



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

INFRASTRUCTURE AND CAPITAL INVESTMENT COMMITTEE

Wednesday 8 February 2012

Session 4

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INFRASTRUCTURE AND CAPITAL INVESTMENT COMMITTEE
3rd Meeting 2012, Session 4

CONVENER

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

DEPUTY CONVENER

*Jamie Hepburn (Cumbernauld and Kilsyth) (SNP)

COMMITTEE MEMBERS

*Malcolm Chisholm (Edinburgh Northern and Leith) (Lab)
*Adam Ingram (Carrick, Cumnock and Doon Valley) (SNP)
*Alex Johnstone (North East Scotland) (Con)
*Gordon MacDonald (Edinburgh Pentlands) (SNP)
*Margaret McCulloch (Central Scotland) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Keith Brown (Minister for Housing and Transport)
Ian Duncan (Scottish Parliament)
William Fleming (Scottish Government)
Marion Gibbs (Scottish Government)

CLERK TO THE COMMITTEE

Steve Farrell

LOCATION

Committee Room 6

Scottish Parliament

Infrastructure and Capital Investment Committee

Wednesday 8 February 2012

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

Decision on Taking Business in Private

The Convener (Maureen Watt): Good morning. Welcome to the third meeting in 2012 of the Infrastructure and Capital Investment Committee. I remind everyone to turn off their mobile phones and BlackBerry's, as they affect the broadcasting system.

Under the first item of business, I seek the agreement of the committee to take in private agenda item 6 and future consideration of related draft reports. Do we agree to do so?

Members *indicated agreement.*

Homelessness

10:01

The Convener: Agenda item 2 is on homelessness. Over the past few months, the committee has heard evidence from a variety of stakeholders on the progress that has been made towards meeting the 2012 homelessness commitment. The committee would like to thank the many organisations that have submitted written evidence in response to its call for views on this topic. Today, the committee will hear its final evidence on the 2012 commitment. I welcome Keith Brown, the Minister for Housing and Transport, and his supporting official, Marion Gibbs, team leader in the Scottish Government's housing options and services unit.

I invite the minister to make an opening statement.

The Minister for Housing and Transport (Keith Brown): Scotland's 2012 homelessness commitment, which is to give all unintentionally homeless households the right to settled accommodation by the end of this year, is internationally acclaimed and has rightly been referred to as the most progressive in Europe. However, the target is challenging. Unlike targets that were set by Governments in other places, it was not set in the full knowledge that it could be fairly easily met but is a genuinely challenging target to achieve.

With the target, we are trying to remove the bureaucratic distinctions between different categories of homeless people. That was always going to be a challenge, but it has become much more difficult in the economic circumstances in which we find ourselves. However, I have made it clear that we are committed to achieving that, and I want to restate that commitment today.

Meeting the target is not, by any means, the end of the journey. The causes of homelessness are not going to end in 2012 because we have set the target and met it. Among the key tasks that we will have as we move forward should be that of maintaining a continuing and persistent focus on preventing homelessness.

The Scottish Government and the Convention of Scottish Local Authorities have a joint steering group that directs work on the target. It is an enthusiastic and active group that is focused on homelessness prevention, investment in the appropriate areas, access to all housing tenures, joint working and corporate buy-in. We have also developed five successful and innovative regional hubs containing most local authorities, to promote the housing options approach. In August 2011 we held a successful seminar to highlight the work of

the hubs, and they have agreed to certain action plans, which are currently focusing on mitigation activity around the changes to housing benefit.

We aim to deliver 30,000 affordable homes over the next five years, including at least 20,000 for social rent over the life of this Parliament. Over the next three years, we will be making more than £630 million available for housing, which follows around £1.7 billion of investment in affordable housing over the previous three-year period, from 2008 to 2011.

In 2010, regulations were introduced to allow local authorities to use the private rented sector to discharge their homelessness duty.

In the quarter ending 31 March 2011, six local authorities assessed 100 per cent of homeless households as being in priority need, which is essentially the target. Those authorities are Angus Council, Dundee City Council, Orkney Islands Council, Renfrewshire Council, Stirling Council and West Dunbartonshire Council. In another 10 council areas, more than 90 per cent of homeless households were regarded as being in priority need, which again shows progress towards meeting the target.

Interestingly, the repeat homelessness figures have reduced from 9.8 per cent in the period 2002-03 to 5.5 per cent in 2010-11. We look forward to the publication next week—on 14 February—of the new homelessness statistics.

There is strong support among stakeholders for the 2012 commitment and the promotion of the housing options approach, which seeks to identify the possibility of homelessness at the earliest opportunity and to provide different options to those facing homelessness. That approach and the development of the hubs have been taken forward in the context of meeting the 2012 homelessness target. That work is also important in establishing a foundation for responses to homelessness beyond the 2012 target, with a clear focus on prevention and partnership work, which, in our view, will lead to improved outcomes for homeless people.

The Convener: Thank you.

The Scottish Government's written submission states that progress towards the 2012 commitment is being made and that in 2010-11

"88% of those assessed by local authorities were ... in priority need."

However, we all know of the recent changes in the financial and policy environments. Given recent developments, how confident is the Scottish Government that local authorities will be able to meet and sustain the 2012 commitment?

Keith Brown: That is a key question. When I have spoken to stakeholders I have likened the current situation to climbing a hill. As we reach the last, most difficult part of the climb, we are suddenly hit with two other factors, one of which is the economic situation. Obviously, the recession that we have just gone through led to an increase both in demand for housing and in homelessness. The second factor is welfare reform, particularly the housing benefit proposals, which is starting to bite and which makes the situation extremely difficult.

When we set off on this journey in 2003—when I was one of the signatories as a council leader—we probably did not expect the last part to be as difficult as it is. That said, we remain determined to achieve the target. As you said, real progress has been made. We will get a better idea about the progress that has been made most recently when the figures come out next week.

The Convener: Do you think that there might be some slippage, given the financial and policy environment?

Keith Brown: Two authorities in particular have problems just now. East Lothian Council has issues in identifying land for future development, so the supply side is a particular problem for it, and the City of Edinburgh Council has particular pressures, too. They have both said that they have real challenges, but we are determined to work with those authorities to ensure that they can get through the gate, if you like, by the end of the year. Although that is important, we are trying to focus on ensuring that what we achieve in terms of the target is sustainable in future years. We are therefore pushing very hard to ensure that every council gets through the gate this year and meets the target.

The Convener: What is your impression of how meeting the target has impacted on services for homeless persons and the outcomes that are achieved?

Keith Brown: It has to be an improvement, which is obviously the point of the target. The idea is that people will have a right to an offer of permanent accommodation. Much of the trauma around homelessness is to do with the fear and anxiety that it causes, so it is good if the target helps to eliminate or at least reduce such fear and anxiety. Of course, it just seems right that instead of facing the prospect of being shifted around temporary accommodation people have the right to an offer of permanent accommodation. That is important in a civilised society, and it is part of the reason why our approach has drawn such favourable comment from other countries. For example, although I was not there at the time, at Shelter's conference yesterday, somebody from the States apparently spoke highly about what has

been done here on homelessness. The policy has made and is making a difference to people.

The housing options hubs are a relatively recent development. England concentrated on that side of things to quite good effect, whereas in Scotland we had a hard target. Latterly, we have had both approaches. I highlight the prevention work that goes on in the hubs. As soon as someone thinks that there is a prospect that they might be homeless, work is done and different options are presented to them. That means that, in many cases, people no longer present as homeless at all, which is a very good outcome. The rights-based approach involving the target and the prevention approach are now working well together in Scotland, and we have learned some lessons from the work on prevention down south.

The Convener: You are right. In Scotland we often beat ourselves up about not being good enough at what we do, but when Adam Ingram and I took evidence in Glasgow, we heard that people from around Europe and further afield were looking at Scotland as a model of how to do things, so we must be getting some things right.

Margaret McCulloch (Central Scotland) (Lab): Good morning, minister. I will ask a couple of questions, and probably a supplementary too.

The housing supply budget for 2012-13 has reduced by 41 per cent since 2011-12. How will that impact on your ability to meet and sustain your 2012 commitment?

Keith Brown: There is no doubt that there are constraints on capital. We have rehearsed the figures before: there is a £1.3 billion cut to the Scottish Government's budget, which is most pronounced in the area of capital, to the extent that our capital allocation will reduce by a third in the next three years. There is no doubt that that will have an impact.

We have tried to safeguard the areas in which we want to make progress, such as housing and transport, and which add to economic activity, as building houses does to a great extent. As I said to Shelter yesterday, building houses involves employing people who then pay tax rather than claim benefits, so it creates a virtuous circle.

I mentioned the target of 30,000. When I first got this job last year, people said, "You're not going to achieve that." Shelter said that to meet the target we would need around £610 million of expenditure; we have gone well above that amount in very difficult circumstances. It is not just about the money that the Scottish Government puts in, but about what we can do in concert with others: the £111 million that we allocated through the innovation and investment fund will draw in more than £200 million from other sources.

