The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

LOCAL GOVERNMENT AND REGENERATION COMMITTEE

Wednesday 26 February 2014

Session 4

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CONTENTS

LOCAL GOVERNMENT AND REGENERATION COMMITTEE
6th Meeting 2014, Session 4

CONVENER

*Kevin Stewart (Aberdeen Central) (SNP)

DEPUTY CONVENER

*John Wilson (Central Scotland) (SNP)

COMMITTEE MEMBERS

*Cameron Buchanan (Lothian) (Con)
*Mark McDonald (Aberdeen Donside) (SNP)
Stuart McMillan (West Scotland) (SNP)
*Anne McTaggart (Glasgow) (Lab)
*Alex Rowley (Cowdenbeath) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Derek Mackay (Minister for Local Government and Planning)
Claire Menzies-Smith (Scottish Parliament)
Neil Ross (Scottish Parliament)
Stewart Stevenson (Banffshire and Buchan Coast) (SNP) (Committee Substitute)
David Stewart (Highlands and Islands) (Lab)

CLERK TO THE COMMITTEE

David Cullum

LOCATION

Committee Room 3

Scottish Parliament

Local Government and Regeneration Committee

Wednesday 26 February 2014

[The Convener *opened the meeting at 10:00*]

Interests

The Convener (Kevin Stewart): Good morning and welcome to the sixth meeting in 2014 of the Local Government and Regeneration Committee. I ask everyone, including the folks in the public gallery, to ensure that they have switched off all mobile phones and other electronic equipment, please.

We have an apology from Stuart McMillan, who is unable to attend the meeting. I welcome Stewart Stevenson as the substitute member.

I welcome Alex Rowley to his first meeting of the committee. The first item on the agenda is to ask Alex whether he has any interests to declare.

Alex Rowley (Cowdenbeath) (Lab): Thank you, convener. I am still an elected councillor in Fife Council, and I am a member of the Fife Council pension scheme.

Defective and Dangerous Buildings (Recovery of Expenses) (Scotland) Bill: Stage 1

10:00

The Convener: Our main item of business is item 2, which is an oral evidence-taking session on the Defective and Dangerous Buildings (Recovery of Expenses) (Scotland) Bill.

I welcome our first panel. Derek Mackay is Minister for Local Government and Planning and Bill Dodds is head of building standards in the Scottish Government. Would you like to make any opening remarks, minister?

The Minister for Local Government and Planning (Derek Mackay): Thank you, convener. I will make some brief remarks.

I thank the committee for inviting me to give evidence on Mr David Stewart's Defective and Dangerous Buildings (Recovery of Expenses) (Scotland) Bill. I believe that Mr Stewart has worked on his member's bill over the past four years to get it to this stage.

Local authorities have a range of powers to deal with buildings that have fallen into disrepair. The current powers in the Building (Scotland) Act 2003 require them to take action on buildings that they consider to be dangerous. In some cases, that may mean undertaking emergency work to secure the building and surrounding area or carrying out remedial work. Local authorities can decide to demolish all or part of the building. They can also take action on defective buildings. When the owner has not carried out the necessary remedial works, they can undertake those works themselves.

Those powers cover all building types. They are important to ensure the safety of people in and outside buildings and help to protect buildings for the future.

Currently, when local authorities need to carry out such work themselves, they can recover their costs from the building owner through normal debt recovery methods but, unfortunately, that has not always been successful. That local authority work is at the core of protecting the existing built environment, but it requires local authorities to invest their time and resources. The Scottish Government therefore acknowledges that the cost-recovery aspect of the legislation should be improved. I believe that linking the local authority costs to the property would be a welcome improvement that would, in turn, give local

authorities more certainty about getting their expenses back.

The Convener: Thank you very much, minister.

Many of us around the table have had dealings with such buildings at one point or another. In the evidence-taking session last week, there were numerous discussions about the length of time in which folk could pay back charges. Mr Stewart suggested 30 years. Do you have any view on the timescales, as set out in the bill?

Derek Mackay: That is a good question. I think that, if the 30-year period was the standard, it would be too rigid for every circumstance. Having greater flexibility and different options would be very welcome. Some of the repairs might not warrant a 30-year payback period, of course, so greater flexibility should be considered at this stage.

It would be prudent to inform the committee that, in discussions that I have had with Mr Stewart—I will have further discussions with Government colleagues—I have said that we are minded to support the bill. I have progressed work through the community empowerment (Scotland) bill, because removing these powers was something of a mistake. We should support restoring that which already existed and improving the powers to reflect circumstances. Mr Stewart's bill has been introduced ahead of the community empowerment (Scotland) bill. For timing reasons, if he can accommodate some of our proposed amendments, the Government is quite content to support the bill. It is important to share that with the committee at the outset.

The Convener: That is very useful, minister.

Last week, there was also a discussion about retrospective actions. Would you like to comment on that aspect?

Derek Mackay: There have been a great number of legacy cases in which local authorities have taken action and debt is outstanding. That said, we would want to ensure that we complied with European and domestic legislation. There might be issues with introducing legislation that was retrospective, and we will be carrying out further work on that matter.

We will discuss with Mr Stewart what can be accommodated in the bill but, as I have said, we might not be able to make it retrospective with regard to moneys owed, because of certain legal and technical issues. The measures in question will be implemented once the bill is passed, but we are continuing to explore with solicitors whether a retrospective function would be competent.

The Convener: Last week, housing association representatives told us about difficulties with cost recovery, and Mr Stewart has indicated that he was quite sympathetic to their comments. How can we help housing associations deal with the cost-recovery difficulties that they often have to face?

Derek Mackay: The bill's quite narrow focus is on dangerous and defective buildings and you would expect a housing association to be proactive in dealing with one of its properties that was in such a state. However, the bill itself does not negate local authorities' power to take action.

The bill does not deal with the wider issue of factoring. I am not saying that that is not important, but it is a completely separate matter. This quite narrow and specific bill focuses on dangerous and defective buildings. Irrespective of the ownership issue, the local authority would still be able to take action.

The Convener: The difficulty for housing associations arises when they own a certain number of properties in a building. Because they might not have the majority shareholding in that building, they have difficulties with cost recovery. The groups that gave evidence discussed how councils might co-operate with housing associations in that respect, and I wonder whether you have any specific views on that matter.

Derek Mackay: The housing minister and other colleagues such as Roseanna Cunningham, who has ministerial responsibility for property law, might want to explore that issue further, but we would certainly want to be proactive about debt management and the commissioning of work under the existing factoring and ownership legislation. However, all of that is separate to this bill, which focuses on defective and dangerous buildings, not on all the other aspects of tenemental and shared properties, liability notices or, indeed, factoring itself. Although we are sympathetic to some of the challenges that housing associations face, this bill has a much more narrow focus.

