that any requisite planning permission has not been obtained. Amendment 29 seeks to remove that power completely from the bill. The request for the power originated from Glasgow City Council, which requested help to deal with problems in areas such as Hillhead, where many HMOs operate in breach of planning controls. The inclusion of that power in the bill was endorsed by the Scottish private rented sector strategy group. It is expected that the power will help to improve enforcement where there are excessive numbers of HMOs in an area and will allow local authorities discretion to take account of local circumstances.

Pauline McNeill's amendment 1 goes significantly further than the bill's provisions by seeking to make it mandatory for local authorities to confirm the position in relation to planning permission before considering an application for an HMO licence. Thereafter, amendment 1 would require them to refuse to consider the application if the HMO was in breach of planning control. I understand why Pauline McNeill lodged amendment 1 and I am sympathetic to the particular concerns of her constituents in Hillhead, which is why we included the discretionary power in the bill in the first place. However, I believe that amendment 1 would have unintended negative consequences; accordingly, I cannot support it.

As I said, I was pleased to hear members acknowledge the need to find a balance between managing the impacts that a concentration of HMOs can have on communities and ensuring that young people have access to safe and secure accommodation. I fully support that view; unfortunately, I believe that Pauline McNeill's proposal would stymie efforts to strike that balance by restricting supply and removing local authority discretion. It would also have the unintended consequence of forcing HMO landlords underground. As I outlined, the provision in the bill as introduced originated from Glasgow City Council, which requested a discretionary power to consider planning matters in the context of HMO licence applications in order to deal with exactly the sort of problems that Pauline McNeill seeks to address.

Amendment 1 would remove that discretion and impose a substantial new administrative burden on all local authorities at a time when prioritisation of the use of public finances and staff resource is a key strategic issue. Local authorities would have to check the planning position in relation to every single application. That is not straightforward and would require the council to ascertain whether planning permission was required for the HMO in question and thereafter to establish whether such permission had been granted. I appreciate that councils require the flexibility to prioritise their activities on the basis of local needs. For example, they may consider local planning considerations to be outweighed by the need for HMO accommodation in a particular area to tackle homelessness. The provision in the bill as introduced would enable authorities to take the planning position into account where they considered that to be appropriate. However, amendment 1 would require authorities to do so even if they did not consider it necessary or helpful in view of local conditions. That would cause unnecessary delays in opening HMOs in areas where they were most needed, which would restrict supply and could contribute to homelessness.

The bulk of most HMOs raise no planning concerns for local authorities. Many authorities will not need to use proposed new section 129A of the 2006 act, so it is appropriate that its use remains discretionary, to avoid an unnecessary administrative burden and so that authorities can consider their particular local issues and needs case by case. Glasgow City Council and other stakeholders that I have consulted support that approach. As I said, the PRS strategy group, which helped to develop the bill, concurred with that view. The bill sounding board that I established also endorsed it.

Amendment 2 would require local authorities to refuse to consider varying a licence unless they were satisfied that any requisite planning permission, or a certificate of lawfulness of use, had been granted. That would create administrative delays and would deter landlords from notifying authorities of changes to their circumstances that would require a variation of their licences.

Amendment 3 would ensure that the bill stated expressly that a local authority can exercise the power to refuse to consider an HMO licence application on planning grounds after the time limit for enforcement action by a planning authority has expired. The amendment is unnecessary, as it is already clear from section 13 that the relevant consideration for the authority is whether planning control would be breached and not whether the planning authority is entitled to take enforcement action on a breach under planning legislation.

Furthermore, amendment 3 would risk causing confusion. I do not think that Pauline McNeill's intention is to revive the planning authority's ability

to take enforcement action after the period that is set out in planning legislation. However, the amendment has the risk of being misinterpreted in that way, which could have significant adverse consequences for landlords who might have operated lawfully for some time.

Amendment 4 would introduce subdivision and alteration of water or drainage pipes as issues that a local authority must take into account when considering an HMO licence application. I highlight the fact that local authorities are already required to consider the suitability of accommodation when deciding whether to grant or renew an HMO licence. As part of that assessment, it is open to them to consider issues such as subdivision and alteration of rooms. To that extent, the amendment is unnecessary.

In granting or renewing HMO licences, local authorities apply space standards to ensure that rooms are of a sufficient size. Our guidance encourages authorities to work with building standards colleagues to ensure compliance on that point. Issues have arisen when the relocation of bathrooms and kitchens in flats has caused nuisance, but that applies not just to HMOs but to adaptations in owner-occupied housing. It is for building standards officers to deal with such matters.

Pauline McNeill's amendment 30 would introduce an additional factor for local authorities to consider when determining an HMO licence application. They would be required to refuse an application if they considered that the use of the living accommodation as an HMO would have an adverse effect on communal open space that was associated with the accommodation, such as gardens or refuse storage areas. The amendment is unnecessary. Under section 131 in part 5 of the 2006 act, when considering an HMO licence application, local authorities must ensure that the premises are

"suitable for occupation as an HMO"

and must consider

"the possibility of undue public nuisance."

The draft statutory guidance that is being consulted on supplements that by suggesting, under the heading of physical standards, that whether adequate refuse storage facilities are available and are used appropriately should be considered.

Amendment 6 would commence section 13 of the bill at royal assent. That would have no practical effect and could cause confusion, as part 5 of the 2006 act, to which section 13 relates, will not come into force until 31 August 2011.

I ask Jim Tolson to withdraw amendment 29 and Pauline McNeill not to move her amendments.

Jim Tolson: I am interested in some of the comments that we have heard, particularly from Pauline McNeill and the minister.

Unfortunately, although Pauline McNeill and I agree on many issues in the Parliament, I am afraid that there is not just clear blue water but somewhat of an ocean between us on some of these issues. I will not support her amendments today as I think that they go too far, especially as I am already quite concerned, on behalf of the groups that I mentioned earlier, about this part of the bill.

Alex Neil is right to say that we should have some balance, and perhaps that is where we will end up after today—who knows? There are conflicting concerns from different groups and individuals in areas of high HMO concentration, and perhaps trying to achieve a balance is the best way forward, but we will see how that pans out as the debate on the amendments proceeds.

I am not too familiar with the Glasgow Hillhead issue, for which I apologise to Pauline McNeill and others, nor with the specific concerns that Patricia Ferguson raised about the effects on the lives of some of her constituents.

In my view, however, people feel strongly that discretion must remain a part of how we take these issues forward. It is going too far to bind the hands of our local authorities and councillors, and I press amendment 29.

The Convener: The question is, that amendment 29 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Tolson, Jim (Dunfermline West) (LD)

Against

Doris, Bob (Glasgow) (SNP)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Johnstone, Alex (North East Scotland) (Con)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Morgan, Alasdair (South of Scotland) (SNP)
Mulligan, Mary (Linlithgow) (Lab)
Wilson, John (Central Scotland) (SNP)

The Convener: The result of the division is: For 1, Against 7, Abstentions 0.