There is no doubt that we live in different times with regard to capital allocation. A major constraint that we face is the absurd situation in which the small council from which I came—Clackmannanshire—can borrow more money than the Scottish Government can.

Under the other part of my portfolio, we are building a new Forth crossing, which is the biggest ever capital project undertaken by this Parliament. We are looking to pay for that at the same time as we build it. However, if we sought to build houses, we would pay for that with a mortgage. Those are the constraints under which we operate, but despite that situation we have made available for housing an amount in excess of the £610 million for which Shelter asked, which shows the level of priority that we attach to the issue.

Margaret McCulloch: The legislation refers to those who are unintentionally homeless. Will there be a clarification for all councils of what that terminology means so that people do not interpret it differently?

Giving the homeless priority—while it is an excellent thing to do—will create tensions with people who are already on the housing list, perhaps because they are in smaller homes but need to move to larger accommodation or vice versa. What will be done to try to accommodate those families and individuals who are already on the list and waiting to move?

Keith Brown: The fact that councils have, by and large, not built properties for the best part of 30 years has meant that local authority housing lists have grown. In the council area in which I was involved, the number of available council houses halved during that period, which creates pressure further down the line.

We have tried to address that by starting a substantial council house-building programme. At least 5,000 of the socially rented houses that I said would be built in the next four or five years will be council houses. Those are just the ones that we are supporting; councils are of course now free to build for themselves.

There was no point in councils building when the right to buy meant that they might build a house for £100,000 and then have to sell it for £50,000 a few weeks later. We have taken away that block to building.

You are right to identify the frustration of people who are trying to access a new house or a transfer not because of homelessness but because they have other needs. We recognise that frustration; the answer has to be new supply. That is one of the ways in which we are seeking to address the issue; another is through grants from the innovation and investment fund, from which housing associations have benefited.

Marion Gibbs might want to comment on the first part of your question. I think that the distinction is fairly well understood, but you are right to talk about the potential for local variation.

10:15

Marion Gibbs (Scottish Government): The concept of unintentional homelessness has been around since the Housing (Homeless Persons) Act 1977, so local authorities have come to understand what it means. We have supplemented the legislation with the code of guidance on homelessness, which gives more information about what unintentional homelessness covers. The tests are in the legislation; the code gives additional guidance. As far as we are aware, local authorities have not asked us for further clarification on unintentionality, but if there was an issue in that regard we would look at it.

Margaret McCulloch: I read an article about how one of the Ayrshire councils is looking at preventative action to reduce the number of people who make themselves homeless. How can such good practice be spread to other councils?

Keith Brown: All councils will have the chance to be involved, through the five regional hubs. I take the point that currently not all councils are involved.

If, for example, someone is starting to get into difficulties with their mortgage, homelessness becomes a possibility, but things can be done to prevent that person from becoming homeless. Not long ago, Moray Council said that it would have difficulty achieving the target, but it has taken a preventative approach and has made huge progress—I think that it is about 95 per cent of the way towards meeting the target.

All councils have the chance to get involved in the prevention hubs, as do other partners, and councils should be aware of the dividends that have accrued from the approach. If a council has an issue with the target, it should consider getting involved, to enable it not just to achieve the target but to alleviate the pressure on other householders, as you said.

Margaret McCulloch: Can more be done to make public sector land available for acquisition by social landlords, for example through a public sector assets protocol?

Keith Brown: Yes. There is always more that can be done. It requires a different way of thinking. During the previous session of the Parliament, John Swinney was keen to ensure that the different arms of the public sector were working together to achieve what is required.

The situation is different in different parts of the country. There is less pressure than there has been, because of the economic conditions. With the notable exception of land in East Lothian, land tends to be more available. The funding that is needed to make use of it is more of an issue.

Public bodies in all their guises should try to work in a more co-ordinated way to free up land for housing.

Margaret McCulloch: In the Scottish social housing charter, is there provision for a probationary period for tenants of new houses, to ensure that they adhere to the rules and regulations and do not become antisocial neighbours who upset other tenants?

Keith Brown: We will come on to the charter later. During the past week we issued a consultation document that asks that very question. Behind the question is the idea that there are responsibilities that go with people's rights to housing, which tenants should observe. We are consulting on the idea of graduated accrual of rights, such that a tenant gets the gold standard of a Scottish secure tenancy after a probationary period, and on the idea that people can lose rights in a graduated way, for example if they engage in antisocial behaviour that infringes other people's rights. Such a loss of rights should not happen lightly, because the right to a house should be secure. However, antisocial behaviour is a blight on people's lives and it is right that we try to address it. The matter, including the idea of probationary tenancies, is out to consultation.

Margaret McCulloch: Is there a facility to take preventative action with antisocial tenants so that they know what their problem is and try to address it?

The Convener: That question belongs more to the next agenda item, on the Scottish social housing charter. Perhaps you can come back to the issue then, but I want to stick to housing supply and homelessness.

Alex Johnstone (North East Scotland) (Con): I will touch on an issue that the minister has mentioned. Can he tell us when a Scottish local authority last sold a brand-new house at a 50 per cent discount?

Keith Brown: I do not have that information, but I can get it and pass it on to you.

Alex Johnstone: I would be interested to hear the answer.

My next question is a straightforward one on an issue that the minister has mentioned a couple of times. Many councils have highlighted the difficulties of developing land for housing in the current market and economic environment. What support can the Scottish Government give local

authorities to help them to kick-start private housing developments?

Keith Brown: As you know from asking questions on the issue in the past, we have the national housing trust initiative, which seeks to draw together the private sector and local authorities to do that. In its first phase, the trust should produce around 600-plus houses, and a second phase is to follow. There has been a focus on the fact that the initiative started slowly, but it is effecting a cultural change, which does not happen quickly. There has been interest in the national housing trust from elsewhere and people are now looking at it positively. That is one way of drawing in the private sector. In that respect, we are tenure neutral—if we can get new housing in the private sector, we are happy to do that.

Over and above that, I return to the consultation to which I referred and to the issue of the extent to which social landlords can, if they want, move into the intermediate rent area. Currently, restrictions are placed on that, so we are considering whether we can make it easier for local authorities, for example, as social landlords to move into that area.

Alex Johnstone: To turn to broader issues, can the Government do anything else to change the environment? To pluck an example out of the air, planning law was set in a rather different economic environment. Are changes required to the planning system to achieve what we want?

Keith Brown: Changes are required, but they are happening. John Swinney has done work to simplify planning processes. A large planning application down south could involve payment of up to £0.25 million in planning fees whereas, under the current structure in Scotland, the maximum that will be paid is about a tenth of that. That takes us back to the convener's earlier point that we often do not acknowledge what we do well. We try to make the planning process as easy as possible and there has been a huge drive towards achieving that, although more can always be done.

To return to the general point about making the process as easy as possible, you will know about the housing infrastructure loan fund, which seeks to help private developers—in fact, any developer, I think. If, for example, a developer is asked to provide a new road or community facility as part of a development, we can provide cheap finance, which would otherwise be difficult to get, to kick-start that development. On your basic question, we can always do more, and we are willing to consider that.

Alex Johnstone: On the existing stock, Capability Scotland has voiced concerns about a shortage of what it describes as accessible

housing stock. How can the Scottish Government address that issue?

Keith Brown: One way of addressing it is through the money that we give to social providers to carry out adaptations. They can make adaptations in any event, but we provide them with money to help them to do so. Such work is valuable because it means that people can sometimes stay in their home when otherwise they would have to go into an institution.

I am struck by the extent to which new housing developments incorporate accessibility requirements as a matter of course. Yesterday, as is in the nature of my job, I visited two new housing developments. One of those developments had 32 houses, six of which were immediately adaptable. Increasingly, houses are built so that, even if they do not have adaptations already, they can be made easily, unlike tenements that were built many years ago. Many builders incorporate in new houses a wet room or shower room that is accessible by wheelchair, or wider corridors and spaces. Adaptations of existing stock can help but, increasingly, social housing developments and, in many cases, private developments, incorporate accessibility requirements from the start.

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): Minister, you said that you hoped that everybody would get through the gate by the end of the year. I was interested that you mentioned East Lothian and Edinburgh, which were the two councils that I visited—obviously, I know quite a lot about the situation in Edinburgh anyway. I am interested in how you will know whether someone has gone through the gate.

One thing that might happen is that people will spend longer in temporary accommodation. Officials in Edinburgh told us that a homeless person in Edinburgh already spends an average of nine months in temporary accommodation. Do you have concerns about that? To be fair, Shelter said that there was not necessarily a correlation between a local authority that assesses a high number of people as being in priority need and a spike in temporary accommodation—it gave quite strong evidence in that regard. However, given that Edinburgh already has people who spend a long time in temporary accommodation, by the end of the year will more people be spending longer in temporary accommodation? If so, what is your view of that?

When is someone through the gate under the legislation? There is supposed to be a right to permanent or settled accommodation, but within what time period is it reasonable to expect that that should happen?

