



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

INFRASTRUCTURE AND CAPITAL INVESTMENT COMMITTEE

Wednesday 24 October 2012

Session 4

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INFRASTRUCTURE AND CAPITAL INVESTMENT COMMITTEE

17th 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 Bookbinder (Chartered Institute of Housing in Scotland)

Ian Cowan (UK Environmental Law Association)

Dr Sarah Hendry (IHP-HELP Centre for Water Law, Policy and Science)

Adrian Johnston (Institution of Civil Engineers Scotland)

Gordon MacRae (Shelter Scotland)

Fraser Stewart (Glasgow and West of Scotland Forum of Housing Associations)

Marc Stutter (James Hutton Institute)

CLERK TO THE COMMITTEE

Steve Farrell

LOCATION

Committee Room 2

Scottish Parliament

Infrastructure and Capital Investment Committee

Wednesday 24 October 2012

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

Draft Budget Scrutiny 2013-14

The Convener (Maureen Watt): Good morning, everyone, and welcome to the 17th meeting in 2012 of the Infrastructure and Capital Investment Committee. I remind everyone to turn off their mobile phones and BlackBerrys, if they have not already done so, because they affect the broadcasting system.

We begin the meeting with our second evidence session on the affordable housing spending allocation within the Scottish Government's draft budget for 2013-14. I welcome the witnesses: David Bookbinder, head of policy and public affairs at the Chartered Institute of Housing in Scotland; Fraser Stewart, the lead member of housing investment at the Glasgow and west of Scotland forum of housing associations, who is also the director of New Gorbals Housing Association; and Gordon MacRae, head of communications and policy at Shelter Scotland. I thank you all for your written evidence.

Margaret McCulloch (Central Scotland (Lab): Good morning. What are your views on the Government's overall ambition for Scotland to become a hydro nation? Sorry, that is the wrong question. [*Laughter.*] I apologise—I am just so keen on Scottish Water.

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

David Bookbinder (Chartered Institute of Housing in Scotland): The quick answer to why the first year's performance exceeded the target is that the completions that it was based on were generally funded through a more generous grant regime. The litmus test of whether the forward programme will be successful is what is being approved. The approvals in 2011-12 were just over 6,000, of which about 60 per cent were social rented. Some saw it as quite a cynical move when the Scottish Government switched from counting approvals to counting completions. Approvals really give us the true picture of what is being funded.

Gordon MacRae (Shelter Scotland): It is important that we compare the previous spending review with this spending review. There has been an issue with the level of transparency about the funds that are available, so it is easier to look at the £770 million that has been allocated during this three-year period than the £1.4 billion in the previous three-year period. As David Bookbinder says, the completions were up in previous years because of a couple of things, such as accelerated finance, which was brought in during the lowest point of the recession.

What we expect is that during this three-year period, out of the target of 18,000 affordable homes—the 30,000 target is over the period of this parliamentary session, not over the period of the spending review—about 12,000 would be social rented. The only way in which that can be delivered is at considerably lower levels of grant subsidy. We have to assume therefore that we are looking at about £40,000 to £45,000 per unit—that has never previously been delivered at a sustained level.

We are in effect looking at a 45 per cent cut in the overall capital budget for house building between this comprehensive spending review period and the previous one. Our real worry is that with welfare reform kicking in during this period, we are facing a real one-two knockout punch for low-income families who desperately require secure, affordable housing. It will be more difficult to access such housing because, in looking at the starts, we have to anticipate that fewer social rented properties will be available in the next three or four years.

Fraser Stewart (Glasgow and West of Scotland Forum of Housing Associations): Rather than comment on why the 6,000 figure was exceeded, I would like to answer the question whether we will achieve the figures for the remainder of the period.

The forum's concern is that the level of grants is not sufficient to sustain the level of development that the Government wants to be achieved, even if we include housing at mid-market rent and so forth. The programme is supposed to have a 70:30 split between social rented housing and mid-market rented housing and other forms of low-cost home ownership, but the outcome is much more likely to be 30 per cent social rented and 70 per cent mid-market rent.

That is my association's experience, and we are being as flexible as we can be to maintain the momentum of regeneration programmes. It is also the anecdotal evidence from local authorities, including Glasgow City Council—although what happens remains to be seen. Government officials have not set out planning assumptions on how the figures will be achieved and seem to be relying on

organisations—the CIHS, I think, or Shelter Scotland—to say that the figures will be achieved. That is disappointing.