Of course, housing associations that own properties in a defective and dangerous building will benefit from this legislation because local authorities will be empowered to recover costs. That in itself will incentivise local authorities to take action through their building standards function where previously they might have been a bit more nervous about doing so.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): I will preface my couple of short questions with the case that drives me to ask them. In a particular village in the north-east of Scotland, there is a derelict building on the main street. Initially, the building's ownership was quite uncertain but, after five years' work, we found that it was owned by a registered company in Panama that would deal with us and the community only

through correspondence in Spanish. As a result, it cost quite a lot of money to deal with the company, because everything had to be translated and so on. My first question, therefore, is whether anything in the proposed bill will help us to deal with remote, inaccessible and de facto unfindable owners who, in practical terms, are never going to cough up any money whatever.

Secondly, and linked to that, given that this building is approaching the point where it will simply be a clear site with some stones on it, will the bill apply to buildings in such a state of dereliction that people might debate whether there is actually a property there?

Derek Mackay: I want to be careful that I do not trespass on areas such as property law that I am not quite as familiar with, but I understand that, under certain legislation, someone who occupies unchallenged for a period of time a property that is lying abandoned and untouched and to which there is no existing title might well acquire the rights to it. That might be a way for Mr Stevenson to expand his property portfolio in some parts of Scotland but, of course, it is not for me to give him advice on such a matter.

In all seriousness, and in addition to the normal routes of debt recovery—which we still encourage local authorities to pursue—where there is a title, it seems a sensible way forward to attach the debt and the liability to the title. That is an incentive for the owner, where there is one, to pay their share and take earlier action, thus avoiding the need for the local authority to move in in the first place.

There is an issue around definitions when it comes to dangerous and defective property but, because local authorities already have the power and are already carrying out functions in this area to a great extent, we know how to tackle such issues.

We are trying to create a culture of proactivity whereby, even if there is a lack of an owner, a local authority can take action. In more cases than not, there will be an identifiable owner. As I said in my earlier, more flippant, remarks, if there is no title and there is no owner or no identifiable owner, we can adopt a different approach.

Stewart Stevenson: My memory is imperfect on this, but I believe that the minister is referring to something called the bona vacantia provisions—I am getting a nod from your officials, minister, so I must be right. However, that requires occupation for a period of 10 years, which is not terribly easy for people in many of our communities. I say that merely to inform.

The Convener: We have heard previously—and some of us have experienced relevant situations—how buildings can change hands on numerous occasions over very short periods of time. Do the proposed measures halt that kind of practice, and should they lead to a better chance of cost recovery without going to title?

Derek Mackay: That is a good question. As far as occupancy is concerned, the tenant or occupant may change, but if the owner of the property changes, that must be reflected in the title. Attaching the debt to the title—as a last resort—feels like a pretty strong safeguard, even if there is a very frequent turnover of ownership of the property.

Stewart Stevenson: I understand what the minister is saying. One of the difficulties with corporate ownership is that the ownership of the corporate body that owns the property is what changes, rather than the registration of the property. It is that indirect but de facto ownership that causes many difficulties in many parts of Scotland, particularly in the north-east, where there is the further complication of leaseholding of the land on which properties may reside. Therefore, the rights of the leaseholder may pre-empt those of the owner. I suspect that the minister might tell us that that is a substantially more difficult issue than what is being dealt with in the bill.

Derek Mackay: It really is unlike Mr Stevenson to ask a difficult question. I would say that we are in a far better position to have the proposed new powers, which are very similar to those that I proposed under the forthcoming community empowerment (Scotland) bill and to those that we had before. They are an improvement on simple methods of debt recovery for previous work carried out.

Will the proposals resolve every single case? Unfortunately, I do not think that they will. However, if there are any other mechanisms that could improve the situation, we are certainly interested. The proposals are a step forward, rather than a step back—which is perhaps what we had when the powers were inadvertently removed.

John Wilson (Central Scotland) (SNP): I would not joke too much about the raiders of the lost titles, as there have been many problems in many areas, particularly in my area, where somebody went through the records, identified pieces of land with no title claim, took on their ownership and sold them off. That causes problems, so we have to be careful about the raiders of the lost titles.

Last week, we heard evidence from the Scottish Federation of Housing Associations. The federation was asking for the same power to make charging orders that is being conferred under the bill. What is your view about extending the scope

of organisations that could be empowered to make charging orders?

Derek Mackay: The bill is about defective and dangerous buildings. The member mentioned widening it out from that, but that would have ramifications. The Government is happy to explore that but, at the moment, the bill is specifically about dangerous and defective buildings. If people want charging orders to be introduced for other matters, we will give that some thought, so the answer is not a no in principle, but the bill is fairly tight for good reason. This matter has not been progressed before, and then two bills came along at once. The Government, gracious as it is, is supporting the member in taking his bill forward. We are happy to explore the point that the member raises, but it would have to be in the context of dangerous and defective buildings.

10:15

John Wilson: The request was in respect of dangerous and defective buildings. The SFHA argues that, when its members try to carry out remedial work on properties, they find things difficult as they have the same problem with identifying owners, particularly in tenemental properties. They carry out work to deal with defects in buildings, but they have to do so without the powers that they need and they cannot recover costs in the same way that a local authority can. Their argument is that, if they had the same powers as local authorities, they would be able to pursue the owners of properties to recoup any costs that arise in making good the defects in buildings.

Derek Mackay: It remains a local authority power because of the functions that local authorities have in relation to public safety and the building standards function that we execute in partnership with local authorities. We do not have proposals to change that, although work is being done with the Housing (Scotland) Bill, which covers some wider ownership issues.

I am mindful that the bill is focused on dangerous and defective buildings and is not intended to cover the wider issues of ownership, factoring and general improvements. Of course we want to encourage improvements, but the bill has a tight framework. The Government is not opposed to exploring the matter, but it is really one for the member in charge of the bill. I also refer Mr Wilson to the Housing (Scotland) Bill, which is making its way through the Parliament.

John Wilson: I accept that, minister. It is just that there is crossover in relation to the powers to recover costs that are being sought by organisations other than local authorities.

Another issue that arose last week is the average cost of making buildings safe. We were given a figure by the local authority representatives who were here, who said that the average cost of making a building safe is £3,000. We also heard an extreme example, as one of the witnesses from North Lanarkshire alluded to a £70,000 cost to make a building secure. We will speak later to the member who is promoting the bill, but is the Government's intention just to make buildings safe or to try to bring buildings back into full use?

Derek Mackay: The purpose of the bill and the existing legislation on defective and dangerous buildings is to bring buildings back into a safe condition.

