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Pàrlamaid na h-Alba

Official Report

INFRASTRUCTURE AND CAPITAL INVESTMENT COMMITTEE

Wednesday 12 March 2014

Session 4

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INFRASTRUCTURE AND CAPITAL INVESTMENT COMMITTEE
8th 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)

COMMITTEE SUBSTITUTES

James Kelly (Rutherglen) (Lab)
Gil Paterson (Clydebank and Milngavie) (SNP)
John Scott (Ayr) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Jackie Baillie (Dumbarton) (Lab)
Claudia Beamish (South Scotland) (Lab)
Neil Bibby (West Scotland) (Lab)
Sarah Boyack (Lothian) (Lab)
Colin Brown (Scottish Government)
Margaret Burgess (Minister for Housing and Welfare)
Daniel Couldridge (Scottish Government)
William Fleming (Scottish Government)
Patrick Harvie (Glasgow) (Green)
James Kelly (Rutherglen) (Lab)
Ken Macintosh (Eastwood) (Lab)
Nicola Sturgeon (Deputy First Minister and Cabinet Secretary for Infrastructure, Investment and Cities)

CLERK TO THE COMMITTEE

Steve Farrell

LOCATION

Committee Room 2

Scottish Parliament

Infrastructure and Capital Investment Committee

Wednesday 12 March 2014

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

Decision on Taking Business in Private

The Convener (Maureen Watt): Good morning, everyone. I welcome you to the eighth meeting in 2014 of the Infrastructure and Capital Investment Committee. I remind everyone to switch off their mobile phones, because they affect the broadcasting system. Some committee members may consult their tablets during the meeting, as we now provide meeting papers in digital format.

We have quite a lot to get through today. Agenda item 1 is to decide whether to take business in private. I seek the committee's agreement to take in private item 5, which is consideration of evidence on the Housing (Scotland) Bill, and to take in private consideration of any future draft reports on the bill. Is that agreed?

Members *indicated agreement.*

Procurement Reform (Scotland) Bill: Stage 2

09:31

The Convener: The next item is to consider the Procurement Reform (Scotland) Bill at stage 2. We have a number of Government and non-Government amendments to consider today. We hope that it will be possible to finish stage 2 today, but time has been set aside to complete stage 2 at the committee's meeting next week, on 19 March, if needed.

I welcome Nicola Sturgeon, the Deputy First Minister and Cabinet Secretary for Infrastructure, Investment and Cities, and her supporting officials. I remind members that the cabinet secretary's officials are here in a strictly supportive capacity and cannot speak during proceedings or be questioned by members.

Members should have a copy of the bill, the marshalled list and the groupings of amendments.

Section 1 agreed to.

Schedule—Contracting Authorities

The Convener: The first group of amendments is on contracting authorities. Amendment 1, in the name of Tavish Scott, is grouped with amendment 35. Tavish is unable to attend and has given his apologies.

James Kelly (Rutherglen) (Lab): I welcome the opportunity to speak to amendment 1, in Tavish Scott's name, and amendment 35, in my name.

The bill covers £10 billion-worth of public contracts. It is trying to achieve more efficient procurement that will boost the economy and support businesses, the public sector and jobs, as well as fairness in the economy. It therefore seems strange that Scottish Water and the hubcos—hub initiatives—that are covered by the Scottish Futures Trust are excluded from the provisions of the bill.

The recent Scottish Futures Trust business plan tells us that it is using expenditure of £3.1 billion. As we know, Scottish Water has a £500 million capital expenditure programme, and its recent revenue expenditure was £837 million. Those organisations affect billions of pounds running through the economy—much of which will be covered by the contracts to which the bill will apply. Therefore, it is a glaring omission that they are not covered by the provisions of the bill. The amendments in the group seek to make the appropriate changes to include those organisations.

We have lodged other amendments to improve provisions in the bill, including on the living wage. The inclusion of Scottish Water and the Scottish Futures Trust would ensure more comprehensive coverage in the bill and would be of benefit to the Scottish economy.

I move amendment 1.

The Convener: Have you anything specific to say on amendment 35, or have you included it in what you have just said?

James Kelly: I have spoken to the two amendments together.

The Convener: That is fine. No other committee members wish to speak, so I call the Deputy First Minister.

Nicola Sturgeon (Deputy First Minister and Cabinet Secretary for Infrastructure, Investment and Cities): There is an important general point to make about amendments 1 and 35, but the comment is relevant to the bill in general. We must ensure that the provisions of the bill are consistent with the overarching framework of European Union public procurement law, that they will not impose unnecessary or disproportionate burdens on public and private bodies, and that they are pragmatic and deliverable, because that is vital to ensuring that the bill will make the difference that we all want it to make.

I will deal first with hubcos. They are not designated as public bodies, but are institutionalised public-private partnerships that are 60 per cent owned by the private partner, 30 per cent owned by the participating authority and 10 per cent owned by the Scottish Futures Trust. As such, hubcos are bodies that are created after Europe-wide competition; therefore, procurement law already applies to their establishment. To expect hubcos to behave as if they are public bodies would create an anomaly in the sense that we would have to apply public procurement rules to private sector bodies. That would also restrict their flexibility to deliver, and that flexibility was a key factor in their creation.

Although Scottish Water is clearly publicly owned—we intend to keep it that way—for procurement purposes it is a utility and is subject to a very different overarching framework of European law. The bill and the subsequent regulations and guidance that we will need to draft must dovetail with EU public procurement rules. The bill currently does that by excluding utilities contracts, as is entirely consistent with the existing EU procurement law approach, and leaving them subject to a separate legal regime. To apply the bill to a body that is subject to a different EU law framework would create risk and complexity for all concerned, as it would require us to work with two different EU regimes.

I recognise the importance of Scottish Water's procurement activity to our economy; in that respect, James Kelly's comments cannot be argued with. My officials have been in dialogue with Scottish Water and it has provided an assurance that it supports the general principles of the bill and will continue to adhere to its key components. For example, Scottish Water already advertises via the public contracts Scotland website, it uses the standard pre-qualification questionnaire template and it uses community benefit clauses in its major contracts. I am happy for officials to have a similar dialogue with the Scottish Futures Trust in relation to hubcos, and I would be happy to feed back on that dialogue to the committee in advance of stage 3.

In the light of all my comments, I was going to ask Tavish Scott to seek to withdraw amendment 1, and Mr Kelly not to move amendment 35, but I now direct both those requests to Mr Kelly.

The Convener: Mr Kelly, do you wish to press or withdraw amendment 1?

James Kelly: I wish to press amendment 1.

The Convener: The question is, that amendment 1 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fee, Mary (West Scotland) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Johnstone, Alex (North East Scotland) (Con)

Against

Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 3, Against 4, Abstentions 0.

Amendment 1 disagreed to.

Amendment 35 moved—[James Kelly].

The Convener: The question is, that amendment 35 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fee, Mary (West Scotland) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Johnstone, Alex (North East Scotland) (Con)

Against

Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)

MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 3, Against 4, Abstentions 0.

Amendment 35 disagreed to.

Schedule agreed to.

Section 2—Regulated procurements

The Convener: The next group of amendments is on the meaning of "regulated procurement". Amendment 4, in the name of the Deputy First Minister, is grouped with amendments 24, 25 and 27.

Nicola Sturgeon: Amendment 4 is a technical amendment that will clarify that the bill's provisions will apply regardless of whether a procurement process involves competitive tendering. Amendments 24, 25 and 27 are consequential on amendment 4.

The amendments relate to the commitment that I gave the committee in December 2013 to introduce an exemption for health and social care contracts—the amendments on that are in a later group. The amendments in the current group also relate to amendment 12, on circumstances in which competition is not required, which will be debated later.

I move amendment 4 and I ask the committee to support it and the other amendments in the group.

Amendment 4 agreed to.

Section 2, as amended, agreed to.

Section 3 agreed to.

Section 4—Excluded contracts

The Convener: The next group is on excluded contracts: resale and research and development. Amendment 5, in the name of the Deputy First Minister, is the only amendment in the group.

Nicola Sturgeon: Amendment 5 is a response to concerns that were expressed in evidence to the committee by the higher and further education sector about the bill's implications for the awarding of contracts that are linked to commercial activity. Higher and further education bodies derive a substantial part of their income from research and development commissions, and a particular concern was that the bill could place them at a competitive disadvantage in pursuing those commissions, especially as changes to funding arrangements in England mean that English higher and further education bodies are likely to come out of the scope of EU public procurement law.

Amendment 5 is intended to exempt from the bill's scope contracts for "goods, works or services" that are for resale or for

"the principal purpose of ... research or development".

The word "principal" is important. Equipment that is bought for the purpose of research or development might subsequently be used for other purposes, including teaching, but the exemption will apply when the principal purpose of acquiring the goods, services or works when they were purchased was to undertake research or development. The exemption for goods that are for resale or hire will provide flexibility for public bodies that undertake quasi-commercial activities; for example, running gift shops or restaurants.

The concerns that the higher and further education sector expressed were not echoed by other sectors, but it is right to apply the exemptions generally, because other public bodies could, conceivably, face similar issues.

I move amendment 5 and ask the committee to support it.

Amendment 5 agreed to.

Section 4, as amended, agreed to.

Sections 5 to 7 agreed to.

Section 8—General duties

The Convener: The next group of amendments is on the consideration to be given to various employment practices. Amendment 36, in the name of James Kelly, is grouped with amendments 69, 70, 39 and 79 to 81.

09:45

James Kelly: I will speak to amendments 36 and 39 in my name, and in support of the other amendments in the group. Amendments 36 and 39 would ensure that the living wage is paid under all public contracts that the bill covers. The bill covers £10 billion-worth of public contracts, so we have the opportunity to implement the living wage across a large number of areas.

The bill offers a real opportunity to make a positive impact on the lives of many workers. There are 400,000 workers who are currently paid the minimum wage, but not the living wage. Of those, 36 per cent are under 25, 64 per cent are women and 95 per cent work in the private sector, where many of the contracts in question would be allocated. My amendments would be truly transformational if they were to be accepted, because they would give people who are currently paid the minimum wage a rise of £2,000, which would be a real benefit to their lives.

I know that all the Scottish National Party committee members have signed up to parliamentary motions in support of the living wage, and I appeal to them to support my amendments, which give them a real opportunity to put their support for those motions into action and to make a real difference for workers.

With regard to the legal issues that arose at stage 1, I submit that my aim can be achieved by linking, as my amendments do, the payment of the living wage to performance under the contract. It is a matter of political will, and it has been done in other areas. The Scottish Government can surely do it, and I appeal to it to look closely at amendment 36 and to interact with the process.

Ken Macintosh's amendments 69 and 70, on trade union recognition, make some valid points. Trade unions play a vital role in the workplace and good trade union relations support the economy; the amendments would help to facilitate both.

Jackie Baillie's amendment 79, on an equal pay audit, sits well with some of the statistics on the living wage that I quoted earlier—for example, the fact that 64 per cent of people who are not paid the living wage are women. There should be an onus on the companies that bid for contracts to ensure that they have in place an equal pay audit to enable provisions in that regard.

Neil Bibby's amendment 80 is interesting with regard to community benefits and would allow us to introduce to the bill a requirement for adequate childcare provision. That would not only benefit employers but would bring in many more women to the workplace, which is an aspiration that I know the Scottish Government shares.

Ken Macintosh's amendment 81, on wage ratios, is also interesting; we are all aware of corporations in which there is a vast difference between what is paid on the shop floor and what is paid in the boardroom. The amendment is pragmatic because it would not include a blanket provision but would give ministers the powers to make provision via regulations. As such, it is well worthy of consideration.

I move amendment 36.

The Convener: I call Ken Macintosh to speak to amendment 69 and the other amendments in the group.

Ken Macintosh (Eastwood) (Lab): Thank you, convener, for inviting me to come along to the committee this morning. I speak in favour of all the amendments in the group, and specifically in support of amendments 69, 70 and 81 in my name.

As a group, the amendments provide us with an opportunity to use public procurement as an engine for radical social and economic change. Amendment 69 would allow procuring authorities, in awarding contracts, to take into account the record of companies in promoting sustainable employment policies.

I had in mind the specific example of work sharing—or Kurzarbeit, as it is known in Germany. I believe that many of us, including the Cabinet Secretary for Finance, Employment and Sustainable Growth, have been looking to the Mittelstand in Germany and at the way in which those middle-sized companies withstood the worst of the recession, in order to see what lessons we can learn in Scotland.

One such lesson is undoubtedly work sharing, which is when a company compensates but temporarily reduces the working week for employees in order to spread a reduced volume of work over the same size of workforce and avoid any large-scale redundancies. That is estimated to have saved up to 400,000 jobs in Germany during the recent recession.