Another factor is that rents appear to have gone up significantly as a result of the innovation and investment fund. There is evidence that some rents are in excess of mid-market rents. Social rents of more than £5,000 per year have had to be implemented to achieve the figures that were just mentioned. In our view, that is not sustainable. Housing associations in Scotland in future years will not be happy to apply the rent levels that we have seen in the past year.

There is a huge question whether the programme is achievable. Government officials must properly review and examine what was achieved through IIF, because things have not changed significantly, and they must publish their assumptions in relation to the shape of the programme. We are certainly not convinced that the programme is deliverable, especially in relation to the social housing unit numbers.

It is important to say that the Government's original ambition was for all the units to be social housing. The ambition is now for 70 per cent social housing, but there is every possibility that that will not be achieved.

Margaret McCulloch: You have referred to the shortfall. What should and can be done to alleviate the deficit in affordable new supply?

Gordon MacRae: Shelter Scotland argues that we should reverse the 45 per cent cut. We acknowledge that capital budgets have been reduced overall in the Scottish block grant, but the overall capital cut is about 33 per cent and housing is taking a 45 per cent cut, which is disproportionate. We are in the midst of a deep social housing crisis in Scotland, and in the long term the cuts will exacerbate the problems that people face in accessing affordable and secure accommodation.

Transport has received additional funds. The recent addition of £40 million to the affordable housing budget only reduces the cut from 50 to 45 per cent, which is still disproportionately large. We hope that the Scottish Government will reconsider and bring housing more into line with the mainstream cut that capital has taken.

David Bookbinder: Any additional money that came along within the spending period—that can happen—would help to make up for the huge reduction to which Gordon MacRae referred and would be welcome.

I sound a cautionary note to those who are playing the numbers game. It will be hugely important to monitor what is being provided and where, not just the actual number of units,

because as things are squeezed more there is a fear that anything that costs a bit more—or significantly more, in some cases—will simply get squeezed. I am talking about work on remote rural sites, work on contaminated brownfield sites as part of an urban regeneration scheme or work to build houses to full wheelchair standards or to greener standards. All those things cost more, and there is an obvious risk that such work will be unduly and disproportionately squeezed when funding gets tight. We must ensure not just that we can tick the numbers box but that a range of needs is met.

Fraser Stewart: What has happened over the past two or three years is that the pips have been squeezed until they squeak—and now that they are squeaking, no one is listening. The simple fact is that we need additional funding. Following Gordon MacRae's suggestion, I acknowledge that the housing cuts are happening, but if they were restored to the national average for the other things funded by Government, that would go a long way towards resolving the issue.

Three or four years ago, my housing association had to raise private finance of around £35,000 for each social rented housing unit; when that increased to £55,000, the pips started to squeak and we would not have been able to sustain that. However, if we wanted to go ahead with new-build social rented housing now, we would have to find £85,000 per unit. That is simply not sustainable; we will not do it. Although we are trying to maintain momentum in transformational regeneration projects and will consider a very modest number of social rents and some mid-market rents that we can afford, we cannot consider developing to any great degree or scale. I guess that you will ask later about areas such as Glasgow, where there is no local authority house building, but I suggest that trying to get larger housing associations to undertake that work would be a very dangerous path to go down.

Adam Ingram (Carrick, Cumnock and Doon Valley) (SNP): You have all focused heavily on the reduction in spending and the cut in the level of grant per unit. However, although the Scottish Government has made it clear that it has had to reduce the grant per unit of housing, evidence suggests that we will still be able to maintain the level of new housing supply. Is it not expected that there might be some change in balance in relation to provision by registered social landlords and provision by local authorities, and is there not an implicit challenge to local authorities to step up to the plate with regard to the provision of social housing?

Gordon MacRae: Efficiencies can always be made in any sector, but we argue that housing associations and local authorities have made

those efficiencies and that, over the past few years, more has been delivered with less. What disappoints us is that that has not been turned into a case for putting more in because it will get us closer to starting to address housing need; the fact is—and the Scottish Government will not suggest otherwise—that these plans are not about addressing housing need on that scale but maintaining momentum in the social sector.

The real test is the number of new starts. Looking across the social sector, including local authorities and housing associations, I will admit that there was an increase in the number of local authority starts in 2010-11 but overall the number of starts has fallen from 4,800 in 2010-11 to 3,366 in 2011-12. Given the lag time in all that, I think that we are heading for a cliff edge with regard to new completions in the next few years.

