The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

# INFRASTRUCTURE AND CAPITAL INVESTMENT COMMITTEE

Wednesday 5 February 2014

Session 4

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## INFRASTRUCTURE AND CAPITAL INVESTMENT COMMITTEE
**4th Meeting 2014, Session 4**

**CONVENER**

*Maureen Watt (Aberdeen South and North Kincardine) (SNP)

**DEPUTY CONVENER**

*Adam Ingram (Carrick, Cumnock and Doon Valley) (SNP)

**COMMITTEE MEMBERS**

*Jim Eadie (Edinburgh Southern) (SNP)
*Mary Fee (West Scotland) (Lab)
*Mark Griffin (Central Scotland) (Lab)
*Alex Johnstone (North East Scotland) (Con)
*Gordon MacDonald (Edinburgh Pentlands) (SNP)

*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Keith Brown (Minister for Transport and Veterans)
Patricia Ferguson (Glasgow Maryhill and Springburn) (Lab)
Kathleen Gell (Council of Letting Agents)
Jonathan Gordon (RICS Scotland)
Patrick Harvie (Glasgow) (Green)
Derek Mackay (Minister for Local Government and Planning)
Ian Potter (Association of Residential Letting Agents)
Fiona Simpson (Scottish Government)
Malcolm Warrack (Let Scotland)

**CLERK TO THE COMMITTEE**

Steve Farrell

**LOCATION**

Committee Room 3

# Scottish Parliament

## Infrastructure and Capital Investment Committee

*Wednesday 5 February 2014*

[The Convener *opened the meeting at 10:01*]

## Decision on Taking Business in Private

**The Convener (Maureen Watt):** Good morning, and welcome to the fourth meeting in 2014 of the Infrastructure and Capital Investment Committee. I remind everyone to turn off mobile devices, as they affect the broadcasting system. That said, some members might access their papers on their tablets.

Agenda item 1 is a decision on taking business in private. Do members agree to take in private agenda item 4, which is consideration of the evidence on the draft national planning framework 3 that we will hear?

**Members** *indicated agreement.*

## National Planning Framework 3

10:02

**The Convener:** Agenda item 2 is ministerial evidence on the draft national planning framework 3. I welcome Derek Mackay, who is the Minister for Local Government and Planning; Keith Brown, who is the Minister for Transport and Veterans; David Anderson, who is the head of planning and design at Transport Scotland; Fiona Simpson, who is assistant chief planner with the Scottish Government; and Helen Wood, who is principal planner with the Scottish Government. I also welcome Patricia Ferguson MSP, who is joining us for the evidence on NPF3. The Minister for Local Government and Planning will make an opening statement.

**The Minister for Local Government and Planning (Derek Mackay):** The proposed national planning framework 3 is the spatial expression of the Government's economic strategy. It is about our ambition to create high-quality places that support sustainable economic growth across the country and which realise our opportunities for development and investment. It brings together our plans and strategies to provide a coherent vision for how Scotland as a place should evolve over the next 20 to 30 years.

From the beginning of the process, I have made it clear that I want the national planning framework and Scottish planning policy to focus the planning system on economic recovery, on the transition to the low-carbon economy and on sustainable economic growth. The spatial strategy that is set out in NPF3 aims to achieve balanced and sustainable growth across Scotland. It plays to our strengths by, for example, highlighting the role of city regions and towns in continuing to attract investment, and by highlighting where planning can help to reduce disadvantage.

The vision for our future development describes Scotland as "A successful, sustainable place", "A low carbon place", "A natural, resilient place" and "A connected place". However, that is more than just a vision. The national planning framework will be taken forward by development plans and in decisions on planning applications, which make a real difference to our places and communities. To help to guide that, the proposed NPF3 explains what the strategy means for our cities, regions, towns, rural areas, coasts and islands.

I understand that the committee is interested in the 14 proposed national developments. We designed the process for identifying national developments having reflected on the views of Parliament in its response to NPF2. For the first time, we issued a call for national developments at

the outset of the process, and more than 240 proposals were formally submitted. Also for the first time, the analyses of those proposals were published for further consultation alongside the main issues report in April 2013. Every proposal has been considered carefully, first against our published criteria and then in relation to the wider spatial strategy.

As well as that, we considered what benefit there would be from national development status—benefit could take the form of streamlining consent or of attracting wider interest, partnership or investment. As a result, we have made choices and we have prioritised the projects that best reflect our spatial vision and which are considered to be in the national interest.

National development status does not automatically grant planning consent—robust planning and assessment are still required for projects and proposals to move forward from applications—and neither does national development status imply a Scottish Government spending commitment. Rather, it provides greater certainty for investors and delivery partners by establishing the need for those developments.

The draft action plan contains more detail on the lead partners for each individual project. I have no doubt that the committee will hear a wide range of views about the national developments that we have proposed. There will be representations from those who contend that other projects should also be given national development status. I emphasise that although we focus on 14 national developments, many of those bring together several individual proposals. Many other proposals are also recognised and supported within the wider strategy.

I am conscious that the committee has an interest in other issues, including transport, infrastructure and housing. Those are key issues for planning in Scotland—when considered both separately and together. On transport, I stress that the proposed NPF3 supports rather than replaces the infrastructure investment plan and the strategic transport projects review.

Our vision is for Scotland to be “A connected place”, which means not only improved transport infrastructure but better digital connections. On housing, our approach has been to promote positive and flexible planning for housing in NPF3 and to focus on achieving that through strategic and local development plans. The draft Scottish planning policy set out our view on how that could best be achieved.

I welcome the opportunity to discuss the proposed NPF3 with the committee and Mr Brown, and I look forward to answering your questions.

**The Convener:** Thank you, minister.

**Alex Johnstone (North East Scotland) (Con):** How does the proposed framework tie in with the policies and proposals that are set out in the infrastructure investment plan, the strategic transport projects review and the national transport strategy?

**Derek Mackay:** As with many other strategies, they have been pulled together to be embodied in a spatial expression that is the national planning framework. A number of the projects that have been outlined have been expressed as having priority in the framework when the planning system can add value—there is a two-way relationship. The investment plans then inform NPF3. That allows us to consider whether the added status that can be gained from national development designation priority within NPF3 makes a difference, because NPF3 is not a spending document, but a planning document. For some people, it is an interpretation of what matters as a material consideration in the planning system; for others, it is an investment document for Scotland. I think that it very helpfully outlines where planning can add value to the system and to individual projects, where necessary.

**Alex Johnstone:** All the transport projects in NPF3 are either committed projects or projects that are at an advanced stage of development. Why is that and why is there no indication of the possible next round of major transport projects from 2025 onwards?

**Derek Mackay:** That is a very fair question. I will refer you back to the decision-making process for the individual strategies. Mr Brown, in his ministerial capacity, will still be considering the infrastructure and transport projects for the future—those that might be emerging—and deciding on how they might be prioritised. NPF3 expresses specifically in terms of infrastructure investment and transport what is required by the nation and where the planning system can add value and give certainty. For that reason, the iterative staged process of considering current infrastructure investments would further inform any future NPF—indeed, planning policy itself would be taken into account.

For the first time, we have integrated NPF3 with SPP; we are reviewing them and coming to conclusions on them at the same time, which is where the “A connected place” vision features. However, all the other Government strategies will still take place in the normal fashion—for example, decisions on investment for transport projects and consultation will be undertaken through the strategic transport review investment considerations.

NPF3 is a spatial expression of existing Government plans. The new elements would come in from other areas—the private sector or

emerging development proposals—and might be more of a surprise. An example of that could be emphasis on energy and storage, which is entirely private-sector led. The Cruachan dam is an example of that. It is not for the Government to say that it must happen, but in terms of the planning regime we would present a supportive framework. The private sector and the Government bring forward proposals in different ways; the Government's proposals are embodied in individual strategies that have been subjected to scrutiny and now feature in NPF3 in an integrated way.

**Alex Johnstone:** My final question is more specific and relates to high-speed rail. Again, that has been designated—quite rightly, in my view—as a national development. Can you provide an update on how it fits in to development? I mean both the Edinburgh to Glasgow high-speed rail link and the greater issue of the United Kingdom-wide high-speed rail mechanism?

**Keith Brown (Minister for Transport and Veterans):** There are two points to be made on that. Alex Johnstone will know about the ongoing preparation of the business case for Edinburgh to Glasgow high-speed rail. That should come to ministers in the next few weeks and will give us more certainty about how we intend to take it forward. In considering the Edinburgh to Glasgow rail improvement project, for example, we have taken into account that the high-speed link may happen. However, we should not get involved in a lot of expenditure or plans in respect of high-speed rail that would supersede the Edinburgh to Glasgow improvement project.

That is what we are doing within Scotland. In UK terms, for the first time we have real engagement with high speed 2: Patrick McLoughlin has agreed to that. We are looking at things such as possible routes and the implications of extension of HS2 to Edinburgh and Glasgow. Generally, we are continuing with the proposal and we are working with the partnership group—which includes Glasgow City Council, the City of Edinburgh Council, Scottish Chambers of Commerce and others—to continue to put pressure on the UK Government to make an early commitment. We still do not have that commitment from the UK Government, but we are pleased to welcome the engagement on HS2. The two things are running alongside each other.

**Mark Griffin (Central Scotland) (Lab):** Can you go into more detail about how particular projects are designated as national developments, in particular when transport projects of a certain size and scale are included but others, such as A9 dualling, are not?

**Derek Mackay:** That is a helpful question and the example that Mark Griffin gave will help me to make the point. When investment decisions have been taken on individual projects, they will feature in transport plans. We pose the question whether a project meets the criteria that will allow it to be considered as a national development, and there is further scrutiny beyond that. We have here the whole matrix of individual projects; if members suffer from insomnia, we can share it.

Crucially, we ask whether NPF3 planning status adds value. The work to which Mark Griffin referred will be happening as planned, so that added-value status is not required. That is the case for a great number of transport project proposals, particularly concerning roads, where—although NPF3 planning status does not add value—the proposals are referenced in the documents because of their importance to the country. That is the difference between the two. Generally, transport projects are of such significance in achievement of our vision of Scotland being a well-connected place that they are referenced, but a project must meet the criteria to reach national development status. That is not to say that it will happen, but to explain that the planning system is generally supportive in terms of the hierarchy within the arrangement.

Developments are scored against a range of factors including reducing emissions to meet targets, job creation and improving the quality of the built and natural environments. We are very clear what the criteria are for every candidate project and how each would be analysed, weighted and presented to committees for consideration. Projects such as the A9 dualling are referenced in NPF3. They are significant but do not require national development status in order to proceed.

10:15

**Jim Eadie (Edinburgh Southern) (SNP):** Good morning. What is the proposed framework's role in encouraging and assisting development of policies that encourage the modal shift from car and public transport to active travel, including cycling? That is probably one for the Minister for Transport and Veterans.

**Keith Brown:** I am happy to answer that. Jim Eadie will have seen the references in the document to the NPF2 policy on active travel. We have had a substantial number of responses on how we should promote active travel. You will also be aware of the additional moneys that John Swinney has allocated to it. Many responses asked specifically about things such as additions to the national cycle network. We said to individual councils and others who asked about it that it is done through Sustrans, with money that we allocate to it for such projects. Jim Eadie will be aware of the project in Edinburgh that is funded

from that pot. Local authorities must come forward with their proposals and work with Sustrans. Our role is in relation to funding. The Edinburgh project is intended to be an exemplar project from which other authorities can learn lessons.

On the previous question on dualling the A9, that project is included in the infrastructure and investment plan, so the substantive decisions have been taken on it and we will proceed with it and complete it by 2025. We have also set up a small group with Sustrans to look at the active travel network coming down the A9. One of the issues is that maintenance has not been as it should have for that active travel network. However, future trunk-road operating contracts will include the obligation to look after the active travel corridor coming down the A9.

As I think Derek Mackay also said previously, local authorities will have to work with Sustrans to come forward with proposals for specific projects.

**Jim Eadie:** What you said about exemplar projects is interesting. I accept what you say about the Government setting the direction of travel and allocating the expenditure, then leaving it to local authorities to pursue projects. However, could not more be done to promote exemplar projects so that we implement the policies in the framework? For example, there is a commitment in the framework that local authorities will identify one walking and cycling friendly project where accessibility will be significantly improved. How can the Government do more to encourage local authorities to take that commitment forward?

**Keith Brown:** We say to local authorities, mainly through Sustrans, that they must look at the network in their area and identify gaps because they know it better than we do. In my area, for example, Clackmannanshire Council has a very well-developed element of the national cycle network, but it has gaps. It is best for local authorities to talk to Sustrans. Of course, we have a role when it comes to signing off projects and ensuring that they happen.

The Leith Walk development is an exemplar project that other large urban areas in Scotland can examine to find out what lessons they can learn from it. There is an iterative process whereby local authorities know what they want to do. I have to say that some local authorities have been much more proactive in that regard than others. However, we want to encourage all local authorities to get involved. They are best placed to say what needs are in their areas. Their work with Sustrans is a kind of bottom-up approach. Derek Mackay wants to add something.

**Derek Mackay:** Purely from the planning point of view, I think that it should be welcomed that, for the first time, in terms of modal shift, a long-distance cycling and walking network is being established as a priority for national development. That policy change should be welcomed. That is not to say that one must walk the entire route in one day. The emphasis on the network will identify the gaps in it.

Mr Brown made a point about his constituency. When I visited the national cycling route there as part of my consideration of whether to include it in NPF3, I saw that there was a blockage there because of a pretty heavily used roundabout. That emphasises the point that in all future planning decisions we should think about the impact on accessibility and transport, and do so more stringently than we have in the past. From the policy perspective, that will tighten up where we are in the modal shift, and it will support other projects including the electrification of rail networks and the transition to the low-carbon economy. There is a range of policy indicators and guides in NPF3 that will help planning authorities to make decisions.

Jim Eadie talked about exemplars. “Designing Streets” is accessibility friendly; we have promoted and analysed it and we know that more developers need to take it up and deliver it. We will share exemplars of good practice across the country.

