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Pàrlamaid na h-Alba

Official Report

INFRASTRUCTURE AND CAPITAL INVESTMENT COMMITTEE

Wednesday 15 January 2014

Session 4

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INFRASTRUCTURE AND CAPITAL INVESTMENT COMMITTEE
1st 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:

Colin Brown (Scottish Government)
Daniel Couldridge (Scottish Government)
Linda Leslie (Scottish Government)
Barry Stalker (Scottish Government)
Claire Tosh (Scottish Government)

CLERK TO THE COMMITTEE

Steve Farrell

LOCATION

Committee Room 6

Scottish Parliament

Infrastructure and Capital Investment Committee

Wednesday 15 January 2014

[The Convener *opened the meeting at 10:02*]

Housing (Scotland) Bill: Stage 1

The Convener (Maureen Watt): Good morning, and welcome to the Infrastructure and Capital Investment Committee's first meeting in 2014. I remind everyone to switch off any mobile devices, as they affect the broadcasting system. Having said that, I note that some members will be working from tablets, as their committee papers are on the devices.

The only item of business is evidence on the Housing (Scotland) Bill at stage 1 from Scottish Government bill team representatives. We have Linda Leslie, housing strategy team leader; Claire Tosh, team leader, private housing services; Barry Stalker, team leader, private rented sector policy; Daniel Couldridge, senior policy officer, housing options and support; and Colin Brown, senior principal legal officer, communities and education division. Would Ms Leslie like to make any opening remarks?

Linda Leslie (Scottish Government): Yes, if that would be all right. The Housing (Scotland) Bill is a wide-ranging bill with provisions that affect all types of housing. Its policy objectives can be summed up as being to safeguard consumers' interests, support improved quality and achieve better outcomes for communities.

To take each of the main topics in turn, the bill will end all right-to-buy entitlements; increase flexibility in the allocation and management of social housing so that landlords can deliver improved outcomes for their tenants and the communities that they live in; introduce a regulatory framework for letting agents to tackle those who do not meet industry standards of professionalism and conduct; create a new specialist private rented sector housing tribunal; give local authorities greater enforcement powers to improve the quality of houses in the private sector by requiring owners to carry out work to repair or maintain their properties; and improve and strengthen the licensing regime that applies to mobile home sites on which people live permanently. There are also miscellaneous provisions, as well as technical amendments to previous housing legislation.

Many of the provisions form part of the Scottish Government's housing strategy in "Homes Fit for the 21st Century". Since that document was published in 2011, we have developed the detail of the provisions through extensive consultation and discussion with stakeholders. Between 2012 and 2013, we held seven public consultations that covered each of the main policy areas in the bill. The Minister for Housing and Welfare continues to engage with stakeholders through her housing policy advisory group, which includes representatives from across the housing sector, and she is keen to reflect on stakeholders' evidence and the committee's views as the bill goes through stage 1.

We understand that the committee wishes to focus the session on four main areas: the private rented sector tribunal, which Dan Couldridge will cover; mobile homes, which Claire Tosh will cover; letting agents, which Barry Stalker will cover; and social housing allocations and tenancies, on which I will answer questions. I will answer general questions on the bill and I will try to answer any questions that members have on other areas but, if necessary, we will provide more detailed answers in writing. The final member of our team is our solicitor, Colin Brown.

The Convener: Adam Ingram will start with some general themes of the bill.

Adam Ingram (Carrick, Cumnock and Doon Valley) (SNP): The bill aspires to contribute to realising the Scottish Government's housing vision, which, as you helpfully laid out in the slide that you provided to us, is that

"All people in Scotland live in high-quality sustainable homes that they can afford and that meet their needs."

To what extent will the bill's provisions support that vision?

Linda Leslie: As that slide shows, the separate policy areas in the bill feed into the supporting outcomes that underpin the vision. Those outcomes are a well-functioning housing system, high-quality sustainable homes, homes that meet people's needs and sustainable communities. Each policy area does not map directly on to only one of the outcomes—some contribute to more than one outcome—but, taken as a whole, the provisions will contribute to those outcomes and therefore to the vision that ministers have for housing.

Adam Ingram: I will focus on one element of the vision—sustainability. Paragraph 32 of the policy memorandum states that the provisions have no adverse effect on sustainable development. Through what process was that determined?

Linda Leslie: The policy areas in the bill were assessed individually and collectively for their effect on sustainable development. We considered

the effects in relation to the environment, society and the economy. In essence, the bill is concerned with property rights, processes and powers, none of which directly impacts on the environment.

We carried out a strategic environmental assessment pre-screening for the bill and concluded that, under section 7 of the Environmental Assessment (Scotland) Act 2005, a full SEA was not needed. We set out in the policy memorandum the possible effects of the various areas on the basis of existing evidence and discussions with key stakeholders as we developed the policies. For example, extending local authority discretionary powers to enforce repairs and maintenance in the private sector should indirectly have a positive effect. That was developed through consultation on our sustainable housing strategy.

Adam Ingram: You mentioned consultations and your discussions with stakeholders. Will you summarise the nature and extent of the consultation exercises and provide an overview of how you engaged with the stakeholders in the process?

Linda Leslie: We started discussions back in 2010, when we asked stakeholders whether any legislative changes could be made to help the housing system to work better. That formed part of our discussion paper "Housing: Fresh Thinking, New Ideas". The outcome of that discussion fed into the strategy in "Homes Fit for the 21st Century", and we identified a number of areas where legislative change might be appropriate and which we would explore in more detail. Based on that, we undertook over 18 months the seven consultations that I mentioned.

The approach of undertaking individual consultations reflected the fact that many of those areas have a discrete set of stakeholder interests, so each consultation was targeted at those interests and used methods that were appropriate to the relevant stakeholders. We did not just rely on publishing a consultation document. For example, officials who are leading on the right to buy met tenants groups across the country through the regional networks of registered tenants organisations, as well as meeting landlords and representative bodies.

