OFFICIAL REPORT
AITHISG OIFIGEIL

Local Government and Communities Committee

Wednesday 29 May 2019

Session 5

The Scottish Parliament
Pàrlamaid na h-Alba

Wednesday 29 May 2019

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LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE
16th Meeting 2019, Session 5

CONVENER

*James Dornan (Glasgow Cathcart) (SNP)

DEPUTY CONVENER

Alex Rowley (Mid Scotland and Fife) (Lab)

COMMITTEE MEMBERS

*Annabelle Ewing (Cowdenbeath) (SNP)
*Kenneth Gibson (Cunninghame North) (SNP)
*Graham Simpson (Central Scotland) (Con)
*Alexander Stewart (Mid Scotland and Fife) (Con)
*Andy Wightman (Lothian) (Green)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Jim Doig (Scottish Assessors Association)
Heather Honeyman (Scottish Assessors Association)
Alastair Kirkwood (Scottish Assessors Association)
Linda Leslie (Scottish Government)
Ian Milton (Scottish Assessors Association)
Kevin Stewart (Minister for Local Government, Housing and Planning)

CLERK TO THE COMMITTEE

Peter McGrath

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Local Government and Communities Committee

Wednesday 29 May 2019

[The Convener opened the meeting at 09:45]

Decision on Taking Business in Private

The Convener (James Dornan): Good morning, and welcome to the 16th meeting in 2019 of the Local Government and Communities Committee. I remind everyone present to turn off their mobile phones. We have received apologies from Alex Rowley.

Agenda item 1 is consideration of whether to take in private agenda item 5. Do members agree to take item 5 in private?

Members *indicated agreement.*

Subordinate Legislation

Private Housing (Tenancies) (Scotland) Act 2016 (Modification of Schedule 1) Regulations 2019 [Draft]

09:45

The Convener: Agenda item 2 is consideration of a Scottish statutory instrument that would modify various aspects of schedule 1 to the Private Housing (Tenancies) (Scotland) Act 2016. The committee will take evidence on the instrument. I welcome Kevin Stewart, the Minister for Local Government, Housing and Planning; and, from the Scottish Government, Linda Leslie, who is the head of private rented sector policy; and Kirsten Simonnet-Lefevre, who is a principal legal officer.

The instrument has been laid under affirmative procedure, which means that Parliament must approve it before the provisions can come into force. Following the evidence session, the committee will be invited at the next agenda item to consider the motion to approve the instrument. I invite the minister to make a short opening statement.

The Minister for Local Government, Housing and Planning (Kevin Stewart): I am pleased to be at the committee this morning to present the regulations which, if approved, would modify schedule 1 to the Private Housing (Tenancies) Act 2016 to safeguard models of housing for veterans and care leavers.

The new private residential tenancy replaced short assured and assured tenancies. The underlying principle of the new tenancy is to improve security, stability and predictability for tenants, and to provide appropriate safeguards for landlords, lenders and investors. New tenancies granted in the private rented sector on and after 1 December 2017 are private residential tenancies, unless they are listed in schedule 1 to the 2016 act. Schedule 1 lists the tenancies that cannot be private residential tenancies.

I thank the Scottish Veterans Garden City Association for raising the issues with Graeme Dey, the Minister for Parliamentary Business and Veterans, and me, and for its continued support in working closely with my officials and others to find a workable solution to the current issues, which include automatic succession rights for tenants who are not disabled veterans and restricted turnover of temporary accommodation.

My officials, with the support of the SVGCA, other veteran groups, and the Coalition of Care and Support Providers in Scotland consulted other charitable organisations in the sector to identify

the size and scale of the problem. They identified one other service model that is used by Barnardo's—that is, a registered private landlord with charitable status. Barnardo's provides temporary accommodation with support for care leavers until they are able to move into their own home to live independently. It agreed the need for the amendment to enable it to continue providing that model of support to care leavers.

The proposed regulations would modify schedule 1 to the 2016 act to ensure that private residential tenancies cannot be granted where a charity provides accommodation to veterans or temporary accommodation to care leavers. There is nothing in the amendments that would prevent Barnardo's from offering a private residential tenancy where permanent accommodation is more suitable for a care leaver.

Finally, I add some reassurance for the committee. Charities have told us that they are still likely to use the model tenancy agreement for the private residential tenancy as best practice when offering permanent or temporary accommodation. The regulations would provide the flexibility for them to adapt the model to suit their charitable purpose.

I am happy to answer any questions on the instrument.

Andy Wightman (Lothian) (Green): Why were the proposed exemptions not incorporated in 2016?

Kevin Stewart: We tried to cover all bases, as we do on many occasions, but sometimes we do not achieve that. It was not until a meeting last October that Graeme Dey and I found that there could be difficulties for the veterans organisations, so we moved swiftly to resolve that. At the same time, we did a piece of work to see whether there could be future difficulties for other organisations, which was when we found that Barnardo's was in a similar position with some of the housing that it operates.

We have moved quickly and worked with the organisations. We have found only those two anomalies. If we had found or been told about them previously, they would have been in schedule 1 to the Private Housing (Tenancies) (Scotland) Bill from the very beginning.

Andy Wightman: The instrument refers to

"a charity providing accommodation to veterans, or ... a charity providing temporary accommodation to a care leaver."

What about organisations that do those things but are not charities? There might not be any, but if a social enterprise was providing accommodation to veterans it would not be covered.

Kevin Stewart: I am not aware of any such organisation acting as a social enterprise rather than a charity. However, if such an organisation were to come forward, we would look closely at the situation, as we do in all cases. Ms Leslie and her team have done their level best to seek out any other anomalies and we are not aware of any.

Andy Wightman: Is the reason for referring to charities—rather than organisations—providing accommodation to veterans that those who provide such accommodation are all charities?

Kevin Stewart: I will bring in Ms Leslie, because she has done most of the running on that.

Linda Leslie (Scottish Government): We are not aware of any other type of organisation that provides that kind of accommodation, other than registered social landlords, and they are obviously not required to use the private residential tenancy. The provision covers a particular group of organisations that we would have added to schedule 1 if, as the minister said, we had received representation about that while the 2016 act was being scrutinised by Parliament. The concerns were specifically about undermining the charitable objects of those organisations.

Andy Wightman: So the concern was as much to do with undermining their charitable objects as with the veterans and the care that they would need.

Kevin Stewart: Correct.

Andy Wightman: That is why you have made explicit reference to charities.

Kevin Stewart: Yes.

The Convener: As there are no other questions, we move to agenda item 3, which is formal consideration of motion S5M-17292.

Motion moved,

That the Local Government and Communities Committee recommends that the Private Housing (Tenancies) (Scotland) Act 2016 (Modification of Schedule 1) Regulations 2019 [draft] be approved.—[*Kevin Stewart*]

Motion agreed to.

The Convener: The committee will report on the outcome of the instrument in due course. I invite the committee to delegate authority to me, as convener, to approve a draft of the report for publication. Are we agreed?

Members *indicated agreement.*

09:53

Meeting suspended.

09:55

On resuming—

Non-Domestic Rates (Scotland) Bill: Stage 1

The Convener: The next agenda item is the committee's second evidence session on the Non-Domestic Rates (Scotland) Bill at stage 1. I welcome, from the Scottish Assessors Association, Ian Milton, who is its president; Alastair Kirkwood, who is its vice-president; Jim Doig, who is chair of the public buildings committee; and Heather Honeyman, who is project manager for non-domestic rates reform implementation.

We will move straight to questions. Does the bill as drafted, along with the early measures that have been implemented by the Scottish Government, sufficiently address the findings and recommendations that were made by the Barclay review group?

