



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

INFRASTRUCTURE AND CAPITAL INVESTMENT COMMITTEE

Wednesday 3 October 2012

Session 4

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INFRASTRUCTURE AND CAPITAL INVESTMENT COMMITTEE
16th Meeting 2012, Session 4

CONVENER

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

DEPUTY CONVENER

Adam Ingram (Carrick, Cumnock and Doon Valley) (SNP)

COMMITTEE MEMBERS

*Malcolm Chisholm (Edinburgh Northern and Leith) (Lab)

Jim Eadie (Edinburgh Southern) (SNP)

*Alex Johnstone (North East Scotland) (Con)

*Gordon MacDonald (Edinburgh Pentlands) (SNP)

*Margaret McCulloch (Central Scotland) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

David Crookall (SSE)

Bob Doris (Glasgow) (SNP) (Committee Substitute)

Kennedy Foster (Council of Mortgage Lenders)

Stephen Freeland (Scottish Environmental Services Association)

Graham Harper (Scottish Federation of Housing Associations)

Jim Hayton (Association of Local Authority Chief Housing Officers)

Philip Hogg (Homes for Scotland)

Andy Limbrick (Energy UK)

CLERK TO THE COMMITTEE

Steve Farrell

LOCATION

Committee Room 5

Scottish Parliament

Infrastructure and Capital Investment Committee

Wednesday 3 October 2012

[The Convener opened the meeting at 10:00]

Draft Budget Scrutiny 2013-14

The Convener (Maureen Watt): Good morning. I welcome everyone to the 16th meeting in 2012 of the Infrastructure and Capital Investment Committee. I remind everyone to turn off their mobile phones and BlackBerrys as they affect the broadcasting system.

We have received apologies from Jim Eadie and Adam Ingram, and Bob Doris is attending as a substitute.

We begin with our second evidence session on the Scottish Government's draft budget for 2013-14, in which we will focus on the allocation of spending for affordable housing.

I welcome the witnesses: Philip Hogg, chief executive of Homes for Scotland; Kennedy Foster, Scotland policy consultant with the Council of Mortgage Lenders; Jim Hayton, policy manager with the Association of Local Authority Chief Housing Officers; and Graham Harper, policy manager with the Scottish Federation of Housing Associations.

I thank you all for submitting your written evidence, and ask Margaret McCulloch to start the questioning.

Margaret McCulloch (Central Scotland) (Lab): Good morning, everybody. I have two questions.

The Government's five-year plan to develop 30,000 additional affordable homes, which includes a target of 6,000 homes per year, resulted in 6,800 completions in year 1. Why did the performance exceed the target, and what are your views about whether the target for the rest of the planning period can be met?

Are there any offers?

Graham Harper (Scottish Federation of Housing Associations): I would like to answer that.

In year 1, to which Margaret McCulloch referred, there were a number of residual completions from the accelerated spending that the Government brought forward in 2009-10 to take advantage of lower land, construction and property prices. A lot of that spending has come through in completions

in the past financial year, and a lot of projects that had not quite started were able to begin. That was a one-off, and it is unlikely to be repeated.

Jim Hayton (Association of Local Authority Chief Housing Officers): I agree with some aspects of what Graham Harper said. It is essentially a function of the programming that those houses were able to be started in that year, which would account for the performance being slightly above the target.

On Margaret McCulloch's question whether we are likely to meet the targets for the remaining period, we are not complacent about that—as I stated in ALACHO's written evidence—and there are no guarantees. However, we are reasonably optimistic that we should be able to do so, assuming that we do what we must do, pay attention to the programme year on year and ensure that we make adjustments as we go along so that the targets are met and even exceeded if possible.

Kennedy Foster (Council of Mortgage Lenders): A lot of the stuff that was coming through was probably at higher grant levels. We now have a grant level that is nearer to £40,000, and it will be interesting to see what that brings forth.

Philip Hogg (Homes for Scotland): I have nothing interesting to add to that.

Margaret McCulloch: Secondly, if there is a shortfall, what should or can be done to alleviate any deficit in affordable new supply?

Graham Harper: To pick up on what Jim Hayton said, the amount of funding that the Government has in place just now, which is approximately £760 million, would in my view be sufficient to meet—or more than meet—the target, assuming that housing associations and local councils can continue to develop at the lower grant levels.

The jury is out on that just now. The feedback from our members is that we cannot do that indefinitely but we can do it in the short term. The length of that short term is up for discussion.

Jim Hayton: I assume that Margaret McCulloch means a shortfall in completion rather than in resources, because we probably agree that the resources as they stand are sufficient to meet the targets. It is more about ensuring that we have a sufficient programme of houses to start with so that we meet the targets.

If it looked as though there were going to be a shortfall, we would have to pick it up as early as possible. As a representative of local authority housing officers, who now have the big say in programme management that we had previously asked for, I think that we will need to communicate

the message speedily and in a timely fashion to local authorities to ensure that other schemes are pulled forward to compensate as far as we possibly can for any problems with delayed site starts. I take the point that there might well be issues with the ability of RSLs or housing associations to fund schemes, but we just need to keep a very close eye on that and ensure that we do whatever we can to deliver on the targets.

Kennedy Foster: It will be a challenge to leverage in private finance to assist with the programme; after all, as far as the banking sector is concerned, the marketplace has changed considerably since 2007-08. We will need to look at more innovative ways of financing social housing. Quite a lot of work is being carried out on that at the moment.

Philip Hogg: If we look at the trajectory of all public and social affordable housing output, we will see that, unfortunately, we are still on a downward path. That is a concern for us all. If we want to increase housing output, we will need innovative financial approaches. The national housing trust is one example, but it is not the only solution. In order to increase affordable and private housing output we will have to find similar models that have a mix of public and private finance.

The Convener: Can you explain your comment that the provision of social rented housing is on a downward path?

Philip Hogg: The 2011 figure for housing completions is the lowest overall since 1947 and the membership of Homes for Scotland, which comprises private home builders and a good proportion of RSLs and housing associations with new-build development capabilities, has indicated that output in 2012 is unlikely to be higher than it was in 2011. The recession is still biting hard and the fact that overall private and affordable housing output remains at very low levels is putting pressure on the whole system. That is why I am suggesting that we are still on a downward trajectory; it might be a minor downward trend, but we are still pretty much running at the bottom.

The Convener: So you have taken private housing into account in those figures.

Philip Hogg: Yes.

The Convener: The £40 million increase in the budget will go some way towards making up for the previous year's cut and, as has been said, will help to meet the target. However, I wonder whether Mr Foster can tell us more about the alternative measures that he would ask the Government to consider in order to exceed the target.

Kennedy Foster: I was not really calling on the Government to come forward with alternative

measures. I was saying that if we wanted to leverage in private finance to assist the programme we might well have to consider more innovative approaches. I know that the Scottish Government has a team in Victoria Quay that is examining the issue and I am sure that Graham Harper will tell you about some of the things in which RSLs are involved. For example, I am on the board of an RSL that is considering a financing mechanism that is basically an arrangement between a developer and an institutional investor; effectively, the RSL would lease the stock over a period of time and might buy it after 30 years for a peppercorn sum. Such means of financing are being considered, and the national housing trust model that Philip Hogg referred to has recently been extended into the RSL sector. I also note that down south housing associations are using the bond and capital markets to leverage in finance. The challenge for housing associations in Scotland is that they are not as big as those south of the border.

The Convener: Might Government have a role in that, for example as a guarantor?

Kennedy Foster: There is a potential to use guarantees; indeed, the United Kingdom Government has announced that it will give guarantees to the social housing sector.