Amendment 29 disagreed to.

Amendments 1 to 3 not moved.

Amendment 4 moved—[Pauline McNeill].

The Convener: The question is, that amendment 4 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Ferguson, Patricia (Glasgow Maryhill) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Mulligan, Mary (Linlithgow) (Lab)

Against

Doris, Bob (Glasgow) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Morgan, Alasdair (South of Scotland) (SNP)
Tolson, Jim (Dunfermline West) (LD)
Wilson, John (Central Scotland) (SNP)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 4 disagreed to.

Amendment 30 moved—[Pauline McNeill].

The Convener: The question is, that amendment 30 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Ferguson, Patricia (Glasgow Maryhill) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Mulligan, Mary (Linlithgow) (Lab)

Against

Doris, Bob (Glasgow) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Morgan, Alasdair (South of Scotland) (SNP)
Tolson, Jim (Dunfermline West) (LD)
Wilson, John (Central Scotland) (SNP)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 30 disagreed to.

The Convener: Amendment 5, in the name of Pauline McNeill, is in a group on its own.

Pauline McNeill: Amendment 5 relates to the 10-year rule in the Town and Country Planning (Scotland) Act 1997. As I have said, some landlords are now relying on the fact that they have been landlords for 10 years. If the minister, as he indicated in his previous comments, is clear that a local authority may decide not to grant an application if it is in breach of planning controls, I would be happier if it was clear that the landlord could not then rely on the fact that they had been around for 10 years and therefore the section would not apply.

For clarity's sake, I am going to move amendment 5. There needs to be clarity. If a local authority chooses to refuse an application from a landlord because of a breach on planning grounds—because the landlord did not apply for planning consent, which is a matter for the local authority to decide—the landlord should not be allowed to come along and say, "Well, I've been a landlord for 10 years, so you have to give me the planning consent." That would be fundamentally wrong, and would go against the provisions in the bill.

I move amendment 5.

11:30

Mary Mulligan: As I said in an earlier contribution, I have concerns about rewarding people for not doing what they are supposed to do. I heard what the minister said about local authorities already having the appropriate power, but how do we ensure that they are aware of their power and use it when appropriate? Sometimes, the only way in which to make something happen is to put it in legislation. However, if the minister can reassure me that that is not necessary, I will be open to persuasion.

Alex Neil: As Pauline McNeill said, amendment 5 proposes to include in the bill a statement that, if a landlord unlawfully operates an unregistered HMO and subsequently obtains a licence, they cannot use the fact that they have obtained a licence as a defence in any prosecution for the earlier offence. I categorically reassure Pauline that that is already the position in law, so there is no need to express it directly in the bill. Indeed, there is a danger that amendment 5 could introduce confusion and uncertainty about the operation of other, similar provisions.

To Mary Mulligan I say that, once this bill becomes an act, we will of course issue guidelines and reminders to local authorities about their powers, and we will remind them about this power. The review of the implementation and enforcement of landlord registration can address that issue as well.

In light of the fact that the measures already exist in law, I invite Pauline McNeill to withdraw amendment 5.

The Convener: I invite Pauline McNeill to indicate whether she wishes to press or withdraw amendment 5.

Pauline McNeill: The minister has provided some clarity for me. If, in any future cases in which doubts arise, we can rely on what the minister has said on the record, I am happy to accept his words today.

Amendment 5, by agreement, withdrawn.

Section 13 agreed to.

Sections 14 to 16 agreed to.

Section 17—Overcrowding in private rented housing: statutory notice

The Convener: Amendment 12, in the name of the minister, is grouped with amendment 16.

Alex Neil: Amendments 12 and 16 relate to matters to be considered by a local authority in deciding whether to serve an overcrowding statutory notice. I was pleased that, in its stage 1 report, the committee agreed with us that something needs to be done now about the serious problems caused by overcrowding in some parts of Scotland, such as Govanhill. The method by which we are proposing to do something was originally proposed by Glasgow City Council. However, I am aware of the concerns that some stakeholders and MSPs have expressed about the practical operation of overcrowding statutory notices and, in particular, about the potential effects on homelessness and housing stock.

To respond to those concerns, the Scottish Government has lodged amendments to clarify further how the notices will work and to offer reassurance that local authorities will use notices only when it is appropriate to do so. We have explained previously the importance of statutory guidance for local authorities in the use of notices. However, we have decided that it would be better to place some provisions in the bill.

Amendment 16 sets out matters that the local authority must consider when deciding whether to serve an overcrowding statutory notice. The first of those is whether it is reasonable and proportionate to serve a notice in view of the extent to which the overcrowding is having an adverse effect, the nature of that effect, the likely effects of service and whether another approach could be taken instead. That will ensure that notices are served only in the most serious cases, where no better alternative exists, and only when service would not make matters worse.

Secondly, before serving a notice, there will be a specific requirement for the local authority to take into account the circumstances of the people living in the house; their views and the views of the landlord, if the local authority is aware of them; and the likely effects of a notice on the people living in the house, particularly with regard to homelessness. That means that the local authority will have to focus on the individuals living in the house to see whether serving a notice is the best approach for them. Amendment 16 will thus ensure that the local authority considers a wide range of factors before using an overcrowding statutory notice.

Amendment 12 indicates that the power to issue a notice is subject to the requirement to take the matters that I have described into account. I ask the committee to support amendments 12 and 16.

I move amendment 12.

Amendment 12 agreed to.

The Convener: Amendment 13, in the name of the minister, is grouped with amendments 14, 24, 18 and 21.

Alex Neil: These amendments relate to overcrowding statutory notices. Amendment 14 places a requirement on ministers to consult stakeholders before using the power to make an order under section 17(7) in relation to overcrowding statutory notices. That will ensure that relevant interests, such as local authorities and tenant and landlord representatives, will have an input into the prescribed form of the overcrowding statutory notice, the additional information to be included in it and the people to whom a copy of it must be given.

Like other amendments that we have lodged, these amendments show the importance that the Scottish Government attaches to the full involvement of relevant stakeholders in the process of developing the system of overcrowding statutory notices.

At stage 1, some stakeholders observed that the maximum fine for a landlord's non-compliance with an overcrowding statutory notice seemed too low in comparison with other housing offences. On reconsideration, we agree, given that the harm that could be caused by non-compliance could be very serious. We are all aware of the appalling consequences of overcrowding in some parts of Scotland. Amendment 18 therefore increases the maximum fine level from level 3, which is £1,000, to level 5, which is £5,000.

Amendments 13 and 21 are minor drafting amendments. Amendment 13 clarifies one of the criteria in relation to houses for which an overcrowding statutory notice may be served. Amendment 21 amends the definitions of "house" and "landlord" as used in part 3.