Ian Milton (Scottish Assessors Association): The answer is yes and no. The bill goes some way towards addressing those recommendations. It introduces more frequent revaluations, on a three-yearly basis, which is an excellent move forward and means that rateable values will be more aligned to markets and more likely to meet occupiers' expectations and understanding. However, the bill does not go as far in some aspects as we would wish, but that does not mean that it will not get there at the end of the day.

The bill is moving in the right direction. The main issue for us is information, which is absolutely critical for assessors. We cannot assess properties unless we have accurate and complete information, which is about not just the physical circumstances but the letting, costings and relationships between occupiers and interested parties in a building, which can be quite complex. The information powers that are introduced by the bill go some way towards achieving that, but not as far as is necessary to ensure that we get our job done.

The Convener: Will you or another witness expand on what is lacking with regard to gathering information?

Ian Milton: Certainly. Heather Honeyman will speak to that.

Heather Honeyman (Scottish Assessors Association): As Mr Milton said, the bill moves in the right direction. However, for us to achieve the three-year revaluation cycle, it is key that we have the right information in at the right time. It is not just about getting our returns; it is about making sure that they are comprehensive and understandable so that we get the right valuations up front. We hope that more accurate valuations will result in a reduction in the number of appeals.

We welcome the move to civil penalties for non-return of information, but the SAA believes that it would also be helpful not to repeal section 7 of the Lands Valuation (Scotland) Act 1854, which retains the criminal penalty. Having the two strands would help to ensure a comprehensive return. Information is key to accurate valuations and streamlining the process.

The Convener: What is missing that would help you to get that information? You said that the Government has moved on with the bill, but not far enough. What could be put in to allow you to get the information that you require?

Heather Honeyman: As it stands, we ask for information, but the issue is the enforcement of the return of that information. The bill includes moves to improve that situation, but we need to be sure that they will be taken to the point at which not returning the information will not be an option. It is necessary to get the information and it has to be the right information.

10:00

As things stand, we ask for information, and we get a low percentage of returns in some areas. During the appeal process, which is some way down the line from the original valuations being presented, that can result in a reduction to the rates per square metre, for example, which can undermine the original valuation and result in appeal loss. That could potentially have been avoided if the information had been submitted at the start of the process rather than later on.

The issue is having the full presentation of information at an early point. Our returns can often be incomplete, or the information can be given to us in a way that is difficult to analyse.

The Convener: So the only thing that is missing is having criminal penalties still in place as well as the civil ones.

Heather Honeyman: That would certainly help. The goal is to make it more challenging for people to avoid returning the information.

Ian Milton: Getting down to specifics might help, so I refer to section 14. It is anticipated that the assessor will be given the power to request information that

"the assessor may reasonably require for the purpose of valuing the lands and heritages referred to in the notice."

For me, that is far too narrow. One of the big issues for me and all assessors is that we will have to do the revaluation every three years. Every 36 months, we will have to refresh our

values, and we will have only around eight to 12 months to do that work from the tone date once we move to a one-year tone. Therefore, we will need the information to come in very quickly, but we do not want to be restricted to asking only for information that will allow us to value particular properties, because a lot of our properties are valued by reference to costs. We use unit costs, and we analyse costs. At each revaluation, we will already have a valuation roll with a quarter of a million properties valued in it. At the next revaluation, two years into the previous revaluation, we will want a refresh of that data. We might want information for a property that we have already valued, but it will inform our next revaluation. Therefore, we really need a power to reasonably request information that is required to fulfil our statutory duty to maintain valuation rolls. If it is simply a case of asking for the information to enable us to value a property, that is not sufficient for us to do our job.

We look at not only cost and rental information; as I mentioned in my opening statement, we look at information about relationships and who has what interest in property. That is becoming very complex, with management agreements and the way that complex industrial properties—such as those used for energy—and many other lands and heritages are now delivered to an occupier or user. Whoever appears to be the user of the property might not be in law the proprietor, tenant or occupier whom we have to identify and value.

That gets down to the unit of valuation. We need that detail, but it is often tied up in confidential agreements that are not disclosed to us when we need them to update the valuation roll. If the information is provided at a later date, we cannot wind back to the valuation roll and make the right entry beyond the current year. There is the serious issue of ensuring that we have access to all cost, rental, occupation and relationship information about properties.

I realise that the power is very wide, but we need it to do our job properly, provided that there are checks and balances, as anticipated. The request has to be reasonable and reasonably made.

Jim Doig (Scottish Assessors Association): It is worth building on what Mr Milton has just said. The one-year tone date with the three-year revaluation will make it extremely difficult for us to get information when we need it. One of the potential issues with civil penalties is that, if we needed information on a property that was not on the valuation roll, the maximum penalty would be only £500. There would be no entry on the valuation roll at that time, so there would be less of an incentive for someone to send the information back.

The Convener: Are you saying that it would benefit people who were not giving you information not to be on the valuation roll?

Jim Doig: Yes. If we were dealing with a large complex industrial property or one that had a multimillion-pound value, a £500 civil penalty would be neither here nor there.

Alastair Kirkwood (Scottish Assessors Association): I will make three points in answer to your question, convener. The first request that we would have on information gathering would be the wider powers that Mr Milton mentioned. The second is clarity on the extent of the penalties and the precise circumstances in which they would apply. The third element is the timescales within which responses would have to be made to information requests. I will be happy to go into the issues on penalties in greater detail if the committee wishes me to do so. I have a number of points to make.

The Convener: I am sure that there will be an opportunity later, but we have quite a lot to get through. I say to all our witnesses that they should not feel that they have to respond if they do not have anything specific to add.

Heather Honeyman: I would like to add a point about timing. The bill proposes a period of 56 days for the return of information, which is quite a long period, given the timetables that we have touched on.

The Convener: What would be your favoured timescale?

Heather Honeyman: Around 28 days would seem to be more reasonable, given that we are trying to move towards a three-year revaluation cycle.

Andy Wightman: I have a few questions, but first I want to pick up on Ian Milton's observations on the potential difficulties in obtaining information from complex properties. It used to be the case—until the 1960s, I think—that rates were split: there was an owner's rate and an occupier's rate. If it is difficult to identify the real occupiers of very complex properties, is there an argument for going back to just levying rates on the owners, who would be much easier to find out? It would then be up to the owners, if they wished, to apportion the rates to occupiers, tenants, management companies and so on.

Ian Milton: That is an interesting point, which I have not yet explored. The complexities arise with particularly large sites on which there is perhaps an energy module that is under a management agreement or a design, build and supply agreement, and perhaps a processing or manufacturing unit. In such cases, even the ownership details could be quite complicated.

Moving away from occupiers rates to owners rates would be a major strategic shift in taxation. As I said, I have not explored that for the purposes of this meeting, but I could have a think about it.

Andy Wightman: I am just exploring possibilities, but might there be a case for having a default power on such complex sites? If it was difficult to ascertain the occupier, you would then have the power to levy the rate on the owner of the land. It is always easy to find out who the owner is, because that will be registered with Registers of Scotland.

Ian Milton: It could form a resilience point whereby, if it was difficult to obtain information as to precisely who was in rateable occupation of which element of the subjects, we could fall back to the owner, which would ensure that the valuation roll was complete and the property was assessed. It might open up arguments and questions on units of valuation, so you would have to start to look at precisely how it would sit comfortably in the current legislative framework. However, I suppose that the principle is there.

Andy Wightman: I want to talk about parks, but before I do so I want to ask about a matter of professional best practice. Let us say that the Government took a policy decision to exempt graveyards from rates. Is it correct that rates are payable on those at the moment?

Ian Milton: They are certainly assessed.

Andy Wightman: Let us say that the Government decided that rates should not have to be paid on them. Would it be good practice to exempt them from the roll, or would it be better to have them on the roll but made subject to relief?