I will give an example from the constituency that I represent. I am sure that Bill Dodds will correct me if I get it wrong. A corner tenement building in mixed ownership had been neglected and the stonework was coming off. It was clearly a threat to the surrounding public. Orders were issued, but no action was taken. The local authority carried out work to make the property safe. It might not have made the flats in the building habitable, but it made the building safe and kept the public safe from falling masonry. What was missing was the ability to attach costs to ensure that the money was returned to the council.

The answer to your question is that the bill is not about bringing all properties up to a standard of occupation. It is about making them safe and compliant with the existing legislation.

John Wilson: Thank you.

Alex Rowley: Good morning, minister. Consensus has broken out in my first meeting of the committee. I hope that that is the way in which we will move forward.

Local authorities across the country will certainly welcome the fact that you are minded to support and take forward the bill. I know from experience in Fife that, where the council has taken action, recovering the moneys has been really difficult. Local authorities are very reluctant to take action; they would have to be absolutely convinced that a building was really dangerous before taking action. That has often left members of the public rather baffled as to what constitutes a dangerous or defective building.

I welcome the bill and I want to see it happen. Local authorities have also responded fairly positively to the bill, but Fife Council raises a question about the funding. As you know better than most, local authorities do not have masses of capital or revenue just sitting there waiting for a dangerous building to come along. Fife Council has suggested exploring the options for funding to see whether, for example, local authorities could

tap into a national loan fund to access funding. Are you prepared to look further at that suggestion?

Derek Mackay: I welcome Alex Rowley to the Parliament. The experience of the budget process and now this bill has been that the Labour Party and the Scottish National Party have worked closely together. Of course, that is the norm in the Scottish Parliament; we very rarely depart from that position. It is, dare I say it, just like Fife Council.

In all seriousness, the bill's progress has been consensual, because everyone recognises and wants to tackle the issue, although there are nuances in how we want to approach it. Finance is at the heart of this. Local authorities should be able to recoup the expenditure of carrying out this necessary work.

This is Dave Stewart's bill, but we as a Government are not attracted by creating a new ring-fenced pot of money that local authorities can draw on. As Mr Rowley is aware, the Government has tried to reduce ring-fenced pots of money for local government. We have reduced ring-fenced money from a substantial figure of more than £2 billion to less than £200 million. If we were to create a specific fund for this bill, it would be a form of re-ring fencing local authority resources, which is not a road that we would choose to go down.

On capital costs, there are pressures, as a consequence of the Westminster Government's reductions in funding to Scotland. That said, local government's share of the pot has largely been maintained. Specifically, the capital resources are there. Only a few weeks ago, we approved funding of more than £10 billion to local authorities. I am not saying that local authorities are not under pressure—they are, just like us—but I believe that there are resources available to tackle this issue, should the bill progress.

It is fair to say that, given that the profile of local authorities' power in this regard would be raised by this bill, there would perhaps be greater expectation and greater demands on them, but it will be for them to decide how much of a priority the issue is for them and how much of their capital resources they wish to make available.

Mark McDonald (Aberdeen Donside) (SNP): I have a couple of questions. At the previous evidence session there was discussion about the 30-year repayment period. The witnesses took the view that there should, rather than a set repayment period of 30 years, be a repayment period of up to 30 years to allow local authorities flexibility, particularly in cases where they might be gathering a small sum of money and would want to avoid having that spread out over a long period. Does the Government have a position on the repayment period?

Derek Mackay: We concur with that: a 30-year period would be too rigid, if it was the standard, the norm or the expectation. The repayment period should be far more flexible, so that local authorities can deploy whichever financial mechanism they want to use to recoup costs.

In supporting the bill, the Government has highlighted to Mr Stewart a number of areas that we want to address, one of which is the repayment period. We think there should be greater flexibility, for the reasons that Mr McDonald gave.

Mark McDonald: I know that Mr Stewart is aware of this, but another issue is the potential conflict in respect of a building's being dangerous and defective and its also being listed or having heritage status. Does the Government have a view on how that potential conflict might be overcome?

Derek Mackay: I am happy to explore that further. I have asked colleagues in the building standards division to support Mr Stewart. If there are issues and if there is such a conflict, I am sure that we will explore them and assist to resolve them before the end of the bill process. If that requires an amendment, we will certainly assist in that.

Mark McDonald: Okay.

Anne McTaggart (Glasgow) (Lab): I think that nearly all my questions have been asked. On greater flexibility, you said that the 30-year period is one of the provisions that you would like to be amended. Can you describe the other amendments that you would like?

Derek Mackay: Yes. We certainly want to amend the 30-year period in order to have flexibility on repayment terms. Other areas that we want to address include the time between the local authority incurring the expenditure and registration. We want to ensure that local authorities can move quickly and keep the time delay at an absolute minimum so that people cannot use time as a reason for not being able to use the notice.

We also want a bit more work to be done on the appeals mechanism. As a minister, I am not attracted to an appeals mechanism in which the Government or reporters make determinations or decisions around costs, so we need further work on that. We also need to explore a bit more whether some provisions could also apply to all enforcement powers under the Building (Scotland) Act 2003 and not just to those for defective and dangerous buildings or areas. We want to explore that in good time for stages 2 and 3.

The Convener: I thank you for your evidence this morning, minister.

10:26

Meeting suspended.

10:27

On resuming—

The Convener: We move on to this morning's second panel of witnesses. I welcome David Stewart MSP, who is the member in charge of the bill; Claire Menzies-Smith, who is a senior assistant clerk in the non-Government bills unit of the Scottish Parliament; and Neil Ross, who is a principal legal officer at the Scottish Parliament. Good morning, Mr Stewart. Would you like to make opening remarks?

David Stewart (Highlands and Islands) (Lab): I would appreciate it if I could put some technical points on the record.

First, convener and members, I thank you for inviting me to give evidence on my bill this morning. As you know, it has been a long and winding road since my friend Councillor Jimmy Gray, the convener of Highland Council, asked me to take action over dangerous buildings nearly four years ago. However, one of the great strengths of this Parliament is the member's bill procedure, which allows ordinary members the opportunity to make a difference in policy areas of their choice. I record my thanks to all the officials in the non-Government bills unit, legal services and the legislative drafting teams for their help. Of course, any errors are my responsibility alone.

As you will be aware, I have been working towards this point since the previous session when I consulted on my initial much wider proposal, which included areas such as building MOTs and, importantly, charging orders. As you know, convener, many local authorities responded to my consultation, and over 80 per cent expressed support. As I said to the committee back in 2012, my view is that a member's bill stands the best chance of success if it is measured and focused, and the member is prepared to be flexible and adaptable. Although I could not go as far as I would have ideally liked, I believe that the bill has the potential to make a significant difference to local authorities. However, it is of course not a magic bullet to cure all ills.

10:30

As you will all know, charging orders will give local authorities greater flexibility and discretion about how to recover their costs when they have carried out work on defective or dangerous buildings under sections 28, 29 or 30 of the Building (Scotland) Act 2003. The mechanism will also increase the proportion of the costs that can be recovered.