I am sympathetic to the aims behind Mary Mulligan's amendment 24. In its stage 1 report, the committee recommended that the Scottish Government should monitor the number of overcrowding statutory notices that are issued and review their effectiveness in dealing with overcrowding and their impact on homelessness. In my reply, I said that we would do that. I therefore consider it sensible to reassure those who have concerns about OSNs by placing a statutory requirement on ministers to publish a triennial report on the number and effects of overcrowding statutory notices. However, there are some minor drafting amendments that could be made to the amendment. In order to ensure that the provision works as intended, Scottish Government officials would be prepared to work with Mary Mulligan with a view to lodging a revised amendment at stage 3. On the basis of that offer, I invite Mary Mulligan not to move amendment 24.

I ask the committee to support amendments 13, 14, 18 and 21.

I move amendment 13.

Mary Mulligan: The committee had much discussion about the problem of overcrowding and what we felt needed to be done through legislation to resolve it. We knew that homelessness legislation would provide for anyone who was rendered homeless because of overcrowding. However, we all agreed that the bill was necessary to strengthen the powers of local authorities to serve notice where overcrowding was a problem.

Following discussion at stage 1, we also recognised that there was a risk of unintended consequences. For example, we discussed the risk that people might be seen as queue jumping for council housing. Furthermore, once an overcrowding notice was served, there would be nowhere for individuals to go, so we would not solve the problem in the way that we would wish to.

The minister and I have each lodged amendments that seek to address those problems. However, to be honest, there is still a risk, and that is the reasoning behind my suggestion that we should review the measures after three years to gauge the impact that they have had. I accept that that might seem like a belt-and-braces proposal, but the committee's concerns were genuine and we needed to do something.

I have listened to what the minister has said, and we are in agreement on the matter. If the drafting of my amendment 24 needs to be improved, I am more than happy to discuss with the minister how to do that. We are both aiming to achieve the same thing. On this occasion, therefore, I will not move my amendment.

Alex Neil: I thank Mary Mulligan for taking up the offer, and I reiterate that we will work with her to produce an acceptable stage 3 amendment. The drafting changes to her amendment 24 will be fairly minor, but it is better to try to get it right for stage 3.

Amendment 13 agreed to.

The Convener: Amendment 23, in the name of Mary Mulligan, is grouped with amendments 25 and 26.

Mary Mulligan: As I have already said, the committee took a lot of time to discuss overcrowding statutory notices and their consequences. The intention behind my amendments 23, 25 and 26 is to ensure that one of the effects of serving those notices is dealt with.

An overcrowding notice having been served, we would expect someone—often more than one person—to leave the property. For me, the issue is where that person then goes. We all accept that those people will frequently be vulnerable in some way, and that they will be in need of support to find alternative accommodation. The intention behind my amendments in this group is to ensure that the local authority that serves the notice provides a housing plan.

The housing plan, which will be drafted in discussion with the landlord and the tenants, will provide information on alternative housing options, such as other private landlords' names and addresses, and guidance on how to apply to the local authority or to a housing association in the area. I wish to be clear that the existence of a housing plan will not mean that the local authority has to provide alternative housing. However, providing support by way of a housing plan would be sensible. Given our concerns about outcomes, I feel that it is necessary to place the housing plan in legislation. That is why I have lodged these amendments.

I move amendment 23.

Jim Tolson: I understand the reasoning behind Mary Mulligan's amendments, which are well intentioned. However, I am concerned about the proposals, despite the member's assurance that the intention is not to make people feel that they will get housing from the local authority and despite the fact that the circumstances that we are discussing will be rare. I am also concerned that the provisions duplicate many of the services that local authorities and a wide range of voluntary sector bodies already provide. Therefore, I am not convinced of the need for the amendments.

Alex Neil: Amendment 23, in conjunction with amendments 25 and 26, relate, as Mary Mulligan has said, to the situation where the local authority has served an overcrowding statutory notice that requires the landlord to take active steps to reduce the occupancy level of the house. Local authorities will be able to serve notices that require landlords not to replace tenants as they leave. However, it is possible that some situations will require more urgent action, and landlords might have to take steps to require occupants to leave.

The idea of providing support to occupants who are affected by an overcrowding statutory notice is highly desirable. When we reach the Government's amendment 17, I will explain how we intend that that should be done in relation to all overcrowding statutory notices. However, the wording of Mary Mulligan's amendments means that they would go further than merely requiring a local authority to support someone in finding alternative accommodation. Although the amendments describe "an alternative housing plan", it is clear from the wording of amendment 26, which uses the phrase

"for the purpose of re-housing",

that the amendments would actually place a duty on local authorities to arrange rehousing for anyone who was required to leave by a landlord complying with a statutory notice.

11:45

Rehousing would not have to be in the social sector; it could be in the private rented sector. However, if the local authority could not arrange private rented accommodation, it would have to use its power to provide accommodation itself. We consider that it would be an unnecessarily bureaucratic burden to require every local authority to arrange an individual alternative housing plan involving rehousing for every person who was required to move because of an overcrowding statutory notice. That could cut across existing homelessness obligations and might make it more difficult for local authorities to meet their duties to priority-need groups and impact on their ability to meet the 2012 homelessness target.

COSLA has made that point and has also expressed concerns about the effects on allocations policies and possible allegations of queue jumping. COSLA also shares our serious concerns about the costs that local authorities could incur if they were required to rehouse every person.

Some occupants will be capable of making their own arrangements unaided. In other cases, all that occupants will need is advice and information about, for example, reputable letting agents or landlords. The Government's amendment 17 gives local authorities duties and a power to provide advice and information that, as subordinate legislation and guidance will make clear, will include those topics. Legislation on environmental health and fire safety can already lead to occupants being required to leave houses, and local authorities and other agencies take a measured approach to dealing with people who are thus displaced. That is exactly the sort of approach that will result from the Government's amendment 16, which will require local authorities to take into account a range of factors, including possible homelessness and other available means to deal with overcrowding, before serving an OSN. Those provisions will be backed up by statutory guidance.

I consider Mary Mulligan's amendments to be unnecessarily sweeping. They might dissuade local authorities from using OSNs, and we do not want to place barriers in the way of local authorities using OSNs to deal with the appalling conditions that we know still exist in parts of Scotland. I therefore invite Mary Mulligan to withdraw amendment 23 and not to move amendments 25 and 26.

Mary Mulligan: I do not think that my measures would be overburdensome in the way that the minister suggests. In the discussions that we have had about overcrowding statutory notices, we have agreed that their use will be a last resort. I am not sure that so many will be issued that the measures will be burdensome.