David Bookbinder: It is all about looking into the future. As Gordon MacRae has suggested—and indeed as the representative from the Association of Local Authority Chief Housing Officers touched on a few weeks ago—there is evidence that some local authorities have capacity to increase the amount of housing that they are building. In some areas, that might well make up for the shortfall that we will see in the coming years from housing associations. However, the situation will vary from area to area and the big question is what happens in areas in which the council either is not building or is coming to the end of its capacity, which is the case in some council areas. In that instance, in areas such as Glasgow where there is no house-building programme we might well see a real problem—not in the next year or two, but thereafter.

Fraser Stewart: If that was the expectation, it should have been modelled by officials. Those planning assumptions should have been published.

The Convener: Why do you calculate the number on the basis of approvals, rather than completions? Others have said that it should be based on completions, rather than approvals.

10:15

David Bookbinder: First, if we move overnight from a system of counting approvals to one of counting completions, we would count the same houses twice for a year's or two years' worth of house building. Even if we had a clean sheet and started counting completions, it would feel a bit rich for the Government to cut grant rates and then say that it has supplied 6,800 homes, when those were funded through a more generous grant rate. We are simply looking for a kind of honesty, if you like, so that the Government says what has been

funded with a lower grant regime. The only way of doing that is to count approvals.

That approach gives a sense of where the programme is going from the present onwards, not of what was funded two years ago on different grant levels. Ultimately, if we start counting completions, in time we will get a clearer picture of what is being funded on the lower grant regime, but we do not have that picture now.

The Convener: The construction industry says that it is in dire straits, so obviously there will be lots of competition among construction companies to build the houses and the cost will be going down. Can you give us an idea of what the cost of building a house is this year, compared with the cost two or three years ago?

Fraser Stewart: There is no evidence that costs are continuing to go down. As a rule, we have reached rock bottom. In fact, in some cases, there is evidence that costs are going up. Because there have been so many lay-offs and redundancies and firms going out of business, the sector is now different. Do not get me wrong—costs are still keen, but a brick costs what a brick costs. Just through ordinary competition, we are getting good prices, but I do not think that anybody should rely on costs going down further. Other organisations, such as Homes for Scotland, are more competent to say whether costs can reduce further, but we are not planning for that. Costs have remained flat for the past year and a half or so.

Gordon MacRae: I defer to the house-building experts on that.

To return to the point about completions, there is a logical case for using completions as the standard but, as David Bookbinder rightly says, we are in the interim period in which we are double counting some houses. If the question is about what the money that was allocated in the comprehensive spending review and in this financial year will deliver, we can conclude only that it will deliver less than was previously anticipated for the three-year period.

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): I want to ask about the target of 6,000 houses a year. You have covered that to a large extent, although I will ask a question about it in a moment. However, I have a prior question about transparency. Your evidence has been helpful to us in trying to understand the current situation, particularly the comments on counting completions rather than approvals. The draft budget appears to me to be not very transparent, and part of the problem is that extra sums of money have been announced in the past few months but, as far as I can see, nowhere is that stated in the document. What do you think about

transparency and how could the situation be improved?

I thank Shelter and the Chartered Institute of Housing for their evidence. You seem to be more on top of the issue than I am, so could you explain how you arrived at the figure of £770 million as distinct from the £630 million that was announced in the budget process last year? That would help us to understand what the figures amount to. As far as I know, there have been three announcements of extra sums of money since the budget was announced a year ago, and then we had Nicola Sturgeon's speech on Sunday, which I take to be a reannouncement. The witnesses might be able to shed some light on that.

David Bookbinder: I will kick off and Gordon MacRae might come in.

By my calculations, the additional £140 million that has been announced in the year and a half since the original draft budget for the three-year period has come in three tranches. The last one was in September, so you are right that the announcement earlier this week was confirmation of that new £40 million or £45 million. The CIH understands that a large tranche of the additional £140 million has come from Barnett consequentials as a result of spending announcements down south, but that is still welcome. We expect Barnett consequentials from housing announcements down south to be respected and to come to housing here. Westminster cuts are quickly passed on, so we expect Westminster spending to be reflected in additional money up here.

You are correct that there has been £140 million extra in three tranches. I think that the largest tranche was about £80 million or £85 million, which came as Barnett consequentials. Gordon MacRae might have the up-to-date figures in front of him.

Malcolm Chisholm: It is just not clear to me whether all that money is Barnett consequentials or whether some of it is made up of underspends or money that has been brought forward; I just do not know. There is nothing on that in the budget document, and I saw nothing in the original announcements that would make that clear.