It is important to note that the problem that I seek to address applies more widely than just to residential property; it extends to buildings more generally, including commercial, farming and historic properties. That is why it is essential that local authorities once more have access to the mechanism of charging orders to deal with the varied circumstances of owners and the different types of building that are dealt with under the 2003 act. Members will know that charging orders relate back to 1959, so they have been a trusted, tried and tested technique.

To put the bill in context, according to the Scottish house condition survey in 2011, 83 per cent of Scotland's dwellings were in some state of disrepair and, more worryingly, 48 per cent were in an urgent state of disrepair.

Another indicator of disrepair in Scotland's built environment is the number of notices that have been issued in relation to defective or dangerous buildings, which stands at 212 notices for dangerous buildings and 206 notices for defective buildings during 2011-12. Action without notice—which, as members will know, is the most urgent action—has more than doubled from 402 cases in 2010-11 to 992 in 2011-12. Sadly, the figures do not demonstrate an improving picture; instead, they signal an increasing burden on local authorities.

The Scottish Government research project worked

"to identify a cost recovery mechanism for local authorities dealing with dangerous and defective buildings"

in November 2012 and collected information from eight local authorities. The project estimated that the total unpaid debt for those authorities amounted to £1.5 million. That figure, when roughly extrapolated, produces an estimated figure for the whole of Scotland of £3.9 million. It is unclear how much local authorities have had to write off completely, but from my extensive contact with building standards managers across the country, I have picked up that the estimated figure is about £700,000 since 2005.

The research also showed that local authorities currently recover about 50 per cent of their costs. That cannot be a satisfactory outcome for any local authority, particularly when they have a statutory duty to act, as is the case with dangerous buildings. I firmly believe that my bill will strengthen local authorities' cost recovery position.

I make it clear that the power to make a charging order would be discretionary; charging orders will be appropriate in some cases but not in others. The local authority is best placed to take the decision in the light of the facts and circumstances of each and every individual case. I have listened to local authorities' views about the

30-year term of a charging order being too long when, for example, the outstanding sum is small. That is why I intend to lodge an amendment to give local authorities greater control over setting the term of a charging order.

One of the main advantages of registering a charging order against the title of the property has to be that, if the property is sold, the local authority should be repaid through the proceeds of the sale. In addition, as the order is secured against the property, the approach avoids the need to pursue an individual through the civil courts. That can be the case at present when an authority might have to take court action to recover the sums that are due to it, in the absence of its being able to rely upon a charging order. That can be both time consuming and costly and—depending on the sums and whether the owner can be traced in the first place—may not be a viable option. As the up-front cost of registering a charging order is very low—it is likely to be in the region of £50—it will not add to local authorities' burden of costs. Of course, the £50 could be added to the charging order, along with any administrative costs.

Charging orders would also benefit owners who cannot access funding because of their low income. A charging order would allow them to pay by instalments over a manageable term. If, during that time, an owner's financial circumstances were to improve, the bill provides for an early settlement of the repayment amount, or a lower sum, if that is agreed by the local authority.

Some responses to the Finance Committee and the Local Government and Regeneration Committee raised an issue about whether there may be circumstances under the bill when a property could be sold or transferred before a charging order could be registered. Of course, local authorities are the experts in that area and I hope that, as such, they will welcome the news that I intend to lodge an amendment to provide the mechanism that will enable them to register liability for costs without having to specify the costs at the time, which takes account of the precedent that was suggested by local authorities under the Tenements (Scotland) Act 2004, thereby further safeguarding the local authority's position.

I confirm that I will amend the bill at stage 2 to take account of the Delegated Powers and Law Reform Committee's suggestion that the Scottish ministers should be able to amend directly schedule 5A to alter the form and content of a charging order, rather than there being the prospect of its being amended by subordinate legislation.

That brings me on to the amiable discussions that I have had with the Minister for Local Government and Planning, Derek Mackay, and his officials. It has always been accepted that the Scottish Government and I share the same goal—to improve local authorities' ability to recover costs—although we have taken slightly different approaches to addressing the problem. I thank the minister for recognising that this is a non-contentious and non-political area, in which agreement and consensual working will be key to timeous resolution of the plight of local authorities.

I hope that the minister and the committee will be reassured by my commitment to make those important changes to the bill—not just to meet the needs of local authorities, but to resolve any concerns that the Scottish Government may have about the approach that is taken in my bill.

I acknowledge the Scottish Government's further observations in its memorandum, which I saw late yesterday afternoon and which covers, in paragraph 35(c), debts incurred prior to implementation, in paragraph 35(d), the details of the appeal mechanism, and in paragraph 35(e), extending the bill to compliance and enforcement provisions in part 3 of the 2003 act. I am content to work with the Scottish Government to explore the detail of what would be involved, and how best those matters could be addressed in the bill. I am happy to answer any questions.

The Convener: Thank you, Mr Stewart. I am glad to hear that there is co-operation between yourself and the Government and that you are flexible, as you said in your opening remarks.

In your letter to the committee, you touch on the question of extending charging orders to social landlords and you say that that is not within the scope of your bill. Could you elaborate on that?

David Stewart: I appreciated the committee's inviting me along last week, when you heard good evidence from Susan Torrance. I am sympathetic to the position that housing associations are in. I had to look carefully at a number of things. First of all, it is not a Government bill, in which there would be a wider range of solutions and tools to help local authorities and others. Because I had not consulted specifically on that point, I felt that the best way forward was to have a specific, simple and straightforward solution. That is why I focused on charging orders for dangerous and defective properties. Notwithstanding that, the minister made some interesting points earlier, and I am happy to incorporate his suggestions.

The feeling that I expressed in the letter was that if there could be internal arrangements between local authorities and housing associations to resolve the problems that Susan Torrance raised last week, I would be more than happy to extend the scope of the bill. However, I feel that that is beyond the competence of the bill.

The other issue is that I did not want to make the bill overly elaborate, or to open up other fronts

that could invite criticism from people who would say that because we had not consulted on an issue we were not competent to take it forward. I hope that that gives a clear answer on why I feel that it is beyond the terms of the bill to extend the charging orders to social landlords. However, if the Government wishes to lodge an amendment to that effect at stage 2, I would look at that in great detail.

The Convener: You have also commented on the oral and written evidence that was given by Dave Sutton of the Institute of Historic Building Conservation, who indicated a willingness to extend the remit of the bill. You say in your letter that, although you are sympathetic, you do not think that that is the way forward. Could you comment on that?