Ian Milton: The Scottish Assessors Association's position throughout our involvement in consultation responses, going back to the "Supporting Business—Promoting Growth" consultation in 2013 and in the more recent consultation last year, has always been that, if all land and heritage is entered on the valuation roll, we have complete transparency and clarity on the landscape in terms of valuation. It is then up to local government and central Government to decide how they want to use their economic levers and whatever strategic objectives they have to grant reliefs.

At present, we have a mixture of reliefs and exemptions. We made reference to that in our responses to the Government consultations last year and in 2013. For example, rural ATMs are exempt; agricultural land is exempt, too, as are many other subjects, as you know. Therefore, there are gaps in the valuation roll that introduce an element of opacity to the overall land valuation assessment process.

Andy Wightman: As a matter of principle, therefore, does the Scottish Assessors Association agree with recommendation 28 in the Barclay review, which states that

"All property should be entered on the valuation roll ... except public infrastructure"?

Ian Milton: Our position is that it is easier to value everything than it is to be selective. If we have everything on the valuation roll, we have a much clearer situation.

Andy Wightman: Would that therefore also go for recommendation 29, which is that

"Large scale commercial processing"

that happens to take place

"on agricultural land"

but which is exactly the same as processing that takes place in a food park should be rated? Would you want that, as a matter of professional best practice, to be on the roll and then the Government to make a policy decision as to why farmers who make ice cream should not pay rates but other businesses that make it should pay them?

Ian Milton: Yes. The position is that, for transparency, it is much better to have a complete valuation roll that has all lands and heritages shown on it. That gives Government and those who determine policy the opportunity to decide precisely how they want to implement local taxation and the distribution of rates according to our assessments, granting reliefs or otherwise through their process.

Andy Wightman: Other members of the panel are free to come in. You all represent the Scottish assessors in some way.

That brings me on to parks. I confess that I am a little bit confused about the provisions on parks. The Barclay report says:

"all public parks are exempt from rating and there are no plans to change this, except where commercial activity takes place."

As I understand it, the provisions in the bill try to bring into the rating system those parks or parts of parks where commercial activity takes place. Is that a fair summation of what the bill attempts to do?

Heather Honeyman: Yes. The issue is to do with the definition of "commercial activity". Not all public parks are exempt at present, as they have to fulfil specific criteria. The Barclay review recommended that that be broadened to cover commercial activity. The bill could bring in more parks than has been envisaged, depending on the definition of "commercial activity". Given what is proposed, various types of subjects could be brought in.

The bill is potentially a little unclear on restricted access. For example, public parks that are exempt at present may have within them trampoline areas or putting greens that customers have to pay to enter. Is the suggestion that such areas should be on the roll but the remainder of those parks, which there is no charge to get into, should be exempt? Or is the proposal that the whole park should be included because part of it has restricted access?

At the moment, buildings that are considered ancillary to the park would also be exempt. The proposals in the bill suggest that those would come on to the roll. Bowling clubs and sports clubs might enter the roll because they are not in the occupation of the local authority.

10:15

We also need to think about what a park is. When we think about parks, we think about green areas, but the definition of park can extend to other types of subjects, such as golf courses, bowling greens or sports areas—effectively, recreation grounds—which might not be what first spring to mind as public parks. Many properties are exempt at the moment and the proposals would bring them on to the roll. They might be subject to rates relief, but they would be included in the roll.

Andy Wightman: That is similar to my earlier point: they might be subject to relief but they will be on the roll.

The Barclay review highlights the fact that the St Andrews links' courses are exempt from rates because the land is classed as a public park. It is owned by a trust, but the courses are commercially operated, and other golf courses pay rates.

Is there a problem with section 4? In your evidence, you highlight that

"It is not clear from the Bill how Assessors should deal with local authority parks where part is open for free and unrestricted access and part is not."

Going back to my previous question, would it not be better to bring all parks on to the roll and, through secondary legislation, deal with what is rateable and not rateable, so that you can adapt to circumstances that are changing all the time? In Edinburgh, there are proposals to turn the Ross bandstand into a commercial venture. The occupation and use of parks change all the time.

Heather Honeyman: I take your point. Assessors would respond to what the legislation stated. As I mentioned, in relation to restricted and unrestricted areas, we need the proposals to have more clarity, so that we can be consistent in our approach to our task.

Andy Wightman: Thank you. I have other questions on dwellings, but I will ask them later.

Kenneth Gibson (Cunninghame North) (SNP): I have a straightforward question. If everything is added to the valuation roll, what would be the resource implications for staffing and costs?

Ian Milton: Over time, that issue has exercised our minds. As we have said, we are conscious that the proposal would impact on us. We are no strangers to that sort of task. Our recent experience of adding shooting rights and deer forests to valuation rolls required a significant commitment of resources and the lessons that we learned from that were useful. One was about the information that we receive. As I said, we need the power to get information, not just to value a subject but to value that category of subjects. The real challenge is getting good-quality information, particularly when we come to agricultural holdings. Off the top of my head, I think that there must be between 20,000 and 30,000 agricultural holdings in Scotland. I imagine that the Scottish Government has considerable data on agricultural holdings; the issue is the quality of that data and whether it provides us with the information that we require. When we embarked on the shootings exercise, the information that was available to us did not meet our expectations and, as a result, it was a resource-intensive process.

Any adding of another category of properties to the valuation roll will have a resource implication. I cannot put a precise figure on it, although it would not be impossible to do so. One of the issues with the bill relates to resources. We can speak to the fact that not only financial resources but expertise are required, and there is a limited pool of that rating expertise in Scotland. That is an issue.

Kenneth Gibson: That is why I asked about resource implications for staff. People think about financial resources but we need trained individuals to do that work. If we have a sudden change and there is a huge increase in the number of properties to be valued, that would put a significant strain in terms of the number of people who would be available to do the job and the level of experience that they have. If there was that step change, I imagine that it would take some time to get everyone up to the required level.

Ian Milton: Certainly. We have a real challenge on our hands in gearing up for the 2022 revaluation and delivering three-yearly revaluations after that. There are some huge pinch points there, such as the proposals for the appeals system, which we may come on to.

The point about expertise is critical. We are working with education providers to see whether we can find ways of bringing more expertise into

the market. The general direction of travel has been for universities in Scotland to reduce the output of what we call cognate graduates—graduates with surveying or estate management degrees—whom we train up to professional qualification standard. We want to reverse that trend, but we need to do it in a short time if we are to deliver three-yearly revaluations. There is quite a bit of inertia in the system.

For that reason, we are trying to bring in school leavers and are looking at apprenticeships. Quite a lot of work is being done in that sphere just now. However, that does not take away from the fact that, if we want to increase the size of the roll by 20,000 to 30,000 subjects for the next revaluation, it will be really hard to deliver that.

Looking further ahead, over time, it is certainly doable, but we would need to build up expertise.

Kenneth Gibson: Your submission says that it is important that resources are maintained. We are looking at a significant increase when the bill is implemented, and then a reduction over the years. What is the age profile of assessors? Is there an issue with the number of people who will retire in the next few years exceeding the number of people who are coming in? Is there a balance, or are the numbers growing? You have talked about apprenticeships, but how do you feel about the human resource that you have available at the moment and are likely to have in the next five to 10 years?

Ian Milton: I think that we are facing a real and serious challenge. I do not have figures on the demographic profile of our services at the moment, but I have my own experience of trying to recruit a chartered surveyor in Aberdeen. I got one applicant for the job after advertising twice online and in the media. That does not bode particularly well, unless it was just the location or the employer that was the issue. In any event, that story has been repeated across Scotland. It is difficult to recruit.