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): I want to carry on with the theme of financial capacity and the alternative financial products have already been referred to. I know that Graham Harper has dealt with this issue, but the target for new affordable supply is premised on independent research estimates of the long-term financial capacity of social landlords to deliver more affordable supply. Two years on from Professor Bramley's review, what is your view of the sector's financial capacity to deliver more affordable housing, and to what level can it deliver such housing?

Graham Harper: First of all, I point out that there were some issues with the accuracy of the figures in Professor Bramley's research. More important, however, is the fact that we live in a very different world from that in, say, 2010. Bramley's research banked on the willingness of RSLs to use all their resources to provide new affordable housing, but there are many other calls on those reserves. They are needed to cover things like major repairs. There is also a new environmental and energy efficiency standard on the horizon to help to address fuel poverty and carbon emissions, and we also have to fund adaptations ourselves. The reserves are needed for things other than simply building new houses.

Moreover, in 2010, benefit reform was in its infancy and was not particularly well understood in the report. Land and build costs are artificially low

and there is a real risk that they will increase; indeed, the building regulations that will come into force in 2013 will significantly increase build costs.

However, Kennedy Foster has already touched on the major issue: the private finance climate. Banks simply do not seem to have the resources or willingness to lend that they once did.

Malcolm Chisholm: Are you saying that the new subsidy regime is dependent on the use of reserves?

Graham Harper: Broadly speaking, yes. Housing associations would have to use their own reserves to top up the current £20,000 to £25,000 funding gap.

Malcolm Chisholm: So what will happen if housing association reserves are run down?

Graham Harper: That is exactly the point. We will stop developing. That is one of the major factors that mean that we can develop at this level only in the short term. Housing associations could use surpluses to borrow extra funds but, like reserves, that money can be spent only once—and once it is gone, it is gone. I am worried that by continuing the policy of developing housing with a £40,000 per unit subsidy we will irreparably damage the housing association sector.

Malcolm Chisholm: So financial capacity is an important constraint.

Graham Harper: Absolutely.

Malcolm Chisholm: Can any of the other witnesses suggest how we might get round this? Would the situation be helped by mixing social rented housing and market rent housing, as is happening more and more, or through some of the other means of accessing money, such as bonds, that Kennedy Foster highlighted?

Graham Harper: It depends on how it is funded—

Malcolm Chisholm: I wonder whether another witness can respond.

Jim Hayton: The situation is slightly different for councils, because we were a bit more sanguine about the conclusions in the Bramley report. I must point out a typographical error in my submission, in which I suggest that, according to Bramley, councils could build 2,000 houses a year. I think that, after taking account of a whole load of assumptions, he reckoned we could build 2,500.

About this time last year, I tried to validate that figure, and the conclusions from my more cheap-and-cheerful survey suggested that, broadly speaking, councils thought that they had some capacity and that if the Government continued to provide the £40,000 per unit subsidy they could

deliver more than the 1,000 units a year that they are expected to deliver. We might even get into the vicinity of 2,000 to 2,500, housing units but—and the buts are in our written evidence—we have to take account of the potential shocks to the system from welfare reform in the reduction of revenues, which could clearly inhibit councils' ability to borrow more and therefore to fund more.

10:15

We also cannot even remotely afford to ignore the potential problems that RSLs might face, given that RSLs and councils will together be delivering the social housing programme. Councils use a different form of lending, in that we simply have to calculate whether we can afford to repay a particular loan, which we get from the Public Works Loan Board rather than making a specific case to private lenders. I think that there is still a reasonable degree of optimism that councils have a bit of capacity to improve and increase their output a little, as long as we keep a close eye on the possible constraints and challenges that may arise as we go forward.

Malcolm Chisholm: Are you saying that, in the long run, it may be easier for councils to build houses than for housing associations?

Jim Hayton: I think that, in the long run, that is the case if nothing else changes. If the subsidy regime stays the same, it is likely to be easier for councils to increase their output. It is not necessarily the case—it is not even likely—that we will be able to replace the output of RSLs, but there is probably scope for a bit more from councils if the limited research that we have done to date is accurate.

Malcolm Chisholm: So how does that work? You get a lower subsidy, but you can borrow more cheaply. Do they not cancel each other out? Do you not have the same problem with rents going up if you have to repay loans?

Jim Hayton: Councils tend to have a bit more latitude because they generally have much larger housing stocks, so they are able to pool costs across a lot more houses in the revenue account. Typically, if an RSL is building 50 houses, it would need to fund those 50 houses from the revenue stream—the rents—that will come from those houses alone, whereas for a local authority such as my old council in South Lanarkshire with 25,000 to 30,000 houses building another 100 or 200 houses tends to be more marginal and does not have such a big impact on rents and so forth. I think that councils would generally find it a bit easier to generate the income and to build than RSLs would.

Malcolm Chisholm: Could the other two witnesses comment on whether there are

alternative or modified models of affordable housing supply that the Government should investigate?

Kennedy Foster: As Graham Harper said, you can raid reserves only once. Going forward, there may be some hope that there could be some cross-subsidisation from the homes that are being built for mid-market rent. Because of demand in the private rented sector, we are also seeing quite a strong move south of the border for housing associations to become involved in the private rented sector, although I do not think that there is much evidence of that so far up here. At one stage, housing associations down south used to build a lot of housing for either shared equity or shared ownership, and some of that provided cross-subsidisation into the social housing sector. The UK Government is also looking at real estate investment trusts for social housing. Those have certain tax advantages but they have not really got off the ground. Indeed, one of the challenges is getting some of these new models up and running.

Philip Hogg: To reinforce Kennedy Foster's point, I think that there is an understanding that the budgets are the budgets and that we need to be creative in how we use them. There are some innovative financial solutions that are still at the very early stages of discussion and exploration, and I think that the time to drive those forward will probably come sooner than we all appreciate. As an industry trade body, we find that there is no shortage of ideas being proposed to us and we are looking to explore them. Indeed, one area that will be a focus of our activity will be to drive forward in exploring new financial models and new financial delivery models that go across all ranges of tenure. In the growing private rented sector, people who traditionally would have considered purchasing their own home are finding it difficult to do that for a variety of obvious reasons—deposits being the main one—and are being pushed back into the social rented sector, whereas they would not traditionally have considered that form of tenure.

We should see that growing middle area as an opportunity to relieve the pressure on social rented stock. The industry might traditionally have been somewhat polarised, but it needs to work collaboratively to ensure that we have that mix of tenure. That will involve exploring the new financial solutions that will deliver that, and Government guarantees potentially have a key role to play. The Westminster Government recently announced its desire to offer Government guarantees for projects. The Scottish Government has to pick up that baton and consider how those solutions can be used to unlock reserves and release cash into the system.

Malcolm Chisholm: I have two questions on mid-market rent, which has been mentioned. Would it be helpful if there were Government guarantees for homes for mid-market rent? Somebody mentioned cross-subsidy. To what extent can mid-market rent cross-subsidise? Is that an option in many places in Scotland or just in a few places such as Edinburgh, where we certainly need homes for mid-market rent?

Graham Harper: Mid-market rent has the effect of lowering average subsidies for mixed development. The average subsidy is a bit lower for mid-market rent development than for social housing development. In the current economic climate, I am not sure that it is possible to generate capital in the way that housing associations might once have been able to do by building for sale. We need to look at everything, and we need partnership working. We work with Homes for Scotland's members.

One note of caution is that those innovative models tend to involve only mid-market rent, but there is an affordability issue with that for some people, particularly if housing benefit is involved. There is a real risk that we could start to push up the housing benefit bill, which we would not want.