The International Labour Organization highlights similarly impressive numbers of livelihoods saved in Japan, Turkey and the United States of America. The ILO concludes that work sharing not only helps workers to keep their jobs, but helps companies to ride out a crisis, retaining the collective workforce experience, which then puts them in a good position to take advantage of any upturn in growth in the economy. Furthermore, as a policy it helps Governments to save on the costs and social impact of unemployment.

My amendment is inclusively worded, partly because I believe that we should be in a position to reward, incentivise and promote all sustainable employment policies, not just work sharing. However, I am aware that the minister is moving an amendment later—amendment 8, on the sustainable procurement duty—that will give her complete flexibility to use guidance to further define sustainable procurement policies and therefore sustainable employment policies. I would hope that that would give her additional comfort, should she require it.

Amendment 70 is one that I hope the minister will have no difficulty in accepting and the committee will wish to promote in that it simply encourages public contractors to recognise trade unions. As well as drawing to the committee's attention my trade union membership, I give particular thanks to the trade union community for its role in bringing the issue forward.

The minister will know from the many times that I have raised the subject in Parliament that I believe that it is quite wrong to award Government grants—in other words, taxpayers' money—to companies such as Amazon that refuse to recognise trade unions. If we want to promote a

more moral economy here in Scotland, we must try to reflect the values that we hold dear—not simply shareholder return or obeisance to market values, but long-term thinking, a commitment to local communities and, as expressed in amendment 70, respect and support for worker representation.

This is not just about weeding out the bad apples. Improved health and safety would be one of the benefits, because workplaces that recognise trade unions are proven to be safer. They are also crucial to improving our productivity. I point to the Scottish rail industry as an example—strong trade union relationships have been vital in delivering the rail franchise. The shipbuilding industry is another example. It was disappointing that trade union recognition was not part of the rail franchise renewal process, but here is an opportunity for the Scottish Government to nail its colours firmly to the mast by promoting the role of trade unions in building a more sustainable economy.

The final amendment in my name is amendment 81 on wage ratios or, as some may call them, wage differentials. This particular measure is supported by Oxfam, among others, and is one of a range of actions that we can take to support the whole concept of "decent work". In this section alone, there are proposals before the committee to support the living wage, equal pay and childcare.

Amendment 81 would allow the Scottish Government to promote equality, encouraging employers to minimise wage ratios between the highest and the lowest paid. In 2012, the average chief executive of a FTSE 100 company was paid £4.8 million a year, or 185 times the average salary. That has risen from £1.2 million in 1999 and comes at a time when wages for most people have been stagnating or worse. In 2010, take-home pay fell for the first time in 30 years.

According to the Equality Trust, wage ratios in the voluntary sector are estimated to be around 10:1. In the public sector, they are roughly 15:1. However, in the private sector, in FTSE 100 companies, they are approximately 262:1. In other words, although more can be done in the public and voluntary sectors, it is clear that earnings inequality in the private sector will have to be tackled in order to create a fairer, more equal society. Not only would amendment 81 help to do that, but it might encourage the voluntary sector, social enterprises and local small and medium-sized enterprises to bid for and win more public sector contracts.

Looking specifically at employers with large public sector contracts, I see that one such company is Serco. Its previous chief executive was paid an estimated £3.1 million in 2010—six times more than the highest paid United Kingdom public servant and 11 times more than the highest paid local authority chief executive. Even David Cameron has suggested that no one in a public sector organisation should earn more than 20 times more than their lowest-paid colleague.

The Equality Trust estimates that none of the large "public service industry" organisations paid its chief executive officer less than 59 times the UK median earnings. It is clear that we need to tackle pay inequality in this field if we are to have any impact on inequality more widely. There are good examples, such as Tullis Russell and Triodos Bank, both of which are in Scotland.

It is worth adding that the International Monetary Fund recently highlighted that lower net inequality is robustly correlated to faster and more durable growth for a given level of redistribution. In other words, this is a pro-business, pro-growth, sustainable economic policy.

I ask for the committee's and the cabinet secretary's support for all the amendments to this section as well as for the three amendments that I have specifically outlined. I believe that we share a desire to build a more resilient economy that emphasises the importance of an ethical and values-based approach to employment and business practices. The Scottish Government has made a very good start with the introduction of the national performance framework.

I have said before that demanding social responsibility from companies large and small will not scare away good employers but will provide the backbone for a more sustainable, long-term approach to Scotland's economy—an approach in which trade unions are recognised, in which someone's job values their worth as a citizen and in which the bonus culture is replaced by more equitable salary differentials and support for equal pay. All those criteria could and should become part of the Scottish Government's approach to procurement.

Jackie Baillie (Dumbarton) (Lab): I thank the committee for hosting so many Labour members this morning. I will speak briefly to amendment 79, which allows for equal pay audits to be considered among the criteria for awarding contracts.

Members will know that equal pay audits consider pay gaps by gender, ethnicity, disability and working pattern. They are, to be honest, relatively easy to carry out and there is lots of support for businesses including toolkits and hands-on advice about how to conduct an equal pay audit and, indeed, what to do with the results. The benefits for business are well documented and include improved productivity, improved staff retention and improved performance—all those positive benefits arise. By agreeing to amendment 79, the committee would encourage good practice

among all contractors and make a positive difference by enhancing equality in relation to pay.

Like colleagues, I support the range of amendments that are before us. I recognise that they come together to provide a positive platform for economic change, which it is right that we should make using the power of public sector spending, which is considerable. I support Ken Macintosh's amendments and I support James Kelly's amendments in relation to the living wage, not least because he reminded us that 64 per cent of those who currently earn less than the living wage are women.

I commend the amendments to the committee and to the cabinet secretary. When taken together, they will make a real difference to economic equality for those who are employed in delivering public sector contracts. We expect the highest standards in the delivery of public services in the Parliament and across the public sector, and those who deliver those contracts deserve to operate to the same high standards as we would find in the public sector.

The Convener: Thank you for your brevity.

Neil Bibby (West Scotland) (Lab): I welcome the opportunity to speak to amendment 80. Childcare was a major feature of the recent stage 3 debate on the Children and Young People (Scotland) Bill. Before that bill was published, when it was just being discussed, my Labour colleagues and I called on the Scottish Government to use the childcare powers that it has to help families and children. However, the reality is that, even after that bill has been passed, Scotland lags behind the rest of the UK in the provision of childcare, and it is clear that the childcare issues of 2014 will not be solved by the Government finally meeting its seven-year-old manifesto commitment. We must do more, and the Procurement Reform (Scotland) Bill represents an ideal opportunity for the Scottish Government not just to talk the talk on childcare, but to walk the walk.

There has been a lot of discussion of extending pre-school education hours in the Scottish Government's white paper and in scrutiny of the Children and Young People (Scotland) Bill, but there has been next to no mention of any action being taken to improve out-of-school care for primary school children and ensure that employers provide greater access to childcare and flexible working. If we are to have a Scottish model of childcare that is affordable, high quality and—crucially—flexible and accessible, it cannot be left to the public sector and local authorities to provide it alone. We need employers to make more of a contribution towards providing accessible childcare and flexible working, and my amendment 80 would ensure that authorities could introduce a childcare requirement on any public contracts worth over £2 million.

10:00

The measure is two pronged. For accessible childcare, contracting authorities could ensure that contracts worth over £2 million, which would presumably employ a considerable number of staff, provide a childcare facility or crèche at the place of work. In addition, to meet the needs of parents, authorities could insist on employees being able to work during family-friendly working hours, which would help to bring more mums and dads into the workplace. I know that that is an ambition of the Scottish Government.

I agree with the other amendments in the group. There are a number of areas in which procurement could be used to provide community benefits. The living wage, wage ratios and equal pay audits should all be included. The bill could also include a childcare requirement.

I understand that the use of procurement to promote accessible childcare and flexible, family-friendly working is being proposed for the first time under the bill. The issue is not new, however. Marco Biagi recently hosted an event in the Parliament on flexible, family-friendly working. There is good practice, such as the Employers For Childcare group in Northern Ireland, which encourages family-friendly working there. We should consider such practices here, too. I believe that the idea is sensible and reasonable. I recently spoke with a number of children's organisations, which indicated support for the proposal.

Labour has proposed this idea in good faith. We are happy with it as it stands but if the Scottish Government has problems with the childcare requirement as we propose it, we will listen to suggestions from other parties and external organisations on ways to improve childcare arrangements through procurement. I assume that the Scottish Government has no objection to the proposal in principle.

I hope that the Scottish Government and committee members will support the proposal at stage 2. Failing that, I hope that agreement can be reached on Labour's proposal for a childcare requirement at stage 3.

Let us make a difference to childcare now, using the powers that we have.

Alex Johnstone (North East Scotland) (Con): Although my remarks relate to the amendments in this group, they might equally apply to a number of other groupings that will come along during stage 2.

The Procurement Reform (Scotland) Bill as introduced appeals to me, in that it sets out to

create a fair and easy-to-understand level playing field in public procurement. However, it has become obvious that the bill offers a number of opportunities to act as a proxy for other political priorities. Many of the amendments that have been lodged for today seek to have that effect.

Although it is important that the Parliament provides an opportunity for many of those priorities to be aired, and although we should take them into account in the longer term, I am not convinced that it is appropriate to allow the bill in effect to be hijacked in order to achieve those priorities. That concerns me because, although some members who have spoken to their amendments so far have said that they would like public procurement to act as an example of best practice, the opposite effect might well apply: by changing the bill in the way that is suggested, we could end up creating a two-tier system of contracting, where those who are regulated by the Procurement Reform (Scotland) Bill operate to one standard while other parts of the economy operate to another.

I am concerned that if we accept the amendments before us now and those in many other groupings that seek to use the bill as a proxy for other policies, we could create a gulf in the Scottish economy that we would not wish to have responsibility for closing.

The Convener: Mr Kelly, you said that the living wage applied in other areas. Perhaps you could explain where. In the course of our consideration of the bill, the Deputy First Minister published the European view on a sub-state imposing or implementing the living wage. Given that you and others said that the question was asked wrongly, I take it that, in the meantime, you or your MEPs have asked the question in a different form. Have you done that? If so, what was the reply?

James Kelly: Do you want me to sum up?

The Convener: No. Perhaps you could answer those questions in your summing-up.

James Kelly: I will deal with them when I sum up.

The Convener: Okay. I call the Deputy First Minister to speak to the amendments.

Nicola Sturgeon: Thank you, convener. There are a number of amendments in this group, and I will go through them all in turn, starting with amendments 36 and 39, which relate specifically to the living wage.

The Government has already explained in some detail why we are not able to make the living wage a mandatory requirement under the bill, and I am not sure that it is a good use of the committee's time for me to go through all those arguments again in detail. Suffice it to say that, as the convener has just alluded to, we sought advice from the European Commission—that was done by my predecessor in this job, Alex Neil. We have made available to the committee the letter that we received from the EC, in which the position is made clear: we cannot make it a condition of a contract that a company is to pay a living wage that is higher than the minimum wage that is set in the United Kingdom. That position applies under the posted workers directive, and the advice has been available to committee members for some time.

I hope that we can unite around the other point to stress on the living wage—I address that remark particularly to Mr Kelly and his Labour colleagues. Our response to the EC position was not to shrug our shoulders and say that there was nothing that we could do through the bill on the living wage—we have absolutely not taken that position. We are very clear that we support the living wage and the principles of the living wage campaign. We have adopted the living wage for all our own staff and all workers in the national health service. We have gone further on the living wage than any previous Scottish Administration has gone, and we actively encourage others to adopt the living wage. When drafting the bill, we thought very carefully and deliberately about what we can do. We did not just talk about what we cannot do; we looked at what we can do within EU law in a procurement context.

As a Government, we take low pay very seriously and are committed to doing everything that we can to ensure that as many people as possible benefit from the living wage. I whole-heartedly agree with James Kelly about the power of the living wage to transform people's living conditions. As I said, we are leading by example in ensuring that all staff covered by our public sector pay policy are paid the living wage. That policy benefits thousands of public sector employees. We are firmly of the view that employers should reward their staff fairly. We have funded a pilot living wage accreditation scheme, with the specific intention of increasing the number of employers that pay the living wage in all sectors of the economy and encouraging others to follow our example.

Crucially, the bill makes provision for the Government to develop statutory guidance for public bodies on the selection of bidders. In particular, that guidance will cover matters relating to recruitment, terms of engagement and remuneration of employees involved in the contract. The intention is there, and we have very deliberately sought to use the bill to the maximum extent possible to progress and pursue our objective of expanding the payment of the living wage. Although we cannot support amendments 36 and 39, I hope that the committee will reflect on my point: we are not doing nothing; rather, we are

using the bill to the best of our ability to tackle the living wage issue, albeit that we are doing it in a way that is different from that suggested by James Kelly.

My general comment on the other amendments in the group is that I have sympathy with the sentiment that is behind them all. Although I cannot support any of them today in the form in which they have been lodged, I am happy to continue consideration of the issues that they raise in advance of stage 3, and I am happy to work with the members who lodged them to see whether there is any common ground that we can develop in the form of specific provisions in the bill. Notwithstanding where we get to on that, I am happy to consider all those issues when it comes to the drafting of guidance that will underpin the bill.