I also believe that almost all people who find themselves in that situation will be vulnerable. Although they might be able to take on board any advice that is given, they will need some support, so there will be a burden. I can see both sides of that position.

I regret if the wording of my amendments is not such that they explain exactly what I am trying to achieve. In using the term "alternative housing plan" I have tried to distinguish the measures from the housing allocation system. It was never my intention that they should be the same. I have sought to ensure that we provide the necessary support to individuals who find themselves in an overcrowding situation and are required to move. I have listened to the minister and I take his points on board. I hope that we can have some more discussion of the issue. He might be able to convince me that his amendments 16 and 17 address what I am trying to do. However, at this stage, I will seek to withdraw amendment 23.

Amendment 23, by agreement, withdrawn.

Amendment 14 moved—[Alex Neil]—and agreed to.

The Convener: Amendment 15, in the name of the minister, is grouped with amendment 20.

Alex Neil: These amendments relate to guidance for part 3. Despite the changes that we have made, guidance will still play an important role in a local authority's use of the new overcrowding powers and the local authority must have regard to it. Amendment 20 is designed to allow such guidance to be as comprehensive as possible by clarifying that it can deal with all aspects of a local authority's discharge of its functions under part 3 and related matters. In its stage 1 report, the committee recommended that the Scottish Government should consult widely on the guidance and amendment 20 seeks to put such consultation on a statutory footing by requiring ministers to consult local authorities, representatives of landlords and occupiers and other appropriate stakeholders before the guidance is issued. Amendment 15 seeks to remove the previous, more limited provision on guidance, and I ask committee members to support both amendments.

I move amendment 15.

Amendment 15 agreed to.

Amendment 24 not moved.

Section 17, as amended, agreed to.

After section 17

Amendment 16 moved—[Alex Neil]—and agreed to.

Section 18—Tenant information and advice

Amendment 25 not moved.

The Convener: Amendment 17, in the name of the minister, is in a group on its own.

Alex Neil: The bill contains a power for a local authority to provide appropriate information and advice to the occupier of a house on which an overcrowding statutory notice has been served. In light of concerns that the provision was not strong enough to ensure that occupiers would receive the necessary help, amendment 17 seeks to replace that original power with new duties. A local authority that serves a notice will be required to serve on the occupier of the house in question a notice containing information and advice as prescribed in an order to be made by ministers. Before that order is made, ministers will be required to consult stakeholders. In addition, the local authority will have to provide relevant information or advice that is reasonably requested by anyone living in the house and may provide the occupier with other appropriate information and advice. Such duties placed on a local authority exercising the discretionary power to serve an overcrowding statutory notice will maximise the opportunities for the occupier and other people living in the affected house to receive helpful advice and information.

I move amendment 17.

Mary Mulligan: I reassure the minister that I appreciate the reference to "duties" in his remarks and that I will support amendment 17.

Jim Tolson: Proposed subsection (4) in amendment 17 refers to "other information" that would be given to the occupier. Given that in the debate on a number of Mary Mulligan's amendments it was felt that we might be going too far and requiring too much information to be provided, I am slightly concerned about double standards and I would be grateful if the minister could give us some examples of "other information" that it might be appropriate to give under the terms of amendment 17.

Alex Neil: Obviously, we will consult on all this, but other information might include where to get housing support and what housing is available in the private and social rented sectors. Moreover, under our new housing options approach, we would be encouraging local authorities to have a wider discussion with displaced people on other options that might be available to them, including, for example, assistance through the low-income first-time buyers scheme. As I say, that wide-ranging discussion would be based on the housing options principle and would consider all the realistic options that might be available to the displaced person.

Amendment 17 agreed to.

Section 18, as amended, agreed to.

Sections 19 to 24 agreed to.

Section 25—Offences

Amendment 18 moved—[Alex Neil]—and agreed to.

Section 25, as amended, agreed to.

After section 25

The Convener: Amendment 19, in the name of the minister, is in a group on its own.

Alex Neil: At stage 1, some stakeholders raised the valid question of how a local authority would establish that a house was statutorily overcrowded, which is a criterion for the service of an OSN. It is expected that information about a house causing problems would come in the main from neighbours, agencies such as the police and other local authority departments. However, in order to establish that overcrowding exists, a local authority may need to obtain additional information about the house and the people living in it. To allow a local authority to carry out its part 3 functions, amendment 19 gives it the power to require specified persons connected with the house to provide information about the house and persons connected with it. Failure to comply with the requirement, or the provision of false or misleading information, will be offences that will be subject to a maximum fine of level 2—£500. The use of this power, particularly in relation to vulnerable occupants of houses, will be covered in the statutory guidance.

I move amendment 19.

Mary Mulligan: I am glad that the minister referred to protection for vulnerable tenants. We had a similar discussion about tenants giving information against landlords where landlords were not registered. We were concerned that that might put vulnerable tenants in a difficult situation to the extent that they would be thrown out on to the street. I want reassurance from the minister that there will be guidance to try to support people in such a situation in that, if they are legitimately seen as vulnerable, they would not face a possible fine.

Jim Tolson: I seek clarification on new subsections (2)(a) and (3)(b) that are proposed in amendment 19; they seem to be wide ranging. I am not sure that in circumstances where multiple individuals own particular properties they would all be known to one another, depending on how that was organised. Can you clarify why you seek what seems to be a wide-ranging remit in those subsections?

Alex Neil: First, I assure Mary Mulligan that we will follow the example that we followed previously in ensuring that vulnerable people are not subject to prosecution in the circumstances to which she referred. Clearly, that would not be our intention at all. The provisions proposed in amendment 19 and the guidance that will be provided will make that absolutely clear.

Does Jim Tolson's question refer first to proposed subsection (2)(a)?

Jim Tolson: Yes. There is a similar feel to proposed subsections (2)(a) and (3)(b). There could be a situation in which, for example, shareholders in various properties that would come under the legislation would not be known to one another, so how could they provide information on one another?

Alex Neil: That is a fairly technical point. There is similar wording for HMO and landlord registration, so the registration of individual people or companies should be synonymous with HMO registration.

Jim Tolson: I accept the minister's reassurance on that.

Alex Neil: We will give you further explanation by letter. I am happy to do so.

Jim Tolson: Thank you.

Amendment 19 agreed to.

Section 26 agreed to.

After section 26

Amendment 20 moved—[Alex Neil]—and agreed to.

Section 27—Interpretation of Part 3

Amendment 26 not moved.

Amendment 21 moved—[Alex Neil]—and agreed to.

Section 27, as amended, agreed to.

Section 28 agreed to.

Section 29—Tenant information packs

12:00

The Convener: Amendment 31, in the name of Bob Doris, is grouped with amendment 27.

Bob Doris (Glasgow) (SNP): I thank the Electrical Safety Council, with which I have had a dialogue on the matter. The ESC has drawn to my attention its belief that tenants in the private rented sector are more at risk in a variety of ways, including in relation to the electrical safety of properties.