It is also difficult to hold on to qualified staff. We invest five years in training someone up to become professionally qualified. However, the demand that regular revaluations create for rating consultants to advise occupiers of property means that we have a significant brain drain into the private sector as a result of providing such an excellent training environment. That is a further challenge.

The situation will also lead to wages inflation, which is difficult to manage in a public sector environment in which we are conscious of resources, as are the councils that fund us.

Kenneth Gibson: Thank you for those comprehensive answers.

Graham Simpson (Central Scotland) (Con): I want to follow up on the impact on you of moving to three-yearly revaluations. Have you assessed how many extra staff will be needed across Scotland?

Ian Milton: Yes, we have. We provided input to the Scottish Government and the Convention of Scottish Local Authorities in the preparation of the financial memorandum.

The estimates that we provided were based on our understanding at the time. Our first estimate in September was reasonably sketchy, I suppose, but over time, up to February, we managed to form a better understanding of what the NDR reforms mean on the ground. That informed the information that is in the financial memorandum.

As you can see from the financial memorandum, we are talking about an estimated additional 122 personnel, of whom 50 per cent will be trainees, 20 per cent will be qualified surveyors and 30 per cent will be information technology and support staff. We will have to gear up in terms of the information powers so that we can support staff to ensure that we get the information coming in and manage it properly.

However, we also need the expertise. As I think is acknowledged in the policy memorandum, in the past, we have always dealt with things sequentially. We did a revaluation, the staff who did the revaluation went on to resolve the appeals and then, three years later, they went back to revaluation tasks. Instead of a sequential approach, we will now have two teams: one that will deal with revaluation full time and all year round, and one that will deal with dispute resolution, proposals and appeals.

Although we have done some work in that regard, that work and the figures in the financial memorandum must be considered alongside the caveats and assumptions that we made based on what we knew in February. One caveat—which I do not think is mentioned in the financial memorandum—is that we are assuming a 25 per cent reduction in appeal volumes. That assumption is built into our figures. In addition, there is no funding allocation or estimate for the additional costs that designated assessors will face in relation to public utilities. There is also the issue of the impact of asynchronous revaluations compared to the other jurisdictions in the United Kingdom. There are therefore gaps in the estimate that are difficult to fill at this point.

Graham Simpson: So although the 122 figure takes into account three-yearly revaluations, a new pre-appeal mechanism and everything else, it cannot be wholly accurate.

Ian Milton: No. In relation to the proposal and appeal system, the figure is based on what our

understanding was at that time. The bill creates the gateway for a new appeal system, but it does not do the most fundamental thing that we need it to do, which is to reduce the volume of appeals. In addition to the information flow into our offices—which I have already said is critical—that reduction is critical if we are to deliver three-year revaluations.

Our costings reflect our knowledge of the proposal and appeal system in February. However, as the proposal and appeal provisions take shape over the next few months, they could influence and change our estimates and resource requirements. If we cannot find a way of getting the volume down, or if we find that we end up with a cumbersome proposal and appeal disposal process, we will find ourselves stretched and requiring more resources.

Graham Simpson: Are you confident that the proposals in the bill will reduce the number of appeals?

Ian Milton: No.

Graham Simpson: You are not.

Ian Milton: In short, no. The proposals in the bill would set up a system of proposal and appeal. Instead of a system of straight appeal, there will be a proposal stage first—which it is anticipated will be dealt with by an assessor—and then an appeal; it will be a two-stage process. The big question is how that will operate, and the bill is—of course—silent on that, because that will come in secondary legislation, which is currently being formed. Discussions on what shape it might take are on-going between the various stakeholders, and the shape that it takes will be absolutely critical to whether we are on budget or not—we do not know the answer to that at present. I therefore urge all observers in the process to reflect on the financial memorandum as a statement that is based on assumptions and knowledge from February of this year.

Graham Simpson: Are there assumptions that you are not entirely confident will be met?

Ian Milton: Absolutely.

The Convener: Ian Milton said that the system of proposal and appeal is part of the problem. How would someone get to the appeal stage without going through the proposal stage first?

Alastair Kirkwood: Under the current system, in effect, an appeal is lodged with the assessor and followed through until it comes to the valuation appeal hearing before a committee. The bill proposes splitting that into a two-stage process: in the first instance, a proposal would come to the assessor, who would issue a decision on their assessment of the position at the end of the proposal stage. The ratepayer would then have the opportunity to lodge an appeal with the valuation tribunal or the valuation appeal committee.

From the assessors' point of view, that is likely to be a more complex procedure than the current one-stage process. At the moment, 80,000 appeals are lodged at each revaluation. It will not help us if there are 80,000 proposals followed by a second stage. The same amount of work will be involved for assessors whether it is called a proposal or an appeal. In fact, it is likely that the volume of work will be higher because of the two-stage process.

10:30

We envisage that ratepayers will lodge their proposal with the assessor, a discussion will take place, the assessor will intimate his thoughts on the matter, and the ratepayer will then have the opportunity to proceed to a formal appeal with the valuation appeal committee. That will probably reduce the number of appeals that go to the valuation appeal committee, but it will not necessarily reduce the number of proposals that the assessor receives.

The Convener: So you think that those people who automatically go to appeal at the moment would automatically go to the proposal stage and that some of them might go on to appeal.

Alastair Kirkwood: Indeed. In fact, some of the provisions in the bill suggest that there might be slightly more proposals than there are appeals.

Graham Simpson: Will having the extra stage increase the workload?

Alastair Kirkwood: It is likely to increase the workload. A lot will depend on exactly how the Scottish Courts and Tribunals Service deals with the appeals, which is yet to be decided. The valuation appeal committee structure will be absorbed into the Scottish Courts and Tribunals Service in 2022, which will coincide with the introduction of three-yearly revaluations. We are not sure of the details of how the tribunals service will manage those appeals. We have concerns that the streamlining of the process and the timescales for dealing with appeals will have a significant impact on our ability to achieve revaluation on a three-yearly basis.

The assessors consider that it is imperative that appeals are resolved within the course of the revaluation. The issue of fairness to ratepayers and their having certainty about their liabilities aside, going into the following revaluation with appeals outstanding and continuing legal uncertainties or valuation issues doubles the potential income loss from one revaluation to the

next. We consider that all appeals should be resolved within the three-year period.

The new arrangements could be slightly more administrative than the current arrangements, but we see the logic of going down the proposed route.

Graham Simpson: Given the concerns that you have expressed, is there anything that you would change in the bill to make things better?

Alastair Kirkwood: One issue that is not addressed in the bill but which could be dealt with through mechanisms other than the bill is the role of public sector appeals. It has been suggested that the number of appeals from the public sector could be reduced, given that it could be argued that that involves money going from one public purse to another public purse.

Beyond that, assessors have suggested a number of measures, the first of which is that a fee could be charged at the proposal stage. The bill contains provisions for a fee to be charged at the second stage, when the valuation appeal committee or the tribunal considers the matter, but not at the proposal stage. We have suggested that there could be measures whereby, if a property is in receipt of 100 per cent relief, there should be no right for a proposal to be lodged. We have also suggested that there should be no right for a proposal to be lodged when there has been a pre-discussion in which ratepayers have reached an agreement with assessors about what the value should be. A number of measures have been suggested that do not appear in the bill.

Andy Wightman: I want to follow up on Mr Simpson's questioning.

Mr Milton—when you were asked whether there would be any change in the volume of appeals, you said that there would not be. You said that you did not know how many appeals there would be. You mentioned that the issue will be resolved in secondary legislation. I presume that that was a reference to subsection (6) of proposed new section 3ZB, which the bill will insert in the Local Government (Scotland) Act 1975. It states that ministers may make regulations that make provision about the

"circumstances in which such an appeal may be made only with the permission of the valuation appeal committee".