I turn specifically to amendments 69 and 70, in the name of Ken Macintosh. As he is aware, and as I think he alluded to, the bill already provides for statutory guidance on how workforce-related matters should be taken into account in procurement procedures.

Purchasers are already under a duty to consider how they can improve economic, social and environmental wellbeing, so it may well be that that duty could encompass what is proposed in amendment 69. Under section 24, guidance will be published on the selection of bidders and will address employment-related issues—to the extent that they are relevant—in connection with contracts. I am therefore happy to give further consideration to whether there is anything that we can do on the face of the bill and to ensure that that point is factored into our thinking in the drafting of guidance.

In relation to amendment 70—Ken Macintosh's second amendment—I whole-heartedly agree that effective employee representation and trade union recognition are undoubtedly good things. However, I do not think that it is necessary to include those on the face of the bill, as amendment 70 proposes. A clear regime is already in place under the Trade Union and Labour Relations (Consolidation) Act 1992, which includes measures concerning the recognition of trade unions, and we have been very careful to consider the interaction of the bill with other pieces of legislation. However, I am happy to have a further discussion on both those issues if that would be helpful.

I have sympathy with amendment 79, in the name of Jackie Baillie. Equal pay audits can bring benefits and clarity not just to employees but to employers. However, I am not convinced that limiting competition to companies that have conducted an equal pay audit would be consistent with our obligations under EU law on equal treatment of suppliers. I have already pointed out that the bill provides for guidance to be issued on how workforce-related matters should be considered in a procurement context, and I am happy to give a clear commitment that we will consider the issue in the context of that guidance.

I turn to amendment 80, in the name of Neil Bibby. I am glad that he recognised the Government's commitment to childcare. Delivery of Government-funded childcare is already far in excess of the position that we inherited from the previous Labour-Liberal Administration, so our commitment to continuing to expand childcare progressively is well known and well understood.

I am not convinced that it would be appropriate to include the proposal in amendment 80 on the face of the bill. Contractual obligations of that nature can be imposed in procurements only where they are relevant and proportionate to the contract's subject matter. There might well be circumstances in which an authority thinks that it is necessary and appropriate to impose conditions on contractors regarding their approach to childcare, and nothing in the bill would prevent an authority from applying such a clause if it considered it appropriate in the circumstances to do so. However, it seems disproportionate to include in the bill a specific provision on the matter, particularly given that the issue might not always be considered relevant to the subject matter of a particular contract.

Amendment 81, in the name of Ken Macintosh, relates to wage ratios, on which I whole-heartedly endorse many of—if not all—his comments. It comes down to whether, when we are awarding contracts, the general principles of EU law require us to treat companies equally and on their merits. Again, contractual obligations can be imposed only where they are relevant and proportionate to the actual subject matter of the contract. I therefore have reservations and doubts about the amendment in its current form and about including it on the face of the bill. However, as I said earlier, rather than close the door on any of the amendments today, I am happy to continue discussions to find out whether we can develop some common ground.

Alex Johnstone's point bears repetition. I am in agreement with many of the comments that have been made today on the issues of good employment practices, trade union recognition, childcare and the payment of the living wage. We should be ambitious about what we do through procurement. This is public money and we should make sure that we get best value for it. However, we also have to be realistic about the extent to which we can solve those social issues purely through procurement without putting on public bodies disproportionate burdens that may have a

counterproductive effect. There are balances to be struck, but, in the interests of trying to build consensus, in asking James Kelly to withdraw amendment 36 and in asking other members not to move their amendments, I give an open assurance that I am happy to continue discussion on those points both in advance of stage 3 and as we develop the guidance around these issues.

The Convener: I ask James Kelly to wind up.

10:15

James Kelly: I am disappointed by the cabinet secretary's response. With regard to the legal issues, it strikes me that the Government is rooted in a particular legal position and is not prepared to interact with alternative legal advice or look at other examples from throughout the country. There is alternative legal advice in play that deals with some of the issues that the convener raised, and there are practical examples from throughout the country of councils such as Renfrewshire and Islington where the living wage has been introduced. There is even the example of London. I do not believe for a minute that Boris Johnson is more radical than Nicola Sturgeon, and I urge her to find a way forward on the matter.

The Government has signalled via its white paper, "Scotland's Future: Your Guide to an Independent Scotland", that it is sympathetic to the idea of corporation tax cuts of £400 million. We must seek to use the bill to send a strong signal to workers and boost the economy by taking the action that is required. I urge the cabinet secretary, before stage 3, to consider the alternative legal advice and look at the other examples of the way in which the living wage has been implemented throughout the country, and to work with us on the appropriate amendments.

On Alex Johnstone's point about members using the bill to push their political priorities, the amendments are not an exercise in political posturing. All the amendments—my amendments on the living wage, Ken Macintosh's amendments on work sharing and wage ratios, Jackie Baillie's amendment on equal pay and Neil Bibby's amendment on childcare—would bring real benefits to the workplace and deliver real benefits for workers. They would also result in a more harmonious relationship with employers, from which employers would benefit and which would ultimately be better for the economy, which would be stronger and fairer. That is not posturing; the point of being in politics is to make a difference, which is what this suite of amendments seeks to achieve.

It is one thing to hear warm words from the cabinet secretary, but we need action, and we need the legislation to work and to make a difference. I press amendment 36, and I urge members to support all the other amendments in the group.

The Convener: The question is that amendment 36 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fee, Mary (West Scotland) (Lab)
Griffin, Mark (Central Scotland) (Lab)

Against

Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 36 disagreed to.

The Convener: We move to climate change duties. Amendment 37, in the name of Claudia Beamish, is grouped with amendments 66, 40, 55, 59 and 60.

Claudia Beamish (South Scotland) (Lab): The bill provides a valuable opportunity both to make the climate change duties in the procurement process robust, and to clarify expectations. That is important in view of our ever-increasing awareness of climate change, which is strongly underpinned by science. The extreme weather events over the Christmas period have focused the minds of many people in Scotland on how they can contribute to slowing down climate change. I believe that many individuals of all ages, households, communities, public bodies and businesses have sometimes struggled to know how to make a difference.

As a member of the Rural Affairs, Climate Change and Environment Committee, I see increasing understanding among people who give evidence on climate change that there is a culture and behaviour change happening, as a result of which many people now believe that their collective contributions can, and do, make a difference. That is certainly the case in business and industry. Throughout my region, which is South Scotland, I meet many people in business who are enthusiastically seeking advice on how they can reduce their carbon footprint. Others are already doing it. That is a win-win situation, because those companies are contributing to saving the planet while driving down costs in a range of ways. Many of them actively involve their employees in the process.

The procurement process is part of that commitment to tackling climate change, and my amendments seek to build on our world-leading Climate Change (Scotland) Act 2009.

I acknowledge that there may be concerns from businesses about there being more bureaucracy, so I have tried to keep things as simple as possible, but I am quite clear—and I hope that the committee will agree with me—that we must move forward on the issue. The bill provides that opportunity.

My amendment 37 identifies that the responsibility of contracting authorities is key in the greenhouse gas emissions duties process. There is an opportunity for contracting authorities to be climate change leaders.

Amendment 40 would add a greenhouse gas emissions duty for contracting authorities, which would put the onus on the authority

"before carrying out a regulated procurement, to consider how in conducting the procurement process it can"

address the issue and make a positive impact. Those commitments cut to the heart of the matter and would take it forward in a proportionate and, I hope, reasonable way.

Amendment 55 would put a requirement on the contracting authority under the climate change duties requirements to

"include a climate change duties requirement in the contract notice relating to the procurement."

That would be the case with contract tenders that would be worth over £2 million. That threshold chimes with the community benefit clause, which we will hear about later. I believe that that would be proportionate. A range of tools, some of which the Scottish Government has already adopted, can be adopted in the assessment process for such a statement. With large contracts, that commitment would make a significant difference to our carbon footprint. It is only right that, in our collective quest to tackle climate change, that contribution be made through the bill.

In line with the arguments that have been put forward for climate change duties, I support Patrick Harvie's amendment 66.

The amendments in the group are practical and deliverable—I refer back to the cabinet secretary's remarks at the beginning about how important that is—and I ask for the committee's and the cabinet secretary's support for them.

I move amendment 37.

Patrick Harvie (Glasgow) (Green): I would first like to address the more general point that Alex Johnstone made about the previous group of amendments in respect of issues that he perceives as seeking to hijack the bill and make it

"act as a proxy for ... other political priorities",

as Mr Johnstone put it. I invite the committee to reject that line of argument. This is about policy coherence. It seems to me that there is very little point in having public policy priorities, legislative targets and statements of principle and intent from ministers, if how we spend significant amounts of public money undermines those political priorities. This is about coherence between what we say and what we do.

Mr Johnstone may well be right to say that the gap between high standards in the public sector and lower standards in the rest of the economy is a problem. I invite him to abandon the deregulation obsession that some people on the political right have. Let us ensure that the whole of our economy operates to high standards. I see that Mr Johnstone is slightly amused by that. I will move on.

In responding to that point, Nicola Sturgeon said that it would be wrong to suggest that we can solve problems "purely through procurement". That is absolutely the case. I do not suggest that we can, but I ask the committee to ensure that we do not make the problems worse through procurement and how we spend public money.

Claudia Beamish and I have produced two variations on a theme, which have one very important thing in common: we seek high standards. Claudia Beamish's amendment 40 uses the phrase:

"exercise its functions in a way best calculated to reduce greenhouse gas emissions".

My amendment 66 refers to acting

"in the manner likely to best contribute to compliance"

with the existing climate change duties, for which the Government has already published guidance. I took that view because there are existing climate change duties, and I think that contracting organisations in the bill will, without exception, be covered by them.

Those duties are set out, and there is detailed guidance, but a degree of flexibility is involved. Paragraph 3.2 of the guidance says:

"What is required in compliance with the duties may vary from one public body to the next, depending upon various factors. It is therefore suggested that a degree of proportionality should be borne in mind."

That is only one example of statements throughout the guidance that would, if they were read by an enthusiast with a clear commitment to addressing climate change, give permission to act with boldness. However, if they were read by someone who has climate change way down their list of priorities, they would give permission for inaction.

I hope that the committee understands the common thread between Claudia Beamish's amendment 55 and my amendment 66, which is the scale of ambition to take the action that is most likely to achieve the agreed public policy priority. I hope that the committee will vote for whichever of the two options is more favoured. My argument in favour of amendment 66 is purely that tying procurement to the existing duties seems to be a little neater.

In case the cabinet secretary decides to raise this, I make the point that, as there are existing duties that can apply to procurement when read properly, it is clear that there is no barrier in EU law to including climate change objectives in procurement. The question is about intent—not legality. If it is possible and permissible to introduce climate change aspects into a procurement decision or strategy, surely it is a good idea for that to be the norm and for the highest standard for addressing the issue to become the norm. I look forward to the debate on the amendments.

Nicola Sturgeon: Throughout the work that we have done on the bill, we have been conscious of the need to keep the bill's provisions as simple, straightforward and deliverable as possible, which is key to ensuring that the bill will make a difference. That has been particularly important in our consideration of how the bill might interact with requirements in other legislation.

I stress that climate change duties already exist under the Climate Change (Scotland) Act 2009. During the bill's development, we have tried hard to steer a course through a diverse range of opinions—sometimes polar opposites—about what the bill should and should not do. The strong view was expressed, especially by local government stakeholders, that existing legislation on climate change and the environment has already established significant duties, and that to impose additional duties under the bill would not be appropriate or necessary.

However, as with the living wage, it is not correct to say that nothing is being done through the bill: that is absolutely not the case. The bill specifically covers the environment through the general duty on sustainability. That will leave public bodies with an important degree of flexibility that will allow them to take a pragmatic and meaningful approach to dealing with environmental issues in their procurement activity.

There is an absence of recognised or internationally adopted schemes to measure and record the precise carbon footprints of particular goods, works or services, so it is difficult to see how purchasers could take those footprints into account in individual procurement exercises.

In the light of those comments, I cannot support amendments 37, 40, 59 and 60, which Claudia Beamish has lodged. However, as I said in relation to the previous group, I am open to further discussions to see whether we can make ground before stage 3, or in the suite of guidance that we will produce to underpin the legislation.

As for Patrick Harvie's amendment 66 and Claudia Beamish's amendment 55, which are on climate change, I have outlined our general position on the need to keep the duties in the bill as simple as possible, especially when existing legislation applies. As I said, the environment is specifically covered under the general sustainable procurement duty and the bill requires authorities

"to act with a view to securing .. improvements"

as is required in line with that duty. I think therefore that the amendments would add a layer of complexity that would not be justified and would be disproportionate for purchasers and economic operators. I believe that the existing duties and the duty that we are specifically imposing through the bill will achieve what the amendments seek to achieve. I therefore do not support the amendments but extend to both Claudia Beamish and Patrick Harvie the offer of further discussions about how the guidance that we will develop can encapsulate the points that they have made this morning.