Keith Brown: As I said earlier, a basic requirement seems to us to be that a person knows that they will be made an offer of permanent accommodation. Previously, it was possible to have an offer of temporary accommodation that could go on for a long period.

Temporary accommodation is not always a bad thing. Many people prefer the temporary accommodation that they have to permanent accommodation elsewhere. By and large, however, people want to have permanent accommodation. In Edinburgh and elsewhere, some of the public focus has been on the quality of temporary accommodation, with bed and breakfast accommodation often being deemed to be the worst—that is not an environment in which you would like to bring up children.

Difficulties exist. As I said earlier, getting through the gate is not the end of the story; part of the continuing story is how long it takes someone to be made an offer of permanent accommodation. In the first instance, however, ensuring that people have that offer is important. Your question underlines the fact that there is much more to the legislation than what we have become focused on, which is the target of treating everyone in a particular way.

I met the City of Edinburgh Council recently because, as you know, there are particular issues in the city, some of which concern land acquisition and opportunities for development, although Edinburgh has been innovative in its approach to such issues. At the end of that meeting and subsequently, the council assured me that it is determined to try to achieve the target.

Marion Gibbs can say more about the time that is taken for an offer of permanent accommodation to be made.

Marion Gibbs: The target does not cover the time that someone might need to spend in temporary accommodation. That is not part of the target, as such. The target simply concerns the right to settled accommodation of someone who is unintentionally homeless. However, obviously we are aware of the potential for increases in the time that people spend in temporary accommodation.

Much of the housing options approach is about trying to prevent homelessness in the first place by not putting people into temporary accommodation at that point. However, local authorities, such as Moray Council, which the minister mentioned, are able to use the housing options approach to reduce their use of temporary accommodation by reducing the number of people who have the right to it, which means that it is easier to meet people's needs in a way that means that they do not have to spend as long in temporary accommodation as they might have previously.

Reducing the flow means that the council has a bit more time to spend with people. Moray Council has reduced its bed and breakfast usage to the extent that its bed and breakfast accommodation is used only for emergency periods. It has shelved plans to open a new hostel, because it does not need it anymore following its work on housing options, and it has reduced the number of temporary accommodation units in its area because it does not need as many of them.

We have always been aware that the implications of meeting the target might include more use of temporary accommodation and people spending a longer time in temporary accommodation. However, it seems that some councils are able to reduce the use of temporary accommodation and get the best outcome for the households that they are dealing with.

10:30

Malcolm Chisholm: I understand that. I do not know about Moray, and obviously I am influenced by what I have seen particularly in Edinburgh but also in East Lothian, two councils that the minister has acknowledged face particular difficulties. Nevertheless, how will you know that councils are through the gate? I presume that they will be through it as long as they abolish priority need and that, as far as targets are concerned, you are fairly relaxed about whether the people in question are in temporary accommodation for a long time.

The issue that I wanted to ask about was the use of the private sector, which, again, the City of Edinburgh Council and East Lothian Council highlighted, although I know that other councils use the sector. Do you regard strengthening links with the private sector as an important part of the solution? I know that Edinburgh allocates people to private sector tenancies on a quasi-permanent basis, whereas East Lothian uses the private sector to provide extra temporary accommodation; however, East Lothian has said that it might consider whether the Edinburgh model might help in solving its problems. To what extent do you see the private sector as being part of the way forward? What might be the implications of such an approach? A year or so ago, you introduced regulations that modified the legal entitlement to settled accommodation to ensure that the duty could be discharged through the private sector. Do you have other plans to make it easier to use that sector?

Keith Brown: The opportunity was taken up more by some authorities than by others. Given the pressures that Edinburgh was having to deal with, it was allowed to go down that route to help it achieve the target. My understanding is that the approach has worked extremely well; in fact, through that very initiative, a family member of

mine has taken up private rented accommodation in Edinburgh.

Obviously, the situation will be different for different councils. For example, East Lothian has made more of a push towards acquiring former council houses; indeed, it has set aside a substantial amount—I think that the next tranche will be £14 million—to buy back such properties. Although different authorities will take different approaches, this particular approach has been successful where it has been taken.

Marion Gibbs: As you rightly point out, we introduced regulations to make the private rented sector more available as an option for discharging the duty. In constructing those regulations, we got quite a number of different organisations, including Shelter, around the table to discuss the best way of taking this forward and of protecting people from certain aspects of the private rented sector. The draft regulations were introduced and now the regulations themselves are in place. However, having carried out a review, we have discovered that they have not been used to the extent that we thought they would be and we want to go back and consider the matter.

The only other point to make is that, when we first introduced the regulations, the details of the welfare reform agenda were not as clear as they are now; as a result, the private rented sector presented a more attractive option for discharging the homelessness duty. However, the proposed housing benefit changes, particularly for the under-35s—the group that we thought might benefit more from the sector—have created a number of challenges and risks. We were following the English model, in which the private rented sector offered a major means of helping people threatened with homelessness.

Malcolm Chisholm: Is it right that the duty can be discharged in that way only if the potential tenant gives consent?

Marion Gibbs: Yes.

Malcolm Chisholm: Do the Welfare Reform Bill and its implications raise questions about possible changes to tenancy regimes? You mentioned changes to the private sector regime, but that could be problematic for the supply of private rented housing. On the under-35 group, which will face problems under the new regime, has any consideration been given to shared tenancies in the social rented sector?

Marion Gibbs: This actually provides a good example of how the housing option hubs have been able to assist. We have been able to put some money into the hubs to do different types of housing benefit mitigation work—for example, publicity about the changes or tracking how people are being impacted by the changes and trying to

help them. Perth and Kinross Council is looking at shared accommodation schemes involving flat sharing. A lot of such work is being done and we will pull it all together. The money started to be released in November and December last year, following the minister's announcement in November.

Lots of different models are being used out there to try to mitigate the worst part of the housing benefit changes. Obviously, the under-35s are the critical group. The demographic of homelessness shows that that is the main group of single people who approach authorities for help. So, a lot of scrutiny and mitigation work is being done, which we will share across the hubs. If a hub comes up with lots of good ideas, they will be shared with other hubs, which can pick up on them if they are relevant to their area.

Keith Brown: Other aspects of welfare reform are crucial for the private rented sector as well, particularly the change in relation to direct payments. We will require to consider further how that might impact on the private sector's ability to continue to be involved to the same extent. In that regard, underoccupancy is perhaps not as big an issue for the private rented sector.

Having the housing benefit block of funds at our disposal would mean that we could do much more, for example to direct new supply. That is one reason why we think that that resource should be devolved; it would allow us to take a more co-ordinated approach.

Malcolm Chisholm: People think that by the end of this year the Homelessness etc (Scotland) Act 2003 will be fully implemented, but there are two uncommenced bits of the 2003 act. Does the Government have any views on those, which I think are local connection and intentionality? Are there any plans to commence those?

Marion Gibbs: At the moment, the focus is mainly on the 2012 target itself and removing priority need status. Local authorities currently have the power to consider local connection, but the 2003 act proposes to remove that power completely. Arguably, though, local authorities do not have to consider local connection, given that it is a power but not a duty.

We have not taken the intentionality part of the 2003 act further forward because there are concerns about what it might achieve at the end of the day. It is still on the statute book and is definitely something that the Parliament passed, but the focus has been on the removal of the priority need test and on helping local authorities and others get to that part rather than on other provisions in the 2003 act.

Keith Brown: We have changed certain elements. For example, the idea now is that

people coming out of the armed services should not have to demonstrate a local connection.

Adam Ingram (Carrick, Cumnock and Doon Valley) (SNP): Although local authorities have a legal duty towards homeless persons, they rely on making use of registered social landlord stock, particularly in stock transfer areas through, say, the section 5 referrals process. Obviously, that places pressure on RSLs to meet demand—for example, if the bulk of new lets went to homeless people, that would affect the ability of RSLs to meet other housing needs. How can the Scottish Government help to manage the pressure on RSLs in allocating their housing to different groups of people in housing need?

Keith Brown: As I hinted earlier, there are competing pressures and if one of those pressures is prioritised, as we have prioritised tackling homelessness, there is the idea that other pressures can be exacerbated. Back in 2003, the choice was made that homelessness was a priority that was worth highlighting and focusing on. However, that does not mean that there are not other pressures and frustration for people, for example who want to downsize or increase the size of their house within an RSL's housing stock or move to a different area.

The only answer to that is to increase the supply of suitable accommodation. I mentioned the Government's investment programme, but many RSLs are exploring alternative ways of accessing finance—perhaps not publicly at this stage, because they are still working on it. In order to meet demand, some very dynamic RSLs are considering ways in which they can attract institutional finance to help them to increase their development programme. They are increasingly doing so in ways that will—with the Scottish Government's encouragement—create new builds that are very energy efficient.

Affordability is usually expressed in terms of how high the rent is, but a house with very low rent and very high energy costs is not very affordable. If RSLs can drive down energy costs virtually to zero, they can increase the rent and the housing will still be affordable. That element is important, because it can attract institutional finance from investors who view the rate of return as being more attractive than it previously was.