**Jim Eadie:** The framework contains a commitment for each local authority to identify one walking and cycling-friendly settlement. The timescale that is attached to that is 2030. In evidence last week, John Lauder of Sustrans said:

> “I do not understand the 2030 date. It does not fit in with the cycling action plan”.—[*Official Report*, *Infrastructure and Capital Investment Committee*, 29 January 2014; c 2504.]

Does that date represent the Government’s ambition or could it be brought forward?

**Keith Brown:** As with many areas, the date will be dictated partly by the resources that are available. The committee has seen fairly strong evidence for an additional commitment from the Government. If we have additional resources, we can take that forward.

I emphasise that, as I think John Lauder is aware, such commitments involve a partnership. The Government is not simply saying that it will do something; we are not saying to councils, “We’re coming to your area to do this active travel project.” The partnership relies on people coming together and on the resources being available to do that. We have given a date of 2025 for completing the A9 project. We are examining closely whether we can do anything to bring that forward, and that approach applies in most policy areas.

Many of the aspirations exist in the context of a tough budget environment—we have had a cut of about 11 per cent to our revenue budget and about 26 per cent to our capital budget. It is better to ensure that we have the time available to achieve the aims, but we should be aware of the opportunities that might present themselves to do that earlier. We should not have to wait too long for all local authorities to produce their own proposals, which the framework refers to. The date will depend on resources and on partners' willingness to work together.

**The Convener:** I totally and utterly agree with having walking and cycling-friendly spaces, but how is it that in a development that is going up in my constituency, there are no pavements outside the houses? How do local authorities get away with allowing a developer not to build pavements, when we are talking about having living streets?

**Derek Mackay:** Every planning application is considered on its merits. Under the current and emerging SPPs, we expect the local environment, accessibility and safety to be taken into account. I am not aware of the development that you refer to. I cannot use the excuse that the application is live and so I cannot refer to the development, if you say that it is being built.

We expect the basic minimum requirements to be met. The best practice is exemplified in a development at Polnoon in East Renfrewshire, where the developer went over and above what it had to do to design a quality place, where space is designated, real accessibility is provided and the environment is attractive. The developer has got the balance right and produced an exemplar that we should share across the country. We have promoted the "Designing Streets" policy to achieve such developments.

I cannot refer to individual applications that a planning authority might have considered, but we want safe and accessible places for development. I would be surprised if current or emerging planning policy had not been considered.

**Mark Griffin:** How do you reconcile the Scottish Government's climate change targets with the designation of the expansion of five airports as a national development?

**Derek Mackay:** The inclusion of the airports is important to Scotland's economy. They are a gateway to Scotland and they are important to business, travellers and the population at large. It is welcome that we have upgraded the airports' status in NPF3 from that in NPF2. Some people would have you believe that we have downgraded their status, but they have been upgraded to national development status. That is right, because the airport enhancements will contribute to sustainable economic growth.

There is a counterbalance in emissions, although development is taking place in relation to aviation emissions, which I suppose will continue. Greater accessibility and direct flights to Scottish airports, rather than access through connections elsewhere, might also have an impact. A range of factors must be borne in mind in relation to the airports.

However, they are a dynamo for the economy, and we think that any increase in aviation emissions would be offset by a range of other policies around energy, other forms of transport and modal shift and other contributions to climate change targets. As with everything else, it is about achieving a balance, but we think that we have struck the right balance between economic growth and greater protection of the environment.

**Keith Brown:** The other point is that the expansion plans of individual airports very often—in fact, I think in all cases—include an aspiration for a greater number of direct flights and direct routes. Of course, if those aspirations are met, we do not need to have the intermediate short-haul flight, which is environmentally damaging to a greater extent than long-haul flights are. It could help if we get more direct routes into each of the airports.

It is also true to say that the expansion that is referred to—for example, at Aberdeen airport—often includes things that are about customer service, better security arrangements and better customer comfort, so the expansion is of the quality of service that is offered, as well as of the air business through direct flights, which are less environmentally damaging.

**Derek Mackay:** Bear it in mind that one reason for using national development status is because development around the periphery of the airports can be a dynamo for growth, so it is not necessarily just about an increase in the number of flights or an aspiration to have an extra runway that might never materialise; the consequential development from airport growth, which can bring jobs and economic growth, would be welcomed.

**Mark Griffin:** I take on board the point about technological advances and the reduction in carbon from direct flights, but another way of reducing the carbon footprint would be to have more efficient access to our airports. Why has the surface access strategy been removed from NPF3 when it has been in previous versions of the document? Witnesses commented on that at last week's meeting.

**Keith Brown:** Glasgow airport, for example, is carrying out its own study on the surface access strategy—in fact, it is coming to a conclusion. We have enhanced the designation for Glasgow airport in NPF3, but we recognise that this is not

always about what the Government does. We are a partner in the study that the airport is taking forward, and nothing in NPF3 precludes us from taking forward anything that comes from that study. However, NPF3 is much more about enabling the creation of an environment in which such things can be taken forward. There is no downgrading of the issues that we are looking at in relation to surface access.

**The Convener:** As no members have further questions on transport and digital infrastructure, we will move on to housing.

**Mark Griffin:** The committee has heard concerns—this follows on from the convener's previous question—that housing developments do not meet Scottish Government best practice guidance on street design and the provision of digital infrastructure. On the digital infrastructure point in particular, when developments go up, people who move into them sometimes automatically expect a modern house to have a modern internet connection, but that does not seem to be the case in a lot of developments. How does the proposed framework and associated Scottish planning policy tackle that issue?

**Derek Mackay:** We have to be mindful of what NPF3 and planning policy are about. Really, they are about decisions on land use; they are not necessarily about the quality of the product, although I agree that it is a fair assumption and expectation that the developer will provide the infrastructure for a development to be connected.

Our role as a Government is to be supportive of the roll-out of digital technology. That is why I have made major investment in that and why the policies around the planning regime have been updated and strengthened. We are also attaching significance to digital infrastructure as a national project in NPF3.

It does not feel particularly proportionate to go beyond NPF3 and, as you suggest, into setting individual planning policies around the quality of digital connection, for example, even though I agree with you that individual developers should certainly provide that.

We set conditions on energy standards in building control. What you suggest might be more appropriate in there, rather than in planning policy, given the way in which planning policy operates. Planning involves a decision around land use and not necessarily the internals of a property. I absolute agree with the sentiment, but I think that developers should consider best practice in that regard; there is a reason why it is called best practice, but for many it should be seen as a minimum.

The policy is to be supportive across the country and to have roll-out and coverage in every part of the country. There is investment and there is policy support in the planning system, but we cannot compel a developer to connect to broadband, as much as we think that that is attractive. It would not be competent.

10:30

**The Convener:** You could do that if broadband was designated as a utility. Is that a possibility?

**Derek Mackay:** I like your creative thinking, convener, but we are trying to keep the purity of the planning process, which is about decisions on land use and what is appropriate development and what is not. We want a sympathetic process.

I have met digital operators who share the ambition to take broadband to every part of the country, and they are surprised by some of the partners that they work with. There is liaison with Homes for Scotland on how we can encourage developers to deliver this; it is actually in their interests as well as in the interests of individual purchasers and tenants. However, it is not something that the planning system can compel. We can make it available. We can provide a supportive planning environment through Government actions. We are rolling out broadband and taking coverage to as much of the country as we can as quickly as we can, but, within the planning system, we cannot compel individual developers to connect to broadband. My officials will reassure me that that is indeed the case.

**Keith Brown:** I want to emphasise a point that Mr Mackay made about how we try to work within the system. CalMac Ferries travels to many remote parts of the country. It is now actively looking at whether by providing wi-fi on its ferries and at some of the ports and harbours it can also provide a more general community benefit to some of the more remote areas. The Government is trying to look at these things across the piece, and where there are opportunities to provide greater coverage, we are taking them forward.

**The Convener:** It is good to hear that there is some kind of joined-up thinking in parts of the country.

**Gordon MacDonald (Edinburgh Pentlands) (SNP):** I will continue on the housing theme. With reference to green belt, in evidence last week Professor Bramley stated:

> "If we consider the development economics and the residual land values, for every house that is built in that area, there will be hundreds of thousands of pounds of free development gain to the landowner. We should be capturing that to pay for the infrastructure."—[*Official Report, Infrastructure and Capital Investment Committee*, 29 January 2014; c 2511.]

Is there a need for a mechanism to enable infrastructure works to be funded by the developer

or landowner? Is the Government considering that?

**Derek Mackay:** Right now, for any development to proceed, any mitigation that is required has to be delivered. Sometimes it is a matter of negotiation as to what is delivered and how and when. The planning system already demands that where there is a question about infrastructure contribution, any required mitigation is delivered through the planning obligations or sometimes the conditions. Where development requires infrastructure improvement to make it happen, that is delivered at the moment. You might question some of the decisions that planning authorities take, but that is already a requirement in the planning system.

**Gordon MacDonald:** Is 100 per cent of the additional cost met or is it a far lower proportion?

**Derek Mackay:** It depends on the nature of the application and the nature of the development. For example, if there was a housing development and some extra resource for a school was required, you would think about what proportion it was fair to expect that development to contribute to that school. The same would apply to a road connection. Of course you cannot build half a junction, but if a junction was required to support the growth of a housing development, you would require the applicant to contribute to that and, generally, it would be the full cost. It is still a matter for the planning authority, but generally the approach would be to require the full cost of the development.

As a planning minister, I often have to guard against planning authorities asking for a wee added extra—a bit of icing on the cake. That is in the public spirit and could be a public benefit, so I understand the reason for it and, as a former local authority councillor, I know that people sometimes try to get a bit extra for the public good. However, although that is well intentioned, it does not fit with the spirit of planning legislation. It should really be a question of what mitigation is required to allow the development to happen. Generally, full cost is required, but sometimes there is flexibility, although that is for the planning authority to determine and it might allow flexibility for a range of reasons.

I hope that that answers Mr MacDonald's question.

**Gordon MacDonald:** The committee also heard that the location of housing developments is, in some cases, being driven more by the wishes of developers than by those of planning authorities. What guidance does the proposed framework and SPP provide on the location of large-scale housing developments?

**Derek Mackay:** We believe in the plan-led system, but a plan-led system requires credible plans. My challenge to planning authorities is to ensure that all their development plans are credible, up to date and robust, have been consulted on and can inspire confidence. We have put a great deal of effort into that.

We hold that the plan-led system—where the planning authority has suggested development should go—should be the foundation of the planning system. That said, developments do not have to happen within a particular zone if material considerations allow you to depart from the plan, and that is made all the more vulnerable if a planning authority does not have a robust, credible and up-to-date local development plan, which, unfortunately, is still the case for far too many planning authorities. The law says that a development plan should be less than five years old. It may surprise you to learn that almost half of them are more than five years old.

We believe in a plan-led system, but local authorities have to deliver. We hope that many of the actions that we have discussed in Parliament over the past weeks and months will precipitate an improvement in the situation.

To answer your question, yes, planning authorities should be determining through their plans and through engagement with their communities where development should go, but there will be circumstances in which that does not apply and in which development can still be justified, but only if an application can show in a transparent way that there is a material consideration that would allow such a decision.

**Gordon MacDonald:** Do you see any conflict between Scottish planning policy and planning advice? Planning policy says that redevelopment of urban and rural brownfield sites is preferred to development on greenfield sites, and some of the planning advice notes refer to marketability, where planning authorities discuss with housing providers what can be developed.

**Derek Mackay:** I think that they are compatible, because the hierarchy starts with NPF3 and SPP, and the planning advice notes are to advise those making decisions on what should be taken into account.

When producing plans on the generous supply of housing land and sustainable places, it would be unfair to developers and to communities to have whole tracts of land that were not developable, either because there was no demand or because they were contaminated or too complex. It would be pointless having a land supply system if you could not actually market the houses. The planning advice notes actually support policy, which generally supports the

principle that you have cited—not just for housing but in many other areas—that we should look to develop brownfield sites or previously developed land first, before we turn to other areas, such as the green belt. We would rather develop those locations first, but local circumstances might present a range of reasons why other decisions have to be taken.

**Gordon MacDonald:** Last week, Professor Bramley stated:

"I would be suspicious of just asking developers to tell us about marketability. We should have our own independent assessment of the economics and viability of developments and that should be what influences our decisions. In most parts of Scotland, but not all areas, a housing development is viable and we should not just let developers cherry pick."—[*Official Report, Infrastructure and Capital Investment Committee*, 29 January 2014; c 2509.]

What is your view on that? Would the Scottish Government consider independent assessment?

**Derek Mackay:** You cannot make generalised comments about the planning system, because it is far too complex and is particularly sensitive to local circumstances. I suppose that, on the whole, developers will be looking to find the best sites, and if we are talking about private sector developments, of course they will want sites that can be marketed and which people will want to buy. It could be argued that that is a response to market demand and to individuals' needs and decisions on where they want to live.

We know that there are developments in city and town centres on previously developed land and proposals for further regeneration, so I do not think that you can generalise or take a black-and-white approach.

Developers do not get to cherry pick, because we ask for an independent analysis. That is called the planning system. Planners take an impartial view in weighing up all the factors in any planning application, and they make a determination based on the facts and the material considerations. If they do not trust the information that they are presented with, they can probe it further and further analysis can be undertaken. In any large-scale development, where appropriate, we would also require an environmental impact assessment. The planning system should be proportionate, fair and transparent.

In some areas of planning more than others, the system is fraught with difficulty. He who pays the piper calls the tune, it is said. If you pay a consultant to write up a report, you attach the weight that you want to attach to the findings as they are presented. That applies to any planning application. However, I trust the planning profession, as many others do, to make the right decisions and to weigh up those considerations. If the application goes to committee, it will be for democratically elected local members to make the decisions.

**Gordon MacDonald:** You have said that greenfield or green-belt developments are preferred. Are any incentives in place to encourage developers to build on brownfield sites first?

**Derek Mackay:** Through the sequential approach—the hierarchy that we have—there is policy encouragement to look at brownfield first.

In designating sites through the development plan process, we would be far more enthusiastic about finding sites that had been previously developed than about finding greenfield sites. That would be part of our policy approach, and therefore it is appropriate to NPF3 and SPP. We do not propose any financial incentive but, when it comes to public sector investment and housing, there would be a particular methodology to encourage development on previously developed sites. The financial incentive would not come in with the private sector, although it does exist in the public sector.