David Stewart: Although I thought that Mr Sutton's evidence was excellent—I am sure that the committee would agree that he gave a comprehensive presentation that included technical approaches to the problems that we face in Scotland—and although I did not disagree with his evidence in any way, I felt that most of what he was suggesting last week was well outside the frame of what my bill is trying to achieve. That is the only concern that I had about the evidence that was heard and the suggestions that were made; I do not think that it is technically possible to expand my bill.

If it was a bill that was being started from scratch with the minister, it could well be the case that all the extra difficulties and issues that were raised in consultation could be incorporated. However, the advice that I have been given, as an ordinary member, is that I have to keep it pretty specific and pretty much within the terms on which the consultation touched. For those reasons, I do not feel that I could extend the bill.

The Convener: If you were to extend the bill to include historic buildings and buildings with some heritage, could there be a conflict with existing legislation?

David Stewart: Neil Ross can keep me right on this, but my understanding is that the bill and the 2003 act will apply to all buildings, including farming, commercial, residential and historic buildings. As you rightly suggest, there is already quite a lot of legislation in relation to historic and listed buildings, and it may be that some sort of conflict would arise between new legislation and existing legislation. That is not something on which I consulted and—sadly—it is not something that I can incorporate within the bill.

I would like to provide a lot more solutions than I am providing, but I go back to my original point: this is a member's bill, and it is not possible to include things that are clearly outwith the frame of the bill's original concept.

The Convener: Your argument is that you have focused on the areas that have been brought to your attention, and you do not want to muddy the waters by coming into conflict with other legislation.

David Stewart: That is correct. One caveat is that the issues that the minister has raised are in some ways logical extensions of the bill. They still relate to dangerous and defective buildings and some of the issues, such as the length of the charging order, are to do with the bill, so I am comfortable with the points that the minister has raised. I am glad that he has offered the support of his officials, and I will work with them on Government amendments on the points on which the minister touched.

Beyond that, I have no intention of lodging amendments that are outwith the frame of the bill. If the Scottish Government wants to amend the bill at stage 2, I will take advice from officials here in Parliament regarding the next step. However, I would not seek to extend the provisions in the ways that you were describing earlier.

Stewart Stevenson: I wish to pick up on what Mr Stewart said in his letter to the committee about the prior ranking of a charging order over other securities. Given that organisations that have standard securities over properties will generally place duties on borrowers to maintain buildings to standards, thereby ensuring that they have assets that are worth something, is there any mechanism that the member in charge—or the Government, for that matter—could consider such that, when and if the holder of a standard security gets their money back, some of it is entailed to go to the local authority, which might be out of pocket and has thereby protected the value that is attributable to the holder of the standard security?

I understand the substantial complexities around placing the local government order at a higher ranking than standard securities, taking into account the potential legal challenges if we were to approach things in that way, but I would like to be confident that, where public money is being spent to protect what are essentially private or corporate interests, we have explored every opportunity to ensure that the public purse gets back the money that it has spent.

David Stewart: That is a very good point. Mr Stevenson spent many years in banking and has a lot of expertise in this area.

Members will know that the original legislation—the 1959 act—provided for prior ranking. I have looked into the matter carefully. Local authorities are keen on prior ranking, because it means that

they are further up the pecking order than a building society or bank loan.

I had to consider a couple of things. First, some of the legal advice that I received suggested that I would have to be careful with European convention on human rights considerations. I will give an example. Let us assume that there is a charging order on a property and that there is collateral on the property. Let us say that it is a £200,000 property, with a building society loan of £100,000 and no other securities. Any work that is done by the council would be attached to the title. There would therefore be plenty of collateral for the council to get its money back in that situation. That is a beauty in the charging order.

I know that the money is taken over a 30-year period. As you know, many properties are sold within that time. Normally, we would expect the new owner to have a clean title. In other words, the charging order would be discharged and the money would be paid back to the local authority. That is why there is a beauty about the charging order.

There is one caveat that I would make, having spoken to people in local authorities across the country. Judgments about whether or not to have a charging order are normally made between the building control expert who has been carrying out the work and the legal team. If there is a clean title and there is collateral on the building—people can get that information in any searches—we would normally expect the charging order to be used. If that is not the case, the legal team would normally advise the officers not to go ahead with the charging order. That is the key point.

I am not going for prior ranking. On most occasions, if someone does the proper preparation, a charging order will work well. Although that does not rank as highly as a building society or bank security, it may well be the only other security. That is done purely by date of recording.

I am not sure whether Mr Ross wishes to come in at this point on any of those aspects.

10:45

Neil Ross (Scottish Parliament): No—that is the position: it ranks according to the point of registration.

Stewart Stevenson: You may not know the answer to it, but it might be good to put this question on the record. Given that the charging order will be attached to the title, that Registers of Scotland will therefore be aware of it and that anyone who does a search will see it, would notice be given to the institution that placed the charging order if the disposal of the property was contemplated, so that such interests as the council might have could be protected at the point at which there might be some financial value to the asset?

David Stewart: I will get Mr Ross to answer that.

Neil Ross: I am not sure whether you are indicating that the Registers of Scotland should have some active role in intimating—

Stewart Stevenson: To be clear, I am merely posing a question without having a predetermined answer. As you will be well aware, some complicated sets of interests can be registered against title—some financial and some of other character. The important thing is that, where there is a financial interest such as a charging order, that becomes capable of delivering money back to the council at the point at which some value is realised by the sale of the property concerned or by its transfer to another person.

I accept that this may be outwith the scope of the bill, but I was simply wondering whether it would be possible for the local council to be advised that the property was about to be sold. Clearly, the purchaser would be aware of the charging order, but there is not necessarily an obligation on the purchaser to do anything about that.

David Stewart: That is a very interesting point, and I had not considered it. We will take that away and look into it. We will perhaps drop you a line about it. If there is any need for amendments, we will take that on board for stage 2.

Stewart Stevenson: With the convener's consent, I will suggest that you might wish to write to the committee as a whole.

The Convener: It would be extremely useful if it were possible for you to drop us a note after exploring that issue, Mr Stewart.

Cameron Buchanan (Lothian) (Con): So far, Mr Stewart, you have commented mostly on town and city areas. What is your policy on rural areas, where barns and buildings might be defective, but without threatening anybody, unless they are by a roadside? What is your opinion about such situations?

David Stewart: That is a good point. Coming from the Highlands and Islands, I have an eye to rural areas and farmland, too. The main thing that I would ask the committee to consider is something that it will be familiar with. Apart from the cost recovery power, I am not really touching the dangerous and defective building legislation. All that my bill will do is add an extra tool to the armoury of local authorities that incur costs in relation to any dangerous or defective building. That could be a residential property, a commercial

building or a farm building. It could be an historic building or a listed building.

All the provisions of the 2003 legislation are still there; all that I am doing is providing local authorities with an extra tool for getting back costs that they have already incurred.