On social housing allocations, it was important to reach those who might apply for social housing in the future, as well as existing tenants and landlords, so colleagues used Facebook and commissioned Young Scot and the streetlinks project to hold participative workshops with young people. They also commissioned a DVD for the Facebook pages to highlight the issues behind some of the proposals in the consultation and encourage people to think about the implications of those proposals.

Before it was consulted on, the private rented sector strategy was developed through a working group with representatives from across the sector. After the consultation on the mobile homes proposals ended in August 2012, colleagues met the residential mobile homes stakeholder working group and representatives from the industry, residential groups and local authorities, so there has been a mix of approaches to our consultations.

The Convener: How many replies did you get via Facebook and social media?

Linda Leslie: I do not have that data here, but I can certainly write to you to let you know.

The Convener: We shall move on to part 1, on the right to buy.

Alex Johnstone (North East Scotland) (Con): What views were expressed during the consultation on the proposed end to the right to buy?

Linda Leslie: There was a range of views. On the whole, landlords supported ending the right to buy, and the majority of tenants who responded to the consultation also supported ending the right to buy.

Alex Johnstone: You described the consultation a moment or two ago, and it is obvious that work was done to consult tenants as well as landlords. Was any special effort made to consult directly the tenants who have a right that they will lose?

Linda Leslie: That would have been done through the discussions with tenants groups, because the tenants groups that my colleagues met contained a mix of people who have the right and will lose it and of those who do not have a right.

Alex Johnstone: Why will there be a three-year notice period before the right to buy is ended, rather than a shorter notice period, as some social landlords suggested?

Linda Leslie: Ministers had to consider the effect on human rights of ending the right to buy. Our view was that there were potential issues under the European convention on human rights, so the decision that the notice period will be three years was made on the basis that that is a fair and reasonable timescale for tenants who have and can exercise their right to buy to exercise it.

Alex Johnstone: That is a reasonable argument, which I would accept. However, a complication is that the right to buy has already been suspended in a number of areas, and that suspension could continue through to the end of the three-year period. What consideration was

given to the position in which tenants in those areas find themselves?

Linda Leslie: Local authorities are the strategic bodies that have the power to make, amend and revoke pressured area designations. Ministers considered whether there should be a measure to suspend those designations during the notice period, but on balance they felt that that would take away the flexibility of local authorities to respond to housing needs in their areas.

Alex Johnstone: The answer to a previous question was based on human rights. The answer to the question that followed was based on the balance of responsibilities. Is it possible or conceivable that challenges will be brought by tenants in pressured areas who are not allowed to exercise their right?

10:15

Linda Leslie: My colleague Colin Brown will answer that.

Colin Brown (Scottish Government): There is always a possibility of legal challenge, and someone can bring one if they so wish. My advice is that I would not expect such a challenge to succeed.

Alex Johnstone: I have one other thing to ask about the right to buy. The number of houses that have been bought by their tenants has dropped in recent years, but that remains a source of income and resource for social landlords. Has any assessment been made of the financial implications for social landlords of abolishing the right to buy?

Linda Leslie: Yes. The financial memorandum goes into quite a lot of detail about that impact. Landlords who responded to our consultation felt that, on balance, the impact of losing those capital receipts would be neutral or positive. They cannot predict when they will sell the properties and receive the capital receipts whereas, if the stock is retained in their ownership, they can predict the rental income that they will receive, so they can base their business planning on that rental income stream.

The Convener: Will you clarify how legislation on the right to buy might come up against human rights legislation?

Colin Brown: Under article 1 of protocol 1 to the ECHR, the right to buy is part of a package of rights that a tenant has under a secure tenancy. The tenant has a right to buy; that is a possession in ECHR terms, and to interfere with the person's possession, which is that right, and which the person might or might not be able to exercise in practice, needs some sort of justification. Whether that interference is justified has to be considered in a social context. It is slightly arcane, because it is not a very obvious right and it is only one of a package of rights, of which the remainder are unaffected.

The Convener: So the right to buy is part of the tenancy agreement.

Colin Brown: It is a right that a tenant has in the same way as they have the right to have certain repairs carried out, the right to assign in certain circumstances and the right not to be evicted except through certain processes and in certain situations.

The Convener: Did you seek advice about the issue from the Equality and Human Rights Commission?

Colin Brown: The Government sought no external advice on the matter. The Government's legal directorate considered it as part and parcel of developing the proposals.

The Convener: We will move on to part 2, which is on social housing.

Mark Griffin (Central Scotland) (Lab): What changes will the bill make to the existing reasonable preference provisions for the allocation of social housing and how will those changes give social landlords more flexibility than they currently have?

Linda Leslie: As you say, the purpose of the reasonable preference provisions is to give social landlords greater flexibility in allocating their housing. The bill will replace the current reasonable preference categories of failing the tolerable standard, overcrowding and large families, all of which are contained in the Housing (Scotland) Act 1987, and it will introduce new categories of being homeless or threatened with homelessness, unsatisfactory conditions and underoccupancy.

The unsatisfactory conditions category will cover a range of housing needs, such as housing that is unsuitable for an applicant's health condition because, for example, they live in a top-floor flat but require ground-floor access. It might include social reasons, such as the property being in the wrong location to allow the occupant to receive support or the person being a victim of domestic violence.

The bill will require landlords to set out in their allocation policies what those conditions are. They will have to consult tenants, applicants and registered tenants organisations when they create or revise their allocation policies and report on that consultation.

Mark Griffin: Can you give a bit more detail on why the categories of occupying overcrowded houses and large families have been dropped? Is

there a shift away from giving priority to those who live in overcrowded conditions?

Linda Leslie: I do not have the detail of that, but I would be happy to write to you with it.

Mark Griffin: Thank you. Are there any other ways in which the bill would allow social landlords to make best use of social housing?