For instance, the installation of residual current devices—RCDs—has an important role to play in fire safety and safeguarding life. Such devices detect small variations in current should an electrical appliance malfunction in some way or should a tenant within a property be subject to electric shock and black out. They potentially save people from fire and save life and limb, but around 50 per cent of private rented sector stock has no such devices fitted. That is a UK figure, and perhaps there is a need for a Scottish figure. The safety council also estimates that 80 fires in the UK annually could be avoided by the installation of RCDs. That would be 20 per cent of all electrical fires.

Making electrical safety reports a core part of any tenant information pack could be a key driver for change. My amendment 31 would require the pack to have such a report. It would also, among other things, require the pack to say whether an RCD had been installed when commenting on the electrical safety of the house in general. Such a requirement would assist in focusing the minds of private landlords to roll out the installation of RCDs and to promote a more systematic approach to electrical safety in general in their properties.

There appears to be public support for such measures. It is estimated that 87 per cent of the Scottish population would seek to have electrical checks in rented properties, whereas the UK average support for that is 78 per cent, so it is clear that the Scottish electorate would be keen for such things to happen.

I concede that the safety council would like to go further and introduce, among other things, periodic inspection reports, but I am wary of the burden that such measures could place on the private rented sector. Other possible drivers for the improvement of the sector's electrical safety might include providing small grants and tax incentives—particularly VAT cuts—for retrofitting RCDs in certain private rented sector stock.

I acknowledge that we do not normally put such measures in a bill but, given the concerns that have been brought to my attention, I thought that it was only right to seek to put in the bill provisions to ensure that such information is provided in the tenant information pack. I seek the minister's

views on whether that would be desirable and, regardless of whether the matter is included in the bill, an assurance that the tenant information pack will focus more seriously on electrical safety.

I move amendment 31.

Mary Mulligan: The committee has recognised that gas and electricity checks are crucial to tenants' being fully reassured about safety. Such checks have been available for some years and have been included in good practice for a period. However, technology now allows for efficient and effective carbon monoxide detectors to be used and, therefore, I see no reason why we should not include them.

I acknowledge that the committee did not take any evidence on the issue at stage 1. Indeed, I would not have lodged amendment 27 had I not been prompted to do so by a constituent who is a landlord and has experience of the effect of having had a carbon monoxide detector in her property. She is to be commended for her concern about safety and I hope that other committee members will feel able to support amendment 27.

Alex Neil: The amendments seek to ensure that documents confirming the installation of a carbon monoxide detector and a residual current device, along with the assessment of the safety of the energy utilities, form part of the tenant information pack outlined in section 29.

Section 29 inserts a new section 30A into the Housing (Scotland) Act 1988, placing a duty on private landlords to provide tenants with standard tenancy documents. New section 30B provides a power for ministers to specify the documents to be provided. The amendments set out to insert provisions in the bill that require the relevant documents be included in the contents of the tenant information pack, which ministers can specify by order.

As the bill is drafted, the documents to be provided to tenants may include, among other things, documents containing information about the house and the rights and responsibilities of tenants and landlords. Before making an order specifying the standard documents, ministers are required to consult representatives of tenants, private landlords, agents and any other appropriate bodies. That allows scope to include a broad set of documents following further consultation and consideration of the implications for landlords, tenants and local authorities.

I agree that electrical safety and the detection of carbon monoxide are extremely important and I undertake to ensure that those issues are considered as part of that consultation process, with a view to ensuring that they are addressed when developing the information pack.

I believe that we can achieve what members are looking for without amending the bill, and I therefore ask Bob Doris to withdraw amendment 31 and Mary Mulligan not to move amendment 27.

Bob Doris: Amendment 31 was a probing amendment to raise awareness generally about the need for electrical safety in all tenure types, including the private rented sector. I have listened carefully to the minister's assurances and on that basis I am happy to withdraw the amendment.

The Convener: The member seeks leave to withdraw the amendment. Are we agreed?

Members: No.

The Convener: The question is, that amendment 31 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Ferguson, Patricia (Glasgow Maryhill) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Mulligan, Mary (Linlithgow) (Lab)

Against

Doris, Bob (Glasgow) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Morgan, Alasdair (South of Scotland) (SNP)
Tolson, Jim (Dunfermline West) (LD)
Wilson, John (Central Scotland) (SNP)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 31 disagreed to.

Amendment 27 moved—[Mary Mulligan].

The Convener: The question is, that amendment 27 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Ferguson, Patricia (Glasgow Maryhill) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Mulligan, Mary (Linlithgow) (Lab)

Against

Doris, Bob (Glasgow) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Morgan, Alasdair (South of Scotland) (SNP)
Tolson, Jim (Dunfermline West) (LD)
Wilson, John (Central Scotland) (SNP)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 27 disagreed to.

Sections 29 and 30 agreed to.

Section 31—Landlord application to private rented housing panel

The Convener: Amendment 22, in the name of the minister, is in a group on its own.

Alex Neil: Section 31 amends the Housing (Scotland) Act 2006 by inserting provisions that will allow a landlord to apply to the private rented housing panel. That is to help landlords exercise their existing right of entry to a rented house to establish whether it meets the repairing standard or to carry out work to comply with the repairing standard duty or repairing standard enforcement order.

New section 28B of the 2006 act, as inserted by the bill, will give ministers power to

"make further provision about the making or deciding"

of such applications by means of regulations. As the bill stands, such regulations will be subject to negative procedure. However, the Subordinate Legislation Committee commented that the power could be used to go beyond purely administrative detail and that negative procedure might not be appropriate. The Scottish Government agrees, and amendment 22 therefore amends the 2006 act so that regulations made under new section 28B(1) will be subject to affirmative procedure, except where they relate only to new section 28B(2)(b), which deals with the prescribing of an application fee to be paid by a landlord.

Subordinate legislation that sets fees is commonly subject to negative procedure, since fees may be altered quite frequently.

I move amendment 22.

Amendment 22 agreed to.

Section 31, as amended, agreed to.

After section 31

The Convener: Amendment 32, in the name of David McLetchie, is grouped with amendment 33.

David McLetchie (Edinburgh Pentlands) (Con): Having been a member of the committee when it considered the bill in Parliament at stage 1, it is a pleasure to be back in order to move amendments 32 and 33.

I think that we would all agree that Scotland needs to build more homes for rent, and that is certainly true of what we label the affordable housing sector: homes for social or mid-market rent that are built by councils or housing associations. However, it is also true of homes for rent on the open market—the private rented sector—which accounts for some 9 per cent of the total housing stock in Scotland.