The crucial point is to increase the supply of accommodation so that the additional demands—aside from the homelessness demands—can be met.

Adam Ingram: As you pointed out in a previous answer, the Scottish Government is under severe pressure with regard to its ability to support or increase housing supply. You mentioned innovative solutions to that. What are they?

Keith Brown: I just mentioned one of the solutions, which involves RSLs. Traditionally, they have built because they received a certain level of grant from the Government, but that grant is not sustainable for the reasons that have been mentioned. Therefore, they are having to look at other ways of doing things, which has the potential to be hugely important for new supply.

I mentioned the council house-building programme. The 5,000 new houses alone will not meet the additional demand, but they are a huge step towards doing so, and we are seeking to increase that number. We are encouraging councils—whether or not they get the grant from us of around £30,000 per unit—to build more houses anyway.

We recognise that some councils, such as Renfrewshire and Dundee, are so close to the ceiling of their borrowing capacity that they cannot do that, so we will try to provide support for them, based on their needs, through other methods such as the innovation and investment fund.

In response to Alex Johnstone's question, I mentioned the idea of trying to make it easier for private developers to build. We are genuinely tenure neutral, and we recognise that whoever is building the houses is employing people and creating a supply of stock. We can ask local authorities to help in that regard. East Lothian Council, for example, has done some tremendous things to try to make it easier for developers to build houses, some of which will be affordable housing.

Innovations such as the national housing trust, the mortgage-to-rent scheme that we introduced and the shared-equity initiatives are all designed to try to increase the supply of housing, which is the only way in which we will meet the pressures that you mentioned.

Jamie Hepburn (Cumbernauld and Kilsyth) (SNP): I will focus on the housing options hubs and the prevention of homelessness, which has been mentioned quite a bit already. Some of the issues that I wanted to touch on have been covered, but I have a few questions nonetheless.

You spoke very highly of the housing options hub approach, minister, so I presume that you believe that it has a future. Can you tell us what sort of future it has? Is the membership base of the hubs likely to be broadened? What type of support will the Scottish Government provide for the hubs in future?

10:45

Keith Brown: Initially we provided the start-up funding of £0.5 million. The people involved are, by and large, stakeholders in the sector already,

so we are not directly employing people to set up the hubs. Those people come from RSLs, councils and various third sector organisations that are involved in dealing with homelessness. The idea is to make the hub a first point of contact for people who may be facing homelessness. They can be given a range of options, some of which might involve debt counselling. For example, the citizens advice bureaux can provide them with information, which may mean that they do not lose their current house and therefore do not present as homeless.

As has been said, we have provided additional money to try to mitigate the worst effects of the housing benefit reforms, as we see them, and we have provided start-up funding, but the hubs have really been an attempt to bring different groups together. That has happened on a voluntary basis; we have not compelled people to come together. You ask about how the hubs will develop going forward. To an extent that will be based on what people feel that they get from them.

I mentioned the seminar that I spoke at. It is often hard to convey at a committee meeting such as this, but there was huge enthusiasm. It was as if many people, having worked in the sector for a number of years, felt liberated to be doing this kind of work with other people who are involved in the sector. It seems quite an obvious point now, but it is fair to say that England got to grips with the matter before we did. We have learned the lesson. We were much more focused on rights in the 2003 legislation.

The hubs definitely have a future, but their future depends first and foremost on those that are involved in the sector seeing the value in them. So far they seem to see that value.

Jamie Hepburn: So the hubs will sustain themselves, take on a life of their own and develop.

Keith Brown: Questions arise. For example, at Shelter's conference yesterday, somebody from a citizens advice bureau in the west of Scotland queried why they could not be involved. They felt that, by and large, their involvement was to stand up in—to be specific—Hamilton sheriff court and, when someone was about to be evicted, say why they should not be. That is the wrong end of the process to be involved in; they need to be involved much earlier. I did not get much chance to discuss the issue further with them, but they felt that there was a block on their being involved.

We will continue to take a role in ensuring that people who should be involved are involved. So far, we have done that by talking to people and encouraging their involvement and that seems to be working well. However, in the end it will depend on whether the people involved in the hubs see value in them. Every indication is that they

currently do. None of that precludes further Government support if we deem that to be appropriate.

Jamie Hepburn: You are obviously very positive about the hubs.

I will play devil's advocate and come back to the gate analogy that you and Malcolm Chisholm bandied about. Is there a danger that housing options hubs could become, as it were, a gatekeeper? Someone could present to them as unintentionally homeless and all that the hubs might do is to discourage the person from being registered as such. How do you ensure that such people do not just come back again a little further down the line? Is the system working? Are people going away because it is judged that they are not unintentionally homeless after all?

Keith Brown: I return to the point that repeat homelessness is substantially falling, but the figures that we have for that predate the hubs coming into being, so we will have to keep an eye on the issue. If the trend were to reverse and there was an increase in repeat homelessness, that would be an issue for us. We have to have a look at how the hubs are working. The evidence does not seem to indicate that what you suggest has been happening.

The approach that is being taken is about housing options, so people are presented with options; it is not about trying to circumvent any desire that they have to get housed. They can still go straight to the council and say, "I am homeless—I need to be housed." The hubs are there in addition to that option. I do not know whether Marion Gibbs wants to say more about their work.

Marion Gibbs: The gatekeeping argument has always been the one that has come alongside the housing options one. We have learned from the experience in England of housing options, which is why the model is more about partnership working with local authorities than about individual local authorities doing stuff, so that they can learn from each other about how best to do it.

The important point is that we still have the critical safety net of the homelessness legislation, and this is not about eroding that in any way. If an individual household presented to the hub, they would have an opportunity to look through the housing options. If those were not available for them, the homelessness legislation would be the safety net that would pick them up and give them rights. It is about trying to get the best solution for the household, which may or may not involve use of the homelessness legislation, depending on the circumstances and options available in the area and on their needs.

Keith Brown: I can give you a little more reassurance on that point. We have asked an independent organisation to undertake an evaluation of the housing hubs. The organisation concerned is Ipsos MORI, which generally produces very good information, so I look forward to seeing its findings at the end of March. That will give us an evaluation from an outside organisation of how well the hubs are doing and will cover the issue that has been raised.

Jamie Hepburn: I hope that we will be able to see that information as well, as the committee has an interest in it.

One other aspect of the prevention of homelessness that has been touched on a few times is the repossession of people's houses—you touched on it with Margaret McCulloch. In the first quarter of last year—from January to March 2011—local authorities received from creditors 4,495 notifications of households that were at risk of homelessness as a result of eviction proceedings. That was an 81 per cent increase on the same period in the previous year, which probably reflects the times that we are in as much as anything else. What can the Government do with the limited powers that it has to influence the repossession policies of lenders?

Keith Brown: I hope that underlying that question is an acknowledgement of the Government's frustration at having to deal with the consequences of things the causes of which it cannot deal with.

We have done work on preventing repossessions—I think that Nicola Sturgeon undertook it. I acknowledge the figures that you mentioned, but we have not had anything like the numbers of repossessions that were predicted at the start of the recession back in 2008-09. The lenders are helping with that to an extent, but it is up to us to try to address the matter.

To marry this and your previous question, the housing options hubs have the chance to go in and bring other expertise to bear, such as debt counselling. I have mentioned that service a couple of times, although it is not the only thing that the hubs do.

Have I answered your question, Jamie? Were you trying to draw out a particular aspect of the matter?

Jamie Hepburn: What interactions do you have with lenders and what influence can you bring to bear on their repossession policy?

Keith Brown: We have dialogue with the Council of Mortgage Lenders—in fact, I was at a dinner last week at which the CML was present—although it focuses much more on access to finance to buy houses in the first place.

On retail lending, if the banks do not start to listen to what many people have been asking of them over a number of years, they will simply be bypassed. I mentioned the work that some of the housing associations are doing on accessing wholesale finance to try to produce new supply.

It was suggested that it costs as much to provide one 95 per cent mortgage as it does to provide seven 75 per cent mortgages. In response, I made the point that people are looking for 95 per cent mortgages, provided that they are sustainable.

We have a dialogue with the CML, but I do not pretend that we are in the driving seat. The United Kingdom Government obviously has much more ability to influence lenders than we do. That said, there has been a real benefit from the work that was done in the previous session of Parliament, such that there have been far fewer repossessions than were predicted.

Marion, do you want to say anything about other dialogue that we have with the lenders?

Marion Gibbs: The Home Owner and Debtor Protection (Scotland) Act 2010 ensures that lenders have to go through particular processes before they can seek repossession, so it gives a degree of certainty that they are going through the right procedures. Part of that process is to negotiate and try to ensure that people are able to remain in their homes. We already touched on mortgage-to-rent schemes for people who are threatened with homelessness. They come through that act as well.

The notices that Jamie Hepburn mentioned—section 11 notices—are just indicators that lenders might take repossession action; they are not necessarily always an indication that repossession is happening. There is a slight mismatch in the figures, partly because of the way that the notices come through. There is always a bit of a lag, so we will need to look at the homelessness statistics that will come out next week to see some of the impact and find out whether people have come through the homelessness route or found other solutions to their housing issues.