Jim Hayton: Most local authorities would concur that, although mid-market rent is a useful tool in the toolbox, for the reasons that Graham Harper has just outlined, it will not work everywhere and perhaps only in a minority of cases. However, when it can make a contribution to the overall output of social housing, it is certainly worth exploring.

The Convener: Gordon MacDonald has questions on land supply.

Gordon MacDonald (Edinburgh Pentlands) (SNP): The Homes for Scotland written submission highlights the fact that

"Scottish Planning Policy requires planning authorities to ensure the availability ... of a minimum 5-year supply of effective housing land"

and points out that

"only 3 or 4 ... authorities have a 5-year ... land supply."

Given that in rural areas the majority of the land is owned by less than 1 per cent of the population and that in urban areas we have supermarket land banking, is land supply a constraint on the delivery of the Scottish affordable supply target?

Philip Hogg: Sadly, it is not easy to answer that with a yes or no. The land market goes through cycles of desirability, based on risk and demand. Graham Harper might be able to speak more clearly about this, but we are probably at the point in the cycle where, for housing associations, land acquisition is as affordable as it has ever been because there is less competition. Certainly,

private developers are not actively pursuing land in volume and are instead looking to purchase land only where there is confidence that it is good land and that there is demand for it, in that it is where people want to live. That has taken some of the pressure off the land market.

At present, I do not hear feedback from our members that land is the big constraint, although that is not to say that progressing through the planning system is not still a burden and a task. We certainly need to ensure that, when land is available, it is progressed through the planning system as efficiently and effectively as possible. However, I am not hearing that availability is the major constraint.

Graham Harper: I echo Philip Hogg's comments on the planning system. Like him, I am not aware of any real constraint that land supply is placing on housing development of any tenure. However, in a couple of local authority areas that have high property prices and high private rents, land supply could be a bit of a problem. In the Highlands, particularly in rural areas, land tends to come with high infrastructure costs but, again, there is no real national issue with that.

Philip Hogg: If I may, I will add one point. I mentioned the land market cycle. If things start to improve—as we all hope will happen—there will be a time lag between when land is required and when it is actually available. We have to ensure that we plan for that upturn and that the land market and planning system do not act as a constraint on delivery when the market is ready for delivery. That is an important point. It is not an issue at present but, when land is needed, we need to ensure that local authorities have sufficient land available in the right places and that development can progress.

Jim Hayton: We would tend to agree that we must be ready for the upturn when it comes. However, at present, land supply is not a significant constraint on the programme. The issues are much more to do with the macroeconomic situation and the problems that people are having getting deposits for mortgages, particularly at the bottom end of the market.

Gordon MacDonald: Given that, as you seem to agree, there is no constraint on land supply, should there be a restriction on developers trying to build on green belt sites, particularly where there are brownfield sites nearby that have previously had housing on them and which have lain empty for many years?

Philip Hogg: We have to understand that private developers will speculate on building homes only if they have confidence that there is a market in which to sell them or that people have the desire and capability to purchase the homes

once they are built. At present, a developer would not take a risk with any land that is seen as risky, peripheral or not prime. Land might seem to be available, but the issue is not necessarily whether it is available, but whether it is attractive and desirable—those are the key points to bear in mind. Developers need confidence that the homes will be sold and will not just sit there as stock.

Jim Hayton: That is mainly a question about planning policy but, in so far as it relates to housing policy, most local authority chief housing officers would probably agree with the premise that we should look first at brownfield sites. Most local authorities and RSLs are still keen on regeneration and on ensuring that parts of our communities that have become a bit run down and which are clearly in need of regeneration get a degree of priority. Not many local authorities would disagree with that.

Graham Harper: It is, however, difficult to generalise. In places such as Glasgow, where there is an awful lot of brownfield land, it would be difficult to make an argument for building on the green belt, such as it is. In Edinburgh, the situation might be slightly different. We need to ensure that we build the right homes in the right locations. Typically, those locations are near local services and part of the community. That suggests that building on the green belt for social housing is probably unlikely, but it depends on the location.

The Convener: Gordon MacDonald talked about supermarkets banking land, which developers do, too. Is some of the land that developers have banked, which they might previously have wanted to use to build luxury four and five-bedroom houses for private sale, being released for social rented housing?

Philip Hogg: The arguments that I made previously apply to that point. At present, the biggest constraint for developers is cash and working capital—the common denominator that affects us all. Developers cannot afford, nor do they want, to have land sitting on their balance sheets. They want to develop it, build homes and make some profits. However, the argument again applies that developers will not develop unless they are confident that they can sell and that there is a market for the homes. When they develop homes, more often than not there is a section 75 requirement for a proportion of affordable social housing to accompany the private development, so the benefits flow through.

10:30

Graham Harper: The land supply situation is such that RSLs have a great deal of choice, which they would not have had four or five years ago, pre credit crunch. In the situation that the

convener describes, it is probably unlikely that we would be able to meet the seller's expectations. Obviously, private developers pay a fair bit more for land than we would.

On the point about section 75 agreements, we are hearing that, in isolated pockets, developers are unable to progress with private sites, which is therefore stalling section 75 contributions. Section 75 sites will be more and more important if subsidy rates remain as low as they are. It is important that we hold on to that.

Philip Hogg: That is an important point. We have evidence of a number of sites that are stalled or are not progressing because the land was purchased or the deal was concluded when market conditions were a lot different, so the section 75 agreements that were entered into are unrealistic or undeliverable. The net result is that nothing is happening. If there was an opportunity to renegotiate or review some of the section 75 requirements, the net result would be that we would have more homes across all tenures. We perhaps need to explore that to try to get some development happening and to release homes across the board.

The Convener: Why would there be more homes of all tenures if we took away section 75? I do not quite get that.

Philip Hogg: I did not say that we should take it away; I said that we should review the way in which section 75 agreements have been arranged and consider issues such as the proportions. At present, if a site is stalled, it is no good to anyone. If the deal were reviewed and the development could progress, there could be output across the board.

The Convener: Do the other witnesses agree with that?

Jim Hayton: Section 75 agreements are an attempt to capture some of the value that is inherent in land and to ensure that at least a portion of that is used for social housing. There is widespread agreement on that, including from Philip Hogg's organisation. In my view, local authorities would not be dogmatic about that if private developers wanted to talk about proposals. Everyone accepts that we are stuck in a bad situation in the current economic climate. I would hope that most of my colleagues in local authorities would at least be up for discussion on that, even if that meant having to accept a bit less than they had originally envisaged or planned for. Of course, they would want to know what the parameters and outputs would be, but I think that ALACHO would welcome such discussions. I would be surprised if that kind of dialogue was not happening in many authorities, and I certainly hope that it is.

Graham Harper: I echo Jim Hayton's points. Generally, the SFHA wants more homes to be built across all tenures, particularly if a section 75 contribution goes along with developments. Like local authorities, housing associations are well up for those discussions, and I am sure that they are happening already.

The Convener: Graham Harper mentioned the costs of building. At present, not much is happening in the private sector, but builders want to keep their firms going. Are costs generally still on a downward trend or are they static or moving slightly upward? Where are we with that?

Graham Harper: It is fair to say that costs are probably bumping along the bottom. This is anecdotal, but contractors appear to be swallowing the rising costs of materials. We are certainly at the bottom of the curve. I reiterate that, once things start to pick up, which we hope will happen soon, the costs will start to rise. The building regulation changes in 2013 and 2016 will have a dramatic effect on that, too.

Alex Johnstone (North East Scotland) (Con): A couple of the witnesses have already touched on the housing benefit changes. I want to go into the issue in slightly more detail and invite you to consider how the changes in the ways in which housing benefit is calculated and paid might impact on the affordable housing supply targets.