As the minister has said on several occasions, the private rented sector is a bit of a cottage industry with a multiplicity of landlords who own one or two properties. Many of those landlords are brought into the market by the investment returns that they perceive they can gain with the aid of buy-to-let mortgages. Overall, that has been a positive development, contributing to the increase in the housing stock in Scotland that is available to suit the needs and circumstances of our people.

However, what we do not have in this country is significant institutional investment in the private rented sector, other than in specialised areas such as the provision of student accommodation. As I think we are all aware, institutional investment is commonplace in European countries, so we need to consider the barriers to such investment in Scotland where they exist.

One such barrier is the Land Tenure Reform (Scotland) Act 1974, which abolished feuduties and contained provisions in sections 8 and 11 in effect to prevent the equivalent of feuduties being reintroduced through the use of long leaseholds and standard securities.

Those sections in the 1974 act prohibited the granting of a lease of residential property of more than 20 years and the right to redeem a standard security over property that was longer than 20 years in duration.

Those were good intentions, but as we are all aware, good intentions can have unintended negative consequences. In this case, certain funding models for the construction of new homes for rent cannot safely be used because of those legal restrictions and prohibitions.

The issue was brought to light in the context of housing associations and housing bodies when the committee considered the Housing (Scotland) Bill last year and the amendments that were lodged at stage 2 by the minister and Alasdair Morgan and at stage 3 by the minister, and which the committee and the Parliament approved.

Amendments 32 and 33 take matters a stage further. I am grateful to the minister and his officials for the detailed consideration that they have given to the amendments, and I am also grateful to Mr Leonard Freedman of Harper Macleod and other professional colleagues for the expert advice that they have provided.

In essence, the amendments enable a minister by order to prescribe further bodies, which will essentially be private sector bodies and institutions, that can enter into new funding arrangements for building housing for rent. It does so through a further relaxation of the 20-year rule, which was relaxed for other organisations in the Housing (Scotland) Act 2010 last year.

I believe that amendment 32 contains sufficient checks and balances to protect the interests of tenants and prevent the resurrection of the feudal system of land tenure by the back door, which was

of course the real purpose of the 1974 act. It was never intended to inhibit construction of housing for rent, but it is a technical barrier to doing so. That is why the amendment is necessary and desirable, and I commend it to the Parliament.

I move amendment 32.

Mary Mulligan: I knew that David McLetchie would miss us and have to come back and join the committee, but I did not think that it would be quite so quick.

I appreciate his explanation of amendments 32 and 33, because—I have to be honest—when I first looked at them, I was a little puzzled as to why they were being lodged at this stage. As someone who has just lodged amendment 27 I perhaps should not say this, but I was not aware that we had had much discussion of the issue at stage 1.

Mr McLetchie's explanation was helpful, but part of me wonders whether his amendments might have unintended consequences. I would appreciate clarification of whether he has had discussions with the minister or his expert advisers with a view to ensuring that his proposals would have no unintended consequences.

12:15

Alex Neil: I, too, welcome back Mr McLetchie to the committee's proceedings and thank him for lodging his amendments.

As he said, the Government has already enabled housing associations, local authorities and rural housing bodies to invest in and provide affordable housing without the restrictions that the 20-year rule imposes. Amendments 32 and 33 would enable other landlords to obtain the same opportunities. As Mr McLetchie pointed out, the provisions would not apply to individuals. We are talking about a limited measure that would avoid the risk of introducing the leasehold arrangements for residential property that apply elsewhere in the UK.

Although we have still to see how social landlords and rural housing bodies will take advantage of the exemptions that the Housing (Scotland) Act 2010 affords them, we should not delay further reform of this area while we await evidence. In the current financial climate, given the rising demand for rented accommodation, it is important to ensure that there are as few barriers as possible to increasing the supply of affordable housing, particularly when many people who, a few years ago, would have been first-time buyers cannot afford the deposit for a mortgage to get on the owner-occupation housing ladder and so must have the option to rent.

Accordingly, I welcome amendments 32 and 33 and urge the committee to support them.

David McLetchie: I welcome the minister's remarks and those of Mary Mulligan. I hope that the minister's explanation of the background to our discussions allays any concerns that she may have had about unintended consequences. I stress that my amendments incorporate a number of checks and balances on the bodies that will be authorised to enter into such arrangements, and I hope that members will be satisfied that that process enables us to open up the market to a wider form of institutional investment while not prejudicing or imperilling the security and peaceful occupation of property that tenants are entitled to expect.

Amendment 32 agreed to.

Amendment 33 moved—[David McLetchie]—and agreed to.

Sections 32 to 34 agreed to.

Section 35—Short title and commencement

Amendment 6 moved—[Pauline McNeill].

The Convener: The question is, that amendment 6 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

Against

Doris, Bob (Glasgow) (SNP)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Johnstone, Alex (North East Scotland) (Con)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Morgan, Alasdair (South of Scotland) (SNP)
Mulligan, Mary (Linlithgow) (Lab)
Tolson, Jim (Dunfermline West) (LD)
Wilson, John (Central Scotland) (SNP)

The Convener: The result of the division is: For 0, Against 8, Abstentions 0.

Amendment 6 disagreed to.

Section 35 agreed to.

Long title agreed to.

The Convener: Thank you. That ends stage 2 consideration of the bill. I thank the minister and his team.

12:18

Meeting suspended.

12:21

On resuming—

Subordinate Legislation

Tenancy Deposit Schemes (Scotland) Regulations 2011 (Draft)

The Convener: We now come to item 3, which is to take evidence on the draft Tenancy Deposit Schemes (Scotland) Regulations 2011. The minister has been joined by Stephen White, head of consumers in private housing, and Denise Holmes, a policy officer in consumers in private housing. Does the minister wish to make any opening remarks?

Alex Neil: Yes, please, convener. I will keep it as tight as I possibly can because I know that the committee has more to do after this.

I am delighted to be here today to discuss the draft regulations. Many of us have waited quite a long time to see this day.

There have long been concerns about the unfair withholding of tenancy deposits and the difficulty that tenants have in recovering their money. Although I recognise that many good and professional landlords—the vast majority—behave responsibly, the issue affects a significant number of the wide range of tenants across the private rented sector. The draft regulations make it clear that the practice of unfairly withholding tenancy deposits will not be tolerated in future.

Our main objective in making the regulations is to end the practice of unfairly withholding deposits, to ensure that deposits are safeguarded throughout the duration of a tenancy, and to ensure that a deposit is returned quickly and fairly, particularly when there is a dispute about its return to the tenant or the landlord. The regulations have been drafted to create as straightforward and cost-effective an approach to safeguarding deposits as possible. The regulations seek to minimise the costs and administrative requirements for landlords, at the same time as maximising the protection of deposits for tenants.