Adam Ingram: I have a question on joint working. I visited the Ayrshire and south housing options hub and found that people were highly enthusiastic. They felt that that initiative and the homelessness target agenda had brought people together not only across local authorities in the area but within local authorities. The minister mentioned the welfare reform agenda, which brings its own pressures. Can the Government do more to encourage services to work together and to bring about a culture change in our approach to the housing, social work, social care and health agendas?

Keith Brown: Yes, we can always do more. We want to sustain the enthusiasm that exists for that approach, which was evident in the seminar that I mentioned. To be honest, I do not always get a buzz at COSLA meetings, but there was a real buzz in the room at that seminar. There were some people who even worked in the same authority—and, I presume, towards the same ends—but who had not had that conversation previously. Increasingly, local authorities, RSLs, debt counselling organisations and others are working together. Our role must be to encourage that further, which might mean further Government financial support if that is necessary.

Given that dynamic, I do not envisage that people will want to walk away from that work. The issues that they face will exist well beyond the achievement of the target. The momentum is such that the work will continue of its own accord, and the Government wants to encourage that. As I said, yesterday, I had drawn to my attention an instance of somebody who should be inside the tent but who is still outside. We want to help people to make the connections where we can.

More generally, Adam Ingram's point is about work across the sectors. More can always be done on that. For example, 13 years ago, the council of which I was a member set up a housing, health and social work committee to try to draw together those cross-cutting activities. Nowadays, there is more recognition of the way in which housing impacts on health, and vice versa. We have established the change fund, which will mean that people will think about those issues. For example, as I said in response to a previous question, if houses are adapted so that people can stay at home, rather than having to go into an institution, that provides benefits for everybody. The approach that we have taken so far has been about encouragement but, if further Government support is needed, we will consider that.

Adam Ingram: The hub that I visited was strong on addressing the needs of children and young people to prevent homelessness. It also provided mediation to deal with family issues, which are the root cause of many of the problems. That is a move towards a prevention and early intervention agenda, which the Government is trying to progress more generally. What relationship do you have with other ministers who are pushing forward that agenda? Are you taking particular initiatives on that front?

Keith Brown: Yes. To return to the point that I made about the change fund, there are meetings between ministers on that, because we have a joint interest in it. Generally, as Adam Ingram will know, a number of meetings are held at which ministers from different portfolios come together to achieve things jointly. That is best done by having

a direction or purpose that is about trying to achieve certain outcomes, and then considering how people can contribute to that.

To return to Adam Ingram's point about what is happening on the ground, social landlords—not all of them, but the best ones—have been doing mediation for some time. For example, some have child and adolescent mental health teams that deal with antisocial behaviour. Although, as I mentioned in response to Margaret McCulloch, it is important that we stress that people have responsibilities as well as rights when they are given a tenancy, the work that can be done before that must happen, whether it involves social work services, the police or other agencies. It is clear that that will not work with certain individuals, for whom we must have a different way of dealing with the issues, but it should happen as a matter of course. We can always do more to ensure that it happens in every instance.

Gordon MacDonald (Edinburgh Pentlands) (SNP): I want to ask about the Welfare Reform Bill. The committee has heard evidence about the potential negative impact of the United Kingdom Government's welfare reform agenda on homelessness policy in Scotland. The Scottish Council for Single Homeless said:

“no account seems to have been taken of the homelessness legislation in Scotland, whereby local authorities in Scotland have a legal duty to provide temporary accommodation, which is not the case in England, Wales and Northern Ireland.”—[*Official Report, Infrastructure and Capital Investment Committee*, 14 December 2011; c 555.]

Given the impact that the bill would have on the 2012 target, did the Scottish Government get the opportunity to make any representations prior to its being introduced?

11:00

Keith Brown: Yes, we made a number of representations. I am not sure how many times I wrote, but I know that Alex Neil, in his previous role as well as in his current role, and Nicola Sturgeon have written to their relevant counterparts. However, it is not obvious that that has had much of an impact. Indeed, when I went to meet the UK housing minister last year, he asked me what the issues were, despite the fact that I had written to him about them more than once. That suggested that he was not fully cognisant of what the issues in Scotland might be. I told him that we understand the point that the UK Government is making about its pressures in the south-east of England in particular, with the housing market there being as it is, but explained why things are different here, not least in some of the ways that have been mentioned. However, that has not had the required impact on the UK

Government so far, although it seems to have had an impact in the House of Lords.

We have made our representations in an extremely reasonable and measured way, and we have tried to point out some of the difficulties. Direct payments are a potential problem, as is underoccupancy. That will become less of an issue when we get back to the right levels of supply, but telling somebody that their housing benefit will be cut because they have an extra room although they cannot easily go to smaller accommodation does not seem to be smart to us. It is quite possible that the housing benefit changes will end up costing the state more because of their effect. We have made those points clear, and we are continuing to do so.

Gordon MacDonald: As part of the homelessness inquiry, Malcolm Chisholm and I visited the City of Edinburgh Council, which raised the concerns that you have raised to do with under-35s and housing benefit being paid to tenants. An issue relating to underoccupancy was highlighted. Traditionally, that council has not built one-bedroom flats; rather, it has built two-bedroom flats to give more flexibility. Some 4,500 tenants in Edinburgh are underoccupying properties although, obviously, not all of them will be on housing benefit. Given the changes that are coming along, can the Scottish Government do anything to mitigate the housing benefit changes?

Keith Brown: Two things occur to me straight away. First, we have given extra money to the housing hubs specifically for mitigation activity, to prepare in the best way for what is about to come and to protect people from some of its consequences. We can directly support that, and we are doing so.

Secondly, you rightly mentioned the accommodation that people currently have. The underlying assumption is that people are living in accommodation that is too generously proportioned. Councils and other social providers can start to address that anomaly through their allocation process. That is not easy to do, but let us consider, for example, a person who has lived in a three or four-bedroom council house for 30-odd years and whose kids have moved on. In the past, many councils have said, "Right. If you want to get a new property, you qualify for a one-bedroom house." People would have the right to stay in the existing house, but they might want to have a two-bedroom house, because somebody frequently comes to stay with them. The issue is making the system more flexible so that the person is offered a two-bedroom house and the three or four-bedroom house is thereby freed up. Therefore, there are things that social landlords can do to try to address anomalies, and we are encouraging them to do them. We are looking at

how we can take that process further in the consultation that I mentioned.

However, we cannot get past the current levels of housing stock. Over time, all the new build will replace around 10 per cent of the current stock, but the current stock will still make up a high proportion of housing. It is important to make the best use of it, but I think that the underoccupancy provisions in the Welfare Reform Bill were really to address an issue that does not exist across the whole of England but is concentrated in the south-east. They do not fit with what we are trying to do in Scotland, and we have made the point that the approach is wrong. I think that things are particularly difficult for councils such as the City of Edinburgh Council.

The Convener: When we were taking evidence out and about, we heard that many people who present as homeless do so as a result of family relationship breakdowns. Young people are leaving home as a result of such breakdowns. Also, people leave prison without having a positive destination. What more can be done, which is not already being done, to address the root causes of homelessness?

Keith Brown: More can always be done and improvements can always be made in every area of public policy—we have to start with that mindset.

There is sometimes rather sensationalist reporting about people who come out of prison and are housed under the homelessness legislation, while other people are waiting for housing, as members said. However, we should consider the social and economic consequences of homelessness among ex-prisoners. Repeat homelessness presentations are much higher in that group than they are in the general population. Whatever the interests of the prisoner, it must be in the interests of society to have people come out of prison and into sustainable tenancies.

A lot of work has been done on that. The housing options approach helps. There is also the supported accommodation implementation group, which is coming up with proposals in relation to people who are at particular risk of homelessness. Prisoners and young people are both in that category—I hate to categorise the two groups together. We are working hard with justice colleagues to ensure that offenders have access to appropriate advice and support, to help to ensure their reintegration into the community.

I can give an example, although it is not to do with prisoners or even young people in particular. The Bethany Christian Trust in Edinburgh provides housing, often for people who have drug addictions and so on. Not only is the trust good at finding houses for people in such a situation, in

areas that will suit them, it provides support to ensure that the tenancy is sustainable. There is an acknowledgement that, for a person who has a chaotic lifestyle, a tenancy is a huge responsibility to take on, so the person might need support to sustain the tenancy. The benefit is that the person might not revert to their previous way of life, losing the tenancy and perhaps leaving the house empty and in a bad condition for a long time.

There are real social benefits from providing such a level of support—for prisoners and young people, too, to different extents. We want to give young people such support, partly through education. Through the Scottish Council for Single Homeless, which is based in Edinburgh, we fund work with young people on the responsibility of taking on a tenancy, to support them in that move.

That perhaps does not answer your question about family breakdown. As Adam Ingram said, we need to encourage mediation to address the problem.