Jim Hayton: I will provide a local authority perspective. All the local authorities are considering those very issues and are coming up with what might be termed mitigation strategies to pre-empt some of the changes and ensure that we understand the implications of those changes for local authority council housing revenues and, more important, their impact on the lives of the people concerned.

The key link between the potential impact of the reforms and new supply is that, if council revenues are damaged and they reduce significantly from what we forecast, we will not be able to service the increased borrowing that we naturally have to take out to build new homes. I guess that that is the straightforward answer to the question: the biggest impact will be on revenues.

Many people expect that changes such as direct payments to tenants may result in less income being collected by councils and RSLs and higher levels of rent arrears. There are other changes that have less to do with revenues and more to do with housing allocation policies. As far as the links between the welfare reforms and the housing supply are concerned, there is a definite threat of a reduction in revenues, which would mean that that money would not be available to service loans that might otherwise have been used to build new houses.

Graham Harper: The SFHA recently commissioned some research on the impact of benefit reform. Although it is very difficult to predict this with any degree of certainty, the middle ground in the assumptions is that we could face a 5 per cent hit from increased costs and reduced turnover. The cost of the extra effort that will have to go into collecting rent is almost as much as the cost of the projected loss through direct payments.

The lenders will also have a view on the issue. Benefit reform will contribute to higher margins and higher risks for lenders. I am sure that Kennedy can fill us in further on that.

Kennedy Foster: We have been watching closely the issues around the welfare reform agenda and have joined the likes of the SFHA and its sister organisation the National Housing Federation in expressing some concerns, particularly about direct payments to tenants. It is extremely difficult to say what the impact on RSLs will be, but when a direct payment pilot was done in the private rented sector a number of years ago it resulted in arrears to landlords increasing. Pilot projects are going on and we hope that lessons will be learned from them.

The issue for lenders will be that, if the reforms cause RSL levels of arrears to increase, that will probably have an impact on not just borrowing for new development, but RSLs' existing borrowing arrangements. Lenders have some £3 billion invested in the RSL sector in Scotland. The reforms could impact on the likes of financial covenants and—Graham Harper is absolutely right—they could increase the risk profile of the RSL sector, which has always had a good risk profile as far as lenders are concerned.

It is very much a case of waiting and seeing what the impact is. We hope that some lessons will be learned from the pilots that are being conducted—here in Scotland Dunedin Canmore is participating in that.

Alex Johnstone: We have already heard that some of your organisations—local authorities, in particular—are developing a strategy to deal with the problems. Is there anything that you feel could be done at Scottish Government level that might assist you with that? Are there things that we could do that would lessen the impact that you fear?

Graham Harper: Absolutely. The people and communities fund, which is the new replacement for wider role funding, has funded schemes such as a tenancy sustainment programme in which housing associations and local authorities can engage with tenants who are experiencing difficulties. The fund can ultimately prevent evictions, and there are huge savings to the public purse, not to mention the benefits for the tenants

themselves. We find it ironic that, given the current welfare reform, the people and communities fund is not taking applications for tenancy sustainment funds. That is one thing that the Scottish Government could do that would greatly assist in preparing for benefit reform.

Alex Johnstone: Are there any other ideas?

Jim Hayton: I guess that there is limited capacity because significant powers are reserved to Westminster. ALACHO and the SFHA work closely with the Scottish Government because, in many ways, our interests in trying to mitigate the impacts are absolutely the same.

We are about to undertake a review of local authorities' state of readiness for welfare reform. In emerging from that, I think that we will look to speak closely with the Government about where the latitude is and where there may be powers to do the kinds of things that Graham Harper has just talked about, having regard to the point that I made at the start: it is clear that there are some constraints because of the powers that are reserved to Westminster.

Kennedy Foster: There is nothing from me.

Alex Johnstone: If you come up with anything, you will let us know. Thanks very much.

The Convener: I would like further information. Are not evictions, for example, going down anyway? Are not housing associations and councils doing tenancy sustainment fund work anyway because of the vast costs of evictions? Is it not more important to help people to sort out their lives generally and avoid eviction?

Graham Harper: Absolutely. Two years ago, registered social landlord evictions went down by 38 per cent, and there has been a further 19 per cent drop this year. You are absolutely right that evictions are going down. We see eviction as very much a last resort and almost a failure of the system.

A relatively small amount of money is involved in tenancy sustainment schemes, for example. Housing associations and local authorities are doing what they can, and there are very good partnerships to protect tenancies and make savings. For every pound that is invested in a tenancy sustainment scheme, there is a £2.62 return to the sector. That is certainly money well spent. We are not talking about huge amounts of money for that, but it really will mitigate the impact of benefit reform.

Jim Hayton: I agree with the sentiment in the question. In the past few years, the emphasis in local authorities has moved much more towards prevention. Eviction is ultimately in no one's interest: it is simply acknowledgement that a problem has not really been solved; rather, it has

been shifted somewhere else. That is particularly the case when families are involved, but fortunately that is becoming rarer.

A consequence of the focus on prevention through the advice and information and hubs approach is a significant reduction in homeless applications in local authorities. There was a question about what the Scottish Government could do. Councils are trying to do things that help individuals. Some councils are doing income maximisation checks for every new tenant. One council recently reported £4 million being generated in that manner for tenants. We are doing what we can to mitigate and are putting the focus very much on preventing evictions, which simply result in a problem for someone else to deal with. That will frequently be the same local authority, which will have to deal with the household in another office through the homelessness route. The more that we can prevent that from happening, the better.

Bob Doris (Glasgow) (SNP): This year, we will move to multiyear resource planning assumptions, with local authorities taking much more of a lead in the development funding process across Scotland, with an attempt to marry spend to local need. I understand that 80 per cent of that resource will be directed from a local level. In the three-year assumptions, there is a hope that, next year, indicative figures for 2015-16 will also be issued to keep that three-year rolling plan on target.

Could you make some brief comments on that plan in general? What are the advantages and disadvantages of that process and that practice?

10:45

Jim Hayton: Local authorities have been talking to the Scottish Government for a wee while about the new system. We had specifically asked for three-year resource planning assumptions, which is a move away from the bids and the challenge funding, which were resource intensive and not particularly productive. We asked for integrated programmes to be developed by local authorities—that is, for council and RSL projects to go together in some kind of coherent plan. We got that, and we asked for local authorities to have a degree more influence and latitude in relation to the planning of that, although the Scottish Government retains the ultimate control.

As we had productive conversations on that and have got what we asked for, it would be a bit churlish for us now to say that we did not agree with it. We do agree with it. We think that the right place for the decisions to be made is at the local authority level, through the medium of the local housing strategy and the strategic local programmes, which in effect document the nuts

and bolts of the housing projects that are to be delivered.

That said, we understand that with that comes a significant degree of responsibility to ensure that the programmes get delivered and that the targets that we talked about earlier are achieved. Our view on that is that we work closely with the Scottish Government in particular to monitor outputs and expenditure and that we work at the local level with RSL partners to ensure that local programmes are being delivered.

It is absolutely right to give us a three-year planning horizon. Of course, that must be augmented as we go along so that we do not fall off a cliff at the end of the three years and are given good advance warning, at an appropriate point in that cycle, of what resources are likely to be available for the year or two following the three-year programme.

We are confident that the move is the right thing to do and that the locus of responsibility is in the right place, and we will do everything that we can to ensure that the new system is a success.

Graham Harper: I echo every word of that. The three-year programme has made a significant difference to our ability to plan for the longer term. It also recognises the strategic role of local authorities in the process.