I highlight that because, during the town centre debate a few weeks ago, we made the point that the town centre action plan discusses extending the sequential approach, as it relates to retail businesses locating in town centres first, to all other parts of the planning system. We have proposed—and we are saying—that, in addition to planning, other parts of the public sector should consider their investment decisions. For instance, housing associations considering housing grant should consider town centre sites and previously developed land before turning to other sites.

That is a very strong point in policy, and it is not diluted in any way by what we propose. The incentive is to apply the planning policy in order to get permission. If a developer is choosing to go to a greenfield site, it will have to have a very strong case if it is to be considered and then approved.

**Jim Eadie:** You said that we have a plan-led system that can inspire public confidence. You spoke about developers looking for the best sites and responding to market demand. Understandably, they will be looking to maximise their financial gain. Without wanting to generalise—you said that you did not want to go down this route—do you think that there is a role for the planning system and planning guidance in setting a level for what would represent a fair return on a company's investment, so that it can make a profit without profiteering at the public's expense?

**Derek Mackay:** There is no role for a mechanism as you have described. I would propose no such role. Taxation can be dealt with in other ways.

**Alex Johnstone:** Hear, hear.

**Derek Mackay:** I am a bit concerned that I have had a "Hear, hear" from the Conservatives on that point, but from no one else.

What you have described, Mr Eadie, would be a substantial change to the planning system, which should remain focused on decisions on the appropriateness of land use. I should not contaminate that with other considerations, however well meaning. Planning must be about land use.

I add, however, that it is exactly because a housing development will have an element of profit that we have constructed policies that consider not just profit, which is secondary, but need. We ensure that there is an adequate supply of affordable housing and that, even in private sector developments, there is still a quota or share of affordable housing as part of the mix. We achieve public good through a different mechanism to the one that you suggest.

**Jim Eadie:** I will put the question in a slightly different way. Would you be equally concerned at a presumption within planning guidance or heritage guidelines that identified a particular level of profit as being appropriate?

**Derek Mackay:** That would be inappropriate for the planning system. To do that would almost lead us to engage in the development company's ethics and in other considerations that are not particularly appropriate to planning.

It is not for the planning system to make any judgment on what profits someone is making. It is for the planning system to get the right developments in the right places, to meet local and national needs and to do that in a fair and transparent way—that has nothing to do with ensuring that someone gets a slice of the cake. Nice try, Mr Eadie.

**Jim Eadie:** I got a useful reply on the record.

10:45

**The Convener:** Mary Fee will continue the theme.

**Mary Fee (West Scotland) (Lab):** I will follow up on the need to have the right developments in the right places. We have heard evidence that retail housing and business developments continue to be built around access by car, with limited or no access to walking, cycling and public transport networks. What can be done specifically through the NPF and the SPP to ensure that all new developments are accessible by active travel and public transport?

**Derek Mackay:** We have put greater emphasis on that matter in NPF3 and emerging planning policy.

You mentioned retail. We already have a sequential approach in that sector. For example, developments should be considered first in town centres. Why is that the case? Because town centres are generally more accessible than developments that are out of town, on the periphery or in more remote locations.

As I say, decisions will be made from time to time where the economic impact or other considerations allow us to depart from that approach but, generally speaking, we propose that developments take place in population hubs where people can more easily access them through public transport. The approach is a strong feature of planning policy as we propose and include the transition to the low-carbon economy and everything else that goes behind that. That applies not only to retail but to housing and any future developments.

That takes me back to the importance of a plan-led system, which sets out clearly where development should be channelled. The policy suggests that those developments should be as you describe and not in random locations across the country because that might suit a developer. How we have composed the policy is very strategic.

You mentioned decisions taken contrary to that approach. It will still be for each planning authority to make the right decision in its area. We absolutely support—if you will pardon the pun—the direction of travel for future developments to be more accessible, to contribute to the low-carbon economy and to be prioritised in town centres where that is appropriate. That is why we are extending the sequential approach.

**Mary Fee:** Making that modal shift to get people out of cars and move towards walking and cycling is a very aspirational and long-term policy. Is there an opportunity to give more guidance to local authorities on developments in that regard?

**Derek Mackay:** Having conducted—this is the first time that a planning minister has done this—a roadshow to every planning authority in the country, I am aware that there is a need for greater guidance, so that planners know more clearly what is required of them. For that reason I will commit, once we have concluded NPF3 and SPP, to issuing further guidance. We will have to refresh and update the policies, and perhaps we will give a bit more clarity, as you request, around what issues they should take into account.

Let us say that a wonderful development is proposed but it is perhaps not in the plan-led system. As a planner, I would want to understand

what issues to take into account. A question is about net growth, because sometimes it may simply be the case that a development is just an amalgamation of economic activity that is happening elsewhere and will be displaced. Consequently, I have been very keen on attaching greater significance and weighting to economic impact in the planning system and having a clearer understanding on what is new net growth as opposed to displacement from one place to another.

**Mary Fee:** Why are no major housing developments identified as national developments? NPF3 gives emphasis to certain areas where there is critical need of housing, but there are no developments identified.

**Derek Mackay:** There are if you include Ravenscraig, which is predominately a housing development. That is a national development because it is mixed use. I disagree that there are no housing developments; it might just be that housing is connected to the project as a whole.

Our policies are incredibly supportive of house building and growth in Scotland. Households are becoming smaller, so we will require more houses. All the housing demand needs assessments tell us that there is housing demand. Building will happen at a different pace in different parts of the country.

There should be national designation only when all the necessary criteria are met. If all the policies that we have discussed today are abided by, planning consent is likely to be given. No individual national project required such an approach, with the exception of Ravenscraig, and there were clear reasons for Ravenscraig's inclusion.

**Mary Fee:** It has been suggested that regional housing supply targets should be in the NPF rather than in strategic development plans. What is your view?

**Derek Mackay:** We have commissioned work on strategic development plans and the added value that they provide to the system. Right now, housing need is determined through local authorities' assessments, and local authorities deliver housing as part of the development plan process. The approach broadly works well.

Some members will be sensitive to the fact that local authorities get into horse trading about who will build houses and where, which can conflict with public opinion on where sites should be. If we are to address the issue, we should have full engagement at the earliest opportunity. We should find the right number of adequate sites, in order to meet the need for a generous supply of land. Clarity on the plan-led system should ensure that there is adequate provision. For that reason, additional targets should not be required, as long as we abide by our current policies and approach.

I concede—and it is obvious—that there is conflict where individual local authorities feel that they have done their bit and do not want to contribute to the wider target. However, the targets are there for a reason. If we want the right number of houses in the right places, there will have to be a bit of give and take in the system, but I see no value in adding an extra layer or transferring targets.

**Gordon MacDonald:** What constitutes a major housing development? At what point should such a development be included in the process?

**Derek Mackay:** I knew that you would ask me a difficult question. We do not have a definition for the purposes of NPF3. There are criteria in relation to a range of indicators that determine whether a project has that status. It is not just about how many houses are involved. If a development met a few of the criteria, it might be able to feature.

It is almost as though national designation is a status symbol, but the question that we must pose is what added value that status brings. A major housing development should be considered on its own merits and does not require NPF3 status.

Ravenscraig is an exception because there are so many other uses. A new town centre will be created. It is unique. It is a massive regeneration project, which is why it meets a range of criteria and has been designated a national development. In general, housing projects do not require and would not benefit from having that status.

**Gordon MacDonald:** As you know, there is a major issue in the west of Edinburgh. The Edinburgh's garden district proposal is for up to 4,000 houses. Last night, 150 people attended a public meeting about the proposal. The project would have a major impact on the existing communities. There would be congestion on the arterial roads into the city, and we are already failing to meet the European air quality standard in the west of Edinburgh. Surely the proposal is for a major housing development and should be considered, given its impact on the west of the city.

**Derek Mackay:** I cannot answer that, but I am happy to see whether we received a submission in relation to the proposal and what factors were considered. I will get back to you. However, if it is a live application—

**Gordon MacDonald:** It is not live yet. It is at the consultation stage.

**Derek Mackay:** Okay. I am happy to look into the circumstances, but we would be here all week if members wanted me to explain why every

project happens to be in or out of NPF3. This is the second of four committees at which I am giving evidence on NPF3, and it would take some time to go through every project. However, if members want to engage with me about individual projects, I will be happy to do so.

**Gordon MacDonald:** Okay. Thank you.

**The Convener:** If there are no more questions on housing, we will move on to water.

**Adam Ingram (Carrick, Cumnock and Doon Valley) (SNP):** Last week, we heard from Professor Gooch of the Scottish centre for water policy, who flagged up to us that the proposed framework does not show an understanding of issues of flooding and water run-off. As we are all aware, we seem to be suffering more extreme adverse weather on a more frequent basis. In my constituency, for example, we had some severe flooding over the Christmas and new year period. Are you aware of concerns about the NPF in that regard, and would you be prepared to look at the issue?

**Derek Mackay:** We have considered all the submissions and the oral evidence, and we look forward to the committee's findings. However, it is our view that many of the environmental assessments and analyses that are required for any development to happen are adequate. Sometimes they are disproportionate, but it is necessary to understand the impact of developments and how that should be mitigated. As we embrace the challenges and ramifications of climate change, the planning system will have to be quite adept.

I do not concur with the view that we have not taken such matters into account. Of course, what is appropriate for NPF3 is quite different from how we engage with matters in SPP. We would expect not only an environmental impact assessment but any assessment to take such issues into account. We also take a great interest in what has happened south of the border with development on flood plains and its impact.

The Government has put a great deal of effort into flood prevention and wider policies on the environment. I suppose that is why we now have some of the most ambitious climate change targets in the world and a comprehensive set of policies to achieve the transition towards them.

**Adam Ingram:** Okay. The other issue that was flagged up to us last week is that waste management and the use of waste as a resource is not covered in any detail in the proposed framework. Can you explain the reasons for that? Could that issue be addressed in the final document?

**Derek Mackay:** The issue may not require to be in NPF3, but it will be addressed in Scottish planning policy, which is going through a slightly different process.

Intentionally or not, much of what the committee has discussed today has been about SPP not NPF3. We will address the issue of waste through planning policy. NPF3 is about spatial expression, so it would be wrong of us to include in it, for example, information on how national waste will go to energy plants. That is not something that we would put in NPF3 unless we had a national plan to do it, which we do not. It is something that we do in partnership with local authorities, so the considerations that we would take into account will be covered in SPP. I hope that that reassures Mr Ingram.

**Adam Ingram:** Thank you.

**Derek Mackay:** Can I make one further point around water? I think that it is worth making. We have considered the negative consequences of climate change, but there is great potential in Scotland for the storage of water and being a hydro nation. That is very positively covered in our policies, and it is an emerging area for Scotland that is exciting a great number of people. The storage development at Cruachan is a great example of how that might work for the benefit of the environment and consumer demand.

**The Convener:** As it seems that there are no other questions on water, I will go back to the digital issue and the national fibre network.

Mark Griffin asked at last week's meeting about the construction of new broadband cabling whose length exceeds 8km. Professor Fourman said that it was a bit of a mystery to him why the specific length of 8km is mentioned in the document. Can you shed any light on that, minister?

**Derek Mackay:** I am happy to defer to officials on that particular technical mystery. I am sure that Dr Fiona Simpson can answer your question adequately.

**Fiona Simpson (Scottish Government):** The 8km threshold has been used to describe the national development to ensure that only larger-scale proposals are captured by the national development status. The threshold is therefore used to define a major development. We use that in the national development description to avoid tying up smaller-scale developments with the national development.

**The Convener:** So a development will be designated as large scale if the fibre covers more than 8km.

**Fiona Simpson:** Yes. It has to be more than 8km.

**The Convener:** Right. Are you any the wiser, Mark?

**Mark Griffin:** We need to go back to the professor.

**The Convener:** Will the Government's approach make a difference to digital roll-out?

**Fiona Simpson:** The 8km threshold will ensure not only that the required large-scale digital infrastructure is supported by the national development status but that the process for smaller scale developments is not slowed down by having to undergo additional processing or be allocated additional time.

11:00

**The Convener:** Do members have any further questions?

**Patricia Ferguson (Glasgow Maryhill and Springburn) (Lab):** Can I ask a general question on the NPF, convener?

**The Convener:** Yes.

**Patricia Ferguson:** Thank you—and thank you for giving me the opportunity to be here this morning.

Good morning, ministers. I am sure that you are both aware of the Glasgow canal partnership, which is a joint venture involving Glasgow City Council, ISIS Waterside Regeneration, Bigg Regeneration and Scottish Canals. There has been a great deal of regeneration along and investment in the canal corridor, particularly in the north of the city and, indeed, in my constituency. The corridor remains a strategic priority for the council and its partners and will be a focus of continued investment and concerted regeneration efforts, perhaps for the next five to 10 years.

In fact, developments have increased in number and have become more ambitious, even since the publication of NPF2. However, although the corridor merited a mention in NPF2, it does not seem to be in NPF3. Is there any reason for that?

**Derek Mackay:** Again, I am happy to look at individual matters. I have to say that, given our support for the project that Patricia Ferguson has mentioned, there is no reason for its omission. However, a lot of the language that we use about and our definition of the central Scotland green network cover many projects in central Scotland, including Glasgow. We have tried to keep the document fairly concise, and if something in it has not been expanded on fully that is not because it is not important or does not carry the Government's support. It might simply be covered in the principles.

That said, I am happy to consider referring to the project, if that is what the member is suggesting. It does not seem to have met the individual criteria; I am not sure whether it was submitted as an individual bid, but if it had been it would have been assessed along with the others. Nevertheless, we believe that our attractive place and regeneration criteria provide a great deal of coverage and, given that the project itself lies within the central Scotland green network, some of the work will carry support.

The question I come back to is whether the project itself requires the national planning framework in order to achieve planning progress. I do not believe that that is essential for the project, but I appreciate that the member would like it to be included.