10:30

Claudia Beamish: I listened carefully to the cabinet secretary's remarks, which were helpful. I also listened to Patrick Harvie's remarks. Although I appreciate the invitation to discuss the matter further, I believe that it is important to move the amendments at this stage. I do not believe that Patrick Harvie's amendment 66 and my amendments are mutually exclusive. Between them, they offer a robust way forward that is not disproportionate. It is important that the duties of guidance under the Climate Change (Scotland) Act 2009, which are mentioned in Patrick Harvie's amendment, be referred to in the bill. I also believe that it is, while we take forward issues for inclusion in guidance, important also to sharpen the commitment to lowering our carbon emissions in the bill, which needs to be specific. I therefore wish to press amendment 37.

The Convener: The question is, that amendment 37 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fee, Mary (West Scotland) (Lab)
Griffin, Mark (Central Scotland) (Lab)

Against

Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 37 disagreed to.

The Convener: We move on to amendments on general duties: priority of sustainable procurement duty. Amendment 61, in the name of Patrick Harvie, is grouped with amendments 62 and 73.

Patrick Harvie: There are some similar themes in this group to those that we addressed in the previous group. Amendments 61 and 62 would simply swap the order of priority in section 8(3), which currently reads:

"a contracting authority must not do anything in pursuance of"

the sustainable procurement duty

"that would conflict with its duty under subsection (1)."

In effect, that means that we think that sustainable procurement is a jolly good thing unless we can think of a reason not to do it.

It is a question of priorities. If we believe that it is not only desirable but essential, for the dignity and sustainability of our society, that we live within ecological limits and achieve the objectives of sustainability, that is how we must begin living—and not unless we can think of a reason not to do so. The general duties will continue to exist if my amendments 61 and 62 are agreed to, but instead of the order of priorities being that way round, contracting authorities will have to not do anything in pursuance of the general duties that conflicts with the sustainable procurement duty. It would be a fairly simple change.

Amendment 73 would add a similar reference to the sustainable procurement duty under section 9 and is consequential on the first two amendments in the group.

I urge the committee to consider the priorities that are being set in the general approach to sustainability in the bill. Is sustainability to be the norm? Are we to spend public money in a sustainable way, unless there is an overriding barrier or something that makes that impossible, or are we simply to continue with the situation in which we see islands of excellence—examples of good practice—scattered around the country but individuals who work in the area, who often have financial pressures on them, generally being invited to find excuses not to procure sustainably? I hope that the committee will be sympathetic to my amendments.

I move amendment 61.

Nicola Sturgeon: The general and sustainable procurement duties in the bill are framed specifically with a view to helping public bodies to understand how the sustainable procurement duty should be interpreted and how it should be applied within the overarching framework of EU law within which we operate. Whether we like it or not, we are bound by pertaining European law.

The general duties state as a matter of domestic law the duties that already apply to some procurement that is below the existing EU law procurement threshold. They reflect duties that are derived from the EU treaty. Section 8(3) of the bill makes it clear to authorities that any action that they take under the sustainable procurement duty must be compatible with EU duties; in other words, they must be compatible with the law that they are working within.

If we were to reverse that position—which would be the effect of Patrick Harvie's amendments 61 and 62—we would create a situation whereby the bill would impose on public bodies requirements that might not be compatible with European law.

I politely take issue with Patrick Harvie's characterisation of the sustainable procurement duty. The bill emphatically does not say that sustainable procurement is a good thing unless we can find ways of not doing it; it says that we should do things as long as they are within the law—in other words, as long as they do not break the law. I would have thought that that was a fairly obvious point for the committee to understand.

In other words, as it is drafted, the bill will help public bodies to understand their legal obligations. Amendments 61 and 62 would have the opposite effect in that they could and would require public bodies to act in a way that would not be consistent with EU legal obligations. I do not think that I have to spell out too much to the committee what the implications for public bodies would be in such circumstances.

Amendment 73 has possibly arisen from a misreading of the bill. The amendment seeks to add the sustainable procurement duty to the procurement strategy by adding a reference to section 9 to the reference to section 8. However, if members refer back to section 8, they will see that it is section 8 that imposes the sustainable procurement duty, so the reference in section 11 is correct as it stands, and adding a reference to section 9 would have no legal effect. I hope that that clarifies the matter.

Although I do not for a second question Patrick Harvie's motivations—I totally understand what he is trying to do—the practical effect of the amendments would be that we would put our public bodies in the most impossible of situations. I

do not think that a responsible Parliament should do that.

Reading the bill will show members that amendment 73 is not necessary and would not have the intended effect.

The Convener: I ask Patrick Harvie to wind up and to press or withdraw amendment 61.

Patrick Harvie: Over my years of moving amendments in the Scottish Parliament's committees, I have found ministers' use of the phrase, "I love what you've tried to do here" to be one of the clearest examples of damning with faint phrase. It is a common argument for ministers to endorse the intent of an amendment and say, "I very much appreciate what the member intends to achieve, but this isn't how to do it." My concern is that that attitude is prevalent in many public bodies when they make procurement decisions. For example, even when we decide in our own Scottish Parliament how to spend money on travel when committees go elsewhere to take evidence or to meet other organisations, we might at best have a half-costed version of a sustainable travel option but, generally speaking, it is given very little attention. We are spending public money in a way that has sustainability somewhere on the agenda, but it is quite a way down the list and a sustainable option often tends not to be the outcome.

I understand why the cabinet secretary is concerned about the potential for a conflict with existing law. I hope that any minister in any Government that shares a genuine commitment to making sustainability the norm would challenge EU law or general practice throughout the public sector, rather than say simply that we have to go with the flow.

I will press amendment 61, but if there is any willingness at all on the part of the Government to consider an alternative way of achieving the same effect, I would be happy to discuss it prior to stage 3.

The Convener: The question is, that amendment 61 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fee, Mary (West Scotland) (Lab)
Griffin, Mark (Central Scotland) (Lab)

Against

Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 61 disagreed to.

Amendment 62 not moved.

Section 8 agreed to.

Section 9—Sustainable procurement duty

The Convener: The next group of amendments is on the extent of contracting authorities' duties and powers. Amendment 63, in the name of Patrick Harvie, is grouped with amendments 64, 76, 77 and 82.

Patrick Harvie: I am hoping that this will be third time lucky, convener.

Jackie Baillie: No, no. [*Laughter*.]

Patrick Harvie: Will I just leave now?

The Convener: Just carry on, Patrick.

Patrick Harvie: The sustainable procurement duty, as it is set out in the bill, refers to a body considering how, in conducting the procurement process, it can

"improve the economic, social, and environmental wellbeing of the authority's area".

That is a specifically geographic approach to sustainability, and it may well be that benefits could flow, within a local area, from considering the economic, social and environmental wellbeing in that area, but I do not think that that is a very holistic approach to the concept of sustainability.

For example, the approach in the bill leaves open the possibility that, in procuring products from overseas or other jurisdictions, the human rights, economic and environmental impacts of the production methods for those goods or services will simply be ignored. Even procuring waste services might have an economic, social or environmental impact, not just overseas but in other parts of Scotland, outside the contracting authority's own area.

I hope that there is some willingness to consider a more holistic understanding of sustainability and of the global impacts—economic, social and environmental—of the procurement decisions that we make.

My amendments would effectively change the form of words so that the bill requires consideration of how the procurement process can improve global economic, social and environmental wellbeing, rather than purely the impacts on the contracting authority's own area.

The argument is that simple. It is a question of what sustainability means. Does it simply mean looking after one's own patch, or does it mean

taking account of the economic, social and environmental impacts in a more holistic way?

I move amendment 63.

Nicola Sturgeon: I will avoid saying anything nice about Patrick Harvie on these amendments in case he accuses me again of damning him with faint praise.

Patrick Harvie: Aw!

Nicola Sturgeon: He can take my general sympathy for his sentiments as read, rather than have me labour the point.

It is important again to emphasise the need not just for the proposed legislation to be simple but, more importantly, for it to be practically possible to comply with it fully. As Patrick Harvie has just indicated, the amendments would require contracting authorities to consider global economic, social and environmental wellbeing, rather than the wellbeing of their areas. The reason why we focused the duty on the authority's area is because that is what it is most likely to be most familiar with. It is also most likely that its area will be relevant in the context of a procurement exercise.

The bill as it stands does not prevent an authority from taking account of wider global or international issues if it considers that appropriate. If he wants to, I will be happy to discuss with Patrick Harvie how we could use the statutory guidance that will underpin the sustainable procurement duty to encapsulate the perfectly legitimate points that he is making about the wider implications of procurement exercises, particularly large procurements.

10:45

However, making the mandatory sustainable procurement duty applicable in relation to global wellbeing would risk introducing a degree of complexity for purchasers that would simply not be manageable in a meaningful way at a practical level. Although, as I said in relation to a previous group of amendments, it is absolutely essential that we are ambitious with legislation, it is equally important that we take care not to impose mandatory duties that are so wide in scope that they make delivery difficult at a practical level.

I fear that the amendments in this group, if they were in the bill as part of a mandatory duty, could have that counterproductive effect. It would be far better to look at what we can do through guidance to make it clear to purchasing authorities that they must take into account considerations that go beyond their own physical geographical area, although the place where they can make the biggest impact and where they are able to deliver in a practical sense is the area that they exist in and serve. I therefore ask Patrick Harvie to withdraw amendment 63 and not to move the other amendments in the group.

Patrick Harvie: I am pleased that the cabinet secretary acknowledges the general argument that sustainability considerations will involve recognition of impacts beyond a contracting authority's own geographic area. If for some reason the committee is more persuaded by Nicola Sturgeon's arguments than by mine, I will happily have a discussion about guidance with the Government when the time comes.

However, I would like to challenge the cabinet secretary's argument that the amendments introduce a degree of complexity that risks being undeliverable. If a contracting authority procures, let us say, a wagon load of widgets, produced and manufactured in its own area, it will have to consider all the impacts of production processes, economic justice and environmental impacts in that area. If the widgets are being manufactured in a neighbouring area, the job of considering the very same impacts is no more complex. It may be a more complex job to do that if the widgets are produced on the other side of the world, but I still do not think that it should be ignored.

I remind the committee that the requirement is only that, before carrying out the procurement, the contracting authority should

"consider how in conducting the procurement process it can ... improve the economic, social, and environmental wellbeing".

My amendments are simply about putting those global aspects on to the agenda for consideration. They are not about pretending that everybody can answer every question or achieve 100 per cent certainty where there are areas of doubt. If there are impacts in a neighbouring area, it is no more difficult to deliver that objective than if they are produced in the contracting authority's own area.

I want to press amendment 63. If the committee is not convinced, I hope that there will be further consideration of the issue when it comes to the guidance.

The Convener: The question is, that amendment 63 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

Against

Eadie, Jim (Edinburgh Southern) (SNP)
Fee, Mary (West Scotland) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

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

Amendment 63 disagreed to.

Amendment 64 not moved.

The Convener: We move on to the sustainable procurement duty. Amendment 65, in the name of Mary Fee, is grouped with amendments 2, 67, 71, 3, 72, 8, 42 and 52.

Mary Fee (West Scotland) (Lab): Thank you, convener. I will be as brief as possible. Throughout the evidence sessions, we have heard that the bill has been labelled as an enabling bill. My amendments 65 and 42 would provide strength and clarity to the bill so that it would enable contracting authorities, procurers and communities to get the greatest benefits possible. I stress that none of the amendments in my name will detract from the overall purpose of procurement reform.

Amendment 65 is a simple and straightforward amendment that would provide extra clarity. It seeks to place a focus on people who live and work in a particular area. The bill as it stands is too ambiguous, and we need to ensure that maximum benefit is derived for everyone through procurement.

Amendment 42 was drafted to strengthen and simplify the process for contracting authorities to involve only certain businesses. The amendment would place a duty on the minister to publish guidance that the contracting authorities would have to abide by. Amendment 42 mirrors amendments 10A, 11A and 12A and would further increase the participation of micro, small and medium-sized businesses as well as that of supported businesses and the third sector.

I support James Kelly's amendment 2 on co-operative societies, Patrick Harvie's amendment 71, James Kelly's amendment 3, Jackie Baillie's amendment 72, the cabinet secretary's amendment 8 and Sarah Boyack's amendment 52. All those amendments would strengthen the ability through procurement to make communities more sustainable and provide greater benefits. However, I cannot support Patrick Harvie's amendment 67. I struggle to understand how we would be able to comply with what the amendment seeks and what benefit it would bring.

I move amendment 65.