Marion Gibbs: Young people are a focus of the Scottish Government and COSLA 2012 steering group, because a high percentage of the overall statistics relates to young people. In about 67 per cent of cases, family breakdown was a reason for the homelessness. Colleagues in the group—such as North Ayrshire Council, as Mr Ingram knows from his experience of the hub—have done a lot of work on the issue.

It is about acknowledging that, although a young person has come to the local authority to present as homeless, there is potential to work with them to enable them to go back to the family home, perhaps with periods of respite. Of course, we must be very aware of safety considerations in that regard. Such an approach can lead to a far more planned move out of the family home, which does not disrupt important social networks. There are interesting ways of addressing homelessness among young people—there are definitely things that can be done. North Ayrshire Council has had great success in setting up mediation and other activities in that regard.

On prisoners, we are working closely with colleagues in the supported accommodation implementation group, as the minister said. We are also trying to ascertain how we can prevent homelessness, through the reducing reoffending project. We want to ensure that, if someone has accommodation but is sent to prison, they do not lose their accommodation—that happens—and that, when someone comes out of prison, they will not immediately have to make a homelessness application, by identifying appropriate accommodation options for people on release. A lot of work is going on to try to address the issue.

The Convener: If there are no further questions, I thank the witnesses for their evidence. The committee will consider all the evidence that it has heard and we will produce our findings during the next few weeks.

11:10

Meeting suspended.

11:14

On resuming—

Scottish Social Housing Charter

The Convener: Agenda item 3 is consideration of the Scottish social housing charter. At its previous meeting, the committee heard from a range of organisations about their views on and suggestions for developing the Scottish Government's draft Scottish social housing charter. The committee will now hear evidence on the draft charter from the Minister for Housing and Transport.

I welcome back to the meeting Keith Brown, who is accompanied by William Fleming, branch head, and Anne Cook, tenant participation development manager, from the Scottish Government's social housing and strategy unit. I invite the minister to make an opening statement.

Keith Brown: Thank you, convener.

We believe that Scotland's first social housing charter will be an important departure for social housing policy in Scotland. It will set the standards and outcomes that all social landlords, local authorities and housing associations and co-operatives should be aiming to achieve for their tenants and other customers. In effect, it will tell tenants and other customers what they can expect from their landlords, and it will tell landlords where they should focus their efforts.

The charter will state in clear and plain language—language that will be worked on before it is finalised—what tenants and other customers can expect from their landlords, and it will empower them to hold landlords to account for the services that they deliver. It will also enable the landlords to explain what they are achieving for their customers. Just as important, it will provide the basis for the new Scottish Housing Regulator to assess and report on how well landlords are performing and to identify where they are doing well and where they need to improve.

In consultation with tenants, social landlords, the regulator and other stakeholders, we have tried very hard to identify a set of standards and outcomes that will encourage landlords to deliver the high-quality services that tenants and other customers want. The standards and outcomes in the version of the charter that the committee is considering today do no more than describe what a good landlord should be achieving for their tenants and other customers, and it is clear that many social landlords are already achieving some or all of them and are doing an excellent job of managing their housing stock and helping to build strong communities across Scotland. We want the

charter to challenge all landlords to match the performance of the very best.

As the note accompanying this version of the charter explains, the process of development has been quite lengthy, including a public consultation on a draft that contained 71 outcomes. To reflect the consultation responses that we received, we reduced that total to the 16 outcomes in this shorter and more focused version, and I am very pleased that the witnesses who gave evidence to the committee a couple of weeks ago seemed broadly to support this version and the changes that we have made. Since then, the Convention of Scottish Local Authorities, too, has said that it is content with the charter.

I am keen to hear members' views and to answer their questions, and I am certainly interested to hear any suggestions that the committee might have. In the light of our exchanges, the Government will make final revisions to the charter that the committee feels are important. We will then invite the Scottish Parliament to give its approval and ensure that Scotland's first social housing charter can come into effect on 1 April.

Adam Ingram: Will you summarise your opening remarks by saying what you consider to be the Scottish social housing charter's key priorities?

Keith Brown: It is quite hard to prioritise the 16 different outcomes but, if we start from the basis of what tenants want, I think that the important issues are that they want to have a say, they want to be consulted on changes to communities and housing, and they want to be treated fairly. For example, when they are offered a house, they want it to be clean and ready to occupy.

I suppose that it is all about empowering tenants, although through the housing regulator's reports the Government, too, will be empowered to say whether the taxpayer money that is being spent is having the right effect.

I expect that resources will increasingly be directed at those who meet the obligations and responsibilities that will be imposed by the charter. As I have said, it is quite hard to prioritise the outcomes, but I think that the right not only to have the right kind of accommodation but to influence the process in the community is very important.

Alex Johnstone: What is the process for finalising the charter and laying it before Parliament?

Keith Brown: As I have described, we have further revisions to make. That is a genuine process. For example, I met the Scottish Housing Regulator yesterday and we may still receive further representations, including any comments

that the committee might make. Following that, the charter will be presented to Parliament. William Fleming can say more about the exact process.

William Fleming (Scottish Government): We aim to have the charter back in Parliament, after taking account of any comments that the committee makes, by the middle of February. It will be laid formally at that point and will go to the Subordinate Legislation Committee for its comments before coming back to you for final comments and your recommendation to Parliament on whether to support it or not. Then there will be a vote, as the charter can come into effect only once it has been voted on by Parliament.

Alex Johnstone: I understand that you will be interested in what the committee says and that you have spoken to the regulator, but to what extent can stakeholders become involved in the process? Will you be recanvassing stakeholders' views, or has that part of the process come to an end?

Keith Brown: We have been through that process. We have not just said to people, "Give us your views and we'll make amendments." There has been a continuing dialogue. For example, I met the Tenants Information Service last week and have listened to what it had to say. We are now at the stage at which we will incorporate the views of this committee and the Subordinate Legislation Committee. I should point out that we also want to change the language to make it more accessible.

Alex Johnstone: Have you already decided that there will significant changes before it is presented to Parliament?

Keith Brown: Do you mean changes to what you have before you now?

Alex Johnstone: Yes.

Keith Brown: No. If this committee makes suggestions, we will look to make changes based on them, but we do not anticipate further changes.

Malcolm Chisholm: We can look at what is and is not there. Focusing on the latter, we have heard suggestions about additional aspects that should be referenced. Outcome 12 is obviously relevant to what we have been discussing for the past hour or so. It struck me and others as being a bit thin on homelessness. Should there be some reference to homelessness prevention and the key issue of a homeless person's right to settled accommodation? It seems a bit odd that those are not mentioned in outcome 12.

Keith Brown: The fairly open initial consultation produced 71 potential outcomes, as I said. Everyone agreed that that would be far too many, so we reduced the number.

I would not say that the points that you have made would not be meaningful to people, but the regulator, in particular, has been strongly of the view that the outcomes should mean something to individuals in terms of the housing that they have.

Malcolm Chisholm makes fair points. If there is a way in which the outcomes should be expanded, I am happy to consider that. As you say, outcome 12 mentions homelessness. It describes what local authorities should be doing by meeting their statutory duties. That is maybe not spelled out in the way that you would like, but the intention is there. We have not tried to quote legislative requirements, because we wanted to make it more accessible. However, we will look at ways of incorporating the point that you make.

Malcolm Chisholm: Two other areas that were highlighted in evidence were disabled people's rights to independent living and environmental standards and transparency. Do you have any comments on those issues?

Keith Brown: The Disability Discrimination Act 1995 obviously has an impact in this area but, again, rather than set out all the legislative requirements on providers, we have tried to lay the issues out in the way that they might be approached by someone with a disability, so that they can see the obligations that exist under equality of treatment. We have tried to make the charter accessible. That does not mean that we are not concerned about the issues that Malcolm Chisholm raises.

There has been quite a bit of dialogue about the level of financial transparency, and we have tried to take a pragmatic approach to that so that groups of tenants can agree levels of transparency with their landlords; for example, they can set the level above which transactions can be made available. Although the reaction from providers was that they thought that that could be an onerous burden on them, we believe that that information is held by the providers, by and large. We are trying to promote transparency on the basis that the money that social housing providers expend is often—but not exclusively—public money that has been provided by the Government, their money from reserves or rental money. The idea behind it is that people have a right to see how that money is being spent. Going back to the first point, on transparency, it is about empowering people.

Malcolm Chisholm: In relation to outcome 12 but also more directly in relation to outcome 10, on access to social housing, at the consultation stage various groups argued that there should be a clear statement on the underlying principle of social housing. For example Shelter said that given the scarcity of stock, the allocation of social housing should be underpinned by the principle that those

who are excluded from other parts of the housing market should have the opportunity to access good-quality social rented housing. Do you agree that it is an omission that the charter does not clearly state the underpinning principle for social housing?

Keith Brown: Once again, we could have laid out principles at some length in the charter, but we have tried to avoid that approach. Our approach to outcome 10 was to try to express it as someone in that situation would want to see it expressed:

“people looking for housing find it easy to apply for the widest choice of social housing available and get the information they need on how the landlord allocates homes and their prospects of being housed.”