Say that a council—Highland, for example—has spent money ensuring that a farm building has been made safe or has done work around defective buildings, but has been unable to get the funds back by co-operation. If the council felt that a charging order was better, it could use one for a farm building. That is exactly the same as for a building in a city such as Edinburgh or Glasgow. There is no difference at all with regard to using the charging order. It does not matter whether the building is rural or urban, or agricultural or historic.

Cameron Buchanan: The titles in rural areas are often very vague and there might be no titles at all. What happens in cases in which it is not possible to find out who owns the property?

David Stewart: I go back to my reply to Mr Stevenson. It is not compulsory for local authorities to use charging orders. The judgment must be made by the people who are best placed to make it: the legal and building control teams in each of the 32 local authorities of Scotland. It is those individuals who will make the judgment.

Most of the time, the liability is that of the owner, and nothing in the bill suggests other than that. Most of the time, local authorities get funds back from the owner. Some of the time, owners do not or will not pay. In such cases, it is possible to use a normal cost recovery procedure. As members well know, the average legal costs are £5,000. Attempts to get costs back through civil cost recovery are not always successful. If there is a clean, distinct title, the advice would be to use a charging order. In respect of the example that you gave, if there was any doubt about the title, my advice would be not to use a charging order.

Cameron Buchanan: You mentioned registering liability for costs. What sort of register would you have for costs? Some people might have repaired the building and made it good and safe and others might have done more to it.

David Stewart: Perhaps I can raise a wider issue, convener. The key point is that any legitimate costs that a local authority incurs can be added to the charging order. The first charge is of course the £50, or thereabouts. If you do it online it is cheaper: you do not go to court and it is just done through the land register. Then there are any administrative costs that you incur in setting up the charging order. Then there are costs for building control work. Often, the private sector carries out the repairs and then charges the council. There are a whole lot of costs outlined in the bill: administrative, financial and legal costs and the costs for staff time, which can be allocated in the standard way. Whatever the costs, you would add them to the total cost of the charging order and set it for the required time. As I hinted earlier, for larger sums there is likely to be a longer repayment period, but for smaller sums such as £5,000 or £6,000 you would not want to wait 30 years, so clearly there would need to be a shorter repayment period. The council should not be out of pocket. To use the technical term, you would have a full cost recovery approach to this, which would cover staff time, actual costs and the cost of the repairs.

Alex Rowley: Congratulations on all the hard work that you have done to get the bill to this stage. It certainly seems to have been welcomed by local authorities, although they have raised concerns, particularly about the proposal for the inclusion of an appeal process. Will you say something about that, given that there is a view that people could use the appeal process to try to avoid paying?

David Stewart: That is a good point and I am glad that I have the opportunity to cover it. I spoke to one of my Highland Council building control officers earlier to run through the day-to-day procedure. I will give a slightly longer answer to explain where the appeal would come in.

In the normal course of events, if there is a dangerous building, councils go immediately to the owners and, most of the time, it is in the owners' interest to do the work informally and there is no requirement to have an order of any sort.

If the individual does not want to do that, the council can apply a dangerous buildings notice. It does not need to go to court for that; officers have powers to take that action. There would be an immediate health and safety procedure to ensure that masonry was not falling, the road was closed and all the emergency work was carried out. If at that stage the owner thought that the work should not be done because it would cost £10,000, or that the cost was not apportioned correctly, they could go to the sheriff court and appeal under the terms of the 2003 act.

In the appeal process that I am providing, I am not giving owners an opportunity to say that the work should not be done or that the cost should not be apportioned in that way. The process in the bill will cover purely technical issues, such as whether ownership was transferred in good faith at market value, which might give the owner an opportunity to appeal.

I do not expect the process to be used very often, but I understand the Government's concerns and I am prepared to look at it again. I return to the point that I made earlier: I was

advised that, in any new legislation, one must usually have some element addressing the European convention on human rights in terms of giving people a right of appeal.

I reassure local authorities that I do not see the appeal process as a viable delaying tactic, because it cannot be used to argue about the need for the work or the apportionment of the costs; that could be done at a previous stage under the dangerous buildings order.

Alex Rowley: There are concerns in communities that councils do not seem to have the powers to be able to act on what are described as derelict buildings, which blight local communities. In Cowdenbeath High Street in my constituency, there is a former hotel that was set on fire. It sits there looking derelict and horrible, right at the main entrance to the town. When asked about it, the council's answer tends to be that the building is not unsafe. This bill and the community empowerment (Scotland) bill have been referred to time and again in the local papers as measures that will allow councils to address that issue. Having listened to what has been said this morning, my concern is that perhaps the bill will not address that issue. Have local authorities simply been reluctant to take the next step unless they absolutely had to, because it has been difficult to recover the money?

David Stewart: That is a very good point. Your view reflects what I have heard recently from local authorities throughout the country in my various conversations with them. If you are asking me whether there is a gap in the market for legislation for the scenarios that you paint, there probably is. I have asked local authorities what they would do with a derelict building that is not dangerous—perhaps it is orphaned and its ownership cannot be determined, and the council wants it for affordable housing. The councils tell me, as you will know, that there are some powers under planning legislation for compulsory purchase, but that there has to be a dedicated plan in place for that. I think that there probably are some gaps.

I would not want to overegg the extra work that councils may do if they get a charging order. I do, however, feel that for high-level defective and lower-level dangerous buildings, where there is a sort of blurred area about whether councils should act, councils would be more encouraged to act in future because they will be confident, if it is a charging order, that they will get the money back. However, as I said earlier, the charging order would not be used in every situation.

If the bill is passed, my expectation is that, in future, the profile of the outstanding debt that councils have will be reduced. I think that we will probably see councils carrying out more work on buildings that are on the boundary between high-level defective and lower-level dangerous. That is my prediction, based on having spoken to officials throughout the country.

I stress to the committee that I am not suggesting that every time a slate falls off a roof or a ronepipe is broken, suddenly councils have a magic bullet to go and do the work. They have clear financial issues and will probably not get involved in that type of work. However, they will definitely take a much more positive view on dealing with clear, straightforward, dangerous building work.

Stewart Stevenson: The question occurred to me, as I listened to Alex Rowley's quite reasonable point about the hotel in Cowdenbeath, whether one of the ways in which an unsafe building could be dealt with would be to demolish it. In certain circumstances, although it could be a rather unhelpful outcome, demolition would make a building safe. We would probably all be more interested in such a building being moved towards a positive reinstatement of its previous condition rather than demolished, even though that might make it safe.

The Convener: It depends on the building.

David Stewart: That is a good point. In fact, in my consultation in the previous session, I published a picture of a disco in—I think—North Ayrshire that had completely burned down. What was left was dangerous and the council demolished the building at a cost, I think, of between £200,000 and £300,000. Unfortunately the owner disappeared; I understand that they now have a disco in Glasgow—allegedly, I should say. The council was out of pocket because it could not get the money back. On some occasions, building control will demolish, but there is a wider issue. I have examples in my patch, such as the old youth hostel near the castle in Inverness. It is probably not dangerous but it is really unsightly. The downside, of course, is that the neighbours' property values go downhill.