Alastair Kirkwood has mentioned a few gate-keeping rules. Could another one be that someone would not get to make a proposal unless they were appealing a valuation that was more than, say, 10 per cent away from the current valuation? I presume that, at the moment, it is possible to appeal a valuation without there being any threshold with regard to the extent to which the new valuation departs from the existing valuation.

Ian Milton: It is anticipated that a proposal could be made against an entry in the valuation roll. It might not be just the rateable value that is in dispute; the existence of the entry itself might be in dispute.

The bill introduces the business growth accelerator, which we have not touched on. The bill anticipates that there would be a marker in the valuation roll, the existence or lack of which might be challenged by a proprietor, tenant or occupier, as it might be a gateway to their getting or not getting relief. As Alastair Kirkwood mentioned, we anticipate that more proposals might come into the system unless there are active measures to reduce their volume. Another means of reducing them might be to say that, if an outstanding request for information has not been responded to or a civil penalty was sitting against an entry, there should not be a right of proposal.

The position is quite complicated. The volume of appeals is very significant, but I argue that the actual adjustment of properties under appeal is not significant. With any appeal or proposal system, there is an issue about public resource being gummed up. Obviously, we would not want to deny people access to justice, but we have a finite resource. The question is how we can ensure that the volume of appeals is minimised but injustices are remedied.

With other stakeholders, we are currently feeding into the Barclay implementation advisory group's appeal sub-group, and we are looking at options. One issue is the potential for the exchange of information to be set down in secondary legislation. That would tie up assessors in providing information, which is fair enough, but it would also tie up ratepayers in providing information on grounds of appeal, comparisons and such like. There is the potential for a huge raft of work. To be perfectly frank, it will be a challenge to find a system that would be fair to all parties and would not overburden public resources.

The Convener: Graham Simpson wants to come in on changes for independent schools.

Graham Simpson: The panel might be able to answer this question quite quickly. I noticed that the panellists did not have anything to say in their written submissions about the proposals for changes to the way in which rates for independent schools are handled. However, as they are here, now is their opportunity to tell us their views on that.

Alastair Kirkwood: Our position on independent schools is that the matter is one of relief from the charging of rates. That issue would not impact directly on assessors, which is why we have not commented on it in our submission. Currently, such schools are valued and they

appear on the valuation roll, and applying the relief is a matter for policy makers and councils.

Graham Simpson: That is fair enough. That is really a policy question, which is not for the assessors.

Annabelle Ewing (Cowdenbeath) (SNP): Good morning, panel. I want to go back to the issue of information notices. First, I will deal with time limits. I note that you would prefer a limit of 28 days with the possibility of appeal instead of, in effect, 56 days plus another 28 days. As far as you are aware, why is the current position in the bill that the period would be 56 days plus 28 days? What was the thinking behind that? Obviously, you do not agree with it.

Ian Milton: To be frank, it was a surprise to us that the limit came out at 56 days. Such a provision might apply in the jurisdiction of England and Wales, but our position has been that we need the turnaround of information to be quicker. The current rule specifies a limit of 14 days, which we accept is unrealistic, especially when detailed information is looked for. However, we are also aware that detailed information for large, major projects is available through quantity surveyors and project managers, often in digital form—in spreadsheets, for example. A period of 14 days is far too short. Our view is that a period in the region of 28 or 30 days would be about right.

At the end of the day, we have a tight turnaround time of only 12 months between the tone date and the roll coming into force, so we need to get the information in. That is the background. I dare say that, if there was an appeal, there would be a further 28 days. Currently, people have 84 days—12 weeks—between receiving the first notice and the civil penalty appeal stage. Given that we are dealing with a revaluation cycle that is measured in months rather than in years, that is an issue.

Annabelle Ewing: We will doubtless pursue that issue with the minister in due course.

In your submission, you stress that communication should be “digital by default”. I presume that that also applies to information notices. Will you explain a bit more about what that approach would rule in and rule out? Does the bill support the position that you are seeking to achieve?

Heather Honeyman: Under the current legislation, valuation notices have to go out in writing in paper form. We are responding to the modern world and looking at ways of having more streamlined processes. When the bill was introduced, there were suggestions in relation to writing. It was also suggested that how information and valuation notices go out might be agreed between the parties. We believe that the process of going to and fro to get agreement on email addresses and how the notices are sent out could be burdensome. Issuing correspondence digitally and maintaining email addresses and so on would lead to greater efficiency in delivery. We are trying to respond to the modern world and to be more efficient in how we do things.

Ian Milton: As part of our preparations for NDR reform and as we formalise our strategy for delivering it, we are looking at what goes on elsewhere in the United Kingdom. In Northern Ireland, all the assessments are published online, and no valuation notices are issued to ratepayers. There is, of course, an accessibility issue, but that system means that all the information is published at the same time in one place. People know where the information is, and proprietors, tenants, occupiers, agents, rating consultants, advisers and neighbours can all access it online. We have the SAA portal website, on which we publish all our rateable values, all our council tax bands and lots of other information. We are very keen to move towards delivering NDR reform and our service through our portal rather than through paper notices.

We need to issue 400,000 valuation notices each time we do a revaluation. The proposals to increase the amount of information that we provide to ratepayers are very sensible, useful and good, but the problem is that, if we provide that information—such as the addresses of properties that we use for comparisons in our valuation process—on a paper valuation notice, there will be all sorts of challenges. For example, how will notices that contain a list of addresses that have been used for comparison purposes be printed? Sometimes, the list might contain several hundred properties but, in other cases, it might contain only one or two. There are all sorts of such issues.

We believe that the answer is to have all the information available online and to have messaging for ratepayers, proprietors, tenants and occupiers on where they can access that information. We believe that, to ensure cost efficiency, online publication is the way forward. Whether that can be achieved while ensuring accessibility and that nobody is discriminated against is an issue. However, if we look at the common delivery models that taxation services use, we see that Revenue Scotland and other bodies in Scotland are moving to online delivery to drive efficiency.

Annabelle Ewing: I hear what you say, and we can put some of those issues to the minister, who has a digital element to her brief. It will be interesting to hear what she has to say. I take it that you feel confident that you have the infrastructure to go digital.

Ian Milton: We have the infrastructure, in that we have the portal, for which Heather Honeyman is the senior responsible officer. We have that resource available, but we would need to work to expand it.

10:45

Heather Honeyman: We are moving forward a work plan to deliver the Barclay recommendations. That involves putting more information online so that people can self-serve at their leisure—they can go online and look at the information. We are trying to make more valuations available online so that people can look at the detail of what makes up the rateable value.

Annabelle Ewing: Another issue that you raise in your submission to the committee in connection with the information notice concerns legal privilege. You are concerned that the provision of information could be precluded in circumstances in which confidentiality would be detrimentally impacted. That seems to arise when the notice is sent to a solicitor, but you say that there is a lack of clarity. Can you explain that further? As far as I am aware, legal privilege would extend only to communications with the solicitor, not to those with anybody else. Therefore, if the notice was sent directly to the ratepayer, why would there be an issue? Will you clarify what your concern is?

Alastair Kirkwood: Our concern is that, under the current regime, leases are routinely subject to confidentiality clauses. We are seeking confirmation from the Government and the Parliament that the provision will not be extended to cover situations in which a lease includes a confidentiality clause or in which a contractor has a confidentiality clause within his contract. At present, that is a convenient way for parties to claim an exemption from providing the information for which we are asking. The concern is that including the provision expressly in the bill could further encourage that type of action.

Annabelle Ewing: I see. Because it is a new provision that expressly refers to legal privilege, you are concerned that it could somehow be applicable more widely than is intended.