James Kelly: My amendments 2 and 3 are on the recognition of co-operatives. Quite rightly, the sustainable procurement duty section of the bill refers to SMEs and third sector organisations in relation to improving the economic, social and environmental wellbeing of an authority's area, which essentially means the local communities. I think that co-ops play an important role throughout the country in local communities in supporting local workers and reinforcing the community spirit. I therefore think that it would strengthen the bill if co-ops were included in the procurement duty section so that we could ensure that the economic benefit of procurement through the bill is spread evenly throughout the country and uses all the assets at our disposal, including co-operatives.

Patrick Harvie: Again, I seek with my amendments to tweak the sustainable procurement duty.

I hope that there is general agreement on the principle that human rights need to be seen in the context of sustainability. At the moment, as I mentioned in the debate on the previous group of amendments, we expect the impact on economic, social and environmental wellbeing to be considered. There will be many situations in which social wellbeing will be understood to have a connection to human rights, and some people will argue that that is fully covered in the bill. However, I think that we need to give greater emphasis to the United Nation's principles on business and human rights rather than simply pay due regard to them. We need to underline that sustainability is at root about people rather than simply about an ecosystem understood separately from the way in which people live within it.

Amendment 71 tries to strengthen the language in a similar way to the climate change amendments that we discussed earlier. It uses the phrase "in the way best calculated" to replace "with a view to". This is simply about expecting that we seek the highest standard rather than something of a standard, which is a little vague.

Jackie Baillie: Members will be pleased to hear that amendment 72 is very straightforward. In order to curry favour with the convener and the committee, I will be brief and speak only to it.

As Mary Fee said, section 9 deals with the sustainable procurement duty. I simply seek to expand the definition of wellbeing to make it slightly less woolly, with a specific reference to inequality.

Ensuring the wellbeing of all our communities is an ambition that is shared throughout the Parliament. However, wellbeing can be interpreted widely and is subject to variation in application. What do we actually mean by it? When we are talking about substantial sums of public money, we need to be sure that we secure the best possible value for that and prioritise what matters. Having a clear, sharp and defined focus on reducing inequality is helpful in guiding the public sector, when it is awarding contracts, to think about the gains that should be a priority for their local areas.

If we share an ambition of a more equal Scotland, which I think we do, we should be using

the considerable public sector spending to deliver that, as well as to deliver the right framework in which contracts are awarded. In that way, we deliver on equality objectives.

I go back to a point that I made earlier. The provision of public sector services is one that we regard as world class and of the highest quality. If others deliver for us, surely we should ensure that they operate to those self-same standards. For that reason, I would support amendment 72 and the majority of the other amendments in the group, with the exception, I am afraid, of Patrick Harvie's.

Nicola Sturgeon: The sustainable procurement duty is an important element of the bill; in fact, it is one of the most important elements of the bill. It requires public bodies to think carefully about how the procurement process can make real improvements to an authority's area. It is also designed to enable SMEs, supported businesses and third sector organisations to access contract opportunities.

In short, the duty is about ensuring that we are using public sector spend in its totality to make a difference to communities and the business environment of the country. However, like every other section of the bill, we must ensure that it is consistent with European law and reasonably simple to apply and that it does not impose unnecessary or disproportionate burdens on public bodies.

I will deal first with amendments 8 and 42. Amendment 8 is in my name. Having considered the various points that were raised during stage 1 and in the committee's stage 1 report regarding the sustainable procurement duty, I have decided that it would be appropriate to take a power to issue statutory guidance on the matter. That is why I have lodged amendment 8.

Mary Fee was obviously thinking along similar lines in relation to amendment 42, but I point out that amendment 42 would limit guidance to the part of the sustainable procurement duty that relates to SMEs, third sector organisations and supported businesses only. It would not create the obligation to introduce guidance in relation to the other parts of the sustainable procurement duty.

Amendment 8 relates to all aspects of the sustainable procurement duty and will therefore meet the aim of amendment 42 in a more general way. I ask Mary Fee to reflect on that and perhaps to support amendment 8 and not move amendment 42, when we get to that point.

I turn to the other amendments in the group. Amendments 65 and 72 both relate to considerations of wellbeing in the sustainable procurement duty. Mary Fee's amendment 65 adds a requirement to consider the wellbeing of individuals in an authority's area, while Jackie Baillie's amendment 72 seeks to define wellbeing as including the reduction of inequality.

Reducing inequality and improving the wellbeing of individuals is clearly part of the authority's general duty in promoting the wellbeing of its area. However, I believe that the duty itself is best framed in general terms rather than by attempting to highlight certain aspects of it. If we start to single out particular aspects, the danger is that we overlook another equally important aspect of sustainability.

11:00

I therefore take the opposite view to that of Jackie Baillie. The duty in the text of the bill is best expressed in general terms, and we should use guidance to define it further and provide procuring authorities with further detailed information on particular aspects that they will need to take into account in order to meet it. I am happy to assure Jackie Baillie that guidance will be used to ensure—as is her intention—that authorities understand the different aspects of the sustainable procurement duty.

Amendments 2 and 3, in the name of James Kelly, would require contracting authorities to consider how to facilitate the involvement of co-operative societies in procurement. Again, I would welcome that, but I do not think that the amendments are necessary. The sustainable procurement duty already includes references to the third sector, which includes co-operative societies. I am happy for the guidance to make that explicit if that is felt to be necessary or helpful, but it is not appropriate or necessary to include in the text of the bill reference to a particular subset of the third sector, given that the existing references to the third sector encompass co-operatives.

Amendment 67 refers to the UN's guiding principles, but the bill already provides a mechanism for dealing with companies that do not meet the appropriate standards. In addition, contracting authorities already have to comply with a range of requirements on equal treatment that are derived from EU law and from national equality legislation, as well as being subject to obligations under the Human Rights Act 1998. Imposing an across-the-board duty on purchasers in relation to UN guidance on human rights would, in my view, be disproportionate. For those reasons, I do not support amendment 67.

Amendment 71, in the name of Patrick Harvie, shares with section 9(1) as drafted the common aim of ensuring that authorities act in accordance with the sustainable procurement duty. However, the original wording provides the flexibility for an authority to judge what is lawful and appropriate in

the context of an individual procurement and therefore to act accordingly. We must not underestimate the importance of that flexibility in ensuring that compliance with the sustainable procurement duty does not conflict with European law.

To go back to our earlier discussion, we are not saying that we want to make it easy for authorities to get out of the sustainable procurement duty. We are simply stating the obvious fact that authorities must act within the confines of the law, which was a tension that the committee's stage 1 report highlighted. In that respect, EU law requires authorities to take into account considerations only if they are relevant and proportionate in any given case.

Amendment 71 would remove from the authority the ability to identify and consider what it can do in a particular procurement, and it would impose obligations to act in ways that might not be relevant and proportionate in each case. It is important that we retain a degree of flexibility for public bodies in order to ensure that they do not come to regard the duties as impractical things to which they should only pay lip service, which is definitely not the bill's intention.

On amendment 52, in the name of Sarah Boyack, I stress the importance of keeping the burden on public bodies proportionate. Making it mandatory across the board that public bodies must state how the contract will contribute to the sustainable procurement duty would be disproportionate. I am, however, willing to address the issue through guidance, and I am happy to keep the committee informed on that as it develops. The annual reports will also address the issue, as they will include a statement on how regulated procurement has contributed to authorities' procurement strategies.

I ask Mary Fee to withdraw amendment 65 and, in light of the more general nature of amendment 8, not to move amendment 42. I also ask members not to move the other amendments in the group.

Sarah Boyack (Lothian) (Lab): I listened to what the cabinet secretary said, but the purpose of my amendment is to ensure that, when contracts are awarded, there is a degree of transparency in what they will achieve. My amendment would add to section 18 a requirement that, when awards are publicised, the contracting authority must include a statement setting out how the contract will contribute to the achievement of the aims that are mentioned in section 9(1).

The purpose of amendment 52 is to provide transparency. Quite a few people have asked me whether the bill will make a real difference, and I believe that the amendment will ensure that the benefits of awarding a contract are made explicit. It emerged from discussions with the Scottish Council for Voluntary Organisations, which is very keen for the objectives of procurement to be not just stated in the bill but followed through in practice, and it will ensure that when contracting authorities make decisions about awarding contracts they provide an explicit explanation of how they are meeting the bill's requirements.

The amendment also provides a way of ensuring that sustainability issues are not sidestepped, and it reinforces some of the points that Jackie Baillie made about our social objectives. Although they are set out as requirements in the bill, the amendment will ensure that they are met.

This is all about ensuring greater transparency in the delivery of sustainable procurement on a case-by-case basis. I take the cabinet secretary's point about the annual report. However, although that will help, I think that, by putting in place a reporting process and ensuring that those with responsibility are held to account, the amendment will concentrate procurement officers' minds when they make procurement decisions. The measure is not disproportionate; in fact, it will help to answer people's questions about what difference the bill will make in practice.

Mary Fee: I thank the cabinet secretary for her remarks. It appears that we share the same aim of getting maximum benefit for individuals and communities but, unfortunately, we differ slightly in our views on how that can be achieved. The bill needs to be more specific and precise to ensure that communities and individuals derive the maximum benefit from it. For that reason, I will press amendment 65.

On the other hand, I am heartened by the cabinet secretary's assurance that she will publish statutory guidance and, as a result, I will not move amendment 42.

The Convener: The question is, that amendment 65 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fee, Mary (West Scotland) (Lab)
Griffin, Mark (Central Scotland) (Lab)

Against

Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 65 disagreed to.

Amendment 2 moved—[James Kelly].

The Convener: The question is, that amendment 2 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fee, Mary (West Scotland) (Lab)
Griffin, Mark (Central Scotland) (Lab)

Against

Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 2 disagreed to.

The Convener: That is as far as we will go today. We will pick up next week where we have left off. The deadline for lodging amendments to the remaining sections of the bill is noon on Friday 14 March.

I suspend the meeting to allow members to leave the room and the next panel of witnesses to take their seats.

11:08

Meeting suspended.

11:13

On resuming—

Housing (Scotland) Bill: Stage 1

The Convener: The next item of business is the committee's final evidence-taking session on the Housing (Scotland) Bill. I welcome Margaret Burgess, the Minister for Housing and Welfare, and her supporting officials from the Scottish Government. William Fleming is head of the social housing and strategy unit, Barry Stalker is private rented sector policy team leader, Daniel Couldridge is a senior policy officer in the private housing services team and Colin Brown is a senior principal legal officer. I also welcome Patrick Harvie, who has stayed with us for this session.

I invite the minister to make some opening remarks.

The Minister for Housing and Welfare (Margaret Burgess): Thank you, convener. I am pleased to be here to answer questions about the Housing (Scotland) Bill. As you know, it is a wide-ranging bill, with provisions that affect all types of housing. Its policy objectives are to safeguard the interests of consumers, support improved quality and achieve better outcomes for communities.

I commend the committee for taking extensive evidence from such a wide range of stakeholders. I have been following the evidence-taking sessions closely and I welcome the broad support from stakeholders for the bill's objectives and many of the policy principles within it. On the private rented sector, there is clear support for measures to improve quality and access to justice through the regulation of letting agents, the strengthening of local authority powers to tackle poor conditions and the introduction of a private rented sector tribunal.

11:15

There is consensus on ending the right to buy, although I am aware that there is less consensus on how long the notice period should be before the right is ended. It is clear, too, that views are mixed on the proposed changes to social housing allocations and the tools that are available to landlords to tackle antisocial behaviour.

I want to reflect on the range of the views on the bill and consider them along with the committee's stage 1 report before I reach decisions about ways in which provisions in the bill could be strengthened. However, I want to make you aware of an issue that I am minded to explore further, which has been set out in written evidence from the Glasgow and West of Scotland Forum of Housing Associations. It argues that a housing

association that is considering joining another to form a group structure should have to ballot the tenants before it can do so. Officials will be writing to interested stakeholders today to invite them to give their views on that proposal, and I will consider them along with any views that the committee has on the issue.

Many of the stakeholders have acknowledged the extensive consultation that took place before the bill was introduced. I will continue that dialogue when I meet my housing policy advisory group later this month to discuss the bill, and I look forward to receiving the committee's stage 1 report.

The Convener: Thank you. Adam Ingram will start the questioning.

Adam Ingram (Carrick, Cumnock and Doon Valley) (SNP): Good morning, minister. I will start with a couple of general questions. First, how will the provisions in the bill meet the national performance framework national outcomes that are listed in the policy memorandum? Those are well-designed, sustainable places; strong, resilient and supportive communities; and public services that are responsive to local people's needs.

Margaret Burgess: As I said, the majority of stakeholders have acknowledged that the provisions in the bill will support the objectives that we set out in the policy memorandum. The ending of the right to buy, the measures to give social landlords flexibility in the allocation of their stock and the measures to tackle antisocial behaviour will ensure and support strong, resilient communities, so they will meet national outcome 11.