The 2015-16 figures are important. We recognise that a spending review will take place before that but, if we can get a rolling programme of a three-year commitment, that will allow us to plan ahead effectively and to get the most value out of the money that we have.

Kennedy Foster: This is not my area of expertise, but I echo what has been said about the three-year programme and the involvement of local authorities in the local housing strategy and so on. However, it is early days in the new arrangement, and the jury is still out.

Bob Doris: Indicative figures might be published next year, following a spending review, but the money that comes to the Scottish Parliament can change quite dramatically, based on decisions that are made in another place. Does that funding position lead to uncertainty, despite the fact that we will have a three-year rolling programme?

In another existence, I was deputy convener of the Local Government and Communities Committee, where we talked about concordats and single outcome agreements. I know that local housing strategies must be signed off at a national level, but is there a tension around ensuring that the national housing strategies and priorities are filtered through in a constructive way and in partnership at a local level? Are conversations

about that positive and constructive, or are there potential problems?

Graham Harper: On the spending and budget figures, we recognise that, in some cases, the three-year programme can be little more than a planning assumption. However, we have been able to progress things on that basis. There is always a risk that issues will arise, but there is some degree of certainty that things will come through.

I do not detect any tensions between national and regional priorities yet, but it might be too early to say. Jim Hayton probably knows a bit more about that than I do.

Jim Hayton: I absolutely agree that it is vital that the channels of communication between local government and the Scottish Government are clear and open. I agree with Graham Harper that those relationships are good.

Bob Doris is also absolutely right to say that we need to pre-empt whatever happens, even though we do not quite know what that is likely to be. A lot of that will be down to good programme planning arrangements between local authorities and their partners so that, if there is good news in a spending review and extra money is available, we have projects that are ready to take advantage of that.

I take your point that sometimes things happen relatively quickly or come out of the blue and we are asked to spend money relatively quickly. It is vital that we have a range of projects that are ready to go, so that we can take advantage of any money that becomes available.

Similarly, if there is a downside to the spending review and money is going the other way, the earlier that the Government can give us notice of that, the better we will be able to factor that in and speak to people about programmes. The jobs of people in housing associations, local authorities and private contractors depend on the availability of those resources, so the more information we can give them about that, and the earlier that we can do so, the better.

Bob Doris: A good point well made.

With regard to the general resource allocation that goes to local authorities in their budget settlement from the Scottish Government, do you see any relationship between the funding that you will be directing at a local level and the wider budget? Is there an interaction between them? Will there be trade-offs at any point within the budget lines?

Jim Hayton: Could you repeat that question so that I am sure I understand it?

Bob Doris: The suggestion has been made that local government will have a budget settlement from the Scottish Government every year and that it will make investment plans based on that capital and resource allocation. Separate from that, there is the specific allocation for planning assumptions around housing. Will there be an interaction between those two budgets and will there be a trade-off in priorities with regard to how that money is spent?

Jim Hayton: I am not sure that I am in a position to answer that question at the moment. There certainly should be an interaction, as both budgets affect housing. I would want to understand the implications of that a bit better. My intuitive answer to your question is that there will always be trade-offs and that it is up to us, as housing professionals, to advise local politicians of what those trade-offs might be, and it is for them to give us advice and direction on their priorities.

The Convener: There has been much comment about the future shape of the RSL sector and how the current economic situation has brought about an apparent shift in the geography and the nature of providers in the RSL sector. Is it inevitable that the structure will become one of larger developing associations, or is there still room for the community-based sector to develop locally?

Graham Harper: It is difficult to give a general answer to that. Certainly, the number of developing associations is reducing; there is absolutely no question about that. There remains considerable doubt about whether the RSL network might cover the whole country.

You asked whether there might be a smaller number of larger developers. That is a suggestion that first appeared in a policy document called "Firm Foundations", which was published around 2007, before the credit crunch. At that time, the view was that larger associations could perhaps do things more cheaply and generate economies of scale. Although that might have been true in the past, it is fair to say now that the larger developers will ultimately be weaker if the subsidy targets remain at the same level. It is an interesting turnaround but I certainly do not think that the pattern envisaged in "Firm Foundations", with development being taken forward by a smaller number of larger developers and larger, stronger associations, will happen.

Jim Hayton: I have to say that many councils are discerning a pattern of smaller housing associations saying that they will not be able to develop at the current grant rates and a smaller number of larger players being left on the field. That would not necessarily be a bad thing, as long as we could generate two particular benefits that we want and twin the ability of larger associations to get procurement advantages, make economies

of scale and negotiate better loan deals with the perceived advantages of smaller, locally based and often community-based housing associations. Would it not be better to bring together the larger associations, which would do the developing, and the smaller associations, which have community-based tenants on their management committees? As I said, I do not see such a move as a universally bad thing, as long as it is managed correctly and as long as those kinds of relationships can be forged in future.

Malcolm Chisholm: I will try to roll two aspects of housing need into one. First, does the spatial distribution of housing need match the spatial distribution of money? Secondly, with regard to the target of 4,000 social rented houses a year and 5,000 over the period being built by councils, is that breakdown of different types of affordable housing consistent with housing need as a whole across Scotland?

Jim Hayton: As we suggested in our submission, the answer to your first question, on whether the geographical distribution of housing need correlates with where the money is spent, must be "Probably not". The allocation of resources for affordable housing in Scotland has tended to be a matter of historical accident, with some baseline from the dim and distant past simply being added to year after year.

Work is on-going to put the distributional basis on to a more transparent needs-based footing and, led by the Scottish Government and the Convention of Scottish Local Authorities, ALACHO has been working with the SFHA and others to come up with such a formula. Things are at an advanced enough stage to be discussed by the relevant people in COSLA and the Scottish Government, and I hope that as a result resources will more accurately follow patterns of not just geographical need, but other forms of need such as the incidence of homelessness, affordability and so forth. By definition, there might well be winners and losers in that process; in any case, whether the formula is accepted is a matter of political judgment.

Whether the targets of 4,000 social housing units per year and 5,000 units to be built by councils over the period directly focus need is, of course, another question. In our evidence, we suggest that it probably does not come close to meeting absolute need. There are various measures of that, such as the number of people on waiting lists and those set out in the fine-grained analysis of housing need and demand carried out for local housing strategies, but I think that everyone will agree that we will need significantly more than 4,000 social housing units a year to meet absolute need.

Given that meeting that need would require significant injections of capital, particularly subsidies, that are simply not available at the moment, we have to focus things as best we can. We do so through local housing strategies, in which we marry up patterns of need with resources and try to target resources at local authority priorities. Those priorities will either be in regeneration areas, as we mentioned earlier, or in the provision of new supply in areas where there is an absolute shortage of affordable housing.

11:00

Alex Johnstone: You have defined need in various ways and I am certainly glad to hear that you are considering such definitions. Is there a need to take, say, labour mobility into account in such a definition? Scotland has some of the highest and lowest areas of unemployment in the UK, but we still have no labour mobility. In my opinion, the chief reason for that is the lack of affordable housing.

Jim Hayton: I do not disagree. Labour mobility and the ability for people to move either to look for or to take up work should be a factor in deciding where to invest in affordable housing. Some element of that must be about supporting the economy—and perhaps, given the current circumstances, even kick-starting it as best we can.

Graham Harper: I agree with Jim Hayton. The social housing split of two thirds and one third might be reasonable, but I am not aware of any specific work on determining the need for mid-market rent and other products across the country. What I am certain of, however, is that things will be different. In Aberdeenshire and Edinburgh, for example, there is a bigger need for mid-market rent—and, related to that, one might conclude that mid-market rents should go where the jobs are for those who are economically active.