**The Convener:** Was there a request to include it in the document?

**Fiona Simpson:** There were several proposals on the canals network, and we have reflected the importance of canals in regeneration and the work of the metropolitan Glasgow strategic drainage partnership.

**Patricia Ferguson:** That is very interesting. Although I understand the need for brevity, I note that NPF2 simply said:

"Ruchill/Keppoch and locations adjacent to the Forth and Clyde Canal are priorities for regeneration in Glasgow."

That took up only half a line in NPF2, so I do not think that the brevity of the document is at issue here.

The previous NPF referred to a number of other Glasgow projects, such as the Clyde gateway. The canal corridor project is the only one that has not been carried forward and, given its importance to the north of the city, I think that it would be worth mentioning it in NPF3.

Interestingly, although the document refers to the metropolitan Glasgow draining project, a large chunk of which will also be in my constituency, it does not mention that the Glasgow and Clyde corridor element—or, at least, the canal—will be integral to that work. There seems to be a bit of gap with regard to not only regeneration but the connection with the drainage project, and I genuinely think that the project is worthy of inclusion in the document.

**Derek Mackay:** If the member is of that view and if the committee agrees, I am more than happy to include the project in the Glasgow and the Clyde valley section in whatever iteration of the framework we arrive at. Indeed, I have no major difficulty with that. If the member were making a full-frontal bid for national designation, she might be chancing it somewhat, but the reference that she has suggested does not seem

an unreasonable inclusion and would fit within our current narrative.

**Keith Brown:** Although we have no objection to including a reference to the project, I am not sure that it adds anything to the process. Quite a lot of the canal regeneration that was referred to in the previous document has already been carried out; indeed, it is part of a wider national regeneration strategy for Scottish Canals, including work from Inverness across the country to Fort William as well as in Falkirk. Those projects are equally significant.

I can see the national significance of the drainage scheme, which is very exciting, but I can think of nothing that can be added to the project in question. Up to now, any funds that have become available have been allocated to different parts to add to the different mix of canal redevelopment in that area—most recently, there was the very exciting water sports development—and I do not think that anyone in Scottish Canals or elsewhere has felt it to be an impediment that a project has not been mentioned in the national planning framework.

I suppose the question is whether everything that the Government or others are doing should be included in every document. If so, we will end up with very weighty documents. I have no objection to the project being included, but I do not think that its not being included will impede any process.

**Patricia Ferguson:** I should say to Mr Mackay that my ambitions for my constituency know no bounds. The higher the designation that the project can get, the better.

We have actually seen only a very small element of what we hope will be the overall investment in Glasgow's canal network over this five to 10-year period. For example, there are some very ambitious ideas for the old Diageo distillery site that lies adjacent to the wonderful water sports development.

I very much welcome the additional investment in the water sports centre, which I look forward to seeing in proper operation. However, given that another part of the project is still to come and given some of the other developments that are likely to come on the back of the work that has been done at Sighthill and elsewhere in my constituency, I think that the element that I highlighted merits some kind of recognition and that those involved in the canals would actually welcome it.

**The Convener:** As members have no further questions and as the ministers appear to have no further comments to make, I will conclude the agenda item. I thank the witnesses for their evidence, and I suspend the meeting briefly to allow them to leave and new witnesses to take their place.

11:07

*Meeting suspended.*

11:14

*On resuming—*

# Housing (Scotland) Bill: Stage 1

**The Convener:** Our third agenda item is evidence on the Housing (Scotland) Bill from representatives of letting agents organisations. I welcome Kathleen Gell, who is convener of the Council of Letting Agents; Jonathan Gordon, who is chair of the Royal Institution of Chartered Surveyors Scotland private rented sector forum; Ian Potter, who is managing director of the Association of Residential Letting Agents; and Malcolm Warrack, who is chairman of Let Scotland.

I also welcome Patrick Harvie MSP, who has joined us.

I invite questions from members.

**Adam Ingram:** Good morning, lady and gentlemen.

I will start with a gentle general opening question. The Scottish Government has a vision that all people in Scotland

"live in high quality, sustainable homes that they can afford and that meet their needs."

To what extent do you think the bill's provisions support that vision?

**Ian Potter (Association of Residential Letting Agents):** I think that the bill goes some way towards that. It is like any other piece of legislation: it depends on how well it is enforced. Currently, we have legislation that looks at the fitness of property generally, but there is a lot of evidence that it is not overly enforced by local authorities, which have the statutory powers. If we are just going to create another piece of legislation that will not be meaningfully acted on, it will not achieve what you are trying to achieve with it.

There are other areas in the private rented sector that provide examples of that. We know that not every landlord is registered. Some local authorities are very good and are working on that, but others are simply ignoring it. That is what is coming back. Last week, I was at a landlord registration review meeting with representatives of local authorities and that is what they said is happening.

Tenancy deposit protection came in a year past November. Again, we know that there is a lot of compliance, but we also know that many tricks are being looked at to try to get round that, and there is no real evidence of anyone tackling that issue at the moment.

With the caveat that legislation needs to be seen to be enforced, I think that the bill could do an awful lot.

**Kathleen Gell (Council of Letting Agents):** I think that your aim is good, and the CLA welcomes it absolutely in order to give the good letting agents a better voice. There are rogue agents out there, although probably not as many as the public perceive, and the bill will help.

There are two issues. First, what is in the code of practice will be critical. We would certainly be keen to help to draft that code and feed into it at that stage.

Secondly, how the code of practice is enforced will be very important. We are all aware that enforcement has been a hot topic with landlord registration. That enforcement is patchy throughout Scotland, and landlords are very dismissive of that legislation.

I was very interested to hear Professor Duncan Maclennan at a recent RICS conference. His view is that we are perhaps lacking a longer-term strategy for housing in Scotland. Perhaps that needs to be looked at as part of the consideration. If we are seriously looking to have good-quality housing for the longer term, we need to encourage the private rented sector, and not just stamp down on bad practice. There must be a mix of both.

If I look at the fit-and-proper-person test for letting agents—

**The Convener:** We will come on to that.

**Kathleen Gell:** That test is very negative. I would like to see some positive things coming out.

**Jonathan Gordon (RICS Scotland):** The bill covers a diverse range of initiatives across the social and private rented sectors, and we think that the key issue is the right of redress for people across those sectors. Those are the most important positive aspects of the bill.

The RICS is the leading organisation of its kind in the UK. That is a bit of a plug for us, but it means that chartered surveyors are already qualified and regulated by their own self-regulating body to be letting agents, so we at the RICS have a good understanding of what regulation means. Client, consumer and public protection are at the heart of everything that RICS Scotland does and are part of our professional standards and our ethics.

As we see it, the bill does not include enough of that, specifically in relation to the private rented sector initiatives on letting agent registration. The Government's vision of

"A private rented sector that provides good quality homes and high management standards, inspires consumer

confidence, and encourages growth through attracting increased investment"

is an aim that we welcome, but we do not think that the measures in the bill are quite strong enough. They could be adapted and amended through the bill process, but without proper enforcement and professional standards in the industry, a list of things that have to be done will not be self-enforcing. There are many examples of cases in which that approach does not work.

**Malcolm Warrack (Let Scotland):** Without repeating what has been said, I would like to pick up on the word "vision". As we move through 2014 into 2015, we have a wonderful opportunity to develop a vision to make the private rented sector something that, in the years to come—sitting within the broader housing market—operates well, has a good supply chain leading into it and is well managed and provided for from the point of view of services, and which allows us to look back and say that we got it right in 2014-15. We will come on to talk about the detail, but as far as the vision is concerned, I think that we are in a wonderful place to make some real changes and to create something that works for the future.

**Jonathan Gordon:** An issue that is often mentioned is how to improve standards in the industry. One of the most important ways of doing that would be to bring more new, high-quality properties into the market to compete with the existing stock. Much of the existing stock is made up of old properties that have old heating systems, are inefficient and do not meet many of the Government's energy efficiency aims. New-build properties are built to a much higher standard on that side of things. If a whole block of new flats were built in each area that has a high rental demand, that would do much more than any of the measures in the bill to drive up standards, because people with properties to rent would have to compete with those flats and improve standards in their properties.

The Government commissioned research on the issue—"Building the Rented Sector in Scotland" was published before Christmas—and a lot more focus should be put on that, but I think that that is outside the scope of the bill.

**The Convener:** Before we proceed, do you have any idea of what proportion of letting agents your organisations cover? How many letting agents are still outwith your sphere of influence, if I can put it that way?

**Kathleen Gell:** The CLA has slightly more than 320 members at the moment, about 84 of whom have opted to sign up to an accreditation scheme as letting agents—the landlord accreditation Scotland scheme. I believe that there are 155 ARLA members in Scotland, but Ian Potter will be able to correct me if I am wrong.

**Malcolm Warrack:** We are a relatively new organisation, as we were formed in the middle of last year. We currently have around 50 members.

In answer to your question, about 30 per cent—maybe 40 per cent—of agents around Scotland are probably not members of groups such as ours.

**The Convener:** How many letting agents does 40 per cent represent?

**Ian Potter:** The key question is how an agent is defined. Are you speaking about someone who operates on the high street, someone who operates on the internet or Uncle Tom Cobbleigh who acts for his Auntie Mary? In our opinion, the latter example is often where the worst of the problems lie. It relates to cases in which someone acts purely for half a dozen landlords—who are often members of their own family—has absolutely no knowledge of the law that they are operating within and does what they want. That is when the consumer gets the worst experience. It often involves the worst quality of property, too.

**The Convener:** How many hundreds or thousands of those cases do you think there are?

**Ian Potter:** We can look at where other jurisdictions have started to try to identify agents through legislation. I will give the London borough of Newham as an example. Newham Council has now discovered, 15 months into its scheme of licensing all agents, that nearly three times as many agents operate in its borough than it had thought. It thought that about 3,500 to 4,000 landlords owned about 25,000 to 30,000 properties. It now knows that in excess of 10,000 landlords operate 38,000 properties.

An achievement of bringing in a measure such as this is identifying an accurate picture of the size of the market. We are all using best guesses. I have worked with civil servants on this as well, and they would accept that we have always been guessing how big the market is.

**The Convener:** Can you explain a bit more about how Newham went about that? Did it go through virtually every single property?

**Ian Potter:** Newham Council marketed a requirement—I used the word "marketed" advisedly. It created the legislation, which it had the power to do under the English Housing Act 2004, through which it created a licensing scheme, which it advertised from 1 January 2013. All landlords and all agents had to register with that.

The council has been seen to be out there, knocking on doors. It has been looking at its London Housing Authority payment records and asking whether benefit is being paid to a tenant in

a property that is not registered to a landlord on the register. Is the agent who is dealing with the property—and quite often showing on a tenancy agreement that would have been taken in for an LHA claim—showing on the records? There has been lots of joined-up thinking and practical measures to identify agents and make that happen. Newham is now at the stage at which it is looking at active prosecution of people who have not but should have registered.

The Welsh Government is looking at a similar set-up. It is putting through a bill that is in some ways not dissimilar to what the Scottish Government is doing at the moment. I was at an evidence session there last week and exactly the same issues are coming up. In the meantime, in anticipation of the act, it has started trying to identify landlords and agents. Their numbers are going up exponentially.

**Jonathan Gordon:** There is a lot of information and it is hard to know how much of it you have seen. Around 12 per cent of households are in the private rented sector at the moment. That figure doubled in past years and Shelter estimates that it is expected to rise to 20 per cent over the next few years.

About half of those properties are managed by letting agents. We guess that there are about 1,000 letting agents in Scotland, but it is hard to tell, because there are so many individuals who manage five or 10 properties. They start off with their friends' properties and then move on.

The biggest problem, which the bill would need some adaptation to cover, is that, although 40 per cent of agents are members of bodies, only 150 are regulated in any way. The RICS and ARLA provide a regulation scheme for licensed members, which leads to client money protection for their clients and professional standards and training, and all the benefits that come with that.

Although only a small number of letting agents might be rogue agents—as we call them—some of those are very large, well-known firms. Patrick Harvie mentioned one in a previous committee meeting, when he said that a well-known, large and very professional firm was trying to get round the tenancy deposit scheme. We would say that a very professional firm would not do that, so that firm is not professional. An RICS member—and I assume an ARLA-licensed member—would not try to flout the law; it would try to comply with it as best it can. It would work in the spirit of the law and not employ advocates to try to find wee nuances that would allow it to charge a fee. Professional standards are one of the key things that are important in an industry such as this, because consumers cannot be relied on to understand the market themselves and it needs to be laid out more clearly for them.

11:30

**Adam Ingram:** That is an interesting range of answers and I am sure that my colleagues will explore the issues that you have raised. Do you have any observations on the bill consultation process? Are you quite happy with how you have been consulted?

**Ian Potter:** I am nodding my head, so I might as well say yes, I am happy that the bill has been consulted on. Once the bill becomes an act, a lot more consultation work will be required on the impact of the secondary legislation. We would all welcome the opportunity to contribute to that consultation and we all believe that we have something to contribute to it.

**Kathleen Gell:** I feel that the consultation process was good. It is a fairly standard process, I believe, in the Scottish Government. The difficulty is that people are short of time and they do not make it a priority to respond. That is a weakness, but it has nothing to do with the Scottish Government—it is really down to apathy, you could say. I would like to know what happened with the tenancy reform proposals—I believe that somebody was tasked to set up focus groups throughout the country. That would be another avenue for gathering information and responses.

**Jonathan Gordon:** I sit on the tenancy review group that I think Kathleen Gell was referring to. I think that the key stakeholders who sit on that group are the right people to look at that issue. The same stakeholders were involved in this process. As Kathleen said, there has been very good research within that process involving the real stakeholders, if you like—the tenants and landlords out in the field. Some qualitative data has come out of that research, with some very interesting results in relation to that group.

The Scottish Government consulted the RICS and other bodies on three options before publishing the bill. Nobody was keen on the first option, which was to expand the landlord registration scheme. Option 2, which was chosen, is in the bill and is clear. Option 3 was to introduce a legal obligation that all agents must be a member of a recognised professional body. It was assumed that legislation would establish in law how that body or bodies would regulate their members. Scottish Government ministers instructed officials to pursue option 2. Although we recognise that that is a step in the right direction, we think that it falls short of the more consistent and targeted approach to regulation of option 3, for some of the reasons that I have mentioned already. We think that option 2 could be amended to get as close as possible to option 3.