Alastair Kirkwood: We want to be sure, first, that it would not be applicable more widely and, secondly, that it is not perceived to be applicable more widely. We have a significant number of discussions with people in which they refuse to provide information on the ground that their lease is subject to a confidentiality clause. We need to get beyond that.

Annabelle Ewing: It would be a question of ensuring that the language that was used was absolutely watertight.

Alastair Kirkwood: Indeed.

Annabelle Ewing: Another issue—it has already been touched on, so I will not labour the point—concerns the civil penalties. There are two issues, one of which is the fact that it seems to be your view that civil penalties in the form of information notices will be substituted for the current position. What would the current offence be?

Alastair Kirkwood: The current offence is the one in section 7 of the 1854 act, which is somewhat historical.

Annabelle Ewing: That is well known to everybody around the table, I am sure.

Alastair Kirkwood: The Lands Valuation (Scotland) Act 1854 makes it a criminal offence not to respond within 14 days to a reasonably made request by the assessor. Some of the language around that provision is, again, quite restrictive in the sense that the request can be served only on the proprietor, tenant or occupier, not on any other party, and only for the purpose of valuing that subject. For a number of years, assessors have said that it is inadequate for their purposes. Nevertheless, it had some value as a deterrent. Simply being able to put that on the valuation notice or on a questionnaire reaped some benefits, albeit that larger ratepayers, who were perhaps professionally advised, were not always inclined to comply with it.

We very much welcome the introduction of civil penalties—I do not want to disparage that—but the importance of the issue is such that we want all possible tools available to us, and we would prefer to keep the existing criminal offence in addition to having the ability to levy a civil penalty.

Annabelle Ewing: Is it your view that the possibility of a criminal offence will be removed completely from your armoury by the bill?

Alastair Kirkwood: Yes. I am sure that section 7 of the 1854 act will be repealed by one of the sections of the bill—I would need to find that for you—and the provision is not contained anywhere in the bill. Some parts of section 7 are retained in another section of the bill, but not the aspect of non-provision of information. The parts that are retained or replaced in a new provision are about knowingly making false statements. Those have been placed in a new section, but the criminal offence of not providing information has not been included in the bill.

Annabelle Ewing: Do you have any understanding of why that is? Is it an oversight or a deliberate policy decision?

Alastair Kirkwood: Obviously, it is a matter for the Scottish Government. We are not aware of there being any protocol to prohibit the dual

approach of having the two resources available. Certainly, it would be assessors' wish to have both available.

Annabelle Ewing: In other words, they would want the criminal offence of the non-provision of information to be retained.

Alastair Kirkwood: Yes.

Annabelle Ewing: That is clear.

On the civil penalty proposals, last week, we discussed with COSLA the scale of the charges. It was felt that they are inadequate and that, for those with properties of very high rateable value, the charges would be a drop in the ocean and would provide no deterrent whatever. What is your view on that?

Alastair Kirkwood: I very much agree. There are, if you like, two separate issues, the first of which is the size of the penalties. In many cases, we are dealing with properties of rateable values running to tens of thousands, hundreds of thousands and, in some cases, millions and tens of millions of pounds. With the current penalty set at £100 plus £20 per day, the maximum charge in a year would be £7,000 or £7,500, and it would be several years before you would get a more sizeable figure. Even then, that is really nothing at all to some of those who own such properties and companies. I suppose that it will be a meaningful amount of money to smaller individual concerns, in which regard it might be useful, but I would suggest that it is not meaningful to larger organisations.

Mr Milton has touched on the restrictiveness of the provision in question, but I also point out that it is worded in such a way that the maximum penalty is linked to the rateable value of the property on the roll on the day on which the notice is issued. That does not really kick in if we are making an information request about a property that is not yet on the roll. It means that the penalty will be limited to £500, which, to be honest, will be meaningless to the majority of those who own properties of a high rateable value.

Annabelle Ewing: We hear what you and our witnesses last week have said on that matter.

I have a final brief question about the level of the penalty that is applied by local authorities, which is slightly lower than that which is applied by the assessors. Is there any reason for that? Why is the penalty not the same?

Alastair Kirkwood: I am not aware of the thinking behind that. Perhaps there is a difference in the complexity of, or the need for, information.

Annabelle Ewing: The difference is marginal, but it is a difference nonetheless.

Alastair Kirkwood: I should also say that we welcome the fact that the proposed assessor information notice will contain the maximum rateable value of the property. I do not want our comments about civil penalties to be seen as negative; we would just like the provisions to be a bit more complete.

Alexander Stewart (Mid Scotland and Fife) (Con): The anti-avoidance measures in the bill have been welcomed by some organisations. Phoenix companies have been identified as a potential problem, but do you, as assessors, believe that the measures are strong enough and go far enough in closing such loopholes?

Ian Milton: Our submission is silent on the general anti-avoidance regulations because we do not see this as an area of our practice; instead, we see it as an issue of rates avoidance.

Because we are not involved in that side of things, we have not made any comment on it. If we have the right information powers to enable us to get the detail that we need, we will be able to get on with our job and assess the property in question. What happens downstream with the levying and collection of rates is another issue.

Alexander Stewart: You have also suggested that there might be additional costs to the workforce and other aspects. If the costs of the process end up being higher than the estimated costs, do you believe that they will be fully funded? Do you anticipate any issue in that respect? If so, how do you think the situation will be managed?

Ian Milton: We are committed to having a dialogue—or even a trialogue—with the Scottish Government and the Convention of Scottish Local Authorities as the NDR reforms take shape. I am reasonably confident that people will be listening. I suppose that the question is whether the resource will be put in place. Resource availability is an issue that all managers across the whole public sector face. If an allocation is made for NDR reform, there is a risk that funding bodies that are in particularly tight financial conditions might see that as an opportunity to draw back from their baseline funding. We want to guard against that by maintaining our baseline funding and adequate resource funding to deliver the reforms.

Alexander Stewart: As you have identified, many others in the public sector are having to do more with less. You might become an organisation that fits those criteria, depending on the workload for the process that you are going to take on.

Ian Milton: Uniquely, the responsibility to maintain the valuation roll lies with the assessor, not with the valuation authority. The valuation authority has to appoint an assessor, and the assessor has to do the maintaining work and meet

all the statutory requirements. There is a tension there.

Alexander Stewart: Exactly. Are any businesses likely to be affected by the introduction of new penalties in the process? If so, what type of business would they be? Have you assessed whether that is the case?

Ian Milton: We have not carried out any assessment of that. It is probably quicker for us just to say that we have not done any analysis of that.

You will find that there is a greater degree of engagement and provision of information across different sectors. Evidence that we have given to the committee in the past has covered that, to a degree. Perhaps my colleagues will have something to add.

Alastair Kirkwood: I am not sure whether the question was aimed at the civil penalty aspect.

Alexander Stewart: Yes.

Alastair Kirkwood: We would like there to be no civil penalties. We would like the information to be provided and there to be a route to ensuring that penalties do not arise. We do not think that ratepayers should be disbenefited by the penalty regime. Our fundamental interest is in getting the information; we are not really interested in applying penalties. It is really just a tool to make sure that we have the necessary information.

Kenneth Gibson: You have been talking about avoidance. In your submission, you say:

"The SAA recognises the rationale behind the proposed change to section 72 of the Local Government Finance Act 1992"

and that the provision will

"counter a known avoidance tactic for second homes, owners or occupiers of self-catering properties must prove an intention let for 140 days in the year and evidence of actual letting for 70 days."

However, you have some concerns about local government—how shall I put it?—treading on your toes a wee bit. What are those concerns?

Jim Doig: Although the SAA supports the measures in the bill, we make the point that, historically, assessors have decided whether a property enters the roll or the council tax valuation list, whereas in this case, there is a provision to allow the local authority to do that. We are concerned that there should be some sort of criteria to at least determine in what circumstances local government could make the change. For example, in our submission we say that some properties genuinely—through location or whatever—will not be able to do 70 days' letting. We just want to make sure that councils have a policy in place.