Malcolm Chisholm: The final issue that I want to focus on is homelessness, which is not only an absolute need but subject to legal requirements. To what extent will the current levels of affordable housing supply allow the homelessness objective to be met? That is something that, of course, is supposed to happen in three months' time.

Jim Hayton: With regard to the target for local authorities to find accommodation for every homeless person by 2012, I have to say that every new house is to be welcomed but the new supply represents such a small proportion of the overall housing stock that, although it might help, it will not offer an absolute solution. I am not necessarily talking about finding a solution to homelessness, but the most effective ways of tackling it are almost certainly to be found in more innovative

ways of using existing stock and putting a lot of resources and effort into preventing homelessness in the first place.

I would never gainsay the importance of new housing development in dealing with the problem of homelessness but, ultimately, we do not have enough houses and we therefore need to increase supply. In the short to medium term, however, we will have to continue to focus on making best use of existing stock. There are an estimated 23,000 empty houses in Scotland and we need to bring some of them back into use, try to be more creative in allocation policies through, for example, generating more than one move from a single housing allocation, and find other ways of increasing supply aside from building new housing.

Graham Harper: I echo Jim Hayton's comments. Prevention is certainly our biggest weapon against homelessness. Compared with need, the supply of new house-building is incredibly small; indeed, according to our figures, there are 335,000 people on waiting lists and we are building something like 6,000 houses a year. Clearly we have to do a huge amount, but we recognise that the resources for meeting the objective are simply not there.

The Convener: Do you have a final question, Bob?

Bob Doris: Yes, convener. My supplementary is partly an apology for muttering something under my breath during Mr Johnstone's question. Although I agree with his assumption that we must encourage labour mobility to areas under particular economic pressure—indeed, Aberdeen was mentioned in that respect—I wonder whether with regard to planning assumptions and the wider housing strategy you agree that you need to think about the wider economic strategy and try to develop jobs in long-standing communities. It is not just a matter of moving people or communities to areas where the economy is performing well; an integrated housing and economic strategy would look to develop the economy in areas that are stagnating and which have not been developed for some time.

I am simply asking for the sake of completeness, because I would not want to give you the impression that the committee believes that we should move traditional long-standing communities to areas of economic activity and leave those areas deserted. What we need is an integrated economic and social planning framework.

Graham Harper: Absolutely. However, housing cannot do that on its own and I believe that there needs to be a link and correlation with regeneration, particularly economic regeneration

such as job creation and so on. Given that deprivation and the index of multiple deprivation comprise one of the indicators in the new strategic housing investment framework through which resources are allocated, we hope that that mechanism will ensure that disadvantaged communities can continue to receive those benefits and that economic stimulus.

Jim Hayton: I took Mr Johnstone's question as being about the need for alternative forms of provision, different levels of rent and so on, but I certainly agree with the premise of Mr Doris's question that we need to support economic activity in areas that do not have enough.

Bob Doris: Thank you.

The Convener: I thank the witnesses for their evidence and suspend the meeting briefly to allow this panel of witnesses to leave the room and the next panel to take their seats.

11:06

Meeting suspended.

11:11

On resuming—

Water Resources (Scotland) Bill: Stage 1

The Convener: We come to agenda item 2, under which we will hear further evidence on the bill at stage 1 from energy and environmental organisations. I welcome our witnesses: David Crookall, who is an environmental specialist adviser with SSE; Andy Limbrick, who is an environment consultant with Energy UK; and Stephen Freeland, who is a policy executive from the Scottish Environmental Services Association. I thank you all for submitting written evidence, on which some of our questions will be based.

What is your view on the adequacy of the consultation that took place prior to the introduction of the bill? Are you satisfied with the Scottish Government's response to any concerns that you raised during the consultation phase?

Andy Limbrick (Energy UK): I thought that the level of consultation was very good. We were pleased with the opportunity to submit evidence, and the summary of the consultation responses was good. However, part 2 of the bill, on water abstraction, appears to have come in out of the blue and appears not to have been covered in the consultation. That is an area of some concern to us, which we can pick up later on.

The Convener: Yes, we will come to specific questions on that.

Stephen Freeland (Scottish Environmental Services Association): Yes, I thought that the initial consultation—there were two consultation documents—provided a good opportunity for us to feed back our comments and that the bill broadly reflects what we were expecting.

David Crookall (SSE): I echo what has been said. We were generally pleased with the two rounds of consultation. We provided feedback and I think that there were some small changes in the wording of the bill to reflect some of the concerns that we raised. Obviously, one of the main outstanding issues is part 2 of the bill, which was not part of either of those two rounds of consultation.

The Convener: SSE highlighted its development of "inset" water infrastructure in England and asked that the bill be amended to allow competition for the provision of that type of service in Scotland. Can you explain what inset infrastructure is and why you think competition for the provision of such infrastructure and related services should be allowed in Scotland?

David Crookall: At SSE, we have a small but fairly active part of the business—active primarily in England and Wales—whereby we approach developers who are looking to build a housing estate or business park on a greenfield or brownfield site and offer to provide them with utility services for electricity, gas and water. We can deal with all the pipes and infrastructure on the site, and some developers find that quite an attractive option. We recognise that the provision of such infrastructure was not a key part of the consultation; we just wanted to raise a flag to say that, if that were possible in future, whether through this bill or another bill, then as a commercial organisation we would be keen to be involved in a market across the UK, rather than just in England and Wales.

11:15

The Convener: What would be the benefits of that for the Scottish economy and for consumers and customers?

David Crookall: We offer that service to developers, so it would be down to developers whether they wanted to deal with those matters or whether they saw an advantage in having somebody take that work off their hands and do it for them. Generally, the service is provided for small-scale housing or business park developments. I am not particularly expert in the area but, if the committee wants more evidence on that, I am sure that my colleagues would be more than happy to write to you. We are just saying that that part of the business works in England and Wales and would like to work across the UK. However, we recognise that that is not a key feature of the bill.

The Convener: How might the bill be amended to take account of the legislative developments that are currently under way in England and Wales to open the non-domestic water and sewerage market to competition?

David Crookall: Again, I am not expert in that, but I could ask colleagues to write to the committee if that would be helpful. I think that the bill to which you refer is still at the draft stage. There might be provisions that could read across, but I do not know.

The Convener: That would be helpful.

Margaret McCulloch: One main concern that is raised in the evidence from SSE and SESA is that the bill could have a negative impact on private sector energy providers because it encourages Scottish Water to invest in areas such as the generation of renewable energy and waste management. What impact might the bill have on companies that operate in markets that Scottish Water targets as part of its non-core functions?

Stephen Freeland: That is one of our key concerns about the bill. The Scottish Government has just published its zero waste plan and the supporting regulations that go along with it, so there is a drive for the development of infrastructure to treat organic waste, whether that be food waste from domestic properties or organic waste from industrial and commercial premises. If a publicly funded body such as Scottish Water enters that market, it has the potential to distort the market.

Scottish Water would have a number of advantages over SESA members. For example, it could use existing assets such as sewage treatment works, which might now be redundant. It has access to large land banks, whereas a private sector company has to acquire land, which raises costs and then filters down to the company's charges. The concern is that Scottish Water does not have the same up-front costs and financial constraints as private sector companies have and so would be able to offer its services at below the market rate. In the view of our members, who are competing for the same feedstock, that would be very uncompetitive.

David Crookall: I echo that. There are two issues. Generally, we support anyone in developing renewable energy and using their existing assets in a way that maximises their value and benefit. The issue is about how that is funded and whether preferential treatment is given to any operator, whether it is Scottish Water or anyone else. Although the market is regulated fairly heavily, it is open and competitive. We are just looking for a level playing field.