**The Convener:** We will look at that area in more detail but, in general, were you able to put

forward your views and were you fairly satisfied with the consultation process?

**Jonathan Gordon:** Yes.

**Malcolm Warrack:** Yes.

**The Convener:** Thank you. As set out in the policy memorandum, the Scottish Government has two main aims in part 4 of the bill:

"The first is to promote high standards of service and levels of professionalism across the country and the second is to provide landlords and tenants with easy access to a mechanism that will help to resolve disputes where these arise."

We broached the subject earlier, but do you agree with the Scottish Government that there is evidence of poor practice? Can you expand a bit more than you did in your introductory remarks about how we can manage to promote higher standards of service across the country among your members and among those people who are not your members? Also, how can we try to get those people to the level of realising that they must register?

**Ian Potter:** For me, education is key. At the moment, anybody can be a letting agent. They do not need high street premises or any training; they can simply advertise for landlords to give them their property to let. They do not need to know what they are doing and, generally speaking, that is part of the problem.

The other part of the problem is lack of knowledge on the landlord's part. When I operated as an agent in the west of Scotland, I spent a lot of my time explaining to my landlord clients what they could and could not do. It would be fairly typical for a tenancy agreement to say that once rent is 14 days late, the landlord would start to take action. A landlord might think that that means that after 14 days they can change the locks and the tenant is gone. We all know that, practically speaking, that cannot happen, because there is a legal process that has to be gone through.

Tenants are similarly uneducated in lots of ways. There is plenty of evidence to show that they do not read tenancy agreements. The student market is a brilliant example of that. Tenants do not understand, or do not have properly explained to them, things such as joint and several liability and guarantors—indeed, the guarantors do not understand what they are signing up to either. That is typical in the student market.

Clear, simple language in guidance is needed. At the moment, virtually 100 pieces of legislation—consumer law, lettings law or housing and property law—impact on a letting agent in one way or another. An awful lot of primary and secondary legislation impacts on the sector. We acknowledge the ethos behind the legislation, but we have had several new housing acts in Scotland over the past few years and bits of all of them impact on the private sector. There are more and more different pieces of legislation to consider and we have to understand which pieces of legislation impact on others and which pieces supersede others. I think a long-term objective for the Government should be to introduce a consolidation bill.

**Malcolm Warrack:** I support what Ian Potter said. The education of all the main stakeholders—tenants, landlords and letting agents—should be brought up at the same time. I see a differential between how landlords and letting agents should behave under regulations. As the letting agent regulation comes through, it is important that landlords are encouraged to come up to similar standards. It all comes back to education.

**Kathleen Gell:** I agree with Ian Potter and Malcolm Warrack that education is key. As you know, I represent the Council of Letting Agents. I work closely with a group of fantastically dedicated people in a steering group. We are about raising standards, which is what our members want to see, so that letting agents are respected. We give freely of our very limited and precious time, because we think that this matters very much. We are a division of the Scottish Association of Landlords. SAL has its own complaints process; we are working on a complaints process for the CLA, which is very important.

We are working closely on education with Elspeth Boyle at Landlord Accreditation Scotland. We are looking at providing more training modules for letting agent members. Such training would be on-going and tailored to what letting agents want. We might decide as a body to insist on continuing professional development for our members.

My firm, which is a small family firm, happens to have chosen to be a member of the RICS, ARLA, the CLA, Landlord Accreditation Scotland and the safe agent fully endorsed—or SAFE—scheme. Very often, those things mean nothing to the man in the street. It is not just about educating the letting agents; it is about educating tenants and landlords as to why they should choose to use a member of a particular body. That is very important.

**The Convener:** I agree that education is key, but I do not agree with Mr Potter that students do not know about these things. My student children have been telling me what I should be doing with my landlord. Student associations are keen to ensure that university students know their rights and responsibilities when they rent properties.

**Ian Potter:** The National Union of Students says that its members do not read as much as they should. They perhaps do research once they have

a problem—I would not disagree with that—but if we can eradicate the problems in the first place, that will help.

I will add to what Kathleen Gell said. We are—and have been for several years now—an awarding body that is regulated by the statutory body in the area, and we have a formally regulated qualification for letting agents. That is the only route by which we take in new members, who have to be qualified.

**The Convener:** Is there a queue to do the course and join?

**Ian Potter:** A lot of people are studying. They do not necessarily come and join us, although we wish that they would, but last year more than 500 people passed the technical award in residential letting in Scotland.

**The Convener:** Should regulation include a requirement for people to do that course or a similar one?

**Ian Potter:** That is what I was getting at in saying that people need to be educated. The course does not tell people everything—nothing ever will—but it makes them more aware of key problems and where to go to get advice on how to solve them.

**Jonathan Gordon:** This comment might move us slightly off topic. It is about misunderstandings about types of tenancy. The tenancy review group is looking closely at simplifying the tenancy regime so that people have a better chance of understanding it. Tenants have to sign up to eight pieces of paperwork for a letting agent, but our experience from taking over properties from other letting agents is that we rarely get all the pieces of paperwork, perhaps because people have not issued the tenant information pack or the prescribed information for the tenancy deposit scheme. That really comes down to training, so the point is relevant to our discussion.

Most letting agents are not trying to break the law or get round the legislation. We need enforcement where agents are doing that, but the problems are really about a lack of knowledge. There are so many letting agents in each town and city that it is hard for people to choose the best one, and there is no real competition because nobody understands what a letting agent should and should not do or how to judge them.

Going back to the registration scheme, I note that the RICS has some recent evidence that registration schemes in themselves do not improve standards. We have to start with a list of who is fit and proper, but people who are not fit and proper know that and will not apply; they will stay under the radar. We need something that hunts those people out.

The Property Factors (Scotland) Act 2011 is only a year and a half old but I believe that the registration scheme in the bill, although it is not going to match the provision in that act exactly, is intended to be similar to it. The RICS produced an impact review report on the act last year and is in dialogue with the Scottish Government on its findings. There are some issues with the registration scheme, which factors believe is not working.

Three key things came out in the review. The compulsory registration of property factors has not stopped rogue factors operating, because the necessary qualifications for registering as a property factor are too low and simplistic. Some property factors with a history of malpractice now see themselves as being legitimised to practise. A more robust registration process or system would help. It should comprise details beyond basic personal and company details so that we can explore a bit further who is registering.

11:45

I turn to one of the key dangers or risks of the current legislation as far as registration is concerned. Even in evidence to the committee, people keep asking about this part of the regulations or that part of the registration process. Regulation does not happen unless there is enforcement. There needs to be a code of practice, a list of people who are fit and proper and a redress system. There need to be professional standards and enforcement. There really needs to be a professional body overseeing what happens and making judgments on whether people comply with the code of practice.

We operate as a factor in a very small way—we factor one block of rented flats, as well as renting out those flats. We had to register through the property factors scheme. This is anecdotal, but we have read a number of written statements of services, which people produce to comply with the legislation, and found that they were misrepresenting the code of conduct in those written statements of services. How are consumers supposed to be able to unravel all that themselves? It is just not going to work.

**Alex Johnstone:** I return to a point that was raised earlier—we stopped that discussion because this question was coming. I want to hear your general views about the Scottish Government's proposed model of regulation. In particular, how do you think it compares with the other potential options?

**Jonathan Gordon:** As I have said, the RICS thinks that it would be better to have a single professional body that is regulated. The best example is the RICS itself. It is established by

royal charter and operates in accordance with a self-regulation model, and its members are heavily regulated. That regulation is enforced.

There is a requirement for people to do 20 hours of continuous professional development each year—people must comply with that. That does not mean that people cannot make things up, but the standards are there to be enforced by the body.

We have had auditors in our office, checking that we manage our client accounts properly. There are specific ways to manage client accounts. We must not let any one person's ledger go into a negative balance; otherwise, if the company goes bust, the money has to come from somewhere else. Unless somebody is checking that and ensuring that people understand it, there is no point having a code of conduct that requires client accounts. Of course, that still means that if a company is going to go bust or is already engaging in malpractice and causing trouble for its clients, and if it can see that everything is going to blow up, it can easily move all the money out of the client accounts. In such a case, the clients would not be able to get their money back when the company goes bust.

Client money protection is one benefit of involving a professional body, with standards, training and enforcement. However, that is impossible without enforced regulation. People can buy various insurance policies, but policies do not cover the same things. It is like a big failsafe. For example, if someone puts £50,000 in the Royal Bank of Scotland, they might not know what is going to happen with RBS, but they know that the Government will give them their money back. RBS could have been allowed to go bust, but perhaps one of the reasons why the Government protected it was so that the Government did not have to give all the depositors their money back.

We need that basic level of client money protection, backed up by a professional body. That is another key thing that must be brought in. Three key things are already there, but one final piece of the puzzle is missing.

**Malcolm Warrack:** I have a fear that that route is somewhat exclusive. There is a route by which registration could be strengthened: all registered letting agents could be invited to carry out the requirements for membership of ARLA or RICS. That would include having professional indemnity, client bank accounts and an annual audit of those client bank accounts, and ensuring that all the certification takes place annually, not every three years, as proposed in the Property Factors (Scotland) Act 2011 and the current proposals. A letting agent would be required annually to provide online legal confirmation that they were carrying out each of those activities. Something along those lines could be explored in detail so that we could reach the point at which the wish for everybody to be properly qualified would become an aim. That is not being achieved today.

**The Convener:** I do not want the witnesses to get into a bun fight about which body is better.

**Kathleen Gell:** I take issue with what Malcolm Warrack said. I make it clear that a client bank account is very different from client money protection. Members may or may not be aware that brokers out there offer client money protection to firms that act as letting agents and are not members of professional bodies such as ARLA or RICS, which require firms to have such protection. We in the CLA are tossing around whether we want to look at asking our members to move towards that.

If an agent has client money protection through those bodies, it is required to buy professional indemnity insurance and to sign up with one of the two ombudsman services. I have looked at that and spoken to Simon Morris from Ombudsman Services: property. Such a scheme is not hugely expensive and would in a sense be self-regulating.

**Jonathan Gordon:** I hope that a bun fight will not happen, because we four witnesses are all from regulated bodies. The RICS regulates my company; Kathleen Gell's husband was my predecessor, so I know that her company is also regulated by the RICS; ARLA is a regulation body; and Malcolm Warrack's company is a member of ARLA.

There is no argument about the principles; the key issue is what is cost effective for letting agents. We must remember that, if a letting agent carries out their business poorly and adopts poor practice, which affects landlords' investments and the homes that tenants live in, it is essential that somebody checks what is happening. Malcolm Warrack's self-audit idea is good but, if nobody checks, it will not work.

There are different types of client account. It is often said that an agent needs to have a non-designated client account or, indeed, a designated client account. Does anybody know what that means? I did not know until I got such an account, when the RICS told me what it had to look like.

There are different types of professional indemnity insurance. That insurance is key, because it is the ultimate backstop against a landlord's investment being ruined. It is possible to sign a lease in the wrong way that ties in a landlord for ever, so that the tenant never has to leave. Some people might like things to be that way, and in some ways it might not be a bad thing, but at the moment, the legislation is complex and things need to be done in a particular way—the process is not simple.

My professional indemnity insurance quote this year included a different retroactive date, which meant that we would not have been covered beyond a certain date. The quote was cheaper because of that, but I had to adjust it, because the RICS tells me that my retroactive date must go all the way back. I hardly even know what "retroactive" means, but I have to fill in a thing for the RICS that asks whether my insurance is retroactive. I then have to check that the insurance is fully retroactive. Nobody understands that.

**Alex Johnstone:** I am keen to hear what Ian Potter has to say, but it is clear that the Scottish Government's opinion is that requiring letting agents to be a member of a recognised trade or professional body would amount to self-regulation by the industry and would force smaller letting agents out of the market. How do we reconcile that?

**Ian Potter:** To be honest, I do not think that smaller agents would be forced out. I have a huge concern about the self-certification of compliance. Like the RICS, we have a compliance regime. The quality of what comes in—from agents that think that they are complying and which are trying to comply—leaves a lot to be desired. We must work with them to achieve full compliance. They let their professional indemnity insurance run out and forget to renew it, or they open a new bank account and do not get it designated as a client bank account. The annual audit picks those things up, but would there be that awareness with a self-certification scheme? The agents often come back to us and say, "The bank has made a mistake". They provide evidence that they asked for a designated client account, but were not given that by the financial institution. That is where we need the audit; otherwise we break away all the protection we have been speaking about.

Another problem with client bank accounts at the moment—I do not know whether it has come across RICS's radar; I only came across it recently in a meeting with the successor to the Financial Services Authority—is that banks are probably breaking anti-money laundering regulations by allowing an agent to open a designated client bank account. What due diligence was done on the client, who is the ultimate beneficial owner of those funds? A whole piece of work is going on to ensure that we can get regulation down that route, which would mean agents having to do a lot more due diligence work on their client. Letting agents are not covered under the money laundering directive, although estate agents are. You can go into a shop where half the business is regulated and the other half is not. That does not help the consumer.

One of the key things in the proposals in terms of impact is the fact that dispute resolution between an agent and a client through the Private Rented Housing Panel is very expensive. If you look at the evidence, you will see that the ombudsman schemes that currently operate for Jonathan Gordon's members and my members are far cheaper to operate. The majority of consumer complaints are easily fixed—that is where the evidence about lack of education comes in. Let me give the example of a tenant who complains that they have been given notice to leave their property. The tenancy has come to an end—the landlord is legally ending it through the agent—but the tenant is unhappy. They do not want to leave, so they complain to the ombudsman. Taking such a complaint through the PRHP route would probably cost, according to the figures that have been quoted, between £1,600 and £1,800, which would be disproportionate to the problem. The consumer needs to be advised about that issue.

Some people take negatives out of the rise in the number of complaints that have gone to ombudsman schemes over the past few years. However, the rise in the number of complaints that have gone to ombudsman schemes—to which lettings agents have signed up voluntarily—is a positive, for the simple reason that it is evidence of the consumer starting to understand that a route exists that did not exist previously.