We could word it differently and include principles or even the legislative or structural obligations of providers, but wording it as we have makes it easier for people in that situation to know whether they can challenge it. We would start to lose people if we were to list acts or regulatory obligations. If someone is finding it difficult to find and apply for a wide choice of social housing, or to get the information that they need, they will know that they can challenge that situation. We have tried hard to make the charter accessible in the broadest sense for people in that situation. I think that it strikes the right balance.

Gordon MacDonald: In previous evidence, comments were made on the wording of the value-for-money outcome. It was suggested that the wording should change, because making landlords guarantee year on year that they will continue to improve value for money could make them hostages to fortune. Will you explain what the value-for-money outcome is intended to achieve? Do you agree with some witnesses that it may lead to unrealistic expectations among tenants?

Keith Brown: This might seem to many of us to be stating the obvious, but it is meant to bring about a situation in which providers continually improve not just their processes and value for money but their standards in relation to being providers of social housing. We were challenged on that—people said that that could be unfair and continuous improvement could be quite a big burden. We disagree. We think that we should oblige providers to improve continually.

There is a mix. There are some excellent housing associations that are dynamic, that challenge themselves and that seek to improve continually all parts of their function. One such housing association is Dunedin Canmore in Gordon MacDonald’s area. Many private organisations would envy the quick, friendly and accessible service at its call centre for repairs, but such a service only comes about if a housing association challenges itself or is challenged by others constantly to improve that service.

We do not think that it is wrong to require all providers to meet the basic test that they will seek to improve continually all aspects of their service and, in the process, to provide value for money.

Margaret McCulloch: Does the Scottish Government agree that the charter should do more to recognise that social landlords work in partnership with other bodies and contribute to a range of public policy aims, for example in community regeneration?

Keith Brown: That could certainly be argued. The 71 outcomes that initially came back to us are much more wordy and all-encompassing. We had to discipline ourselves hard to make them more manageable. There is a danger that a lengthy charter would be less relevant to people, which is why we boiled it down to a smaller number of outcomes and made as our starting point individual tenants and how they would access it.

There is nothing wrong with the idea that—as you said—people should be aware that social landlords work with others in many cases, but we are trying to focus on outcomes. People just say, “I don’t get this service here”—I do not think that they are particularly concerned about who might be involved in providing that service or what partnerships may have been formed. They just want to know whether they can challenge whoever is providing the service if they do not get it. I do not think that it is necessary to supply the background information.

11:30

Malcolm Chisholm: The important issue is whether the broad charter outcomes are translated into actual improvements for tenants. The role of the regulator will be pretty important in that regard. Are you confident that the regulator will be able to develop meaningful performance measures? Will you ensure that the regulatory framework is underpinned by relevant statutory obligations?

Keith Brown: Yes. We believe that it currently is, although that can be improved. I mentioned in our previous discussion the consultation exercise that we are undertaking, which will address aspects concerning regulation. One of the main mechanisms for driving forward improvement will be the regulator, which can apply a standard and see whether providers are reaching it.

Tenant organisations can play a big role and can use the charter very effectively, but I think that we would all acknowledge that they are not as prevalent in some areas of the country as they are in other areas. It is therefore important that individual tenants who are accessing housing can look at the charter and say, “I’m not getting that and I should be”. The charter will empower both individual tenants and tenant organisations.

You are right to say that the regulator, with the correct regulatory underpinning, is important. I do not think that any housing provider will treat lightly an assessment by the regulator.

Malcolm Chisholm: Will there be any statutory changes as a result, or are you saying that the regulator already has enough power to enforce the charter?

Keith Brown: The regulator's view is that it has the power, but the situation is dynamic. As I mentioned, we have a consultation out just now that focuses on areas including antisocial behaviour and the allocations policy. The legislative situation will continue to evolve—that is bound to happen—but we will do that in consultation with the regulator.

The Convener: The committee has heard that, in some areas, levels of tenant participation are really low. Do you agree that many social landlords need to improve their tenant participation? It is not just about particular houses, but about the environment that people live in and community participation. What support will the Scottish Government offer in that regard?

Keith Brown: We already provide important support to tenant organisations on grant funding and other issues. We had a very productive meeting with the Tenants Information Service last week. As the committee might be aware, one issue that came out of that meeting concerned the way in which the service felt that its representations in relation to the charter had been treated. Some of those representations were deemed by ODS Consulting—the company that looked at the responses—to be of a campaigning nature, and so were almost put to one side.

I have spoken to the regulator about that, and the message will be filtered through to ODS, too. If tenants are willing to make known their views, it is really important that we treat them seriously and respect them. It is a bit like the situation with planning applications, in which people sometimes add their names to a huge petition. Nevertheless, given the difficulties in ensuring that every tenant is involved, we must respect the representations that they make.

We have agreed with the Tenants Information Service that we will look at further suggestions on building capacity. For many years there have been hotspots of tenant activity around the country. We are trying to make the situation much more uniform, and we will work with the Tenants Information Service to do so; that will include direct financial support.

The Convener: I felt when we were taking evidence that the tenants were very vociferous, but they made excellent points. I got the feeling—rightly or wrongly—that many social landlords are

approaching tenants in completely the wrong way. They view tenants not as assets and allies, but as an irritant. Among many social landlords, there seems to be a need for culture change, and for a recognition that we are all in this together and that everyone could help each other.

Keith Brown: You are right to the extent that providers of housing must see their tenants—I realise that this a cliché—as being core to what they do. I believe that the charter will be a powerful weapon to ensure that they do that and that they have due regard for what tenants want. Of itself, it will not be sufficient to ensure that that happens—we will still have to do other things—but it will be extremely powerful, even at the level of individual tenants. As I said to the regulator and the Tenants Information Service, I think that the charter will empower individual tenants, regardless of whether they have a tenants group to represent their interests. They will be able to look at the charter and say, “I’m not getting that, because I was not given fair treatment,” or “When I was given my house, it was filthy.” That empowerment will start to drive a process of cultural change, where it is required among social providers.

The Convener: How should tenants be involved in the regulator's development of performance measures?

Keith Brown: In the charter, we have indicated mechanisms by which that can be done. The regulator will have discussions with tenants organisations, so tenants will be central to that process. William Fleming might want to say more about the extent to which tenants will be involved in driving the assessment of performance.

William Fleming: Under the Housing (Scotland) Act 2010, which provides the statutory underpinning for the regulator to assess and report on performance against the charter, the regulator is under a duty to consult tenants. There are particular requirements on the regulator to involve tenants in the development process, so tenants will have to be involved as the regulator comes up with performance measures.

The Convener: Margaret McCulloch might have a question about tenants' involvement.

Margaret McCulloch: You might have partly answered this. How will all tenants be made aware of the charter so that they know what their rights are? How will the information filter out to them?

Keith Brown: That will happen through the process that they have been involved in so far and through the continuing process, which William Fleming can say more about.

William Fleming: The Government will make quite a splash with the charter, once Parliament approves it—as we hope it will. We will hold quite

a big launch, and we will use various mechanisms, including the Tenant Participation Advisory Service and the Tenants Information Service, to ensure that it is publicised.

One of the key outcomes in the charter is outcome 2, which is on communication. As part of that, landlords have a duty to communicate with their tenants, not least about the charter.

Keith Brown: It is unlikely that any provider that did not have such dialogue could meet the terms of the charter. If a provider was not taking tenants' views into account, it is almost inevitable that it would fall down on the charter.

Jamie Hepburn: Once the charter is in place, how will the Government monitor whether its provisions are effective or whether some revision is required?

Keith Brown: The possibility of revision is built into the legislation. I think that the next standard revision will take place after five years. The Government will monitor the charter's effectiveness mainly through the reports and activities of the regulator, whose whole focus will be on ensuring that the charter is observed and that its outcomes and standards are met. The regulator will have reports on individual housing associations and so on. That will be the main process by which we will follow through on the charter.

Jamie Hepburn: So, essentially, if the regulator notices something on a regular basis that you think is a systemic issue, you can look at the charter and see whether it needs to be changed.

Keith Brown: Yes. The regulator will examine systemic issues and patterns of behaviour rather than individual cases. Individual cases to do with housing providers will continue to go to the Scottish Public Services Ombudsman. The regulator will look for patterns, as will we. It is also true to say that we will want to take decisions on future allocation of resources on the basis of what we get back from the regulator on the extent to which individual providers are meeting the terms of the charter.

Margaret McCulloch: I would like to ask the question that I tried to ask earlier, when I was told to wait until we got on to the charter. Can you give us more information about the extended probationary period for new tenants?

Keith Brown: That is not part of the charter. Last week—it might actually have been this week, on Monday—we launched a consultation.