The other point that I have not pushed but that I can perhaps insert into the record is that most local authorities tell me that they use the private sector to do their dangerous building work. I think that Midlothian Council said last week that it uses its direct labour organisation. Obviously, if there is an increase in the work carried out, that will be a boost to the construction sector in Scotland, which I am sure that we would all welcome.

Demolition does happen and can be very expensive, but at least it leaves opportunities, where there is orphan ownership, for new developments, such as affordable housing, to be built in place of the scarred building that was there before.

John Wilson: We have covered the issues in great detail, but you made a couple of comments in your opening statement that I would like to examine further. One remark was about the number of dangerous and defective buildings: you mentioned 402 rising to 992. Are those figures that you have gathered from local authorities? Have you had any indication of the average cost of carrying out the works to make those buildings safe? Last week, as you heard in evidence, local authorities gave us an average figure of £3,000, but you mentioned a figure of more than £200,000 to make good a dangerous building in North Ayrshire. What is your experience of the average cost in relation to these charges?

11:00

David Stewart: Thank you for your question. The figures that I quoted came from the answer to a parliamentary question that I lodged and I think that they are the most up to date. They are actual, real-life figures.

I have the breakdown per local authority and I do not think that the committee has that information. If the convener agrees, I would be happy to send it—[*Interruption*.] I am sorry; I have just been shown that the information is in the explanatory notes, so it is already available to the committee.

Your point about costs is a good one, although I cannot answer it specifically because it varies from area to area. The speaker from Midlothian who was before the committee last week told me that Midlothian has a very clear risk assessment for any dangerous building. For example, they will go in and do the basic work, such as boarding up windows and making sure that things are not falling off the roof, before they have discussions with the owner, if the owner can be found, about any further work that might be required. Quite rightly, along with a responsibility for a dangerous building, a council has responsibility to taxpayers not to spend excessive funds that it cannot get back. That is a big issue.

The Midlothian representative told me the tragic story of how it boarded up upstairs windows in a house in Dalkeith, I think it was, but three young children got in and started a fire in which, unfortunately, they died. As a result, the council does not board up first-floor windows so that there is a form of escape from the house.

Councils have health and safety, legal, and financial responsibilities. They vary according to the situation, but most local authorities will take the approach of doing the minimum until they can negotiate with the owner. Most local authorities hope that the owner will pay. The nightmare situation is if dangerous work has to be done on a huge building and the owner cannot be traced, but the building has to be made safe. That is when huge costs can be incurred, such as the case in North Ayrshire. That is adding to the burden of local authorities not getting the almost £4 million that is outstanding across Scotland.

John Wilson: I think that you said that the figure was £3.9 million.

David Stewart: Yes.

John Wilson: That was extrapolated from the local authorities' calculations. Could you put that into perspective, taking into account the overall charges that are being laid by local authorities against owners of buildings as a percentage? Where does that £3.9 million come into the equation?

David Stewart: Claire Menzies-Smith might want to answer that.

Claire Menzies-Smith (Scottish Parliament): The figure came from the Scottish Government's commissioned research report. There are gaps in the figures for local authorities that were included in the project. The figure is, as I say, extrapolated from those eight local authorities up to 32. I would not say, therefore, that it was a sound basis for coming up with an average figure.

John Wilson: It is just that you have used that figure in evidence and our role is to examine the evidence that is provided to us.

The second part of my question is how that compares with the overall regime in terms of recovery of costs that are incurred by local authorities in making good dangerous and defective buildings.

David Stewart: Neil?

Neil Ross: I am not sure that I can really add anything to that. It is a question of statistical information to a certain extent.

Claire Menzies-Smith: The information that is available and in the public domain is from the Scottish Government's commissioned research report, the parliamentary questions and the number of notices. We do not have financial figures that are associated with that information; we have numbers rather than pounds.

David Stewart: To help the member, I would be happy to lodge another parliamentary question asking for the actual cost per local authority, as those figures are not in the public domain. I would then write to the convener with the information.

John Wilson: I have been doing some calculations based on the evidence that we have heard this morning. There are 992 empty buildings that need to be made good, so, based on the average cost that we heard from local authorities

of £3,000, that works out at just under £3 million. However, the figure that you quoted earlier was £3.9 million in unrecovered costs. I just want to put those into context in relation to the bill.

The next question is about your earlier comment about charging orders not being appropriate in all circumstances. In what circumstances might they not be appropriate?

David Stewart: I think that I touched on that matter in response to Mr Buchanan.

The key partnership in this respect is between building control officers and the legal teams in their local authorities, who will make a joint decision about situations in which a charging order will be useful. A charging order would not be used, first, if the title was unclear and, secondly, if there was negative equity in the building. Mr Ross might wish to confirm this, but I believe that one might be able to determine whether there was negative equity through a search. If you knew what the outstanding security was, you could work out the property's value with council officials.

Those are a couple of situations in which I would recommend that a charging order should not be used; I do not know whether Mr Ross has any further comments.

Neil Ross: I should repeat that the use of a charging order would be at the local authority's discretion; indeed, the member has emphasised that this is a discretionary power. As has been said, any judgment on whether a charging order is the appropriate course of action in a particular situation will take into account all relevant factors and involve the relevant officials. I am not sure that I can expand beyond that.

David Stewart: The key point is that it is very cheap—only £50—to register a charging order; people will register the order in the land register instead of going to court; and, until the debt is paid off, they will have a hold on the building's title. Most new owners do not want a cluttered title—they want to ensure that any debt has been cleared.

We all know examples of elderly men or women in big houses whose families have left and who now have a very low income. In such circumstances, charging orders might be a good way forward. We need to remember that it is not just an imposition and that there might well be negotiations with the owner about whether such a route is appropriate. That is the proposal's great strength.

I believe that I am right in saying that, in most cases, the title is pretty clear and that only a marginal number are unclear. On most occasions, therefore, a charging order would be a great route forward. We all know the problems with conventional cost recovery, which is expensive and does not always achieve the goal of getting funds back to local authorities.

John Wilson: It is fine to say that decisions about charging orders will be taken by legal teams and building control officers but, in your investigations leading up to the introduction of the bill, did you consider what discussions council officers would have with building owners? As I said, I hope that these orders would be imposed only when officers have exhausted the possibility of discussing the matter with owners.