By introducing the private rented sector tribunal and giving local authorities more discretionary powers to tackle disrepair, we aim to improve quality, which will contribute to the outcome of well-designed, sustainable places. By regulating letting agents and modernising mobile home sites, we aim to improve quality and levels of service and professionalism, which also ties in with the national outcomes.

Adam Ingram: Thank you for that response. The committee heard from a lot of the witnesses who have given evidence to us that the consultation on the bill was well received, but we heard some comments that young people could perhaps have been more involved. Can you reassure us that the equality impact assessments for the bill are fully comprehensive?

Margaret Burgess: I think that they are fully comprehensive. We recognised early on that young people had to be consulted and that the provisions on social housing and, in the private rented sector, the regulation of letting agents will have an impact on young people. Officials also recognised that we could not consult young people in the normal ways and that we had to consider other ways of consulting them. We used youth groups and organisations to set up discussion forums, and we also used social media.

The response might not have been as great as we anticipated, but we recognised that we had to look at other ways of consulting young people and that their views are important. We made every effort to consult young people, and we got responses from those who attended the discussion forums.

Adam Ingram: Thank you.

The Convener: As no member appears to have anything else to ask about that, we move on to the right to buy.

Alex Johnstone: I am sure that it will be no surprise to the minister that the right to buy is one of the areas of interest for me. What was the Government's motivation in moving to end the right to buy at this time?

Margaret Burgess: There are a number of reasons. One is to protect the social housing stock. We have lost more than 450,000 social rented houses since the right to buy was introduced. The right to buy has been amended over time and, in its current format, it is very complex. There are different aspects of the right to buy that depend on the length of tenancy, where someone lives, the type of house, and so on. It was becoming difficult for people to understand. Ending the right to buy will put everyone in the same position.

We now have a number of Government schemes to encourage people to get on to the housing market if they want to. Our LIFT—low-cost initiative for first time buyers—schemes and the MI new home mortgage indemnity guarantee scheme are in place to help and encourage people to go into the market, and we feel that this is the right time to take this step.

Alex Johnstone: Statistical evidence indicates that the right to buy was withering on the vine anyway. The number of houses that were being sold to their tenants had dropped to less than 1,000 a year. In addition to that, the assumption can be made that if the 1,000 tenants a year who were choosing to take up that right were denied that right, very few of them would vacate the property, so not many properties are being saved to be re-let, are they?

Margaret Burgess: It will keep those properties in the social rented sector and the landlords will keep getting the rental income to use. If houses are sold at huge discounts, the landlord's asset base also diminishes. We therefore think that it is the right step to take. Huge support for ending the

right to buy was expressed during the consultation.

Alex Johnstone: Has the Government assessed the impact on demand for right to buy of setting a date for its ending? Is there a serious danger that, by moving to end the right to buy, we might give it a sudden and explosive lease of life at the end?

Margaret Burgess: We certainly considered whether there would be a spike in demand if we announced the end of the right to buy. The most recent figures show that there has been an increase, but we anticipated that that would happen after the announcement. During the last quarter, there has been an increase of 101 house sales under the right to buy. We do not think that that will continue.

There is also going to be stricter regulation in mortgage lending to make affordability in right to buy absolutely clear so that people know what they are getting into. Likewise, the Scottish Government is giving tenants clear guidance so that they realise that buying a house under the right to buy has disadvantages as well as advantages.

We still think that we will save 15,500 homes over the period under the bill.

Alex Johnstone: You do not think that we are going to see a rush of sons and daughters buying their parents' houses as we have seen occasionally in the past, or teams of young men going down streets and knocking on doors to offer to lend money for people to buy their council houses?

Margaret Burgess: I do not think that we will see that. I repeat what I said about the more stringent mortgage regulations that are coming to ensure that, when people are borrowing to buy a house, they can afford the house. It is called the mortgage market review. We do not anticipate what you describe. We did not get evidence from the consultation that that would happen.

Alex Johnstone: When we spoke to officials at the start of this process, we talked about the three-year period that had been proposed to end the right to buy. We have spoken to a number of witnesses who have talked about shortening that period. Do you have a view about the period that will be allowed at the end of the right to buy and whether it can be changed?

Margaret Burgess: As I think I said in my opening statement, that is something that I will consider when I get the stage 1 report. In evidence I alluded to the fact that three years had not been agreed to be the right period. We are looking at that.

We have to balance the need to protect the housing stock against the tenant's right to buy. Colin Brown might want to add to that with regard to the European convention on human rights.

Colin Brown (Scottish Government): People who currently have the right to buy have something that would be recognised as a right in ECHR terms, so any interference with that has to be proportionate. There has to be a balance, as the minister said, between the justification for interference with the right and giving people an appropriate period to consider whether they want to exercise rights that they currently have before they lose them. That is not a purely ECHR point. There are wider issues to do with people having an opportunity to consider what is appropriate for their circumstances and to take proper advice on that.

The three-year period was selected not because it was believed to be a minimum period to ensure ECHR compliance but because it was believed to be the right period. Again, as the minister said, any alternative proposals would have to be assessed.

Alex Johnstone: Thank you very much.

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

Mark Griffin (Central Scotland) (Lab): Section 3 proposes that "reasonable preference" in allocations is given to people who are homeless or living in unsatisfactory conditions and who in both cases have "unmet housing needs". Can you explain what is meant by "unmet housing needs" and how they will be assessed?

Margaret Burgess: It will be for landlords to assess housing needs in line with their framework, as amended by the bill, and with any guidance that we publish. The assessment of any housing needs or "reasonable preference" is for the landlord.

With the bill, we are trying to allow more flexibility and a focus on the need for housing, which can be down to a number of things. People may live in poor housing conditions or overcrowded housing, or they may need to be rehoused because of harassment or a medical condition. It is about having a need for a home. One of the conditions for giving reasonable preference is when someone is living in "unsatisfactory housing conditions". We are looking at flexibility and focusing on need, as opposed to anything else. In the allocation of housing, it is need that is important.

Mark Griffin: You mentioned housing that is below the tolerable standard. Government statistics show that up to 15,000 socially rented houses are below the tolerable standard. Why is the requirement for giving reasonable preference

to those who live in such dwellings going to be removed?

Margaret Burgess: It will not be removed, because those people's situations will be covered by "unsatisfactory housing conditions". We wanted to widen that. I think that 2.5 per cent of housing is below the tolerable standard. People who live in housing that is below the tolerable standard will still have a housing need under the "unsatisfactory housing conditions" category.

Mark Griffin: A number of witnesses raised concerns about the possibility of age discrimination in the allocation policy. Witnesses have said that age

"could be used in a discriminatory way",

and that allocations should be made on the basis of "need and circumstance". How would you respond to those concerns and how will you monitor use of that provision, to ensure that younger people are not discriminated against?

11:30

Margaret Burgess: The first thing to say is that there is no intention to discriminate against anybody. Landlords cannot use discriminatory practices in allocating houses—I think that that is clear. As I said, need is the absolute priority. However, the issue of flexibility for landlords came up during the consultation in that they want to make better use—and sometimes better sense—of how they allocate houses when people have needs.

Age should never take precedence over need, but age could be involved in particular situations of housing need. For example, one of the downstairs flats in a block of four tenanted by young people could become empty and have to be reallocated; if the choice was between an older person or a younger person on the housing list, the council or the landlord could determine that it would be more appropriate to put the young person into the flat than put an older person into a building with young people. Of course, that could work conversely.

It is therefore about being more flexible to make better use of allocations, but that flexibility is certainly not intended in any way to be discriminatory. The Scottish social housing charter states that there must be proper access to housing for everyone. We are very clear in the bill that 16 and 17-year-olds should not be discriminated against on the ground of age. There is no intention whatsoever to discriminate against young people or any other age group. The flexibility is about making good, sensible and appropriate use of housing when people with a similar need or an unmet need satisfy the "reasonable preference" provision. When a house is being allocated, a landlord can consider what the most sensible allocation would be.

We have all heard about cases where someone older has moved in beside groups of young people—or vice versa—and that has caused problems. The flexibility provision is about making sensible use of the housing stock.

The Convener: Mary Fee has some questions on antisocial behaviour.

Mary Fee: Part 2 contains provisions that are aimed at giving social landlords more tools to tackle antisocial behaviour, including the

"ability to grant or convert existing SSTs to a short SST".

As part of its evidence taking, the committee heard recently from tenants groups in Dumbarton about the very real antisocial behaviour problems that they face. What evidence is there that the proposed tools in the bill will help landlords to tackle antisocial behaviour?

Margaret Burgess: During the consultation process, landlords, the Chartered Institute of Housing, the Association of Local Authority Chief Housing Officers and the Scottish Federation of Housing Associations welcomed the proposals for tackling antisocial behaviour. However, we recognise that, as they said, the proposals will not be the absolute panacea for antisocial behaviour. We are not suggesting that the bill will sort antisocial behaviour and bring it to an end. However, the provisions will give landlords key tools with which to tackle the antisocial behaviour that you heard about from the tenants in Dumbarton.

We have all heard about the difficulties for tenants who live beside antisocial neighbours and we know that landlords often face difficulties in trying to remove antisocial tenants. We want to give landlords the tools that will enable them to do that and to tackle the problems more quickly. In cases where there is a criminal conviction in relation to the use of a house, landlords would be able to do that without having to go through another process for behaviour that is clearly not acceptable for a community. The bill's proposals are about getting better outcomes for communities.

Mary Fee: The Convention of Scottish Local Authorities has suggested that we need to think about more innovative ways of tackling antisocial behaviour. The Tenants Information Service suggested that partnership working was critical for dealing with antisocial behaviour. We have heard other evidence around the same theme, but the bill does not address those issues directly. How will the bill's provisions regarding antisocial behaviour help to provide better outcomes for communities?

Margaret Burgess: As I said, I think that the bill will lead to better outcomes for communities. The measures on antisocial behaviour are intended to help landlords to play their part, by giving them the tools to act in circumstances in which they are currently unable to act. That should contribute towards better communities.

On partnership working, I think that we all agree that antisocial behaviour will not be resolved by one sector and that much antisocial behaviour is dealt with by other agencies, such as the police. However, putting that into the bill would not lead to better results. The Scottish social housing charter makes it clear that landlords must work with other agencies to tackle antisocial behaviour, and there is no evidence that landlords are not doing so. Agencies are working together, but we are giving landlords an additional tool, so that they can play their part. That is what we are trying to do in the bill.

Mary Fee: There is evidence that partnership working is quite patchy across the country. Some areas are far better at it than others are. Should there be something in the bill about the necessity of working in partnership, to strengthen and shore up the approach?

Margaret Burgess: The issue did not come up in the consultation—unless I am wrong on that. William Fleming might comment.

William Fleming (Scottish Government): We have not had evidence that we ought to be legislating in that area. I think that the evidence was that we should do more to give landlords the right sort of tools, so that they could play their part, in a partnership. There is a presumption that partnership working is always going on, although it might not be as good everywhere as it might be. The bill focuses on what landlords can do and does not address the wider issue. By giving landlords more tools, we hope that they can be more effective partners, with police and local authorities.

Mary Fee: The committee heard that the removal of the test of reasonableness in certain eviction cases, in section 15, is a fundamental erosion of tenants' rights. How will the proposals strike an appropriate balance between the rights of landlords and the rights of tenants?

Margaret Burgess: The proposal on the reasonableness test relates to serious cases, in which someone has been convicted of an offence that has caused distress to their neighbours and community—it is not about offences that were committed inside the house and did not impact on other people. In such circumstances, a landlord who is already dealing with the antisocial behaviour aspect will have to go through a separate eviction process, which takes up time—people always complain about the time that it takes for landlords to evict people in serious antisocial behaviour cases.

There is not a mandatory requirement for landlords to evict a tenant who has been convicted of a serious offence. That is not the case, and it is not the intention. A 12-month period is provided for, which gives the tenant an opportunity to amend their behaviour. If that happens, the landlord will not necessarily proceed with eviction. Also, a tenant has the right to challenge the position in court if they think that they have been treated unreasonably or unfairly.

We are talking about serious cases, in which someone has been convicted of behaviour that has adversely impacted on their community and neighbourhood, but it is important that we have built in provision to allow for the tenant to change their behaviour. There is a lot of built-in support, too. A person will not have been convicted of antisocial behaviour automatically; a lot of work will have been done to charge the tenant and get the case to court.

Mary Fee: The Government consulted on the possibility of introducing initial probationary tenancies for all new tenants, although that has not been taken up in the bill. We have heard a mix of evidence, some of which supported initial tenancies while some did not. Why has the proposal for initial probationary tenancies not been taken forward, given that 62 per cent of respondents to the consultation supported the proposal?

Margaret Burgess: I am aware of the response to the consultation, but the initial tenancies were not the only proposal for dealing with antisocial behaviour. I do not think that the time is right to proceed with initial probationary tenancies. There is enough uncertainty just now with the welfare reforms. In other parts of the UK, social tenancies are a short-term thing—people have no right to remain and they are moved around. A tenancy in the social sector is only for a short time in someone's life, and they have to move on. Given all those uncertainties, it would just not be right to implement the proposal.