The number of agents that have signed up to the existing ombudsman schemes has grown exponentially since 2006, so you would expect the number of complaints to rise. When the bill is enacted, whichever body looks at complaints against letting agents has to be prepared to accept that the figures on impact that are in the papers are the equivalent of holding a finger to the wind to see what way it is blowing. I think that the figures will turn out to be much higher. The better agents, who are trying to do it right, have signed up voluntarily to those schemes. When we start to bring in the rest—as I believe that we should—we have to be prepared to see the numbers go up, but that is what consumer protection is about.

**Jonathan Gordon:** Alex Johnstone might want to ask about the redress situation itself, which I would have comments on. I think that his last point was about the specifics of letting agents going bust or going out of business if too much is forced on them.

I was not in the stakeholder groups myself, but someone from our policy team was, and there was a genuine feeling that the third option that I mentioned earlier was the preferred option. The key thing that stopped that was the issue of small agents not being able to afford the training and accreditation. The Government was concerned about that and that those small agents could go out of business, but the nature of any well-

regulated market is that there must be some basic entry requirements.

12:00

I do not think that most letting agents, or even a significant number of them, would go bust, but if agents are not qualified to operate in the market and cannot afford the costs of training, they will not improve standards or provide basic protection for their customers, and those agents should leave the market.

For the bill to realise its desired policy outcomes of raising professional standards and reducing consumer detriment, consistent and effective approaches to the enforcement of the proposed arrangements and the associated code of practice are vital. Summary figures in a recent RICS impact research paper, which we can make available to the committee, suggest that the benefits will outweigh the costs in under 2.5 years. Those are high-level research findings on the costs to society and so on, but we have to remember that we are dealing with tenants' homes that need protecting and tenants who cannot get what they need from their letting agent or landlord.

Quite a big study is being done for the tenancy review group, which has been mentioned a couple of times, and it will report soon. Qualitative research was commissioned, paid for by the Government, and interviews were conducted with tenants all over the country—in small towns such as Dumfries and in Inverness, for example—to gather views on how well they felt the tenancy regime was working for them, whether they understood the lease that they had signed and whether they wanted a longer tenancy or more security of tenure. However, what the research fed back in was that they did not really care about those things. Few people—landlords or tenants—understood exactly what was happening with the tenancy regime. The comments that came back from the tenants were distressing to the group. Its report is the first research that I have seen on the issue, and I would recommend that everyone get a copy of it. It shows that there are people sitting at home with a boiler that does not work, so they cannot heat water to give their children a bath. Those vulnerable tenants are at the bottom of the ladder of ability.

We tend to manage properties in the centre of town that are let out to professional working people, or sometimes to students whose guarantors are professional working people, and those tenants can move. There have been landlords who have refused to do a repair, and we have given up those properties. In trying to get things sorted and make repairs happen, we have told tenants' parents that landlords are not meeting the repairing standard and that we will give up those properties. We have also told them how they can resolve what is a repairing standard matter by going the Private Rented Housing Panel.

As I said, those people can move. For example, one tenant's parents told the tenant just to leave and not to pay the next month's rent, because the landlord was not fixing the problem. The tenant moved into a more suitable property and never came back. However, people who are living in more deprived areas and who are more vulnerable are not able to leave or to demand their rights. They do not feel empowered to act. It is those people who need to be protected.

Letting is not a simple process. Agents look after complex obligations, and there are letting agents who will allow landlords to manage their own maintenance. The question is whether that maintenance is being done poorly or well, and there are letting agents out there who will allow landlords not to meet the repairing standard while still collecting the rent, passing it on and signing the lease. That practice will not disappear with a registration scheme, but a bit more enforcement is required to create more compliance, even with existing legislation.

**Mary Fee:** Sections 26 to 52 set out the detail of how the regulatory regime will work in practice. I would be interested in the panel's views on the proposals for registration of letting agents, the definition of letting agents, the fit-and-proper-person test, and the requirement for agents to reregister every three years. I note that Mr Warrack from Let Scotland takes the view that renewal should be annual. Why do you think that, Mr Warrack?

**Malcolm Warrack:** We have touched on the weaknesses of the property factors legislation. Letting agents will have a pivotal role in the housing market over the next five to 10 years. Whether they are controlled by the Government overseeing the certification of auditing and all the detail that my colleagues have just talked about, or by the RICS, a three-year period is too long to leave something before it is tested properly.

Whatever the fine detail that is determined at stage 2 with regard to letting agent registration, I think of it in almost terms of a licence. Perhaps letting agents should have an annual licence to operate. To be licensed, they could be required to provide certification to demonstrate that they have the things that we have been talking about: the right professional indemnity; the correct client bank account; and the correct audit of that bank account. There are other things, too, but the list is quite long so I will not go into it.

As we go through stage 2, the devil will be in the detail. We hope that the proposed legislation will

provide an excellent example of what being part of a wider housing market can be in the years to come. I would like us to look back in five or 10 years' time and say that what we have is envied by the world. People refer to the private rented sector in the US and Europe in that way. I like to think that we can cherry pick the best elements of what happens in the global private rented sector, bring it to the bill and ensure that we get something that works for the long term.

**Mary Fee:** I agree that the devil is in the detail, and I am sure that we will get more detail as we go along. However, in relation to the fit-and-proper-person test, what would you like to see? What do you think should be required for someone to become a fit and proper person?

**Malcolm Warrack:** Ideally, it should be a professional qualification, but—

**Mary Fee:** If you want to think about it, you can come back to it later.

**Malcolm Warrack:** I will have to think about it and come back to you.

**Kathleen Gell:** I will comment on the fit-and-proper consideration as it is set out in the bill. As I said earlier, I feel that it is coming across in a very negative way, that it is not particularly helpful and that it does not set a minimum standard. The CLA wants to see a minimum threshold for a letting agent to be able to operate.

The situation with regard to qualifications is a little patchy in Scotland. I believe that one of the London universities is considering offering a degree specialising in residential property management. In Scotland, the highest level that can be reached by someone who wants to develop their career path in the PRS is a level 3 certificate, which is equivalent to a Scottish higher. It is not possible for an ARLA member to go beyond that in Scotland.

There are training opportunities—an excellent one is afforded by Elspeth Boyle through Landlord Accreditation Scotland. It is not for me to say this, but the Scottish Government could perhaps look at putting some funding into the bodies that are out there—for example, the Chartered Institute of Housing and Landlord Accreditation Scotland. It would be good to feel that the Scottish Government was helping letting agents to meet a minimum standard of competence.

When we look at the age profile of letting agents in Scotland, it is clear that we need to think about the future. The average age of most of us is certainly not in the 20s, so we need to develop career paths for people and enable them to become qualified and even better qualified. Let us set the standard in Scotland—please let us do that.

**Mary Fee:** What is your view on reregistration every three years?

**Kathleen Gell:** I agree with Malcolm Warrack that three years is far too long. Let us just get in there and check the position every year. A lot can happen in three years.

**Ian Potter:** There is a halfway house. I have no issue with the three-year licence; the issue is the checking that is carried out during that period. The suggestion about annual documentation offers a practical way forward.

My concern, from my practical experience of looking at the documentation, is about who will look at issues to do with client accounts, for example. We have succeeded in having registered auditors—chartered accountants—struck off for making false declarations on behalf of members. Whoever is looking at the documentation, whether it is the Scottish Government or a body such as my association, the question is how robust they can be. That is the key.

Jonathan Gordon mentioned professional indemnity insurance and retrospective cover. That is hugely important, because someone could have made a mistake two years ago and subsequently changed their insurer, and if they do not have retrospective cover, when the problem comes to light there will be no insurance in place—their current policy will not cover them.

People are generally comfortable with what something like motor insurance covers. They understand that if they change their insurer and then say that they had an accident three months ago the insurer will say, "Well you didn't tell us—tough."

**Jonathan Gordon:** I echo all that. Mary Fee asked about the registration scheme and the fit-and-proper-person test. I understand that the test for landlord registration in the Property Factors (Scotland) Act 2011 involves checking high-level details about criminal activity and so on.

It is important to know who the letting agents are and to have a list of them, and it is important that certain types of person should not be allowed to operate. The register is therefore a key starting point. In all the evidence that I have given, I have said that a fit and proper person should be a member of a professional body that regulates their activities and protects the public.

We have to keep going back to what we are doing. There has been a lot of research into problems in the sector and complaints about landlords and letting agents, but it is common for surveys to show that 79 per cent of tenants are satisfied with their agent—the statistic is cited on letting agents' websites as a key reason why there is no requirement to legislate in relation to letting

agents. However, we are talking about 300,000 properties, so perhaps 60,000 households are living in homes that are in poor repair—with no working boiler, mould in the bedroom and so on. That is a lot of homes, and the sector is growing.

I am here to represent the RICS, but as a letting agent who is regulated I have other comments to make. Whenever we take over properties from other agents or access properties that other agents manage—our company often has to get access to a property above one of ours, for example if there has been a leak—we find that the standard of knowledge among the letting agents that we meet is poor, even when they are from well-known companies, which are on the high street. There is no training, and agents show a lack of knowledge about the legislation and the documents that are required.

12:15

Some letting agents do not even know how to deal with simple maintenance problems. Regardless of tenants' rights, landlords' rights and everything else, they are meant to be managing the property and inspecting it every three or six months, depending on the type of property. What do those inspections involve? A landlord will expect the agent to look at the property and not only assess what is happening with the tenant but find out whether maintenance is required, whether anything is going to fall down, whether the tiles are coming off the wall or whether the grout is cracking. If they can catch, say, a grouting problem, it can just be regrouted; otherwise it could end up as a £2,000 repair job. That is the kind of thing that we look at as a property-managing organisation.

Training is key. As far as the highest standards are concerned, I am not suggesting that everyone should be a chartered surveyor—although that would be good for us—but I studied for seven years to learn how to manage property, carry out structural surveys and that type of thing and I believe that such people should be managing properties or at least running those companies. As Kathleen Gell said, people can get qualifications—say, a level 3—that will get them close to the right level; it might be okay to compare such qualifications with highers, given that they cover such a narrow area. In any case, if every member of staff who worked for a letting agent had such qualifications, half the problems would disappear.

**Ian Potter:** Ms Fee alluded to the business models of agencies and the question of who should satisfy the fit-and-proper-person test, which is an issue that we have begun to find quite interesting. There are plenty of examples of agencies in which the shareholders and the board come nowhere near the day-to-day running of the business. In such cases, the person who is likely to be left to meet the fit-and-proper-person test will be the office manager, the business manager or the lettings manager who, in practice, cannot always comply with what they should be doing if the owner of the business is telling them to do something different and they want to keep their job. That issue certainly needs to be addressed.

The route that has been suggested in Wales to get round that particular problem is to apply the fit-and-proper-person test that is set out in houses in multiple occupation legislation to the principals, partners and directors of a business and ensure not only that they have an educational qualification at a particular level but that two thirds of their staff who work in a customer-facing position also have a level 2 or 3 qualification. Although that might be a minimum level, it is felt that such a move would begin to raise standards. We very much support that ethos. We have to set the bar at an achievable height to begin with, and we can crank it up later when we start to get the mass that people are concerned about. As for the impact on smaller business, the bar can be set at a lower level to begin with and when they begin to see the business benefit they will be able to achieve a higher level. I do not think that setting the bar at a low level to begin with is a bad thing, so long as there is a planned strategy to achieve a higher level.

**Jonathan Gordon:** As far as smaller letting agents are concerned, we have six staff members; on the other hand, some agents have 10,000 properties. The scale can be huge, but professional bodies tend to regulate all of that quite well.

Someone can become an RICS member by going through the associate qualification process. It is fairly straightforward; they have to prove their competence and, depending on which route they take, they might have to undergo training. If they have worked in the letting industry for five or 10 years, they might be able to take a direct route but, even so, they will need to undertake continuous professional development after that. They also have to understand professional standards and ethics; there are basic tests on those that have to be sat before a person can join. Routes to becoming a chartered surveyor already exist for people who, unlike me, have not done a degree. I might be slightly jealous of that but it is a good approach because it brings everyone up towards the right standard.

My only other point was going to be a repetition of a point that Ian Potter made, so I will leave it there.

**Mary Fee:** Ms Gell, do you want to come back on that before I move on?

**Kathleen Gell:** Yes. Actually, I have a query. Is the committee thinking about how the legislation might capture agents south of the border who act as agents for and manage properties in Scotland? The fact is that they never go near those properties, which are in a shocking state of repair. I simply wonder whether you have given thought to such agents, because they are out there and we frequently get calls about them.

**Mary Fee:** That is something that we are aware of, but I thank you for pointing it out.

The bill makes provision for a letting agent code of practice. I know that many letting agents already comply with existing professional codes of practice. Will the panel members give me a bit more information on what is in the existing codes of practice and, more important, how they are enforced when there is a breach?

**Ian Potter:** The bodies that Jonathan Gordon and I represent have codes of practice and requirements. ARLA has, in effect, two bits to our code of practice. We require all our members to belong to one of the two ombudsman schemes that were created under the Consumers, Estate Agents and Redress Act 2007 for sales agents. Those schemes also cover lettings complaints.

The Property Ombudsman service developed a code of practice that is based on a code of practice that ARLA had developed previously. The code has got to Office of Fair Trading stage 1 approval. It covers many of the wider issues around what the consumer should experience and it offers the consumer—landlord or tenant—redress, if financial recompense is looked for, for actions that have impacted materially on them.

To complement that, we have a disciplinary process. If we receive a complaint that is not just about looking for redress, we take that complaint through the process. The punishments under that process can be anything from a warning, to a requirement to do further training, to expulsion from membership.

Last year, nationally—within the UK—we removed 270 members for non-compliance, so we do act. The problem is that because it is a voluntary self-regulatory scheme, expulsion does not stop those people from practising. There is no route in any of the UK jurisdictions for banning a person from being a letting agent.