Linda Leslie: Yes. The bill will make a number of other changes, one of which is to allow landlords to take account of an applicant's age in the allocation of housing, subject to equalities legislation. The intention behind that is to allow landlords to make best use of their stock in light of local circumstances. That suggestion came from responses to our consultation on affordable rented housing. We felt that removing the ban on taking age into account could allow landlords to develop policies that better meet the needs of people from different age groups. For example, a landlord might use a particular block of housing specifically for older people instead of having a mixed group of people whose different lifestyles could cause issues to arise. There were some concerns that the shift to allow landlords to take age into account might lead to young people being discriminated against, but the bill extends protection under the Equality Act 2010 to 16 and 17-year-olds to ensure that that does not happen.

Mark Griffin: I note from the Scottish Parliament information centre briefing that there was some support for allowing allocations policies to include consideration of whether an applicant was from the local area. Why was that not taken forward?

Linda Leslie: The bill makes no changes to existing legislation in relation to local connection. Existing legislation allows landlords to take into account whether an applicant has a local connection—for example, whether they work in the area or need to move to the area because of special medical or social needs. However, in order to ensure that housing is allocated on the basis of need, landlords cannot take into account the length of time that someone has been in an area. There is no change to that.

Alex Johnstone: I am sorry for raising this point, which is a bit cheeky, although it is relevant. A number of people on significantly above-average earnings continue to occupy social rented housing. There has been publicity in the past few days about attempts south of the border to end that practice. It was suggested to me that such a provision might appear in the bill, but it does not. Was one ever considered? If so, why was it dropped?

Linda Leslie: Ministers consulted on whether income should be taken into account, but they decided that, on balance, that should not be taken forward because they want social housing to remain accessible to all.

The Convener: You have mentioned various factors that were taken into account. Did they include economic conditions in a particular area? I ask because I am from Aberdeen, which is a very pressured area for housing, with lots of people moving into the area to take up jobs.

Linda Leslie: As I said, existing legislation allows such local connections to be taken into account, so no change has been made to that.

Mark Griffin: Can you explain how the bill will provide social landlords with additional tools to tackle antisocial behaviour and what impact such provisions will have in practice?

Linda Leslie: Yes. There are a number of provisions in the bill that will help social landlords deal with antisocial behaviour more effectively, the first of which is to allow them to suspend an applicant with a history of antisocial behaviour from the waiting list for a period. The hope is that the ability to take past behaviour into account and to allow a period of time before an applicant is eligible for housing will encourage tenants to think about their behaviour and recognise the impact that it has on their ability to access housing.

We understand that landlords already suspend applicants for a variety of reasons. The latest figures indicate that 10,000 applicants on the housing list are ineligible for housing. That is mainly because of existing rent arrears or because the applicant has refused what a landlord considers to be a reasonable number of offers of accommodation. The evidence from landlords suggests that they take into account behaviour over up to three to five years. In effect, the bill puts into legislation something that is done in practice by some landlords now.

Mark Griffin: I will ask about suspending applicants because of antisocial behaviour. Is there any clash at all with social landlords' responsibility to make offers of housing to those who are homeless?

Linda Leslie: The provision will not affect those who are unintentionally homeless.

Mark Griffin: So there will be no suspension in those cases. That is fine.

What is the Government's thinking on the types of evidence that social landlords would require to make use of the proposed powers to issue a short Scottish secure tenancy?

Linda Leslie: That is one of the other provisions that would allow landlords to tackle antisocial behaviour. The intention is that it would help to reduce antisocial behaviour. Landlords would need evidence of antisocial behaviour on at least

two occasions before they could convert a secure tenancy into a short Scottish secure tenancy, which would limit the tenant's security of tenure to 12 months. A short secure tenancy currently lasts for six months, so we are extending its length from six to 12 months.

Alongside that, the landlord would have to provide housing support services to help the tenant to change their behaviour during the period for which they had a short secure tenancy. That is not only about tackling antisocial behaviour but about giving people a second chance to sustain their tenancy. At the end of the 12 months, if the tenant has demonstrated that they can meet the requirements of a secure tenancy, the tenancy would convert back to that. Alternatively, two months before the end of the short secure tenancy, the landlord could serve a notice to extend it for another six-month period, as long as they provided additional housing support during that time.

Mark Griffin: Are there any other protections for tenants who are placed on a short SST or who have their SST converted to a short SST?

Linda Leslie: Yes. The landlord would have to serve a notice to let the tenant know the grounds on which it was considering ending the short secure tenancy if the behaviour had not changed—that is not necessarily a requirement at the moment—and they would have to set out the reasons why they wished to recover possession. That is also a new measure.

Mark Griffin: What would be the right of appeal for a tenant who had their tenancy converted to a short SST?

Linda Leslie: I think that they would have a right of appeal to the social landlord and that the bill will allow ministers to set the requirement for that appeal process in regulations, but I will clarify that in writing.

The Convener: Jim Eadie has some questions on private rented housing.

Jim Eadie (Edinburgh Southern) (SNP): Thank you, convener. I will ask about the transfer of jurisdiction from the sheriff to the first-tier tribunal. There is a proposal to transfer certain types of civil court actions in relation to the private rented housing sector from the jurisdiction of the sheriff court to the jurisdiction of the first-tier tribunal, which is a new body that will be established under the Tribunals (Scotland) Bill. Can you set out the rationale for that change? What will be the benefits for tenants and landlords? Can you also explain to the committee why social rented sector cases are not being transferred from the sheriff's jurisdiction to that of the first-tier tribunal, despite that having been flagged up as a possible option during the consultation process?

10:30

Daniel Couldridge (Scottish Government): Yes. The social rented sector is very different from the private rented sector. For example, the Scottish Government's 2009 review of the private rented sector showed that 75 per cent of private rented sector landlords have only one property, and half the properties surveyed were managed wholly by the landlords themselves. We have heard that private rented sector tenants and landlords can be reluctant to take cases to court and have difficulty accessing justice.

The social sector is different. For example, tenants have recourse to an ombudsman and landlords have pre-action requirements that they must fulfil before they can take eviction action against tenants. Social sector cases tend to proceed to court when that is absolutely necessary.