We have included enough protections to deal with the antisocial behaviour measures. Furthermore, people who come through the homeless route have the right to support for a tenancy, so they are getting that support built into their tenancy. That is right and proper.

People who have been waiting for ages on a housing list to get a house that they can make into their own home would all of a sudden be on trial as to whether they may remain in their home.

For all those reasons, I do not think that it is right to proceed with that measure. It could be

reviewed under a future bill, but I certainly do not think that the time is right. I listened to the evidence that was given on the matter last week, and a lot of it was about antisocial behaviour and tenants and landlords getting to know each other. That can be done in a variety of other ways without putting people on trial.

The Convener: We move to part 3, on private rented housing.

Jim Eadie (Edinburgh Southern) (SNP): The bill makes provision to transfer jurisdiction for civil private rented sector cases from the Scottish courts to a first-tier tribunal. At the moment, if someone is pursuing a case through the courts, they are or may be eligible for legal aid. How do you intend to ensure that tenants, particularly vulnerable tenants, are able to access advocacy services or some other form of representation through the tribunal process?

Margaret Burgess: The tribunal procedures are designed to be accessible, understandable and less formal than the court system. That is how tribunals currently operate, and that is the way in which I would expect the private rented sector housing tribunals to operate. People can represent themselves; they can be represented by family members; or they can be represented by friends. Some people might have legal representation. Many people will be represented by other agencies, advocacy services and advice agencies, as you described.

The intention would be to ensure that the private rented sector tribunal is where people can go for help, advice and representation with regard to the private rented sector. We will certainly be considering that. My intention would be for such assistance to be accessible to everyone. People should be able to go along somewhere to get advice. It does not have to be from a legal representative—there are many other agencies that provide housing advice and other advice. I am sure that they will be involved.

We will have to monitor the case load to see what impact there is on other agencies. In my view, we do not need to specify in the bill how that advice will be provided, but I should make it absolutely clear that I anticipate that such advice will be there for people. The tribunals should be accessible. If people require representation, they should be able to get it.

Jim Eadie: I take the point entirely that the process is less formal. I hear what you say about ensuring that people can access the tribunal system. What specific measures is the Scottish Government taking to ensure that?

11:45

Margaret Burgess: I hope that my comments made it clear that we will ensure that that happens and that tribunals are accessible. That does not have to be in the bill; it is something that we will discuss with the agencies that will be involved and the stakeholders. The intention is absolutely clear: the tribunal system will be accessible to people. We know that some people will have difficulty in accessing it, but we need to look at the measures that we can introduce to deal with that and we will monitor the situation. I do not think that we need to put in the bill how we will make it accessible, however, as we have yet to draw up the tribunal procedures.

Jim Eadie: Okay. The policy memorandum makes the point that, under the current dispute resolution system,

"cases can take a long time to reach court".

Are you confident that the new tribunal system, which is yet to be established, will be adequately resourced?

Margaret Burgess: We are confident that it will be adequately resourced. The ethos behind the system is to make it more accessible. We hope that that will also speed up the process, but the absolute priority is to provide access to justice for people who do not currently use the system. I do not know whether any of the officials want to comment on the figures that we arrived at.

Daniel Couldridge (Scottish Government): The costings that we developed for the private rented sector tribunal are based on data and best practice from other existing tribunal jurisdictions. We have also costed a range of scenarios based on how many cases the tribunal can hear in a day, which should give a good range for the tribunal to develop properly.

Jim Eadie: The financial memorandum states:

"It is expected that there will be no additional costs for local authorities"

arising from the proposal to establish the tribunal. Are you able to share with the committee the likely budget and staffing arrangements for the tribunal?

Margaret Burgess: We cannot do that at this stage. Sorry—could you repeat what you said at the start of your question?

Jim Eadie: The financial memorandum states that

"there will be no additional costs for local authorities"

arising from the establishment of the tribunal. My question is whether you are in a position to share with the committee your current estimates of the staffing arrangements and budget of the new tribunal.

Margaret Burgess: We will come to the staffing arrangements and budget in a minute. Those will come under the tribunal set-up. There should be no additional costs to local authorities from the setting up of the tribunal system. I am not sure why local authorities would feel that there would be an extra cost to them from our setting up the tribunal system.

Jim Eadie: It has been suggested to the committee in evidence that councils might have to train their staff, for example, or that there might be appeals against landlord registration decisions.

Margaret Burgess: My understanding is that only one local authority has suggested that. We will look at that, but we do not expect that there will be any significant cost to local authorities from our setting up the private rented sector tribunal. Colin Brown or Dan Couldridge might be able to address your point about the financial memorandum.

Daniel Couldridge: In the financial memorandum, we set out that the private rented sector tribunal will need up to 63 members to hear the estimated case load and that there will be one-off set-up costs of between £90,000 and £130,000 and annual operating costs of between £585,000 and £880,000 thereafter.

Jim Eadie: The set-up costs will be £130,000, and what will be the annual running costs?

Daniel Couldridge: They will be between £585,000 and £880,000.

Jim Eadie: What about the staffing arrangements?

Daniel Couldridge: Up to 63 tribunal members will be needed to hear the estimated case load. Those will be fee-paid tribunal members who will give around 15 days per year to hearing cases for the tribunal.

Jim Eadie: Am I right in saying that the impact of the change will be a widening of access to justice for people and that there will not necessarily be a resultant saving to the court service?

Margaret Burgess: The intention is to widen access to justice. It is not for us to save money for the court service.

Jim Eadie: Okay. We heard in evidence that the private rented sector will be covered by the new tribunal but the social rented sector will be excluded. Can you explain what the rationale for that decision was and how you intend to monitor and evaluate the situation?

Margaret Burgess: The rationale for that was the evidence that we heard, which was that in the private rented sector, there were fewer tenants—and even landlords—taking forward cases through the court system. It is about balance. Someone put it very well at the committee evidence session last week—in the private sector, there is not a balance of power between the landlord and the tenant; the redress is not there for the tenant. In the social rented sector, tenants have a right to complain, the social housing charter looks at the housing quality standards and there are a number of other areas that go to the ombudsman. Tenants in the social rented sector have a form of redress that tenants do not currently have in the private rented sector. It was felt very strongly that we should start this tribunal in the private rented sector.

As regards the court reforms that are coming in, they are talking about specialist summary cases and sheriffs—perhaps Colin Brown could talk a bit more about the court reforms. We would want to see how those reforms bedded in with regard to the social rented sector before giving consideration to extending the tribunal system into the social rented sector. However, there has clearly been very strong support for the private rented sector tribunal.

Jim Eadie: Can you add anything to that answer on the changes to the court system in relation to the social rented sector as regards the use of mediation services?

Margaret Burgess: We are looking separately at mediation services between landlords and tenants—we do not have to legislate for them. We are taking forward mediation services in any case, so we do not have to put that in the bill. Colin Brown can add a bit more about the court reforms and how they would apply in the social rented sector.

Colin Brown: We will have to watch to see how the court reforms develop. It is for the Lord President to decide how the courts operate, and the indications are that the Lord President is minded to create specialist summary sheriffs in housing cases; when that system is developed, it would be expected to have advantages in how housing cases are handled. However, it is a work in progress and it will have to be watched as it develops to see how it goes and also to see how it impacts on things such as mediation and the choices that parties make on what goes to court.

Jim Eadie: Does the Scottish Government intend to evaluate whether social rented sector cases could or should be transferred to a tribunal system at some future point?

Margaret Burgess: We have said that we will look at how the tribunal system operates in the private rented sector to see whether the system delivers what we intend it to deliver. We will also look at the court reforms when they come in to see whether they have made any changes in the social

rented sector or had any impact on it. The situation will have to be monitored and if at a future date we have to legislate or change things further, that point could be considered but it will not happen in the immediate future. We have to see how the tribunal system works in the private sector first and whether it delivers the outcome that we want it to deliver. Then we will look at the court reforms to see whether further changes need to be made.

Patrick Harvie: Moving on from the tribunal to the other aspects of the bill that relate to the private rented sector, the bill could have gone into a number of other areas. What scope do you see for the bill to develop over stage 2 and stage 3 into addressing other aspects of the private rented sector—in particular cost, given rent levels? We do not have the chronic problem that exists in some parts of the south of England, for example, but in areas such as Glasgow, Edinburgh and, in particular, Aberdeen, costs are spiralling and that is becoming extremely burdensome.

It would seem to be very consistent with the Government's approach to cost of living issues, which generally fall under the heading of the social wage—trying to address the costs that people face—to consider what measures could be put in place through a bill such as this to address rent levels. What consideration has the Government given to that? Might other issues be addressed in the bill, such as discrimination against people on housing benefit and issues around evictions and harassment?

I will leave it at that. The principal issue that I am asking about is rent levels.

Margaret Burgess: We did not consult on rent levels. The issue was not raised during our consultation on the private rented sector strategy, and nor has it been raised with me, other than by you, Mr Harvie. We have a group that is looking at private rented sector tenure but, again, the issue of rent levels has not been high on the agenda in that group. We do not intend to legislate on rent levels in the bill. We have not consulted on it and the issue has not been raised with us frequently, if at all.

Patrick Harvie: It is possible that organisations such as the National Union of Students will seek to raise the issue. The NUS has certainly already made public arguments about it.

You mentioned security of tenure. From the research that has just been published on that, it is pretty clear that there has not been a proactive attempt to find the views of people who have had negative experiences. I think that 63 tenants were involved in the survey for the research, and that most of those who had moved on had done so for voluntary reasons rather than as a result of being forced to move at short notice because of insecure tenure. Does the Government remain open to the argument on security of tenure? To me, the issue underpins the inequality of arms, or power imbalance, between tenants and landlords. For the growing number of people in Scotland for whom the private rented sector is the only housing that our society provides, that inequality and power imbalance is a serious problem that underpins every aspect of their relationship with their landlord.

Margaret Burgess: I have said from the outset that, for the bill, we were not consulting on security of tenure. I have had discussions about that with Shelter Scotland and other organisations and told them clearly that, if the evidence is there, we will consider legislating on the issue, not in the bill, but during the current session of Parliament. We set up the group that I mentioned to put forward proposals, evidence and suggestions. Mr Harvie has suggested that he does not think that the research is wide enough, and we will look at all that. If a need to change the tenancy regime is demonstrated, I am open to doing that. We will not do it in the bill, but we would certainly do it in the current session.

The Convener: We will move on to part 4, which is on letting agents.

Gordon MacDonald (Edinburgh Pentlands) (SNP): In evidence, the Royal Institution of Chartered Surveyors pointed out that the proposed registration processes for letting agents are largely based on those for property factors. The RICS has suggested that the necessary qualifications for registering as a property factor are

"too low and very simplistic",

with the result that property factors with

"a history of malpractice or misconduct, are now legitimised to practice".

What evidence do you have on the effectiveness of the registration system and its appropriateness for letting agents?

Margaret Burgess: I have listened carefully to what the Royal Institution of Chartered Surveyors has been saying. We are absolutely clear that any regulation or registration has to be set at a meaningful level. We have looked at the Property Factors (Scotland) Act 2011, and I agree that, in practice, we might need something stronger for letting agents. That is the intention. We have to have something, and it has to be set at a level that is meaningful and can be enforced. It cannot just be about putting names in a register and thinking that that is fine.

12:00

Gordon MacDonald: What changes will you introduce?

Margaret Burgess: I want to wait until stage 1 is over and we have looked at all the evidence and the report, but we will certainly look at strengthening what is required of a letting agent. We are not going down the road of thinking that letting agents have to be a member of a professional body, because that is about the industry regulating itself. In effect, it would say who gets into and out of the register. However, we will certainly look at things such as training, qualifications and how letting agents operate their business. We are looking at a number of things. We have received a lot of evidence from letting agents and the sector, and you may see changes at stage 2. We are looking at the matter very closely.

Gordon MacDonald: You said that you are not going down the route of letting agents having to be members of a professional or trade body. What will be the visible policing body for the letting agent sector whose purpose it is to inspect and investigate the industry in a bid to scope out unregistered or substandard practitioners?

Margaret Burgess: First, we are not saying that we will police the agents through a regulatory body such as that for social housing—the Scottish Housing Regulator. That was not costed or consulted on.

We have said that all letting agents will require to be registered with the Scottish Government, which will hold the register of letting agents; they will not be registered with local authorities. The Scottish Government will apply the fit-and-proper-person test, and obviously that will be clear.

On how we will regulate, the first-tier tribunal can look at breaches of the code of practice, which will be the key. Exactly where the standards will be set and what we expect letting agents to be able to do to operate a business will be drawn up with stakeholders. The code will cover things such as the training that we have talked about, and it may cover issues such as how we would expect letting agents to operate in relation to equality and discrimination issues. That is the intention.