At the moment, there are a lot of changes, with self-catering properties moving in and out of the roll. I will give you an example. In my area, there are about 1,300 self-catering properties. Since the revaluation in 2017, I have made about 600 changes through properties coming in and out. We just want to make sure that we do not end up with local authorities making ad hoc decisions on properties moving in and out of the roll.

11:00

Kenneth Gibson: Your submission also says that

"the SAA would recommend that the exercise of that discretion should require a policy decision of the Council."

I am a bit unclear as to whether you feel that that decision should be made for each individual property or whether the local authority should make some overall decision.

Secondly, you refer to

"an island situation or very remote area,"

where

"the letting season is not as long as 70 days."

I have two islands in my constituency—Arran and Cumbrae—where the letting season goes on for months and months. Where in Scotland is there a letting season of only 70 days? We are talking about May, June, July, August, September, October, Easter and so on. Surely, there is nowhere where the season is 70 days—not even Iceland or the Faroe Islands have a letting season of under 70 days. I was just a bit curious about that, but I am more concerned to know how you expect councils to operate in that respect.

Alastair Kirkwood: In that part of our submission, we are pointing out that assessors and local authority officials do not have any discretion to add subjects either to the valuation roll or to the council tax valuation list. There is already legislation from policy makers in the form of the Scottish Government that would be applied by assessors, and the proposal is a departure in the sense that the responsibility will now fall to local government. That is entirely appropriate, but we want to make it clear that it means that decisions on whether properties go on to the valuation roll or the council tax list will move from the Scottish Government to local authorities. The assessors have no difficulty with that; we just want to point out that that is the effect of the move.

As Mr Doig has said, we would welcome it if the policy were not changed frequently, because each change will require moving more subjects from one list to the other, which in turn will require information gathering and valuation administrative processes. From a working point of view, the

assessors' desire would be not to have a regular process.

Kenneth Gibson: I see that, but councils generally do not change a policy within six months of its being made.

My question was about whether you are looking for the local authority to put in place some overall policy or to have a policy to meet each circumstance. That is what I am trying to get clarity on, because I am not sure what you are trying to get at in your submission.

Alastair Kirkwood: One would imagine that a council would make a policy decision with regard to a particular circumstance such as a landslip on a major access road. If there were to be a provision whereby, in certain areas where, we are told, the letting season is less than 70 days—

Kenneth Gibson: I am sorry, but where would those areas be?

Alastair Kirkwood: Some of the Western Isles and the northern isles. It is not my area, so I cannot speak authoritatively on it, but it has been suggested to us that, in some of those places, the letting season is not 70 days. It might be for the council to make a policy decision on the matter. We are just highlighting it as an issue that we hope will be decided by policy makers at the Scottish Government or local government level and not implemented by, say, assessors, directors of finance or other such officials.

The Convener: Let us return to the anti-avoidance measures. Surely, the assessors would be the front line in that respect, because they would be out there, seeing what is going on. You must have intelligence from the assessment work that you do. Would you not be the people who, first and foremost, would see where the loopholes were and who was using them, and would you not feed that information back to, for example, the Government?

Ian Milton: We have certainly identified weaknesses in the lands valuation acts that make it difficult for us to make an entry in the valuation roll, and we have also highlighted areas where our attempts to make such entries can be frustrated by the non-provision of information—which is, indeed, the classic example. If part of a property is sublet and that information has not been provided, we cannot, if the entry in the roll is challenged, make a new entry outside the current year for the sublet bit, although we might be able to correct the former entry.

I see the anti-avoidance proposals as addressing not that particular matter but phoenix companies and the like, which is not an area in which I have any particular experience or professional expertise. My job is to make sure that everything in my area—in this case, the Grampian area—is accurately assessed and on the valuation roll.

The Convener: Would it not be assessors who, with their experience, would feed back on the loopholes that are regularly used?

Ian Milton: We have identified situations in which weaknesses in the Lands Valuation (Scotland) Act 1854 are being exploited, and we have fed that information back to the Government. There are elements of these reforms that address them, but it remains to be seen whether they go far enough. I do not know whether my colleagues have other views.

The Convener: You seem to fear there being a shortage of funding, but the Government has said that it will fund the anti-avoidance measures and, at last week's meeting, COSLA said that it was very confident that the Government will do that and that the funding will be there, so what in particular do you fear?

Ian Milton: Derek Mackay, the Cabinet Secretary for Finance, Economy and Fair Work, has been very clear that we fall in the local government family—that is understood. Local government is being subjected to funding challenges. Valuation joint boards have a power to requisition—assessors for unitary authorities do not have a valuation joint board; nevertheless, the valuation authority has a power to requisition funding from the local council. When making a requisition request, valuation joint board members are conscious of the financial situation that they face as members of their councils. The challenge is that there is a limited pot. Although the Government might say in the financial memorandum that the estimated cost over so many years of funding the NDR reforms for assessors is £29.1 million, the challenge will be to make sure that the money reaches assessors, while their baseline funding is maintained.

Most assessors are electoral registration officers, so we have experience of working in other areas. We have, for example, received direct funding from the Cabinet Office for the introduction of individual electoral registration, so we have experience of receiving direct money from Government—in that case, the UK Government—to deliver a reform to electoral registration. That money came straight to the electoral registration officers. However, we do not have a similar mechanism here; rather, we have a mechanism that runs through and is supported by COSLA. For the first year, that has worked well, but the question in my mind is about whether the funding will continue to work how we want it to work or whether authorities will be reluctant to maintain the level of funding because of their chosen funding priorities.

The Convener: The basis of your concerns is to do with how councils continue to fund you.

Ian Milton: Yes.

Andy Wightman: Going back to section 5 of the bill and

"whether lands and heritages are dwellings",

how do you currently assess whether a property is residential or a commercial short-term let? For example, there are just over 1,500 self-catering properties in the city of Edinburgh. Do they come on to the roll because their occupiers voluntarily request them to be on it or are you making proactive assessments?

Jim Doig: Most of the time, the occupier or proprietor will advise us that there has been a change. We send out a declaration to say that there is intention to let that property for 140 days for self-catering use. We evidence that as best we can, and then we make the entry on that basis.

Andy Wightman: It is based on occupiers approaching you.

Jim Doig: Or, if we find out about that through other sources, we will be proactive.

Andy Wightman: Do you pay attention to planning applications, for example?

Jim Doig: We look at planning applications, VisitScotland's website and various other things to see whether properties are being used commercially rather than being on the council tax list.

Andy Wightman: Is there any reason why local authorities need the power to vary the meaning of "dwelling" in section 72 of the Local Government Finance Act 1992, which is all about council tax? Commercial short-term lets are not dwellings—they are commercial self-catering properties or short-stay accommodation. They are in a different planning use class. Why do we have to play around with section 72?

Jim Doig: I assume that the provision is for the local authority to take a decision if there is any short-term cessation of use of the property for self-catering purposes. The example that is stated in the bill's policy memorandum is of a property that cannot be used for self-catering purposes due to an issue such as a landslide or there being no access to the property. That is my understanding of what the provision is for.

Ian Milton: As Andy Wightman identified, the definition of "dwelling" for council tax purposes is in section 72 of the Local Government Finance Act 1992. That definition is varied by a number of statutory instruments. Prisons, for example, are defined as dwellings; the definition also identifies self-catering subjects. Dwellings that are in fact still dwellings, and which would, but for the provision, be subject to council tax, can be defined as lands that fall within the definition of "lands and heritages" that need to be entered on the valuation roll by way of a statutory instrument.