Ministers have decided that, on balance, private rented sector cases should transfer to a tribunal that will deal with issues that are specific to that sector, to enable tenants and landlords to access justice. The proposals will create a specialist, efficient and accessible forum so that tenants and landlords can access justice.

Jim Eadie: You have outlined the reasons for excluding the social rented sector from the proposal for the private rented sector. Can you tell me in a little bit more detail what benefits the proposal will have for landlords and tenants?

Daniel Couldridge: Tribunal procedures are less formal than court procedures, legal representation is not always required before tribunal proceedings, and a tribunal judiciary tends to be more active in asking questions and getting to the root of the issues involved in a case. The rationale behind transferring such cases to a tribunal is that that will enable tenants and landlords to access justice. They will have a more accessible forum in which to bring cases in situations in which they might have been reluctant to bring cases previously.

Jim Eadie: Can you clarify whether one of the advantages is that tenants who want to bring an action to the tribunal will not face the legal costs and barriers that they would have faced if they brought an action through the civil courts?

Daniel Couldridge: Parties that come before the tribunal could be represented if they wished, by a family friend or someone to speak on their behalf, who could be legally qualified. The tribunal's advantage over the courts is that the tribunal judiciary has the expertise and time to ask

questions, investigate the matter in question and get to the root of an issue. That should enable parties who are generally unrepresented in court proceedings at the moment to make the best of their case.

Jim Eadie: Are there any specific proposals regarding legal aid for tenants who will appear before the tribunal and what the tribunal fees are likely to be?

Daniel Couldridge: There are two elements to that. There would be scope for the tribunal to charge a fee under general powers provided for in the Tribunals (Scotland) Bill, which ministers want to consider further. That would involve balancing the interests of seeking to recoup a percentage of the tribunal's overall running costs against those of ensuring accessibility for tenants and landlords, which we have said is a key issue. Any proposal to charge a fee for the private rented sector tribunal would require secondary legislation, so the Parliament would have the chance to scrutinise such a proposal.

Tribunal procedures are designed to be accessible and understandable, and generally parties do not require legal representation. However, we are aware that some parties might require support to engage effectively with tribunal proceedings and we want to look in more detail at what support we can provide. That could be through the provision of legal aid or through other means: a representation or advocacy service, for example.

Jim Eadie: I want to confirm that I have understood you correctly. Is the motivation for transferring jurisdiction from the sheriff court to the first-tier tribunal to do with strengthening tenants' rights and rebalancing the relationship between the tenant and the landlord? Is that the motivation, rationale and justification for the move?

Daniel Couldridge: Partly. It is about improving the quality of and access to justice, for both tenants and landlords in the sector. Tenants will be able to bring cases on various issues to the tribunal, and landlords will also be able to bring cases to the tribunal.

Jim Eadie: You touched on tribunal fees being a source of income to offset the costs of setting up the tribunal. Do you have any information at this stage about what the expected cost of setting up the new process will be? Is there anything further that you can tell us about the staffing arrangements that would be required to get the service up and running and to sustain it?

Daniel Couldridge: We have provided cost estimates in the financial memorandum. Our estimates are that there would be one-off set-up costs of between £90,000 and £140,000 and on-going operational costs of between £580,000 and £880,000 a year. Those costs are based on data from other existing tribunal jurisdictions. The Private Rented Housing Panel is the only other dedicated housing tribunal that operates in Scotland.

Jim Eadie: We will come on to that in a second.

Daniel Couldridge: In the process of producing the costs, we visited some of the larger tribunal jurisdictions in Scotland—the social security and child support tribunal and the employment tribunal—to look at practice in those jurisdictions so that we could accurately model the costs.

We estimate that the tribunal will need up to 60 members to deal with the projected caseload of around 700 cases a year. Again, that is based on what happens in other tribunal jurisdictions and how many members they have in their pool to deal with their caseloads.

Jim Eadie: Sixty employees is not an insignificant number of people. That suggests to me that there is an unmet need in terms of tenants being able to access justice through the current legal system, which might be addressed through the new tribunal system. Is that a fair assessment?

Daniel Couldridge: In consultation and during the development of the proposals, we have heard that, sometimes, tenants and landlords in the private sector can be reluctant to bring cases to court. The tribunal is intended to help parties who may have been reluctant to bring cases. A requirement for 60 members is not significant for tribunal jurisdictions of comparable size, because members are paid fees and generally tend to give around 15 days a year to tribunal work.

Jim Eadie: I would like to move on to other provisions in the bill on private rented housing matters. In sections 23 to 25, there is provision to expand access to the Private Rented Housing Panel, which you mentioned earlier, by enabling third-party applications by local authorities to enforce the repairing standard. The policy memorandum also makes reference to providing

"additional discretionary powers for local authorities that would enable them to target enforcement action at an area characterised by poor conditions".

Could you say a little more about each of those?

Barry Stalker (Scottish Government): The overall outcome that we seek to achieve through those provisions is to continue to improve the quality and condition of houses in the private rented sector that require improvement.

Currently, only tenants can make an application to the Private Rented Housing Panel to seek to enforce the repairing standard, which is a condition standard that the landlords have to meet in order to rent out their property—it is a legal

obligation. The broadening out to local authorities of the ability to report to the panel, which was based on stakeholder feedback, aims to give local authorities additional means to report properties where the condition is thought to be below that standard. We hear of circumstances in which tenants might be reluctant to report to the Private Rented Housing Panel—you mentioned the panel's work in previous years—and one of the reasons for expanding reporting rights is to give local authorities the ability to do that instead of only tenants. That should help to protect tenants who might feel vulnerable and might not want to take the action that is required.

Jim Eadie: What will that mean in practice? How will the change benefit tenants?