We would expect either tenants or other letting agents to report an agent that is not operating under practice. I think that we will find that if agents who are registered and conduct their business in a professional manner as we expect them to do are aware of other agents in their area who are not doing that, that will be brought to the attention of the Scottish ministers very quickly.

We also need to do a lot more to ensure that tenants know what we expect of a letting agent, so that when they go into properties with a tenant information pack and everything else, they are clear about the role of the letting agent and the services that it provides to the landlord and the tenant. If that has not been done, we would take action. The Scottish Government will hold the register.

Gordon MacDonald: Okay. Finally, do you have any views on how the code of practice could help to support the Scottish Government's aspiration for sustainable homes that help to meet Scotland's climate change targets?

Margaret Burgess: I do not think that the letting agent code of practice will cover that. It will be more about the quality and standards of professional services; it will not be about climate change or sustainable housing. That would be covered by our sustainable housing strategy, when we look at consulting on standards for the private sector, which includes the private rented sector and home owners. It is not covered in the bill.

The Convener: Does Patrick Harvie have a question on that part of the bill?

Patrick Harvie: Yes. I am grateful to you, convener.

First, the minister said that it is possible that the code of practice will address discrimination issues. I encourage the minister to go a wee bit further on what Parliament can expect in the code. I have raised the specific issue of discrimination against housing benefit or welfare recipients in advertising properties with a clear indication that housing benefit claimants will not be considered and in telling existing tenants that they have to leave if they claim housing benefit.

The second issue is the workarounds that some letting agents are coming up with to get round the deposit protection schemes, by charging advance rents or finding different ways of getting the same money in without calling it a deposit.

Thirdly, can the code of practice address the reasons why a landlord might end a tenancy? In the insecure tenancy regime that we currently have, many tenants are given notice to quit without any justifiable reason.

Will the code of practice address such issues? That would raise standards in the industry as a whole, rather than just weed out a few of the worst apples—we do not weed apples; I am sorry about the mixed metaphor.

Margaret Burgess: The code of practice is about raising standards and ensuring that agents can meet them. Some of the issues that you raised can certainly be addressed in the code of practice—some perhaps more easily than others. For example, I think that we can address the

problem of landlords getting round the tenancy deposit scheme in the code of practice. I want to address such issues in that way.

I certainly want to explore the issues that you raised. I agree with you about the "No DSS" approach, whereby landlords say that they do not want tenants who are on benefits. We will want to talk to stakeholders about that as we put together the code of practice.

I think that you had a third point.

Patrick Harvie: It was about giving tenants a reason why they have been given notice to quit, when they have insecure tenure after a period of secure tenure.

Margaret Burgess: That should be happening in any case, I would have thought. The code of practice should say that letting agents should know what the rules are and how and when they can issue a notice to quit—we talked about training. Tenants should know that, too.

I am more than willing to take the matter on. We know that some landlords do not adhere to the rules. In the context of the letting agent code of practice, we will expect agents to follow the rules on notices to quit and everything else that goes with tenancy agreements. It should be clear how such things operate.

Patrick Harvie: Thank you.

The Convener: Why is there no provision in the bill to give bodies—in addition to local authorities—third-party rights to report to the Private Rented Housing Panel? Would not such an approach help to meet the policy aim of expanding access to the panel?

Margaret Burgess: I understand where you are coming from. During the consultation, local authorities asked for such a power, which they thought would help in relation to their strategic approaches. I have sympathy with the suggestion that other people should have reporting rights. Of course, a person can act via the local authority, and a tenant could act with the support of an agency to report their landlord to the local authority.

There is provision in the bill for the Scottish ministers, through secondary legislation, to designate other bodies that have the power to report to the Private Rented Housing Panel. If it is deemed necessary, we will consider doing that. As you rightly said, such an approach would improve access to the panel. Local authorities are given the power in the bill; the question is where to include other bodies and how many bodies to include. However, there is the ability to do that in secondary legislation.

The Convener: Okay. What action is the Scottish Government taking on issues to do with the enforcement of existing private rented sector legislation, such as the private landlord registration scheme? Does the bill present an opportunity to improve the operation of the scheme, or is the scheme working?

Margaret Burgess: There are existing powers for local authorities to take action against landlords who do not abide by the private landlord registration scheme. I accept that the scheme is probably not operating as we hoped that it would do. However, local authorities have the power to take action against bad landlords.

We can all give examples of people who have come to our surgeries telling us about their landlords' behaviour and what they have done to them, and that those landlords are still on the register. If there are continual complaints about a landlord when a house has been allocated or when a new tenant is moving in, although a local authority might not have taken action, the powers are there and it is a question of getting local authorities to use those powers. We will certainly be discussing that as we move forward. I know that local authorities are of the view that they have insufficient resources to do things the way that we would all want them to be done, but we have to remind them of the powers that they currently have and encourage them to use those powers. I do not think that we need to do anything additional in the bill, because the powers are there.

The Convener: Do you agree with some of the suggestions that have been made to us about supplementing the bill's provision of improvements to the physical standard of private rented housing? In particular, I am referring to the need to be clear about how electrical safety should be achieved, making the provision of smoke alarms mandatory in private rented properties and the installation of carbon monoxide alarms.

Margaret Burgess: Safety in homes is paramount and I am sympathetic to some of the proposals that have been put to the committee. I have followed the debate and I would certainly be interested in the committee's recommendations.

The Convener: I move on to part 5, on mobile homes. We heard evidence suggesting that site owners could use the three-year licence period as a threat against vulnerable residents. What is the policy intention behind the three-year licence period and what can you do to prevent site owners from using it as a threat to vulnerable tenants?

Margaret Burgess: The intention behind the fixed-term licence was to protect residents on a mobile home site and to ensure that the site owner was operating the site effectively and was a fit and proper person to do that. I know that evidence has

suggested that site owners are telling tenants, "If we lose our licence after three years, you're off the site." That is simply not the case. We need to do some work on that by talking to both site owners and residents to assure them that that is not the intention. The intention was to protect tenants, and the situation seems to be turning, so we will issue advice and information to residents and to site owners about our views on the matter.

I know that the committee has heard lots of evidence from mobile home owners, and I have spoken to a number of them as well, so there may be some changes to what we are doing for mobile home owners.

The Convener: The park owners have also suggested that a three-year licence term could impact negatively on lenders providing finance to residential park homes in Scotland. Is not there an argument for a five-yearly review and a rolling licence, a bit like the arrangements for Care Inspectorate inspections of care homes that are less likely to meet the standards rather than those that are consistently meeting them, or the arrangements for school inspections?

Margaret Burgess: We heard suggestions that it might prevent lenders from lending to site owners, and it is not our intention that that should happen, but we do not have any concrete evidence at this stage that that is the case. Officials are speaking to colleagues in the Welsh Assembly to determine whether that is an issue in Wales, and we shall keep an eye on that.

Three years were deemed to be an appropriate period. I do not want to say that the licence will roll on, which might mean something else, but the bill says that the licence will be renewed automatically every three years, unless the site owner has breached requirements. As the park owners suggested, they would apply for the licence and, although they would have to apply again three years later, the local authority would automatically renew the licence, unless any breaches had occurred. We are not quite sure how that differs from what the owners propose.

12:15

The Convener: We have heard that practice varies among local authorities. Do local authorities have the resources to be able to inspect sites regularly and fully use the proposed site licensing enforcement powers?

Margaret Burgess: The bill gives local authorities an income stream in relation to issuing and enforcing mobile home site licences. It also gives them the ability to claim back from site owners the costs of any enforcement action. We expect the fees to cover the cost of a site inspection at least once in the term of a licence.

We also expect local authorities to concentrate their resources on sites that they know have difficulties. As we all know, some sites operate without any difficulty whatever and have no complaints from residents or anyone else, whereas local authorities will know of other sites that constantly cause difficulties, so they would concentrate the bulk of their activity on bringing those sites up to standard.

The Convener: Is there a way for local authorities or the Government to ensure that park owners' costs are not passed on to residents?

Margaret Burgess: I do not know whether somebody in the legal team knows about ensuring that costs of enforcement action are not passed on. We will look into that and get back to the committee.

I want to be clear about your question. I think that you are asking whether, if the local authority recovers the cost of enforcement action from the site owner, the site owner can somehow be prevented from passing on that cost to residents.

William Fleming: We expect licensing to be a small cost that would be passed on to each resident—that will be part of the site owner's costs—but we will look into whether the impact of what is in effect a fine could be prevented from being passed on to residents.

Margaret Burgess: The intention is certainly not that residents should pay for bad services that landlords have been made to correct. We will look into that.

The Convener: Residents would have paid for a good service, but they would not have got it.

Margaret Burgess: I absolutely take your point. Why should residents pay twice?

The Convener: Adam Ingram has questions on private housing conditions.

Adam Ingram: Part 6 amends local authority powers to enforce repairs and maintenance in private homes. How does that sit in the context of the Scottish Government's sustainable housing strategy?

Margaret Burgess: The provisions sit in that context, because they cover a number of situations in which local authorities can enforce repairs, which can include measures such as insulation. The provisions are part of keeping houses to a standard that means that people can maintain and live in them. The bill amends existing powers on repairs and maintenance.

William Fleming: The intention is to improve the quality of the stock generally. In that sense, the provisions go towards a more sustainable approach.

Adam Ingram: The missing share proposal will solve one of the problems.

Margaret Burgess: The missing share problem has been a major difficulty in getting houses brought up to quality and standard. I think that the proposal will be of assistance and local authorities tell us that it will assist them considerably.

The Convener: Finally, you mentioned the Scottish Housing Regulator in your opening remarks. Having listened to tenants—especially when we were in Dumbarton on the Parliament day—we know that they are concerned about the removal of the need to consult. Why do you think that the Scottish Housing Regulator might not have to consult tenants? Insolvency or the threat of insolvency does not happen from one day to the next. There is a build-up to it—whatever the reason behind it—so it is not a sudden thing. Why are there proposals in the bill to remove the need to consult? Should we not be genuinely trying to find means to protect tenants?

Margaret Burgess: The bill is seen as a means to protect tenants. I think that I made it clear in my opening remarks how important consulting tenants is for the Scottish Government. This very narrow exception in the bill addresses a circumstance that I hope would never arise, but it came close to happening on one occasion, so we have to address it, and that is why we want to include that exception to the duty in the bill. We envisage it being exercised only if a social landlord is in financial jeopardy that means that they could imminently become insolvent as the lender could call in the debt. In those circumstances, a direction from the Scottish Housing Regulator to transfer the assets to another registered landlord would reduce the likelihood of that happening. In those circumstances, there might not be time to consult. Those four tests would have to be met before the need to consult would be removed.

We have said to all the stakeholders that if we can tighten that regulation any further, we will. We intend it to be an extremely tightly drawn power that is used only in exceptional circumstances. I hope that it would never have to be used, but if that option is there it will provide ultimate protection for tenants. It is not about regulation; it is about protecting tenants to ensure that in those very extreme circumstances they would be protected and they would have a landlord.

The Convener: There is also some concern in the sector about amalgamations of housing associations. Would it still be the case that tenants would have to vote on whether their housing association amalgamates with others? Where is the drive for that coming from?

Margaret Burgess: As I said in my opening remarks, the Glasgow and West of Scotland Forum of Housing Associations put forward quite compelling arguments for why, when there is an amalgamation or a merger, tenants should be balloted. Currently, tenants are balloted only if they change their landlord, whereas if a housing association amalgamates with or forms a constitutional partnership with a larger housing association, in effect tenants have the same landlord and they are not required to be balloted.

We are looking at protecting tenants' rights and some of these mergers can make a difference to tenants. We therefore believe that, for there to be openness and transparency, tenants perhaps should be consulted in those circumstances. That is why I have written today to all stakeholders to say that we are minded to consider that at stage 2.

The Convener: So we will see amendments on that from you at stage 2.

Margaret Burgess: Possibly.

The Convener: As there are no further questions, I thank the minister and her team very much.

I will suspend the meeting briefly to allow the witnesses to leave the room.

12:24

Meeting suspended.

12:25

On resuming—

Subordinate Legislation

Home Energy Assistance Scheme (Scotland) Amendment Regulations 2014 (SSI 2014/40)

The Convener: Agenda item 4 is consideration of a Scottish statutory instrument that is subject to the negative procedure. The regulations amend the eligibility criteria for grants under the energy assistance scheme.

The Delegated Powers and Law Reform Committee determined that it did not need to draw the Parliament's attention to the regulations. The committee will now consider any issues that it wishes to raise in reporting to Parliament on the regulations. Members should note that no motion to annul has been lodged.

As members have no comments on the regulations, does the committee agree to make no recommendation on them to the Parliament?

Members *indicated agreement.*

12:26

Meeting continued in private until 12:50.

Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice to SPICe.

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