As Jim Doig said, the current rule in relation to self-catering properties is that they must be available for 140 days with a reasonable expectation of being let commercially. The suggestion is that people who have second homes—perhaps inherited homes—use that rule to avoid paying council tax. If they can convince the assessor that the property is available for commercial let for 140 or more days a year, they can apply to have it added to the valuation roll, and it falls into the definition of "lands and heritages". I think that that is the issue.

Andy Wightman: Maybe we should redefine what we mean by dwellings as a planning use class. About 2,000 dwellings in Edinburgh are on the council tax roll and operate as commercial short-term lets—there is no anti-avoidance there.

Ian Milton: Student halls of residence are defined as dwellings by similar legislation.

Andy Wightman: Okay—maybe we need to revisit that. Going back to revaluation, the Barclay review considered the situation in the Netherlands, for example, where there are rolling revaluations—on a three-yearly revaluation, a third of the country, or a third of the classes, is done every year. Is there any merit in that, or have you arrived at the clear position that a three-yearly valuation for everything is the best way forward?

Ian Milton: That is an interesting way of looking at it. Local property taxation operates in a number of ways across Europe and, indeed, the wider world; all sorts of different models are available, including indexation and annual revaluation.

Our view is that we implement what the Government puts forward. As a chartered surveyor, I can see that a rolling revaluation with a third of the properties being reassessed every year might be advantageous to me in delivering revaluation. However, would that be by sector or by area? If it were to be by area, how would that impact on the national rates poundage arrangement that we have at present? The whole local taxation sphere would need to be re-examined, if we were to move to that sort of approach.

Nonetheless, I do not see any fundamental issue with having different models of revaluation. The important feature of any local taxation system that is based on property is that it is up to date with the prevailing market values, because that makes it visible and transparent to the occupiers and the taxpayers.

Andy Wightman: I think that you previously made the point that you have to have information that a property is being sublet in order for it to be on the roll as such. Is that correct?

Ian Milton: Yes. There are examples in which someone is subletting part of a property but, because it does not need planning consent and there are no building warrant concerns, we are not getting that information. If the original assessment is challenged and we find—quite rightly—that a separate rateable occupier is part of that, a new lands and heritages entry is formed, but we can make that entry only in the current year.

Andy Wightman: Just to be clear about that, are you saying that you cannot make entries between valuation years?

11:15

Ian Milton: No. We can backdate an update to the valuation roll only in the current year—we can go back only to 1 April in the year that we are in.

Andy Wightman: If that situation happened five years ago, you could not do anything retrospectively.

Ian Milton: No, but, with three-yearly revaluations, we would hope to pick up such situations.

Andy Wightman: Okay. Does that mean that we need not think about doing anything extra in the bill to cover that?

Ian Milton: It could raise a whole raft of issues. Time probably does not permit me to answer that question, but there are certainly questions in that regard. We made the point in our response to the previous consultation that we may need to look at section 2 of the Local Government (Scotland) Act 1975 in more detail in respect of the ability or otherwise of assessors to correct errors.

Andy Wightman: I remind you that Parliament is working on the legislation, and that the bill will not look the same at the end as it does at the beginning of the process, so if you have any ideas that you may have given to the Government but that the committee has not had sight of, feel free to bring them to our attention for stage 2.

Ian Milton: Thank you.

Andy Wightman: My final point is on the financial memorandum. You have been closely involved, as has COSLA, with drafting up the numbers for that. Apart from the points that you made about additional personnel and baseline funding, do you want to draw to the committee's attention other areas in which we should scrutinise the numbers more closely?

On the baseline funding, I notice that the gross estimated costs that are associated with the bill are £32 million and the cost to ratepayers is £68 million, meaning that there will be a £34 million net uplift in public revenue. Is there an issue about making sure that that money goes where it should and that the administrative costs are covered? I know that that is a policy decision, but there is £34 million of flexibility to cover the costs that you have said you might have to meet.

Ian Milton: There is no doubt that moving from five-yearly to three-yearly revaluations means that there will be a whole new pile of work to be done. Even if we just think about issuing paper valuation notices—if we are still issuing them in paper form—every third year instead of every fifth year, that would mean mailing 400,000 items, and the immediate costs would include stamps, envelopes and stationary.

The costs that we have estimated are based on our current understanding, and I have identified caveats in a number of areas. We do not have funding for the designated assessors, if they face challenges; there is also an issue to do with the costs of asynchronous revaluations. At present, we benefit from a lot of sharing of information. Heather Honeyman will be able to speak to that, if members are interested in what is involved for designated assessors in working with colleagues south of the border. That area is not fully covered, so the financial memorandum is not the final story.

There is no question in my mind but that we can do the job, but we need the tools to do it. We need not only the legislation, but the resources, which includes the finance and, as identified earlier, the expertise, which will be a real challenge to get. If we get those things, we should be able to do the job.

Andy Wightman: Paragraph 99 of the financial memorandum says that the Scottish Assessors Association

"did not carry out a sensitivity analysis in relation to their cost estimates (Table 4), therefore the margin of uncertainty is not known."

That is a bit worrying. The total assessor costs are estimated at £29.1 million. If you do not know the margin of uncertainty, those costs could, in theory, be £129 million. You must have some idea.

Ian Milton: We have done the best that we can. We have not carried out a sensitivity analysis in that regard, because, in my view, there are too many unknowns at present. We will know the position only once we drill down into the detail of what we will be required to do in terms of the exchange of information through the proposal and appeals process—for example, we may have to present a complete statement of our position at the end of each proposal stage, to be used by the

tribunal service, or the valuation appeal committee and then by the tribunal service, to go through the appeal. If we have to produce, in essence, the case, that would be an incredibly onerous task. The vast majority of proposals fall at that point. If we have to produce the legally backed and researched documentation to demonstrate everything that we are saying, that will be a major task for us and a major cost.

Until we see the shape of the proposal and appeal provisions, we cannot get involved in the luxury—if you will pardon my use of that term—of dealing with a sensitivity analysis, because we need to get the true size of the task specced out. Once we have done that, we will be able to put it to our IT analysts, to work out how much professional expertise we need and to get down to the fine detail. At that stage, we will be able to build up a sensitivity analysis that looks at what would happen if the values rose by more than expected at a revaluation and the appeal volume went up.

We are assuming that there will be a 25 per cent reduction in the number of appeals, but we do not know whether the measures to reduce the volume of appeals that we get from the public sector will work and be rolled out. Rateable values are now used for water and sewerage charges, too, so it is not just local government rates funding that is affected. Even if the local government finance side of things is taken care of, that might not remove the driver for someone to make a proposal and appeal against an assessment, because water charges will be levied according to the rateable value.

Andy Wightman: Okay. You are saying that you cannot know what the impact will be until the bill becomes an act and the new system is operational.

Ian Milton: It is not just a case of waiting for the bill to become an act; the secondary legislation will be critical in shaping our service.

Andy Wightman: If you have any ideas about how the bill could be improved to limit or curtail large increases in cost or to make the costs more predictable, we would be interested to hear about those.

Ian Milton: I apologise for the fact that the committee received our submission only very recently—we were working to a deadline of 30 May—but it identifies measures that we think need to be taken to get the information coming in and to reduce the volume of proposals or appeals, which we believe is what will make or break the new system. Whether they are called proposals or appeals, we are talking about an interaction, the cost of which will have to be met by public resources on our side and ratepayer resources on the other side. In my view, the extent to which we nail those two aspects of the new non-domestic rating system will make or break the system.

The Convener: I thank the panel for attending today's evidence session on the Non-Domestic Rates (Scotland) Bill. Further sessions on the bill will be held in June.

11:23

Meeting continued in private until 11:31.

Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

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