**Mary Fee:** So, you can expel agents, but they can just carry on working.

**Ian Potter:** That is what happens in practice, unless the agent has totally gone bust and disappeared with all its clients' funds. We had one case last year from which the agent has risen again like the phoenix from the ashes and is doing exactly the same thing. Those agents belong to no body, so there is no consumer protection. We need to make sure that that loophole is closed in order to stop that sort of thing from happening.

**Jonathan Gordon:** There is lots of evidence from work that has been done by the Property Ombudsman and the RICS itself, for example. The RICS has not formulated a view on what the code of conduct should be—we understand that that will be part of another consultation.

The RICS has significant experience of direct relations with its members. There are lots of differences between us and ARLA, but in relation to regulation of our members, the key things are client money protection and what must be in place to achieve that. ARLA licenses members; a principal can be a member. You can be a member of ARLA and work for a company, which means that you have gone out and got the qualifications yourself, but your company is not necessarily a member. That is the key difference. If you are a chartered surveyor, you have to comply with the professional practice and codes of conduct.

The code of conduct is generally about checking some basic high-level things. I can leave a copy of the code of conduct with the committee. The key things are client money advice for firms and professional indemnity insurance advice for firms. There are also professional and ethical standards with which we must comply.

The key element of the code is that there must be a complaints-handling procedure to deal with low-level complaints, to provide people with a redress system that they understand and can deal with themselves, and to help firms to avoid statutory interference or complainants having to go to an ombudsman.

The procedure is very similar to how the Financial Conduct Authority deals with complaints about mortgages. We have eight weeks to deal with the complaint—if we are not dealing with it at all, I think that there are other redress mechanisms—and after that point the person can go to the ombudsman. That would cost us a £230 fee; the consumer pays nothing. It is up to the ombudsman whether it takes on the case, but if the case is valid there is a procedure to go through, including an appeals system and everything that goes with that.

Client money protection and professional indemnity insurance advice are the other two key elements. The fact that advice on them is dealt with in separate documents illustrates their importance. Compliance with those two elements leads to the client money protections, which are the ultimate protections for investors.

The code of conduct deals more effectively with the landlord side of things, as the investor. We must remember that most landlords are not

sophisticated investors, but happen to have a house that their parents owned, or have moved in with their partner and are renting out their home. Most landlords in the rented sector are not institutions, and most properties in the rented sector are not owned by institutions. The properties are owned by individuals who are using the property as their pension pot for when they retire. It may be that their mortgage costs more than they get in rent, so it is important to them that their agent manages matters properly. However, that might be the only normal consumer investment that is not regulated in a properly enforced way, so it is vital that the bill is not only passed but amended to ensure that how the investments are managed is enforced in the same way as management of other investment products.

**Mary Fee:** It would be very useful if you could leave those details with us.

**The Convener:** It would be more helpful if you could send them to us electronically.

**Mary Fee:** The code of practice would raise the standards for tenants. I also imagine that, in your view, it would help to weed out rogue landlords and letting agents.

**Ian Potter:** The code has the potential to do that. What is not particularly robust in either code—I say that despite the fact that we signed off a new code yesterday at a board meeting—is provision in respect of property standards. That issue, which is covered under different legislation, is key. Both the RICS code and our code include the requirement for the agent to act within the law. A catch-all phrase encapsulates the issue in the code of practice. Concern has been raised about the coverage of the property standard in the bill; it is a difficult matter for a code of practice to enshrine properly or to have teeth on when there is already legislation and, as I have mentioned, a body—the local authority—that has statutory powers to deal with the issue.

If the agent or landlord was found guilty of breaching the statutory obligations and that information got back to us about one of our members, we would view the code as guidance on what disciplinary action we could take. I do not sit on the tribunals that look at such cases, so I cannot say what the regulation should do; neither can the membership part of the body. The regulation must be ring fenced and independent. However, if we are talking about just one incident, the member might very well just get a formal warning, which would count as one strike against them. If we saw a repeated pattern, we would look at other means. We recently amended our code of practice so that we can impose a fine of up to £5 million.

**Jonathan Gordon:** That is a good point to make. Other than that being a part of professional standards—we give up landlords' properties and will not manage them if they do not comply with the repairing standard—the property standard is probably missing from our code of conduct. I had not thought of including it in the code of conduct, although that would be a good idea; it would bind the letting agent to the landlord's obligations.

All the evidence is anecdotal, however. For instance, someone might take over a property from another letting agent and look for the gas safety certificate, but find that it is three years out of date. They go back through the paperwork and find an email from the landlord to the previous letting agent saying, "Don't worry about it. I've already spoken to the tenants; I have keys and will deal with it myself". Then the landlord says, "That's fine", but the matter is not dealt with.

In other situations, which are more common in London, letting agents offer a rent collection and legal service only: they find the tenant and move them in but do not manage the maintenance. When they do viewings they know fine well that the property is not in good condition, but at the end of the day they are going to get 10 per cent of £500 for doing nothing. There are lots of significant landlord obligations, but the letting agent has no obligation, other than a general duty of care that anybody has under law to look after the property. To bind agents to the landlord's obligations would be a good idea.

12:30

**Ian Potter:** That area of law is still unclear. The OFT recently produced guidance for letting agents on the Consumer Protection from Unfair Trading Regulations 2008 in consultation with the industry. Simply put, that legislation has a requirement that the agent should tell the consumer everything they need to know that would impact on their transactional decision making. Landlords should be told everything they need to know when agents take a new instruction from a landlord client. Similarly, the tenant should know everything they would be likely to need to know before they even go to see a property. Although that has been law since 2008, there is no case law yet. The industry is on guard.

As I mentioned earlier, Newham London Borough Council says—under consumer protection regulations, I can understand this—that when advertising a property the maximum occupancy rate should be advertised. Its licensing scheme says how many people can be in any one property. For instance, a two-bedroom property might be allowed a maximum of five people, or a family, or a combination. That should be made clear to the consumer.

The Private Rented Housing Panel in Scotland has looked at occupancy rates and over-crowding. It is a problem in Scotland; it comes back to the Govanhill discussion, which I think this committee had two or three years ago.

**The Convener:** It was not this committee.

**Ian Potter:** One of the committees certainly discussed overcrowding, anti-social behaviour and landlord registration. They all come together: we just need some joined-up thinking.

**Mary Fee:** That was very helpful: thank you.

**The Convener:** The RICS is a signatory to the United Nations' global compact for sustainable development. What elements should a code of practice include to help the sector to develop more sustainable business practices, in line with the compact's 10 principles—in particular principle 8, which is about undertaking initiatives to promote greater environmental responsibility?

**Jonathan Gordon:** I had to refer to my policy adviser for that one. The UN global compact is high-level stuff. I have talked about the environmental side of things. Driving up standards by having more new housing stock to rent is probably the best way forward. RICS Scotland believes that consideration of principle 8 in the code of practice is a good starting point, but the whole compact has the potential to play a role. RICS Scotland will be able to provide further detail in its written submission.

**The Convener:** Should the compact be considered in secondary legislation in relation to drawing up codes of practice?

**Jonathan Gordon:** Each part of the code of practice could be looked at. You would not need a separate part of the code, but would need to consider whether each part of the code related to the compact.

**Patrick Harvie (Glasgow) (Green):** The panel has given very clear evidence on the scale and nature of the problems that the bill is intended to address, which has been very helpful. It is recognised that we need to talk not only about competence and qualifications but about ethical practice.

On the balance between what should be in the legislation and what would be in the code of practice, I want to float a couple of suggestions to find out whether you think that they fall on one side or the other. I suggest that the issues would be well addressed in the code of practice.

Mr Gordon mentioned my comments in a previous meeting about a letting agent who had clearly decided, "I cannae be bothered with this deposit protection lark, so I'll just charge more advance rent," and was finding legal workarounds. If a person pays two months' rent and is given a month's notice to quit, they will still have a fight on their hands to get their money back, and will probably also need to come up with rent for a month or two to get another place to live in. The question how we could close those loopholes is therefore serious.

The other issue is the continuing problem of discrimination against housing benefit claimants. We have seen a recent media outburst from a big landlord south of the border who wanted to give all his housing benefit recipient tenants notice to quit. Even in Scotland, there is a significant problem, with the historic phrase "No DSS" still being familiar in the private rented sector. Would that kind of discrimination be effectively dealt with in the code of practice?

**Kathleen Gell:** My understanding is that that term is illegal, but nobody has challenged it.

**Patrick Harvie:** I am talking about the practice as well as the term.

**Kathleen Gell:** Yes. The practice is really driven by mortgage providers. I believe that the Bank of Scotland is guilty of not permitting buy-to-let borrowers who are looking for a mortgage to rent to people who receive benefits. I think that that was driven by the introduction of the universal credit. That is my take on the matter.

**Jonathan Gordon:** "No DSS" is a common phrase. I stated earlier that the majority of landlords whom we speak to are not wealthy people; the majority of our clients are not wealthy people. The majority of properties that we look after have a mortgage, and often the mortgage is more than the rent. Those people cannot afford not to receive the rent, so the affordability test is critical.

People who receive benefits are not excluded from our process, but we have an affordability test that is carried out by an independent company and for which we pay. It checks the tenant's suitability for the property in order to meet what we have told the landlords we will do.

In addition to the banks, many insurance companies will not allow people who would have been called DSS tenants. The cheapest insurance that people can get, which is advertised everywhere online, specifically excludes students and people who would have claimed DSS benefits. I do not know how it defines what a benefit is, because there are obviously tax credits and other different types of benefit. Therefore, a person could be—or is likely to be—working, as well.

We have a couple of people who receive housing benefit, and we get the money direct from the council. It will reduce that amount without

notice if the person is having money clawed back for something else that has been overpaid. Perhaps that money should be ring fenced, because it provides people's shelter. Perhaps the money should be paid directly to the registered agent or registered landlord, with checks in place. I know that empowerment is important for tenants, which is why the money is given to them directly, but if it will all be used for rent and they pay out at a certain level, what is the point in not giving it directly to the registered agent or registered landlord and leaving them to manage that. If I did not have any food, I would spend the rent on food, but it is more important to have somewhere to live, and a person might try harder to find another route, although I understand that that is difficult. People might think slightly differently if they did not have the money.

**Patrick Harvie:** I am sure that members can also see the argument about the needs of small landlords in particular, who depend on that income. However, it is clearly unacceptable for an existing private rented sector tenant who loses their job then to find that they are also being thrown out of their home. What can be done in the current climate to overcome that continuing discrimination?

**Ian Potter:** A landlord certainly would not be able to do that during a fixed-term tenancy as long as the tenant carried on paying the rent. Although there is plenty of anecdotal evidence that tenants are threatened with that, there would not be a breach of the tenancy agreement in the circumstances you describe. The difficulty arises if the tenancy comes to an end, after which the practice may be different.

As has been said, the Council of Mortgage Lenders is working hard with its members. Nationwide has said that it will change the term for buy-to-let mortgages and will allow a longer tenancy than it has done previously. Often, a buy-to-let mortgage deed states that no tenancy shall be created for longer than 12 months at any one time, but Shelter will tell you that it would like people to have the ability to stay longer. In practice, many tenancies last far longer than a year. When I left Glasgow in 2006 for my current post, I had had a tenant in situ in a property in the private rented sector since 1989. The tenant was perfectly happy and the landlord was happy as well. Generally speaking, if their tenants are behaving, landlords do not want to change tenants unless something has impacted on their personal circumstances.

In the current market, there are buyers who are willing to buy a property with a sitting tenant from an investor landlord or an accidental landlord who wants to exit the market, and a good agent can match up those two parties.

I know exceptionally well the English case to which you referred. I have had to face it in the media on more than one occasion, as the landlord did the same thing back in 2004 and 2006. I have to be careful what I say publicly, but I do not think that the reason that he gave was the right reason.

One of the big problems for the benefit tenant is that the rent that they can afford or that they will receive benefit for is often below the market rent and the landlord wants to know that they are maximising the return on their property.

**Patrick Harvie:** You have to look at it from both perspectives, though.

**Ian Potter:** Of course we have to look at it from both perspectives, but if people were told that they would make a more socially acceptable investment by putting their money into one bank interest free as opposed to getting even what they would get in today's market—0.25 per cent—from another bank, what percentage of the population would think that that was a good deal?

The rent return on a landlord's property is no different. We want institutional investment in the private rented sector of the type that Jonathan Gordon spoke about earlier, and quality new stock coming into the private rented sector will be very much yield driven.

We must address the issue. I know that the Scottish Government has had concerns about universal credit and has said that it will do what it can to support people in that situation, but it is a fact of life.

**The Convener:** I think that we are veering off the subject, and we are rapidly running out of time. Does anyone have anything to add on the current subject before we move on to dispute resolution and enforcement?

12:45

**Jonathan Gordon:** I have a very quick point to make. The Scottish Government would do well to look at investing in the rented sector as the way to improve the situation, with the right proportion of affordable homes being created as part of building a new sector. Encouraging the sector would play a massive part. If 20 per cent of houses have to be affordable, that will create more homes that people can afford.

If the Government is not able to do everything that is required to allow a tenant to stay in a property when they fall on hard times, it is not feasible for an individual person—who has just enough money to feed their own family and who happens to be a landlord—to be the one who steps in to support the tenant who cannot afford to pay the rent.

Nobody would be thrown out for losing their job. They would be thrown out—or, rather, the correct legal process to evict them would be started—if they could not afford to pay the rent or if they stopped paying the rent. A professional and ethical body that looked after a landlord who tried to do anything else would not last very long.

I will stop there so that the committee can move on.

**Kathleen Gell:** I will make one final point. I come back to the point that I made at the outset in support of Professor Maclennan, which is that there needs to be a bigger strategy. The barrier to investment in new build for the private rented sector is apparently cited as being the cost of land. Investors are, in effect, sterilising land that could be used for building. The Scottish Government could look at freeing up or ring fencing land and not allowing it to be bought by investors.

**The Convener:** That is for local authorities.

Let us move on to dispute resolution and enforcement.

**Gordon MacDonald:** What mechanisms currently exist for resolving disputes between letting agents and their customers? How effective and fair are those procedures for resolving customer complaints? How aware are people of the existing schemes?