Barry Stalker: There should be more of an opportunity for properties that do not meet the repairing standard to be brought to the panel's attention and for the panel to do its job in assessing whether those properties meet the standard. If they do not, the panel can take action by issuing repairing standard enforcement orders to ensure that landlords bring properties up to the appropriate standard.

Jim Eadie: So that change could be quite significant and strengthen tenants' rights.

Barry Stalker: Yes. The change is based on feedback from stakeholders, including local authorities, which felt that they would benefit from it. Ministers certainly felt that the move would help to improve properties out there that still do not meet the standard, and it increases opportunities for such properties to be brought to the PRHP's attention.

Jim Eadie: What about the introduction of enhanced enforcement areas?

Barry Stalker: That is another means of seeking to improve the condition of properties where required and, again, is based on feedback that we received through the consultation that Linda Leslie mentioned and on-going dialogue with stakeholders.

Some local authorities, particularly urban ones, have discussed with us their current range of powers and other powers that they might need to tackle problems with the condition of accommodation in the private rented sector. The objective of enhanced enforcement areas, which we intend to introduce in a stage 2 amendment, is to provide, where appropriate, local authorities with additional powers to deal with areas where the issues might be complex. We intend to set out in the amendment that local authorities will make an application to Scottish ministers and that, if the application is approved, they will have additional powers for a set period of time to deal with that area.

The powers that we are currently considering include mandatory disclosure checks for landlord registration purposes. At the moment, when a local authority carries out its fit and proper person test it can ask an applicant whether they have reasonable grounds for receiving a disclosure certificate. However, as a result of the proposed provision, the authority will not need reasonable grounds and will simply be able to ask for a full disclosure check on a mandatory basis.

In addition, there will be inspection rights with regard to private rented properties, to check whether they are complying with all statutory obligations. In response to your previous question I mentioned local authorities' ability to report to the PRHP, and our intention with the enhanced enforcement area measure is to give local authorities the ability to inspect a property to find out whether it complies with the repairing standard.

Jim Eadie: That is very helpful. I understand that the intention behind the measure is to allow local authorities, if they so wish, to target enforcement action in areas where the conditions in the private rented sector are poor. Were the views that you received from stakeholders in the consultation process unanimous in their support for such a measure, or was there a range of views? Were there any conflicting views?

Barry Stalker: As we have discussed with stakeholders, the measure is designed for a particular context and we envisage its being used predominantly in urban areas. Local authorities, particularly urban ones, see it as being helpful because of the complex nature of the conditions that they might have to deal with. For example, a certain area might have a high proportion of private landlords or there might be issues with the make-up of the housing stock, and it was felt that such a power would help in those situations. Some stakeholders are particularly keen to have the measure as it will enable them to take further action to improve conditions in those areas.

10:45

Jim Eadie: Have you had any representations that suggest that we need to go further than that provision, or is it considered adequate to achieve the improvements that are sought?

Barry Stalker: That is the position at present, but because the amendment will not be lodged until stage 2 we can continue to discuss matters with stakeholders, and we will do that over the next wee while.

Jim Eadie: I am trying to establish whether you have received any early indication from stakeholders that they are satisfied that the proposed provision goes far enough or whether it

would need to be amended further at a later stage in the legislative process.

Barry Stalker: The early indication is that an ability to inspect properties would be a significant and helpful power.

Jim Eadie: Thank you.

The Convener: We move to part 4 of the bill, which is on letting agents. Mary Fee has some questions.

Mary Fee (West Scotland) (Lab): I apologise for my hoarseness—I hope that my voice lasts.

From the evidence that you gathered and the consultation that you carried out, can you explain what benefits the customers of letting agents will gain from the regulation of letting agents?

Barry Stalker: I am happy to do so. Your question is about the benefits of further regulation of the industry. We are on a journey, and we describe the process that we are going through as the further regulation of letting agents. We have taken measures to tackle some of the problems to do with letting agents that have been brought to our attention over recent years. Those measures will help, but they will not address the issue entirely. I will quickly set out the journey that we are on.

Some of the problems that have been raised with us relate to the situation in which a letting agent—which, currently, anyone can set themselves up as—folds and the tenant's deposit money or the landlord's rent money is lost. To an extent, the tenancy deposit scheme will address the issue of deposit money, which is now protected under that scheme. In addition, in November 2012—as I am sure that you are aware—the Scottish Government clarified the legislation on the charging of premiums by letting agents. From a tenant's perspective, in particular, those measures seem to be helpful from the point of view of a customer engaging with the services of a letting agent. However, feedback from the private rented sector strategy group, which consulted on the strategy and continues to have a dialogue with stakeholders, indicated that there continue to be problems with some letting agents regarding the service that landlords or tenants might receive. Interestingly, the industry and groups that represent it were quite keen for a consistently high-quality service to be provided by letting agents.

The benefit of the further regulation of letting agents is that it will address the basic problem that any organisation can set itself up as a letting agent. There are no compulsory standards and no compulsory code of practice governing what a letting agent should do. There are some voluntary schemes but joining them is optional, and although some form of redress is available it is limited to circumstances in which a letting agent is a member of a particular redress scheme. There should be benefits for tenants and landlords in its being clear and transparent what standards of service they can expect from a letting agent. In the event that those standards are diverged from, there will be an ability to seek redress.

Mary Fee: Can you give me a bit more detail about how the regulatory regime would work in practice and what the enforcement provisions would be? In the explanatory notes there is no definitive number of letting agents across Scotland, there is just an estimate.

Barry Stalker: Yes.

Mary Fee: When a regulatory regime is set up, how will people who we do not know exist be brought on board? That is my concern. How will that work in practice?

Barry Stalker: I will start with what our intentions are in the bill. Put simply, there are three elements, the first of which is a register of letting agents. You are quite right that we do not have a definitive number of letting agents at present, but the register should give us that. It will be a legal requirement for a letting agent to register, and they will need to pass a fit-and-proper-person test. Our intention is that the Scottish Government will maintain the register. That should give a letting agent's customers an assurance that it is indeed a letting agent, and there will be the assurance that a fit-and-proper-person test has been taken.