Another point is that some of the discretionary powers that are to be given to ministers and Scottish Water refer to Scotland's water resources, which are defined as all inland waters, wetlands and estuaries, so it is not just water where Scottish Water has assets or from which it currently abstracts. The question is whether that affects existing water users and water rights. If Scottish Water saw an opportunity, would those powers give it the opportunity to short circuit legislative requirements with which other people would have to comply? I do not suggest that that is the intention, but the wording of some of the provisions suggests that Scottish Water would have a lot of discretion in that area in relation to all Scotland's water resources and not just the ones over which it currently has rights.

Andy Limbrick: I echo the previous two speakers' points about market conditions. We have a highly competitive Great Britain market in electricity. We are certainly looking for a level playing field for the companies of all shapes and sizes that participate in that.

Margaret McCulloch: On non-core activities, the Scottish Government bill team gave an assurance that

"it is ministers' expectation that Scottish Water will engage in those activities on properly commercial terms."—[*Official Report, Infrastructure and Capital Investment Committee*, 12 September 2012; c 815.]

How do you respond to that?

Stephen Freeland: We have no objections to Scottish Water entering the market, as long as that is done on a level playing field. However, we see no assurances in the bill to alleviate our concerns. We are looking for evidence of transparency and evidence of the commercial returns that are made on public sector investment.

David Crookall: I agree with Stephen Freeland. Obviously, I welcome that commitment, but the words in the bill matter and they are what will remain for the long term. How those words are interpreted and applied can change over time. If that is the commitment, it would be nice to have it clearly defined in the bill.

Andy Limbrick: I suppose that a question arises about who has the responsibility to review those "properly commercial terms".

Malcolm Chisholm: I have a couple of questions about SSE's evidence, although Mr Crookall might have touched on the first one to an extent. First, why might Scottish Water's status as a designated body that can be directed by the Scottish ministers give it an unfair competitive advantage in undertaking non-core duties? Secondly, you have asked that the ministerial directions should be subject to public consultation prior to being issued. Why do you think that would be beneficial?

David Crookall: On the first point, part 3 of the bill will give Scottish Water a right to do anything that it thinks is necessary. The bill provides

"the power to do anything that Scottish Water considers will assist in the development of the value of Scotland's water resources".

As I said, water resources are defined as all inland, wetland and estuary waters, not just ones to which Scottish Water currently has access. We can interpret that statement in different ways, but it is clearly a broad discretionary power. Whether it has an impact depends on how it is interpreted and applied.

Sorry, but I did not catch the second question.

Malcolm Chisholm: It was about ministerial direction. You say that there should be consultation on such directions and that the power would give Scottish Water an unfair advantage.

David Crookall: Under the bill, ministers, have the power to ensure

“the development of the value of Scotland’s water resources”.

The definition of the term “water resources” means that that applies not just to Scottish Water’s existing assets or areas where it already has water rights, so there could be a direction applying to a water resource anywhere. Whether that is an issue depends on what directions are given.

There are many pieces of legislation under which ministers can give direction to public bodies and we have not really seen an issue with any of them. However, the issue is the breadth of the powers, how they will be applied and how they can be interpreted. The issue is whether the wording in the bill is as tight and as well defined as it could be so that people understand the possible scope of the directions. For example, if a direction might affect third parties that have existing water rights in those areas, it would be nice to think that it would be subject to consultation and discussion with those third parties.

Malcolm Chisholm: So you are thinking about specific consultation with interested or relevant people rather than a general public consultation.

David Crookall: Yes.

Malcolm Chisholm: This question is for everyone. The committee has heard calls that the Scottish ministers should be required to consider social and environmental matters rather than just having an economic focus when developing the value of Scotland’s water resources. What would your view be on that suggestion?

David Crookall: From our perspective, abstraction, control and various other issues are dealt with under planning and the controlled activities regulations, which should pick up most if not all of the social and economic issues. The Scottish Environment Protection Agency has gone on record as saying that it is satisfied that CAR deals with all the environmental issues.

We would want to avoid any duplication or potential confusion with regimes cutting across each other and consents under one regime saying something slightly different from consents under another regime.

If there are areas that CAR and planning do not fully cover, it would be better for any new regime to deal with just those specific areas and not to risk any overlap with existing regimes that are working well.

Andy Limbrick: I see that the word “sustainable” has been introduced into the bill. In my view, sustainability would cover environmental and social aspects as well. The extent to which that happens would need to be teased out, and I say that in recognition of what David Crookall said about overlap with CAR. You might want to take a

rather light touch on the environmental side, but the environment has to be taken into account if you are looking at sustainable employment of resources.

The Convener: We can move on to water abstraction. Alex Johnstone has some questions on that.

Alex Johnstone: The convener is laughing because it is my favourite subject.

You have already touched on the fact that the late addition of abstraction to the bill means that you feel that you were not properly consulted on that. What discussions have you had with the Scottish Government about abstraction?

David Crookall: I am not aware that, prior to the bill coming out, there were any. I think that there has since been contact with the bill team, and it is fair to say that we have had a positive response from them and that they are happy to discuss the matter further. However, it was a surprise to see it in the bill.

Alex Johnstone: Can you outline your concerns about the new abstraction rules that have been proposed?

David Crookall: As I said, there is already planning, and there is CAR. There is already legislation in this area.

This is probably a function of the lack of consultation but, in responding to the draft bill, we were not really sure what it was trying to achieve and we did not know the scale of the problem that it was trying to deal with—whether we were talking about a handful of applications that might be a concern or dozens—or what those issues might be. It is difficult to say exactly that planning or CAR already deal with certain issues, as we are not quite sure what the bill is aiming at.

However, any time that you are introducing a new abstraction regime, even with exemptions, on top of existing regulations, you have to ask whether that is necessary to achieve the objective or whether there are other ways of doing it. We have not had enough information to enable us to form a view on that.

Andy Limbrick: From the broader energy sector perspective, there are two big themes in part 2. One is about building and maintaining investor confidence by introducing a reasonable amount of certainty into policy and regulation, and there are a lot of things in part 2 that are quite open ended and which we might explore in more detail.

The second big theme is the implementation of the better regulation agenda and the simplifying of administrative arrangements. On the face of it, part 2 seems almost to double the administrative

burden for businesses that are looking for water abstraction because, once they have gone through the CAR procedure, they must also go through the process of making an application to ministers. That seems to be an additional burden on businesses and there are costs associated with it as well.

11:30

Alex Johnstone: On the specifics in your written evidence, you note that there is an exemption for hydro generation, but you express a fear that ministers may choose to remove that exemption at a later date. What are your grounds for that fear? Is there any indication that that may happen, or is it simply that the bill leaves the possibility open?

David Crookall: It is simply that the bill leaves it open. Who knows how a future Administration might want to use those powers? If there is no intention to remove the exemption, the bill could be worded in such a way as to provide exemptions and to provide that ministers could add to those exemptions. If the bill allows an exemption to be removed—perhaps this is jumping at shadows—that adds to the uncertainty. As Andy Limbrick said, businesses are always looking for as much certainty as possible. If there is no intention ever to remove the exemption, why does the bill allow for it to be removed? If you were a fish farmer or whatever, you might feel the same.

Alex Johnstone: You suggest that the Government should enter into negotiations over that as a matter of urgency. Is that to ensure that we can change the bill before it becomes an act?

David Crookall: We would certainly welcome discussions with the lead people on the bill just to get some confidence about what the bill is trying to achieve. We could then perhaps be more targeted in our responses. Is the wording in the current proposals necessary and appropriate for what the bill is trying to achieve? If it is not and if the wording can be tightened up in a way that still achieves the objective, perhaps it can be changed before the bill goes through. If our concerns are groundless—as I think we would both hope they are—perhaps the wording could just be removed from the bill.