The draft regulations are based on a number of key principles: approval of a robust model that ensures that deposits are safeguarded by an independent third party; schemes being free to tenants and landlords; schemes being able to demonstrate that they will operate without reliance on subsidy from the taxpayer; quick repayment of deposits when there is no dispute; schemes offering access to a free and independent dispute resolution service to tenants and landlords when a dispute arises; and landlords being required to provide tenants with information about the tenancy, their deposit and how it will be protected.

The draft regulations will empower tenants to seek sanctions through the courts against landlords who fail to comply with them. Schemes will also provide information that is obtained about a landlord's registration status to relevant local authorities, thereby increasing the authority's ability to identify unregistered landlords and properties.

The draft regulations pave the way for a more professional approach to tenancy deposit management. Landlords and the private rented sector more generally will benefit from tenants' increased confidence in the sector as a safe, modern and desirable housing option.

I commend the regulations to the committee and am happy to answer any questions that members might have.

John Wilson: As I indicated to the minister during the stage 1 debate on the Private Rented Housing (Scotland) Bill, I have a number of questions about the scheme's administration, particularly about allowing private landlords to take deposits and hand them to the scheme administrator. Does the minister consider that to be appropriate? Would it not be more appropriate for the tenant to give the deposit directly to the administrator?

I also noted the minister's comment that the scheme would be run at no cost to the taxpayer. The business regulatory impact assessment clearly indicates that there will be a cost to the Scottish Government in setting up the scheme and that there will be on-going costs in advertising its operation. What will be the overall cost of the scheme? What will it cost the Scottish Government?

The minister also implied that the scheme would become self-financing. That view is based on certain assumptions about staff grades and payments, but I see no costings for rental of office accommodation, updating of equipment and anything else associated with running an independent scheme—unless, of course, independence in this context means that those involved in the scheme will be allocated some corner of St Andrew's house or Victoria Quay.

I hope that the minister can answer those questions.

The Convener: I call Mary Mulligan, to be followed by Bob Doris.

Alex Neil: Are you taking all the questions first, convener?

The Convener: Yes.

Alex Neil: That gives me more time to prepare my answers.

Mary Mulligan: I have three questions. First, why did the minister choose this scheme instead of an insurance-based scheme? Secondly, it has been suggested that Scotland's private rented sector is of such a size that if the scheme is to be self-financing—to which John Wilson alluded—only one can be introduced. What is the minister's view on that? Thirdly, if the scheme gets the go-ahead, what will be the timescale for its commencement?

Bob Doris: My first question is similar to the one that Mary Mulligan asked. I do not know whether this happened to her but I put on record first of all the fact that I was contacted by the Deposit Protection Service, which is very keen to be the one provider of the custodial scheme. If outside commercial interests are involved, I think that I should say so for the sake of transparency.

Like Mary Mulligan, the Deposit Protection Service has suggested that if the idea is for costs to be met from interest on tenancy deposits, the introduction of multiple schemes rather than a single scheme could undermine the cost neutrality of the scheme to the public purse. What is the minister's opinion on that?

As for registered landlords who already hold a number of deposits and use them to account for debts and as part of their businesses' overall cash flow, it has been suggested that they would have nine months from the date of commencement of the regulations within which to lodge those deposits with the central scheme. Is that period of time appropriate? I am content with that provision but if the Government chose to review it, would individual businesses be able to make a specific case for needing longer than nine months to liquidise their assets and produce those deposits?

12:30

Alex Neil: If that is all the questions, I will try to deal with each of them in as much detail as I can.

On John Wilson's question about whether it would be more appropriate for the tenant to lodge the money with the independent agency, a point of law is involved in that the contract or lease is between the tenant and the landlord and therefore the money exchange is between the tenant and the landlord. However, I think that underlying John Wilson's question is a concern to ensure that the tenant can be assured that the money has indeed been lodged with the agency. We will ensure that the provisions and the rules ensure that that happens and that the tenant is able to find out quickly from the independent agency whether their deposit has indeed been lodged with it. That will minimise any risk that it would not be.

Furthermore, a landlord will take the money on the understanding and, indeed, the legal requirement that they will then deposit it with the independent agency. If the landlord does not do that and retains the money, they will be culpable and can be taken to court for fraud because they have got the money under false pretences. The information pack that will be available to tenants will make it clear that there is a legal requirement on the landlord to lodge the deposit with the independent agency.

On the costs to the Scottish Government, we have looked at the scheme that operates south of the border—this is where some of the other questions about the scale of the sector in Scotland are relevant. Our estimate is that, although the private rented sector in Scotland has just under 9 per cent of all houses in Scotland, it is nevertheless not an insignificant business. We reckon that it has a turnover of £100 million or so a year. I will ask Stephen White to give you more detail, but I will give you the overall picture.

Even at today's rates of interest, the scheme's income over time—we must remember that it will be an accumulation—will be very substantial indeed and will, we believe, be enough for the scheme to be self-financing. However, we also have powers in the regulations whereby, if necessary, the Scottish Government can provide public subsidy to the scheme. We do not want to do that so, when we get the bids in, one of the key criteria for deciding which bids to approve will be whether they require any significant Government subsidy. In other words, although the private rented sector in Scotland is much smaller both in absolute and relative terms than that south of the border, it is still a significant business and we believe that the revenue stream from the interest on the deposits—the principal—will be enough to cover the costs. Once the scheme is set up, the administrative costs should be minimal because there is a standard procedure.

A nine-month transition period is built into the regulations. We will continually review how we go about things and consult the representatives of the landlords and tenants, and so on. However, we believe that there is a need for a transition period. We hope to have the scheme up and running pretty fully by the end of this calendar year; we will do it as soon as possible once the regulations are approved. However, we are happy to review the nine-month period if we think that it is either too long or too short. Some people might take a different point of view on whether it is the appropriate timescale.

John Wilson made the point that there will be some cost for the Scottish Government because we will advertise the scheme, mainly through the information packs that tenants will get. It will not

be a big advertising campaign on the telly; it will be direct information to the tenants primarily via the information pack that they will be obliged to get. That is the best way of reaching the tenants and ensuring that they know their rights.

Mary Mulligan asked why we do not have an insurance-backed scheme instead of a custodial scheme. The answer is that, based on the experience south of the border and the submissions that we received from north of the border, there is a risk element in the insurance scheme, particularly given how insurance industry premiums are going at the present time. It was felt that that could add a risk and cost element that was unnecessary and undesirable. There was uniformity among representatives of landlords and tenants in that regard although, obviously, the landlords would have preferred to have no scheme. However, they clearly said to us, "If you're going to have a scheme, please make it a custodial scheme, because it takes a lot of the risk out and it's a more sensible approach." The experience down south shows that to be the case.

I hope that that has given a broad overview. Stephen White will spell out the detail on costs.