The second element is the code of practice that we intend to develop through secondary legislation, which we will need to consult on. We intend to work with the industry on that. I mentioned previously that different organisations have codes of practice, but we are looking to put the code of practice on a statutory basis. The intention is to ensure that it is very clear and transparent to customers what standards of service they should expect.

The third element is a means of redress. If a letting agency's customers feel that there has been a transgression of the code of practice, they will be able to seek redress through the first-tier tribunal. That provision is currently in the Tribunals (Scotland) Bill, which is also in the parliamentary process, and links to what Dan Couldridge talked about with regard to the PRS-specific tribunal.

Those are the three elements: a register, a code of practice and a redress mechanism.

Mary Fee's second question was about enforcement. There will be a legal requirement for a letting agent to register to be able to practise. If they do not, that will be a criminal offence set at, I

think, level 3—I would be happy to write to the committee to confirm the detail of that.

There are provisions in the bill that mean that letting agents who are not registered should not be able to incur costs. If a letting agent has failed the test or been revoked or refused, they should not, on the final date of that decision, be able to charge costs for their work.

On consumer empowerment, we hope that if unregistered letting agents were operating out there that would be brought to the attention of the appropriate authorities.

Mary Fee: The onus would be on customers.

Barry Stalker: The onus will be on letting agents to register because it will be an offence if they do not do so.

Mary Fee: I am still not completely clear about how letting agents that operate under the radar and have only one or two properties will be brought on board. If we do not know that they exist, they cannot be asked to register, so how will they be got on board?

Barry Stalker: The first and most obvious way is through the legal requirement for them to get on board. When ministers looked at the approach to letting agents, they were keen to ensure that we took a pragmatic and proportionate approach. That is one of the reasons why we set out the options that we set out. For example, we set out in the financial memorandum that we envisage that the cost to a letting agent would be £250 for a three-year membership. Therefore, the cost to a business of registering would be relatively small. There could have been further costs if we had chosen to go down another route. For example, we could have insisted on a proportion of staff having compulsory qualifications.

There has been consideration of the best approach to ensure that all letting agents, beyond the legal requirement, feel that they are able to register and participate in the new regime to achieve the aim that the sector is looking to achieve, which is to improve the overall consistency and standards of service of their businesses for their customers.

Mary Fee: There is a view across many letting agents that they are happy with the bill and that it will help their sector. Are you confident that the proposals in the bill will be enough to bring on board every private letting agent?

Barry Stalker: Scottish Government ministers are confident that the provisions in the bill will achieve the aims that we have set out. In particular, the fact that the bill makes it an offence not to be registered should send a strong signal to any letting agent out there who feels that they would be able to avoid their legal requirement to register.

Mary Fee: As you said, it will be a level 3 offence not to register. If someone registers and you then find that there is a breach of what they should be doing, will it be possible to remove them from the register?

Barry Stalker: Yes. Just to clarify, I said that it will be a level 3 offence, but it will actually be a level 5 offence. I apologise.

As part of the fit-and-proper-person test, we have set out a range of considerations that can be taken on board, which include contraventions of housing law and other law that relates to housing. That can also include consideration of whether a letting agent has been taken to the first-tier tribunal for a breach or infringement of the code of practice.

The intention is that that will act as an incentive to letting agents to meet their obligations—first, because no letting agent would want to be put out of business because they have been deregistered and, secondly, because there is a cost implication in that they will not be able legally to charge or recover costs if they have been deregistered. Also, the decisions will be made public, so there is a business risk. If a letting agent is looking to attract landlords and tenants as customers, they will want to avoid having decisions made against them and put out in the public domain.

The Convener: I know of a situation in which a property that was to let was in such poor condition that, in order to get a letting agent, the owner had to get one from Manchester. I presume that, if a letting agent works in Scotland, they will have to register here even though their head office may be outwith Scotland. Is that correct?

Barry Stalker: Yes. For a letting agent to operate in Scotland, they need to be registered.

The Convener: Alex Johnstone has a supplementary question.

Alex Johnstone: For a letting agent to be registered, they will be required to pass a fit-and-proper-person test. I take it that there is no plan to introduce a similar register of tenants.

Barry Stalker: No.

The Convener: We will move swiftly on to mobile home sites with permanent residents. What evidence is there that the site licensing regime for permanent residential mobile homes needs to be improved?

Claire Tosh (Scottish Government): Just to set the scene, I note that the current licensing regime is set out in the Caravan Sites and Control of Development Act 1960, which is now relatively old, and Scottish ministers are aware that an

increasing number of people are living on mobile home sites, including many older people. The survey that Consumer Focus carried out—I think that it was in 2012—found that the majority of interviewees were aged over 61. Such sites are marketed as desirable and affordable retirement communities.

The aim of the provisions in the bill is to improve and strengthen the licensing regime to ensure that quality is maintained and that mobile home sites meet an acceptable standard. A consultation was carried out prior to the bill's publication, in which some mobile home residents stated that they were concerned about the standards on some sites. As I said, there was also a Consumer Focus report in 2012, which indicated that some residents were concerned about problems with maintenance and security, problems with electricity supply, pitch fees and written statements under the Mobile Homes Act 1983.

Within the licensing regime that is in place under the 1960 act, a licence for a mobile home site can run in perpetuity. The only point at which a licence can be revoked is when the local authority applies to a court to have it revoked because the mobile home site owner has received a third conviction for an offence under the 1960 act. Ministers think that, as an older licensing regime, it appears not to fit the current mobile home site sector or the provision of mobile homes. Also, the range of enforcement tools that are available to local authorities under the current licensing regime seems not to be broad enough to enable them to improve the quality of sites.

11:00

The Convener: What key changes does the bill make to the site licensing regime, and what benefits will that bring for mobile home residents?