**Ian Potter:** The ombudsman schemes that we referred to earlier are the ones that are most commonly used. They are independent; the ombudsman bodies are not controlled by the industry. The schemes work and they are cost-efficient business models. I have concerns about the costs of using the Private Rented Housing Panel that are given in the documents that accompany the bill. Typically, the cost of dispute resolution that goes to either of the ombudsmen is less than £250 as opposed to the figure that is given of £1,600 to £1,800 for the PRHP.

One thing that we have to look at is whether, for some issues that are likely to be areas of complaint, we could come up with something as simple as alternative dispute resolution. ADR works quite effectively for tenancy deposit cases: the cost of ADR schemes that are running for tenancy deposit protection ranges from about £80 to £150, and the process is a desktop exercise. I do not have a problem with the suggestion that there might be a requirement for a higher-level, more complicated route, but we have to look at how quickly and efficiently some of the problems can be addressed.

Obviously, there has to be a code of conduct that requires an agent to have a dispute resolution and internal complaints procedure. Often, a more junior member of staff digs in their heels and says, "No, that is not right," but when the problem gets to the boss, they have a solution. I know that, as an agent, I used to spend money to keep both sides happy.

**Malcolm Warrack:** Another element is the education and empowerment of the tenant. The better their education about the circumstances and their rights and responsibilities, the more likely we are to be able to move to the situation that Ian Potter has been talking about, in which problems are captured and dealt with sooner rather than later. It is the escalation process that is often the problem. Tenants need to be better informed.

**Gordon MacDonald:** What are your views on the bill's proposals regarding how tenants and landlords could seek to enforce a letting agent's compliance with the letting agent code of practice? Do you agree with the Government that the proposals provide easy access to a redress mechanism?

**Jonathan Gordon:** The Government's proposals are good and it has thought about the issue in the right way. The difficulty is that the Private Rented Housing Panel is the best example of a tribunal at the moment, and it is not operating as it is meant to. People who have problems in relation to the repairing standard are not going to the panel, or their cases are taking too long to be resolved. Investment in that is therefore key.

The RICS's view is that the best-placed people to manage disputes between letting agents and their clients, whether they are landlords or tenants, are ombudsmen. The two ombudsman schemes that are in place are credible and, as Ian Potter said, they provide good low-cost solutions and easy access for people.

Tribunals would be fine, if that is what is wanted, but it is unnecessary to add another layer that the Government gets involved in. If a scheme that already operates can be used, why introduce another one? Extending the scope of tribunals to take cases away from sheriff courts is a good idea, but perhaps issues to do with the registration of letting agents should lie with ombudsmen.

A disparate set of organisations is involved and there is a huge number of codes of conduct. Nobody understands the position at the moment. What need is there for the Scottish Government to add another level?

ARLA is well known in England as a licensing body for letting agents and it has a strict code of conduct. The RICS has an additional element in professional development—the on-going training on what is required is slightly more entrenched. However, as Ian Potter said, ARLA provides training to its members, and that is something that it is supposed to do. Why would we not use something that exists already? Why spend

£500,000 or £1 million on setting up a scheme that nobody will comply with or which requires an enforcement body to be set up?

If someone tries to call the trading standards department at the City of Edinburgh Council, they will not get through, but they can get through to a citizens advice bureau helpline. I understand that that is the route that people would use to complain about a letting agent at the moment. Why not take advantage of existing bodies?

The RICS has white-labelled the regulation of other sectors. Members of the Institute of Residential Property Management and the Association of Residential Managing Agents, which work in similar sectors, are regulated by the RICS. The RICS also regulates every surveyor who values a house that is for sale.

Experienced practitioners in RICS regulation have written to the Government to offer advice on three ways in which they could help. At the top level, people could be required to be surveyors. At the next level, the RICS could provide the regulation in a white-label format. Finally, the RICS could set up the code and manage it for the Government.

Lots of stuff could be done. The fit-and-proper-person test will need to be set up, and a code of practice that everybody must stick to will have to be established. We should use the existing low-cost ombudsman services, which work well for consumers. We should also use something that already exists to manage all that, such as ARLA, the RICS or a combination of them.

We could follow what was done with tenancy deposit schemes. The Government said what a company would have to do to run a deposit scheme, and three companies, including one in which the RICS is involved, set up independent schemes for that—although those bodies are not involved in enforcement, which would need to be added in this case. All the schemes have their own rules and sets of guidance, but they do pretty much what the Government wrote that they have to comply with.

Why do we not do something like that and let the market, which already has experienced people, take over the role? That is my main suggestion.

**The Convener:** Are there any other suggestions?

**Kathleen Gell:** I do not know whether this is a suggestion; it is really an observation. We have a lot of different bodies, not all of which know what they are meant to regulate. For example, Highland Council's trading standards department was—sadly—not aware that it was meant to oversee the display of energy performance certificates. It needed me to tell it where it could find out about that.

Local authorities regulate landlords, the Scottish Government is to regulate letting agents, and the police regulate some aspects. The Private Rented Housing Panel, ombudsmen, the RICS and ARLA are also involved. We need just one body that has an overview and the ability to regulate the system. That would be much clearer and would make the system much easier to enforce. I do not have a suggestion on who that should be or how that should be done.

**Mark Griffin:** We have heard concerns that existing private rented sector legislative requirements such as private landlord registration schemes are not being enforced effectively. That came through in your opening remarks, when you said that enforcement was key. Are there any concerns about the Government's ability to enforce their letting agent registration requirements?

**Ian Potter:** My main concern is whether the Government can enforce its own legislation effectively. Where things are sitting in the proposals, the enforcing body is the Government. I am still trying to work out how that will be devolved: where it will go and who will have that responsibility.

Kathleen Gell made a point about something that has happened south of the border, which has not been able to be extended north of the border, which is a scheme known as primary authority. Through it, one local trading standards department can provide what is known as assured advice, which every other trading standards officer in the jurisdiction—remember that I am speaking about England—will abide by. That leads to uniformity of standards and enforcement, which makes it much easier for everyone to know where to get advice.

I will be perfectly honest and say that the scheme is in its infancy for the private rented sector. However, since we launched our scheme in October, almost 1,000 agents have signed up to it and we are starting to see cases coming through. Cases are referred, advice is given quickly and clearly, and other local authority trading standards departments are accepting it. Something like that is workable and could be made to happen in Scottish legislation.

**Kathleen Gell:** I can think back five or six years to when the City of Edinburgh Council ran the letwise scheme—correct me if I am wrong—which was excellent, with very high-standard training sessions for landlords. We travelled down from Inverness to go to them, because there is such a lack of training opportunities.

People are eager for knowledge; they want to do a good job. Many of us are out there, trying to

raise the bar. It is something that could be looked at and which could cover a lot of areas.

**Jonathan Gordon:** There is a theme in what I am saying about regulation needing enforcement by a proper professional body. The fact is that there are good letting agents, who do everything right and know exactly what they are doing—the top percentage—and there are a few bad ones at the bottom, who either do not care whether they do everything right as long as they get the money, or deliberately do things to make more money.

A big percentage of letting agents have a lack of understanding and knowledge, but the vast majority want to do a good job. The self-regulation model is something that even the hardest campaigners and others such as the press support. The Government is trying to improve redress for tenants in the court system, by moving their cases away from the court system to specialist tribunals where housing people will look at them. The best people to regulate the sector are the people who know how the sector should work.

There is a massive lack of information for tenants, landlords and the Government. Whenever the Government looks at something, it interviews people such as us and gets anecdotal evidence of things that are happening in the market. However, there are 1,000 letting agents and we do not know anything about those who are not members of a trade body. Even for those who are, there is no compulsion to do anything right—there is no formalisation of stuff. Why not take the opportunity to change that? The Scottish Government is unique in the UK in that it wants to regulate housing to improve standards. The best route to doing that is to create a single body that will self-regulate, using people who understand the market. Why would the Government want to get tied up in something that people will complain about? Why not set it off in the market in the right way and have proper self-regulation, enforced by an independent body?

13:00

**Mark Griffin:** What are your views on the proposed offences in the bill? Are they proportionate?

**Jonathan Gordon:** The level of fines is set out clearly, but the RICS is concerned that they appear to be lower than the fines for non-compliance with landlord registration, which seems strange. I spotted that but did not have time to look into the detail. I think that for a particular offence, it is level 3—I apologise; I am not sure how it works, but I think that you will find that the approach does not match the approach to landlord registration.

**Mark Griffin:** What will letting agents be required to do to comply with the registration scheme? Will the approach create undue regulatory burdens?

**Kathleen Gell:** My feeling is that it should create regulatory burdens—otherwise why do it?

**Jonathan Gordon:** That is my view, too.

**Malcolm Warrack:** Yes, it should do.

**Jonathan Gordon:** We all agree.

**Ian Potter:** What agents will have to do will vary across the market. Some agents will not have to do anything; others will have to take a long, hard look at their current business model and everything else. The impact will be greatest on the latter group, but that is the group in relation to which we—and, I am sure, members of the committee—think that the biggest problems arise. Therefore, we should not be frightened of the regulatory impact.

**Malcolm Warrack:** There are cost implications, of course. I said in a meeting with Shelter some months ago that the cost of landlord registration is too low. It is about finding a balance, to ensure that the regulatory costs and efforts to comply with the code of practice and everything else are in balance with the size of the business.

**Jonathan Gordon:** Cost is an important issue for RICS members and particularly for its regulated firms, which operate as limited companies or whatever. For us, the cost of regulation can be well over £1,000, not counting the high level of professional indemnity insurance that we must have. We think that to require regulated firms of chartered surveyors to pay another fee to a Government registration scheme—in order to adhere to a lower set of standards—would place an unnecessary burden on those firms. The RICS heavily regulates its members already, and it might create confusion in the market and among its members' operations if firms had to comply with two codes of conduct.

The Law Society of Scotland made similar points. Its members deal with particular pieces of legislation in relation to signing documents, I think, and are covered by the society's code of practice.

The management of property is core to what surveyors do. Why would they be regulated by someone else, when strong regulation is already in place?

**Kathleen Gell:** We accept that there will be a cost, but I echo what Jonathan Gordon said. I am here speaking on behalf of the CLA, but let me put this in the context of our firm, which is very small—it is me and my husband. The fee for membership of the CLA is £295, I think, so my firm pays that. We also pay into the SAFE—safe agent fully

endorsed—scheme, the Landlord Accreditation Scotland scheme, ARLA and RICS. My accountant tells me that last year our fees to those bodies were just short of £3,000. Therefore, some of us might not take kindly to a hefty fee of several hundred pounds, unless it will achieve what the Government is trying to do—so please give the approach teeth.

**Jonathan Gordon:** There is a competition issue and a risk to businesses that are already accredited and are already providing a good service, in that everyone else will be legitimised by the term "regulation", even though agents will be unregulated if the bill is enacted without change. People will automatically start talking about regulation, even if they mean registration, and that would be extremely unfair. At the moment, we are able to set ourselves apart as being qualified and regulated, but once the scheme comes into force as set out in the bill at the moment, other letting agents will also be able to say when asked, "Yeah, we're regulated by the Scottish Government," and the perception will be that surely that is better.

**The Convener:** I think that we have got the point.

Would the witnesses like to add anything that we have not covered? We have had a fairly long and detailed session, and it has been of great benefit to the committee.

**Kathleen Gell:** I have one last concern. If a letting agent has been removed from the register, can that letting agent set up as a new partnership, a new limited company or whatever, and reregister? How do you propose to deal with that?

**The Convener:** We shall certainly pass that question on.

**Jonathan Gordon:** I have talked a lot about enforcement, and I want to make it clear that we support the Government's intention to regulate letting agents. We just feel that it needs to address another couple of points.

I have watched videos of the evidence sessions that have taken place and I know that electrical safety and fire safety have been mentioned, so I would like to say a quick word about that. The Scottish Government's own figures show that the number of accidental residential fires is falling each year. However, faulty electrical wiring or installation is the number 1 cause of fires and the number of such fires is rising. In 373 of the 5,000 accidental dwelling fires noted last year, the source of ignition is listed as the electricity supply. There were more than 600 more in which an appliance is listed as the cause. Unfortunately, the data is not clear enough on whether those fires were in rented properties, but we can assume that 20 per cent of them were in rented properties—or perhaps that the rented sector is worse, because people look after their own property first.

Legislation on gas safety is clear, and all landlords have a duty of care to the tenant and must provide safe gas installations. The relevant legislation also makes it clear that that must be achieved by way of an annual gas safety inspection. Legislation on electrical safety is also clear, in that all landlords have a duty of care to the tenant and must provide safe electrical installation and appliances, but unfortunately, the relevant legislation is not clear about how that is to be achieved, with the result that most landlords do not carry out electrical wiring and installation checks by way of an electrical installation condition report or portable appliance testing. Strangely, anecdotal evidence suggests that more people check that the kettle works than check the socket that it goes into.

That is likely to mean that many properties that are let out privately, or perhaps even the majority of such properties, are not safe. It is relevant to the bill that letting agents—people from whom we are trying to win business—often advise people that they do not have to carry out electrical safety checks. We believe that that is not correct, because they are failing in their duty to the tenant to provide a safe system.

The issue of smoke alarms in the repairing standard is also confusing. Having a suitable smoke alarm is a requirement, but nobody is telling anyone what is meant by a suitable smoke alarm. Battery smoke alarms are unreliable: tenants take the batteries out and such alarms often fail and do not work as well as mains-operated smoke alarms do. The Housing (Scotland) Act 2006 introduced the repairing standard, which is quite well drafted, but we think that it should be amended to make the provision of suitable mains smoke alarms, as well as electrical safety checks, mandatory.

Given that the new building standards say that any new gas installation should have a carbon monoxide—CO—alarm in the same room, it seems strange that that is left out of the letting legislation. We feel that CO alarms should be compulsory in rooms in which people have a gas appliance.

**Kathleen Gell:** Letting agents who choose to sign up and be members of Landlord Accreditation Scotland have to insist that landlords provide an EICR, fire blankets and so on, so there are higher standards, and that is an excellent thing.

**The Convener:** Thank you for your evidence, which has been really good. I shall allow the witnesses to leave the room and then the

committee will continue for a couple of minutes in private.

13:09

*Meeting continued in private until 13:10.*

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