Stephen White (Scottish Government Directorate for Housing, Regeneration and Commonwealth Games): I will deal with the points that have been raised. The nine-month transition period will begin for all existing tenancies that are linked to the landlord registration scheme after the first approved scheme becomes operational, so it will not be nine months after the commencement of the regulations. If the scheme commences at the end of this calendar year, it will be September 2012 before the last of the landlords has to comply with it. I suppose that that answers some of the questions about extricating from current business arrangements to respond to the new system.

The minister answered the question on the insurance schemes well. The other dimension to that is part 4 of the 2006 act, which has the framework for the regulations. We considered whether insurance schemes truly safeguarded deposits in the way that the legislation intended. We concluded that custodial schemes are a more appropriate match for the legislation.

On Mr Wilson's question about the cost to the taxpayer, we expect that all the costs of setting up offices and so on will be part of the business plan or business explanation that is presented in any approaches to the Scottish ministers for approval of a scheme. The Scottish Government will not be operating the scheme, so we expect to see that information in black and white for us to consider as part of the overall business case. Decisions on feasibility will be made by the organisation approaching the Scottish ministers for approved status.

On the question about whether schemes will be self-financing and whether having one scheme is supportable but having more than one is not, we need to wait to see the different parties who seek a conversation with us. We have already had interest from a number of bodies and will continue early discussions with them. There may be a strong element of truth in the view that having more than one scheme is not supportable, but we are at an early stage of discussion, so it is too early to reach a conclusion on that.

The minister covered the question of timescale. If I have missed anything, please draw it to my attention.

The Convener: Do members have any other questions?

John Wilson: The minister indicated that, if a landlord does not pay the deposit to the administrator of the scheme, they will be in breach of the agreement and will be taken to court. Who would take the landlord to court and who would pay the costs of doing so? My second question relates to the surpluses that are expected to be generated by the administration of the scheme. What will happen to such surpluses? If there continues to be the current 1.5 to 2 per cent return on money deposited, there will be surpluses. Where will they lie? For what benefit will they be used?

Alex Neil: It is clear that the tenant could take the landlord to court. The local authority could withdraw the landlord's registration because the landlord would not be abiding by the terms and conditions of the registration scheme. Indeed, depending on the proposals that are introduced as a result of the bids that are made, the independent party or parties might want to be able to take the landlord to court.

There would be no shortage of people who could take the landlord to court. However, I hope that that would happen only in extreme cases, and we want to put controls in place to avoid getting as far as that before any problem is resolved.

What happens to the surpluses also relates to what will be proposed in the bids. Any organisation is free to make a bid to run the scheme—we may end up with more than one scheme. Public sector organisations such as councils can make bids. Social sector—third sector—organisations can also make bids, and I know of one such organisation that is seriously thinking of doing so. Private companies can also make bids—I think that Mr Doris referred to the one that operates the scheme south of the border.

We will see what comes in when we issue the invitation to bid. Part of the consideration will be what will happen if there are significant surpluses. We do not want the scheme to generate such huge surpluses that somebody makes a killing. If huge surpluses were generated, we would want the money to be reinvested in the sector in some way, but it would be up to the bidders to give us their ideas on that.

Although I am sure that the sector is robust enough to allow the scheme to be self-sufficient, I do not anticipate that huge surpluses will be achievable in the foreseeable future, certainly not with interest rates being at the low level at which they are at present.

Patricia Ferguson: The point of the scheme is to ensure that people who rent do not unfairly lose their deposits, but it is difficult to imagine that people who handed over a deposit to a landlord and then found that the landlord had not dealt with it correctly would go to court. They may have lost any spare money that they had. That strikes me as being slightly anomalous.

Who will make the decision about how the deposit is dealt with when the tenancy comes to an end and how will the money be disbursed? The purpose of its being there is, I presume, for the landlord to have money to replace a rug that has had cigarette burns made on it, for example, the notional cost of which will be deducted from the deposit. Who will adjudicate on such issues?

Alex Neil: On the tenant's ability to take the landlord to court, tenants in the situation that you describe would qualify for legal aid. Anyone with an income of less than £25,000 has, under certain conditions, access to legal aid.

I do not know why you are shaking your head.

Patricia Ferguson: I am sorry, convener, but this is not how we usually do things. My understanding is that people would not get civil legal aid for something like that.

Alex Neil: The rules were changed last year. When the Home Owner and Debtor Protection (Scotland) Act 2010 was going through the Parliament, many changes were made to the legal aid rules. We can double-check and get back to you, but my understanding—I may stand corrected—is that tenants would qualify.

I anticipate that the first thing that the tenant would do on realising that their money had not been lodged would be to inform the independent organisation. In the tenant information pack, there should be a clear steer to the tenant to ensure, within a reasonable period after handing over their deposit, that it had been handed over to the independent organisation.

Stephen White: I have a point of clarification. Under the regulations, the receiving body should inform the tenant by way of a receipt that the deposit has been lodged with it. The tenant has a failsafe mechanism and will know whether or not the deposit has been lodged.

12:45

Alex Neil: I would also expect that there will be a way for people to check, if they so wish. For example, if they have not received notification within, say, a month they should immediately follow up the issue. There are various ways in which they will be alerted to what is going on.

As for the point about administration at the termination of a lease, in principle the process should not be all that different from what happens at the moment. Where there is no dispute, which will be in the vast majority of cases, the money will be paid over, less any jointly agreed deductions for fag burns or whatever. However, problems arise where there is a dispute, and a dispute resolution service must form a clear part of the bidding process. The landlord might say, "Look, you've damaged this or that, so I'm not giving 100 per cent of your deposit"—in some cases, the costs of repairing the damage might be such that they refuse to give back any of it—and the tenant might argue that it was not their fault, that the damage was there to begin with and so on. In such disputes, the dispute resolution service should become involved. Although an extra player—in this case, the independent organisation—will be involved, the process should in principle be no different from what happens just now.

The Convener: If there are no other questions, we move to consideration of motion S3M-7781.

Motion moved,

That the Local Government and Communities Committee recommends that the Tenancy Deposit Schemes (Scotland) Regulations 2011 be approved.—[*Alex Neil*.]

Motion agreed to.

The Convener: I thank the minister and his team for their attendance this morning.

Control of Dogs (Scotland) Act 2010 (Prescribed Form of Notice) Order 2011 (SSI 2011/39)

Home Energy Assistance Scheme (Scotland) Amendment Regulations 2011 (SSI 2011/56)

Local Authority Accounts (Scotland) Amendment Regulations 2011 (SSI 2011/64)

The Convener: Item 5 is consideration of three Scottish statutory instruments, all of which are subject to the negative procedure. Members will have received an electronic copy of the instruments. No concerns have been raised and no motions to annul have been lodged. Do members agree that the committee has no recommendations to make to Parliament on these instruments?

Members *indicated agreement.*

Meeting closed at 12:47.

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