Claire Tosh: The key change is the introduction of a fit-and-proper-person test akin to those that are used in other licensing regimes. A person who owns a mobile home site and applies for a licence will have to pass such a test under the new provisions. The bill sets out what material must be taken into account in considering whether somebody is a fit and proper person, which includes convictions for quite serious offences and, similar to tests for other licensing regimes in the housing sector, whether the person has previously contravened housing law. Somebody who runs a site on behalf of somebody else will also have to be a fit and proper person to do so.

The Convener: Both the owner of a site and the person who runs it will have to be licensed.

Claire Tosh: That is correct. For the owner to obtain a licence, the person who runs the site will have to be considered a fit and proper person as well.

An additional measure is that, under the bill, the licences will have a fixed three-year term. Currently, licences run in perpetuity and, as I said, the only time that a licence can be revoked is on the licence holder's third conviction for an offence, when the local authority can ask the court to revoke the licence.

In addressing enforcement measures that might be lacking in the current framework, the bill seeks to introduce a range of measures to give local authorities tools to intervene at an earlier stage. First, a local authority will be able to issue an improvement notice that will require a site owner to take steps to improve something if, for example, they fail to comply with a condition of the site licence. Secondly, a local authority will be able to issue a penalty notice. That power could be used by a local authority when a site owner does not have a licence or if an improvement notice has been served but the site owner has failed to comply with it. Under a penalty notice, the site owner would lose their income from the site for a certain period.

The Convener: The site owner would lose their income from the rents.

Claire Tosh: Yes.

The Convener: Where would that money go? Would the residents stop paying?

Claire Tosh: The site residents would be told that they did not have to pay on-going pitch fees. That is part of a range of enforcement measures that could be used if a person did not have a licence and continued to operate without one or if there was a failure to comply with an enforcement notice. It is anticipated that local authorities would engage with site owners prior to taking enforcement measures, but local authorities will be able to use a range of options for on-going enforcement on a site. A local authority will also be able to revoke a licence if a site owner is no longer considered to be a fit and proper person to own the site or they fail to continue to comply with the fit-and-proper-person test.

As I said, the intention is to provide local authorities with a range of tools that they can use. That is different from the current situation, in which there is only revocation and the criminal offence of operating a site without a licence. Ministers consider those to be quite blunt tools that do not really allow for proper enforcement.

The Convener: A few mobile home owners and residents in my constituency have been alerted to the bill and have had quite a lot of discussion about it. When you were drawing up the bill, did you get an impression that some local authorities

have more of a handle, shall we say, on mobile home sites than others, and that the regimes in some local authority areas are very different from those in others?

Claire Tosh: There is on-going consultation with local authorities on the regime and how it is operated. The policy memorandum indicates that, in the consultation responses, there was a varied reaction from local authorities, with some perhaps not responding and others being in favour of enhanced enforcement measures. In the continuing discussions with local authorities, the Scottish Government is making them aware of the bill's provisions and the new enforcement powers that local authorities will have.

The Convener: What views did mobile home site owners and residents express in the consultation on the proposed revised licensing regime?

Claire Tosh: The responses to the formal consultation that was done before the bill's provisions were drafted indicated that mobile home residents generally supported the proposed changes and an enhanced licensing and inspection regime.

The mobile home site owners had some concerns about there perhaps being an additional burden on them. Particular concerns were expressed during the consultation regarding the effect on the industry as a whole. As a consequence, although the proposals indicated that the new licensing regime should apply across the board to all sites, ministers decided, having looked at the consultation responses, that it would be appropriate and proportionate to change the regime in respect of those sites on which people live permanently—those that have a residential aspect. The concerns were listened to and taken on board in the development of the proposals.

The Convener: Why did you alight on three years, as opposed to five years, for the term of a licence?

Claire Tosh: We consulted on the term being three years, and more than half of the 129 consultation responses supported that. Ministers consider that that term is similar to the terms for other types of licensing regime in the housing sector—for example, landlord registration—and that it takes account of residents' desire for an effective, on-going review process that requires site owners to apply and local authorities to consider the fit-and-proper-person test.

The Convener: How will permanent residents be protected in respect of on-going service provision and so on if the owner's licence is refused or revoked?

Claire Tosh: It might be helpful if I set out a bit of background to the measures. The proposals in the bill deal almost exclusively with the licensing regime. The law that underpins mobile home sites and the rights of site residents is covered in various pieces of legislation, so this is part of a package of measures. The rights of people who live on mobile home sites and own the homes in which they live are protected under an act of 1983, which includes a set of terms relating to their residency. There is a provision in the bill to make it clear that those rights will not be affected by the provisions on the licensing system.

In addition, there is a provision in the bill to allow local authorities to appoint an interim manager if a licence is revoked, which will enable the on-going provision of maintenance.

The Convener: What have local authorities said about the resource implications for them of enforcing the new licensing regime?

Claire Tosh: In developing the proposals, it was considered that there should be an element of cost recovery. There is a provision that enables local authorities to charge a fee for licence applications as long as it relates to what is required to be carried out under the licensing process. There are also provisions that enable local authorities to cover any expenses that they incur from carrying out enforcement action.

The Convener: That would be from the site owner.

Claire Tosh: Yes.

The Convener: Do you have a ballpark figure for the cost of a licence?

Claire Tosh: Costings were carried out for the financial memorandum. It is estimated that the cost of a three-year licence will be £600. However, local authorities will be given the power to charge fees on the basis of costs to the individual local authority, so the figure may or may not be £600.

The Convener: That is quite a lot if the mobile home site is not a terribly big one. I have some idea of pitch fees and they are not that much. That could be quite a lot in respect of the site owner's income.

Claire Tosh: The £600 would be over three years, and it is anticipated that local authorities will take into account the size of the site and the general inspection costs. As I said, the fee must not exceed the reasonable cost to the authority of deciding on the application—it is tied to that. Moreover, Scottish ministers will have a power to make regulations on fees if it becomes apparent that issues are arising in respect of the bill. Such regulations could state that the fee must not exceed a certain amount and set out the factors that local authorities would have to take into

account. However, it is expected that local authorities will look at the actual costs of processing licence applications.