Alex Johnstone: Is that view shared across the panel?

Andy Limbrick: Certainly. I look forward to some constructive dialogue on the detail if that is possible.

Stephen Freeland: Abstraction is not an issue for us.

Alex Johnstone: You are not required to have a view on it.

Finally, the committee has heard suggestions that there should be exemptions in a number of areas, as we have already touched on. Do you have any broader views on the issue of exemptions as raised by other witnesses?

David Crookall: From an energy point of view, the obvious one would be an exemption for cooling water. Hydro generation is exempted, but if someone wanted to build a gas-fired power station or whatever, which is a major investment, that would not be included under any of the exemptions and would therefore be an additional issue. Whether someone can build a new power station is already covered by planning legislation, so it is not necessary to control it through legislation on abstraction control. That is one additional exemption, but Andy Limbrick may have others.

Andy Limbrick: An exemption for thermal power stations is my favourite as well.

Alex Johnstone: We have touched on the issue with other sections of industry and we have further questions about it to ask others.

Andy Limbrick: The use of water for cooling is the best environmental option for reducing carbon emissions. We would support an exemption for thermal power stations as well.

Alex Johnstone: Do you agree with the general view that has been expressed by some that the upper limit should be based on consumption rather than abstraction? That is, if you are taking water out and putting it back immediately in a non-harmful way, that should not count as abstraction.

Andy Limbrick: I think that there is room for improving the terminology and understanding of water use generally in power generation. There are several ways of cooling plants: some involve a once-through use of water, so there is no net use; others involve some evaporative cooling, which leads to the consumption of some water. In terms of valuing water, we are probably moving towards a world where we pay for what we consume rather than for rights to abstract.

The Convener: We move on to consider Scottish Water's functions.

Bob Doris: A theme that seems to be emerging is Scottish Water's impact on the commercial market. Will you expand on the concerns that were outlined in written evidence about the Scottish ministers awarding grant and loans directly to subsidiaries of Scottish Water?

David Crookall: Your question takes us back to what we said about open and competitive markets and the need for people to compete on fair terms. That is where our concerns begin and end. If Scottish Water can acquire finance for commercial

investments at lower rates than its competitors can, that will give it an advantage.

What might be appropriate for public investment in Scottish Water's core functions might not always be appropriate when a subsidiary of Scottish Water is investing in a purely commercial venture. We are looking for a level playing field. We are not trying to stop Scottish Water developing its assets or gaining value, but we want to ensure that it does that on the same terms as apply to everyone else.

Stephen Freeland: Some of our members expressed concern about state aid implications. I am not an expert on the matter, so I could not allay their concerns, but I wanted to bring the issue to the committee and ask whether it will be considered as part of the bill process.

Alex Johnstone: I have a very simple solution to the problem, if people want to hear it.

Bob Doris: Perhaps you can ask a simple supplementary question later. Mr Limbrick, do you have a simple solution?

Andy Limbrick: I can imagine what Mr Johnstone's simple solution is, but I am not sure how politically acceptable it would be.

Bob Doris: Do you have a desirable solution?

Andy Limbrick: Our concern was to raise the spectre of Brussels intervention and ensure that the Scottish Government has given due consideration to the state aid rules.

Bob Doris: There is a difference between Brussels intervention and other players in the market seeking such intervention. I am reminded of the alcohol minimum pricing policy in that regard.

Mr Freeland said that he is not an expert on state aid—nor am I. Despite that, will the witnesses have a stab at this question? Would your organisations consider taking action under state aid rules if the provisions in the bill were enacted and the Scottish Government loaned money directly to Scottish Water Horizons to develop renewable energy or waste management infrastructure? Europe wanting to take an interest in the matter and you guys going to Europe about it are two very different things.

Stephen Freeland: I cannot comment at this stage. The matter would need to be given careful consideration.

Bob Doris: Are there any other takers on that?

David Crookall: The decision would be way above my pay grade, but I think that we would try to avoid getting into that situation. I do not think that anyone wants to go there, given the costs and the political fall-out. No one wants that. I guess

that it would depend on how the bill was implemented and whether people felt that they were being severely disadvantaged.

Bob Doris: I commend you on what seems to be a responsible attitude, in contrast to what has been happening in an area that is outwith the remit of the committee.

The Convener: The witnesses have raised a number of issues about which we undertake to ask the cabinet secretary on their behalf when she gives evidence.

Gordon MacDonald: I will ask about the potential for distortion of the market. In its written evidence, the Scottish Environmental Services Association referred to the Office of Fair Trading investigation into

"competition in England between water companies and waste management companies in the treatment of organic wastes."

What were the results of the inquiry? How might they be relevant to the proposals in the bill?

Stephen Freeland: That was highlighted as an example of work that is going on down south. Last September, the OFT published a report and it is important to flag up the two main recommendations in connection with your consideration of the bill. First, the report noted that waste water authorities have a planning advantage when they compete in the open market with the waste industry, as they have existing land banks and assets to utilise. Secondly, it noted that the economic framework provides another advantage to the waste water authorities over the waste industry.

Gordon MacDonald: In the written evidence, you also indicated that Scottish Water and its subsidiaries are able to

"offer organic waste collection services below the market rate."

Can you provide any practical examples of that and explain how Scottish Water can undercut commercial rivals?

Stephen Freeland: That probably centres on the fact that Scottish Water has full access not only to anaerobic digestion plants, but to the existing sewer network. For example, when Scottish Water and another company bid for a contract from a producer of organic waste, Scottish Water can make a more competitive bid because it has the back-up of being able to use the sewer network for certain wastes that might not always need to go to an anaerobic digestion plant. The waste management industry does not have the same access to the sewer network; a waste management company would, if it wanted to use the sewer network for any reason, have to pay

a spot price, rather than building that into the overall contract.

Gordon MacDonald: Is that not just making efficient use of the sewer network?

Stephen Freeland: That would be fine were Scottish Water and the waste management company able to use the sewer network at the same rates.

Gordon MacDonald: You have raised concerns that Business Stream's dominant market position gives it

"an almost monopoly status to introduce new organic waste services."

Can you expand on that comment and explain what impact that may have on commercial waste service providers?

Stephen Freeland: When Business Stream was set up as a branch of Scottish Water, all the customers, pretty much by default, went to that subsidiary. That makes it hard for a company that wants to be a new entrant to the market.

The Convener: New folk are coming into the market and taking customers from Business Stream, so is it not just a question of time before there are new entrants and other competitors?

Stephen Freeland: Yes, perhaps that may happen over time, but it is difficult for a company at the outset.

The Convener: None of you has provided any written evidence on parts 4 to 7 of the bill. Are there any comments that you want to make about other proposals in the bill?

Andy Limbrick: We have covered everything that we wanted to.

The Convener: As members have no further questions, I thank the witnesses for attending and providing evidence, and ask them to send us the follow-up material that they promised.

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

11:44

Meeting suspended.

11:45

On resuming—

Subordinate Legislation

Green Deal (Acknowledgment) (Scotland) Regulations 2012 (SSI 2012/214)

The Convener: Under agenda item 3, the committee is invited to consider an instrument that is subject to the negative procedure. I refer members to paper 5 and the instrument. No motions to annul the instrument have been received.

As members have no comments to make, is the committee agreed that we do not wish to make any recommendations on the instrument?

Members indicated agreement.

The Convener: That ends today's business. At our next meeting on 24 October, we will continue our consideration of the Water Resources (Scotland) Bill, and we will appoint our new European Union reporter.

Meeting closed at 11:45.

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