David Stewart: That is a very good point, but I must stress that owners are responsible for repairing buildings and making them safe. On most occasions and in all local authority areas in Scotland, the owners will pay any funds up front to the council. At a recent meeting with the chief executive of Glasgow City Council, his officers told me that part and parcel of any negotiation before even thinking of applying any other form of cost control would be to negotiate a repayment. If that can be done on a voluntary basis, you will not need to go near the courts or charging orders. The funds can be retrieved through negotiation, and it is obviously in the council's interests to do that.

You are also right to suggest that a charging order would be part of a negotiation. That is certainly my hope. After all, it is always better for the council to take the owner with it instead of making this kind of imposition.

John Wilson: Thank you very much.

The Convener: Stewart Stevenson has a supplementary question.

Stewart Stevenson: The member made an oblique reference to equity release that the elderly owners of large properties might indulge in and which would lead to a security being attached to the property. However, given that these owners have low incomes, will the bill's provisions or its practical operation allow the charging order or any debt to the council that might arise to be deferred until the owner's death, as would be the case with equity release schemes?

David Stewart: I make it totally clear that I was not talking about any formal equity release scheme. I was simply using as an analogy the case of an elderly person who lives in a large house but has a low income. We all know of such examples and, in those cases, a charging order would be useful as it would ensure that the property is safe, which would be in the interests of the owner, the neighbour and the council. On such occasions, the local authority might have more discretion over the period of the charging order, which is an issue that I am hoping to cover in the bill, and it would then decide on an appropriate period. In any event, one would expect the

outstanding debt to be cleared on the death of the owner—

Stewart Stevenson: Just to cut to the chase, I simply wanted to find out whether the charge could be started at a distant date or whether it had to start at once.

David Stewart: Mr Ross will respond on the technical point but the point that I want to put on record is that if the elderly person dies and the house passes to a son or daughter, they will be responsible because they will have the title of the building. The council does not need to do anything else because the charging order puts a hold on the title.

The Convener: Do you have anything to add, Mr Ross?

Neil Ross: On the technical issue, it would be for the local authority to determine the point at which to proceed to formally registering the charge.

Stewart Stevenson: Thank you. That is sufficient.

Anne McTaggart: Although this used to be a tool in the toolbox, it was removed. Why did that happen? Had any negative issues been raised or concerns expressed about it?

David Stewart: The member raises a very good point. That is one of life's great mysteries and I have spent a lot of time and effort talking to the Scottish Parliament information centre, ex-ministers, NGBU and others to find out why this excellent tool was taken out of the toolbox in 2002-03. There was a suggestion that European legislation was going to be introduced that might have had an impact, but none came.

We should certainly call what happened an error. I am not blaming anyone or any political party for it; it is just the way it was. At the very least, I am simply making good a mistake that was made in 2002-03. As you know, the approach worked very well from 1959 to 2002 and all the parties supported it. I am not claiming that it was perfect, but it was a good additional tool in the toolbox. If someone can explain why this error happened, I will be very grateful because I have had zero intelligence on the matter.

Anne McTaggart: Thank you.

The Convener: I thank Mr Stewart very much for his evidence—[*Interruption*.] I beg your pardon, Mr McDonald. I did not see you indicate that you wanted to ask a question.

Mark McDonald: I have just a couple of questions, convener.

In our evidence taking, we have spent a lot of time talking about private ownership of properties. Have any problems or even potential problems been encountered where a property is owned by another council department—for example, a derelict school building that is owned by an education department—or another public body? After all, we are talking about local authorities recouping costs, but what if they are recouping those costs internally? Have you encountered any difficulties in that respect?

David Stewart: That is a good point. I have to say that I have not considered the situation in which the property in question is owned by another local authority department, but I suppose that the fundamental issue is that if a building is dangerous and defective and the local authority cannot get its funds back, it can use a charging order against anyone as long as there is a clear title. It might cause local embarrassment if another public body is involved, but the good thing is that the local authority would know that it would get its money back. We all know of examples of public bodies taking each other to court—indeed, I have some examples of that in my own area. It might seem daft from a taxpayer's point of view, given the amount of legal costs that they would be incurring in the process, but there is no debarment to the use of a charging order no matter whether the property in question is owned by a public body, another local authority department or whatever. As long as there is a clear title, the measure is competent.

I do not know whether Mr Ross has anything to add.

Neil Ross: I do not think so. Clearly a local authority could not take action against itself but beyond that a charging order would be an option.

Mark McDonald: That is fine. It was important to get that on the record, given how much we have discussed the issue of private ownership.

My second question is about the point raised by the convener in the previous evidence session about whether the bill might have a retrospective element. Have you taken a further look at the detail of that? Complexities could arise if you tried to apply a charging order retrospectively, particularly given that ownership might have repeatedly changed hands.

David Stewart: I understand that local authorities are quite keen for the provisions to go back in time. Given the level of debt that Mr Wilson highlighted, clearly it would be good if they could use this tool retrospectively.

However, the general advice that I have had is that it is not normal to backdate legislation and, again, there are ECHR issues to take into account. My legal advice is that it would be best if we did not do that. If it were to go through, the bill would be effective six months after royal assent.

I listened to what the minister said and am obviously happy to discuss some of these points with the team from the Scottish Government. However, I note that last week's witnesses were not very keen on retrospectivity, and the position that I have taken is that the bill should not go back in time. I will, as always, keep my options open just in case a compelling amendment is lodged but, as I have said, the legal advice that I have received is that trying to include a retrospective element might breach human rights.

The Convener: Thank you, Mr Stewart. You said that you would write to the committee to clarify a couple of matters. If you could do so by the end of the week, we would be grateful, because certain processes need to be gone through.

I suspend the meeting for a couple of minutes to allow the witnesses to leave.

11:15

Meeting suspended.

11:16

On resuming—

Subordinate Legislation

Local Government Pension Scheme (Miscellaneous Amendments) (Scotland) Regulations 2014 (SSI 2014/23)

Non-Domestic Rate (Scotland) Order 2014 (SSI 2014/28)

Non-Domestic Rates (Levying) (Scotland) Regulations 2014 (SSI 2014/30)

The Convener: Agenda item 3 is consideration of three negative instruments. Members have received a paper from the clerks on the purpose of the instruments. They were considered by the Delegated Powers and Law Reform Committee, which had no comments to make.

Do members have any comments?

Stewart Stevenson: I take this opportunity to very much welcome the continuation of the business bonus scheme, which is so valuable to many of our smaller businesses across Scotland and is encompassed in the Non-Domestic Rate (Scotland) Order 2014 (SSI 2014/28).

The Convener: Thank you. Does the committee agree not to make any recommendation to the Parliament on any of the instruments?

Members *indicated agreement.*

The Convener: Thank you very much. We now move into private session.

11:18

Meeting continued in private until 11:24.

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e-format first available
ISBN 978-1-78392-819-4

Revised e-format available
ISBN 978-1-78392-833-0

Printed in Scotland by APS Group Scotland