Alex Johnstone: As a result of work on a different committee, Mary Fee and I visited Travelling people's sites, which, as you would realise from visiting them, fall under the criteria that are covered in the bill. In the preparation of the bill, was its impact and effect on Travelling people's sites, or its interaction with them, taken into account?

Claire Tosh: The provisions in the bill will not affect Travellers sites that are maintained or operated by local authorities. However, it will affect privately-run Travellers sites, so there will be implications for them. People who own or run such sites will be required to have a licence under the provisions in the bill.

11:15

Alex Johnstone: Will it basically apply in those circumstances as it will anywhere else?

Claire Tosh: Yes, but it is my understanding—if I am wrong about this, I will write to correct what I have said—that the provisions will not affect sites that are provided by local authorities. I am not sure whether the sites that were visited were local authority sites or not.

Gordon MacDonald (Edinburgh Pentlands) (SNP): Part 6 of the bill amends local authorities' powers to enforce repair and maintenance of private homes. Will you explain the policy objectives behind that?

Linda Leslie: I will try, but it is an area that I am not so familiar with, so we may have to write to you with some further details.

The provisions on house condition enforcement powers are intended to clarify the existing power to pay missing shares on behalf of owners who are unwilling or unable to pay their shares, and to ensure that local authorities are able to use the power to support majority decisions by owners under the tenement management scheme for repair works. They also allow local authorities to issue maintenance orders where they have issued a work notice or a previous maintenance order. They are intended to reduce the administrative burden of maintenance orders and address a number of other issues around safety and security notices.

Gordon MacDonald: We have had a situation in Edinburgh in which, under the statutory notice system, the City of Edinburgh Council could intervene to organise repair work on private properties when the owners of shared buildings could not reach agreement. The system was accused of being open to bribery, overcharging and unnecessary work being done, and police later charged 15 people. What safeguards are in place for home owners to ensure that we do not replicate the problems that existed in Edinburgh?

Linda Leslie: My understanding is that the provisions in the bill do not replicate the system in Edinburgh. I can write to you about the safeguards and how they fit with the previous legislation in the Tenements (Scotland) Act 2004.

Gordon MacDonald: I have two other questions that relate to that. If a council ends up paying an individual's share, what recovery methods will be available to the council, especially in a situation where the householder or house owner has limited resources, perhaps because they are retired or unemployed?

Linda Leslie: We will have to write to you about that, to ensure that we give an accurate answer.

Gordon MacDonald: The City of Edinburgh Council has £22 million of repairs outstanding for which it has not yet recovered the costs from home owners. Given the financial pressures on councils, how will they be able to manage such situations?

Linda Leslie: The powers are discretionary, so it will be up to the council to decide whether it wishes to use them.

Gordon MacDonald: Moving on to part 7, will you provide a brief overview of the bill's miscellaneous provisions? I am particularly interested in hearing about the changes to shared equity schemes, as I have a number of Orlit homes in my constituency. What are the practical changes with the repeal of the defective designation provisions? That is one of the four areas that are covered in part 7.

Linda Leslie: Colin Brown will answer that.

Colin Brown: The heritable security stuff is fairly technical. It stems from legislation from 1974, which was part of a scheme to address the feudal tenure system. Those with long memories who know arcane details of feudal systems will know that people were able to redeem feu duties by paying 20 years' worth of feu duties. In 1974, there was a concern that securities might create a form of feu duty in perpetuity when they ceased to be able to be created. The legislation for that covers all heritable securities and states that a person who has a debt or a property as security—the debtor on a security—has the right to redeem that security come year 20, as long as they pay what they originally borrowed plus the interest less what they have already paid.

For a conventional security, that works perfectly normally—I am sure that my bank would be perfectly happy if I wanted to pay off my security in year 20—but it does not work properly for shared

equity, where the loan is advanced on the basis that the recovery will not be through on-going interest but will be linked to the value of the property in a number of years. In theory, it opens up the possibility that a person could redeem a security come year 20 and pay back only a percentage of the value when they initially received it.

Existing shared equity schemes get round that problem by entering into only a 19-year security, so that people never reach the year-20 question, and they can then enter into a new security if they want to do so. As certain provisions were developed around the right to repair and assistance to repair, it became apparent that lenders would experience difficulty with that, because there are changes to the background mortgage legislation and good practice regulations that they have to operate. The gist of it is that there would be a break event in year 20, and they would have to take that into account, and for certain people they would not be happy to advance a commercial mortgage on those terms.

The intention behind the provision in the bill is simply that there will be types of loans that can be prescribed by order, to which the 20-year rules will not apply. They are intended to be used for shared equity-type loans to get round that difficulty and avoid the emerging problem that has arisen because of changes to practice. It is fairly technical stuff, but I am happy to bore you for longer on it if you want.

What else is in the miscellaneous provisions? For completeness, section 78 allows the president of the Private Rented Housing Panel to delegate various functions to the depute. That is essentially just a pragmatic change; it was sought, and it seems entirely sensible. Section 79 affects the Scottish Housing Regulator's powers to transfer assets. It addresses some practical difficulties that were found in a particular emergency situation where there was simply not time to do various things that appeared to be needed.

On the repeal of the defective designation provisions, there was a scheme to assist owners of defective housing that allowed them to seek assistance over a period of years. The scheme has now run its course and is closed to business. It served its time, but a redundant decision remains on the statute book.

Gordon MacDonald: So the bill just removes the provision.

Colin Brown: Yes. It removes stuff that no longer has any practical significance.

Gordon MacDonald: Thank you.

The Convener: We have had a good run through the generalities of the bill. I thank all the witnesses for attending, and we look forward to receiving written information from you shortly.

The committee's next meeting will be on 22 January, when we will consider a draft report on the Procurement Reform (Scotland) Bill and take evidence from two panels on the Housing (Scotland) Bill.

Meeting closed at 11:23.

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