The idea behind that is to see whether all new tenants who are being offered a house are given a probationary tenancy in the first instance. That impacts on the Scottish secure tenancy, which is the gold standard. However, it seems to me—and

not only to me; we have had many representations on this—that the idea of people earning rights, and then losing rights if they do not adhere to their obligations, is a good one. We are told that housing associations alone get 24,000 complaints a year about antisocial behaviour. Of course, that number relates only to the people who complain. Many councils will not go to court nowadays because they do not believe that they can get the outcome that they want, given the cost, time delays and anxiety caused to those involved. They do not take it as a serious proposition. The probationary period is a device whereby we can potentially ensure that people understand that they have obligations when they are given a council house or a housing association house. That is my thinking at the moment, but the matter is out for consultation and we will see what comes back.

The Convener: There are no further questions. The committee will consider at a later stage all the evidence that we have heard and will write to you on any outstanding issues. I thank the witnesses for their evidence.

11:41

Meeting suspended.

11:42

On resuming—

Subordinate Legislation

Private Rented Housing (Scotland) Act 2011 (Commencement No 2 and Transitional Provision) Order 2012 (SSI 2012/2)

The Convener: Agenda item 4 is consideration of a commencement order that is not subject to parliamentary procedure. I refer members to the cover note and invite them to take note of the order. Is it noted?

Members *indicated agreement.*

Procurement (European Union Legislative Proposals)

11:42

The Convener: Agenda item 5 is consideration of European Union legislative proposals. Under the terms of the Scottish Parliament's European strategy, the committee will consider any EU directive or proposal that has raised subsidiarity concerns. In simple terms, this is about the appropriate level at which decisions should be made—at a local, national or EU level. The committee has received two EU legislative proposals regarding procurement about which the UK and Scottish Governments have raised subsidiarity concerns. I refer members to paper 5. I welcome Judith Morrison and Eileen Threlfall, from the Parliament's legal team; and Ian Duncan, clerk to the European and External Relations Committee, who are here to respond to questions from members. I now invite Jamie Hepburn, who is the committee's European reporter, to make a few opening remarks and explain what all this is about.

Jamie Hepburn: That is quite a challenge, convener; I shall do my level best.

I begin by thanking the clerks for their assistance in preparing the papers that we have in front of us, because this is not an entirely straightforward issue. The convener asked me to make a few remarks, but I am afraid that they will probably be more lengthy in nature than we might have hoped, because this is the first time that we have dealt with this process and so there is a bit of background to give. In a previous guise, I served on the European and External Relations Committee when we discussed the Scottish Parliament's system for dealing with subsidiarity issues. We were told at that stage that it would be rare for subsidiarity issues to be brought to this Parliament, but I think that this is the third occasion—although the first in this committee—so we will need to see whether it is an initial glut or a regular feature of parliamentary life.

11:45

There is a lot of material for colleagues to look through, but I direct your attention to what I think are the key issues. First, as a bit of background, I should point out that the UK and Scottish Governments generally agree with the policy direction of the directives, but they have flagged up subsidiarity concerns about the establishment of a single UK oversight body that, as well as having a number of administrative duties, would be responsible for determining on disputes regarding compliance with procurement regulations. We are invited to consider whether

there has been a breach of subsidiarity protocols. In essence, do we agree with the views of the Scottish and UK Governments that the proposal to establish this oversight body with its mix of judicial and non-judicial functions raises subsidiarity concerns?

The Scottish and UK Governments are concerned that establishing a national oversight body to determine on disputes with regard to compliance with procurement regulations would represent an unwarranted intrusion on member states' functions. For a start, because the body would require to have judicial and non-judicial functions, it would pre-empt the jurisdiction of the courts. They also make the point that, in their opinion, previous directives, in particular directive 89/665/EEC—members will need to get used to these snappy titles—have adequately set out remedies for breaches of procurement rules and have given member states the flexibility to determine the best way of implementing them within their jurisdictions. I should also point out that, according to the Scottish and UK Governments, this particular proposal was not in the initial plans set out in the European Commission's green paper.

However, the Commission justifies the need for action at an EU level on the grounds that member states do not consistently monitor the implementation and function of public procurement rules and that that compromises the efficient and uniform application of EU law. Although several member states have established a national central body to deal with public procurement issues, the tasks entrusted to such bodies have in the Commission's view varied considerably. Nevertheless, I refer back to the earlier point that it is not clear why the proposal did not emerge early on with the publication of the green paper. Those are the opinions of the Scottish and UK Governments and the European Commission; of course, our own legal advisers can assist us in our deliberations.

In forming a view as to whether we agree with the UK and Scottish Governments that the proposal for a national oversight body raises a subsidiarity concern, we should consider whether we are satisfied that the objective of the proposal can be achieved or achieved to a sufficient extent only by action at EU level and would be better achieved and provide greater benefit than individual action by member states. If we agree that that is the case, there are no subsidiarity concerns as far as the committee is concerned. However, if we agree with the UK and Scottish Governments that the EU proposals raise subsidiarity concerns, we can, as suggested in paper ICI/S4/12/3/5, write to the House of Lords sub-committee conveying those concerns in time for its consideration of the proposal; write to the

Scottish Government notifying it of the outcomes of the committee's consideration and requesting updates in relation to the directives; and write to Scotland's MEPs to bring to their attention any subsidiarity concerns. On the other hand, if we are of the view that the proposals do not raise subsidiarity concerns, no further action will be required.

The options are limitless, convener. Those are just my suggestions.

The Convener: Thank you. I invite committee members to consider the proposal and whether they agree with the subsidiarity concerns raised by the UK and Scottish Governments.

Malcolm Chisholm: I note that the Scottish Government's opinion refers to directive 89/665/EEC. If the legal advisers are allowed to speak, perhaps they can tell us how that relates to the 2007 remedies directive. Given that very similar things are being said, I think that it is legitimate to conclude that there are subsidiarity issues. On my reading, member states have, in accordance with both directives, already been granted the right to determine their oversight of these issues as they think fit. In that respect—and if my reading of the situation is correct—there certainly seems to be a contradiction between the new directive and both previous directives. As we have been invited to home in on subsidiarity issues, that seems to be the main piece of evidence that we can invoke. However, there would be no problem with also pointing out that we think that the proposals to combine judicial and administrative functions raise more substantive policy problems. Of course, there is also a devolution issue, because any body proposed in the directive would be a UK body whereas procurement is devolved. I do not know whether, procedurally, such action would be appropriate, but I would prefer to highlight the whole gamut of objections, while highlighting the subsidiarity issue that we have been asked to concentrate on.

The Convener: I realise that we are concentrating on our own ideas and those of the UK and Scottish Governments, but do we know what other member states think about this legislation? I guess that Ian Duncan is the best person to answer that.

Ian Duncan (Scottish Parliament): At the moment, we are aware only of what the constituent parts of the UK think. Each has particular concerns. Broadly speaking, procurement is a troubling area because of the way in which the material is gathered, audited and assessed and there have been a number of examples of failure in different member states that have implemented the previous directives but have not followed up implementation with monitoring or anything that has allowed the EU to

be certain that the directives have been brought in adequately. I do not think that this directive is aimed primarily at failings in the UK; instead, it is aimed at failings in other member states. Although those states have concerns about establishing a new body or entity, no one has expressed anything serious. Instead, there is a recognition that something has to be done. Only the UK recognises that the issue needs to be looked at in a more devolved way than might be the case in other member states.

The Convener: Jamie Hepburn has set out a range of options, including writing to the House of Lords sub-committee to convey our concerns; writing to the Scottish Government to note the outcome of our consideration; and bringing the matter to the attention of our MEPs. On the other hand, we could simply say that the proposals raise no subsidiarity issues and agree to take no further action.

Jamie Hepburn: In preparing for this item, I have probably examined the issue in a bit more detail than other members have and, in my view, there is probably enough of a concern for us to flag it up. That said, I have to wonder aloud whether the process is far too convoluted and the timescale too short for us to properly consider the matter; indeed, I recall the same point being made when I was a member of the European and External Relations Committee. Although it is useful to hear from Ian Duncan and our legal advisers, it would have been very useful to have had a witness from the Scottish Government explain its position or to have taken evidence from others. No matter what we do, we have to reflect the fact that, ultimately, the process is determined by the EU, which restricts the amount of time available for consideration. We should certainly feed back concerns about that—and, hopefully, someone somewhere will hear us.

The Convener: That is a separate issue that we should take up with the European and External Relations Committee.

Alex Johnstone: At the outset of all this, Jamie Hepburn asked whether we would be inclined to agree with the Government. I did not dive in and say yes at that point, but it is more or less what I think. Perhaps if he had asked whether we were inclined to disagree with the Government, I would have been happier to say no in these circumstances.

The Convener: A bit of semantics there, Alex.

Alex Johnstone: I think that we should back the Government's current position while, to a certain extent, retaining an open mind.

The Convener: Do members agree to write to the House of Lords sub-committee to convey our concerns in time for its consideration of the

proposal? We do not have a long time, so members will have to agree to delegate to me responsibility for writing the letter.

Members indicated agreement.

The Convener: Do members also agree to write to the Scottish Government and MEPs with our concerns?

Members indicated agreement.

The Convener: We now move into private session.

11:55

Meeting continued in private until 12:07.

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