Gordon MacRae: The overall point is that it is extremely frustrating for housing policy people who want to get in behind the announcements. We got level 4 data for the most recent announcements only in the past few days. There is a lack of transparency about where the money is going, which is why we must compare comprehensive spending review periods rather than comparing ups and downs in particular years.

The most recent announcement, which was made at the weekend, was on how the money

would be allocated, rather than being an announcement of entirely new money—that was identified previously, and I understand that it was a Barnett consequential. I share David Bookbinder's analysis. It is predominantly money that has come from announcements down south. The Scottish Government should be commended for ensuring that that money goes into housing. It is worth noting that there is now a broad political consensus that social and affordable housing is an important area to draw attention to.

We are yet to have a game-changing announcement—as opposed to the announcement of a number of small initiatives at various points throughout the year—that will get us to a position in which we start to address housing need.

Fraser Stewart: Gordon MacRae and David Bookbinder are the experts on the overall national figures, but in relation to your point about transparency, it might easily be missed that grant is no longer payable throughout projects but is payable only on completion. That is another way of buying a year for free, which means that it will be several years before we can start to compare figures on a like-for-like basis. I also point out that not paying grant until completion is the most inefficient use of public money—the best use of public money is to put the money in as early as possible, up front. The fact that that is not happening is requiring a lot of housing RSLs, such as us, to borrow to develop, which costs in the region of £3,000 per unit. If the money goes in up front, that cost—which, in effect, is a public purse cost—would not be encountered. There is a loss of £3,000 per unit in development funding as a result of the switch to payment on completion. It is another piece of sleight of hand that not many people would necessarily pick up. The subsidy is not £42,000 a unit; it is between £39,000 and £40,000.

Malcolm Chisholm: Before I go on to ask about the 6,000 houses a year, I have something else to say on transparency. Given that we have had those three announcements of extra money, which you say is now paid on completion, it is not quite clear to me—to take the most recent example—how the £40 million will be spent, particularly if it is to be spent this year. That is just a completion of the transparency point.

My more substantive question relates to the scepticism that you have all expressed about the target of building 6,000 units a year. What feasible alternative measures would you ask the Government to consider to help the target to be met? Some, if not all of you have already expressed the simple demand for more money, but I wonder whether you have any other suggestions. Even if you propose extra money, how would you like it to be spent? I guess that

Fraser Stewart would like something to be done about the subsidy level for each house, but it would be useful to hear other suggestions from all of you.

Gordon MacRae: We are getting to a point at which we must acknowledge that there are no real alternatives to direct subsidy to deliver the social housing that we require. If the only game in town were getting 6,000 units up, we would be better off looking at just building a new town somewhere. When we talk about social rented properties, it is important to remember that we are talking about properties with security of tenure and a level of affordability that is not found in the private rented sector or in mid-market rents, although I think that there is some evidence of rents for what we would in the past have identified as social houses increasing to such levels.

We would like to see investment in house building, be it council or housing association, to build good-quality homes where they need to be, based on an analysis of need. We have called for the Scottish Government to undertake an overall look at the national picture for housing need. Currently, we have some useful tools for local authorities to identify need in their areas, but they do not always take into account cross-border issues, so Edinburgh's analysis and East Lothian's analysis, for example, may well conflict in some areas. We therefore need a national picture. The most recent best estimate of housing need was done by Professor Bramley. Our analysis of that shows that he suggested that we need about 10,000 new social rented properties a year just to meet the levels of demand, which are due to demographic changes and various things.

The Scottish National Party was the only political party to propose a target for house building in the most recent election campaign, and its 6,000 target was welcome, but it is about maintaining some life in the house-building sector and is not about addressing need. We want to see a house-building programme that starts to address the issues of poverty, ill-health, and low educational attainment, which are the consequences of poor housing. With regard to the choices that the Scottish Government can make between expensive transport projects and vital housing projects, as you might expect we would prefer the money to be put into housing.

David Bookbinder: There is no magic solution, but I think that the sector deserves credit for doing its best in the past year or two to look at things differently. For example, where housing associations in conjunction with their strategic local authority partners see in some hot-spot areas a real market for intermediate rent, they are looking to get stuck into that in quite a significant way. Sometimes that might take some pressure off

social housing lists, while in other cases it relieves pressure at the other end of the market for people who would have bought in times gone by.

The picture is different from what it was two or three years ago because the sector is not standing still and is looking at new ways to provide. However, there are obviously urban and rural areas in Scotland where there is not really a market for mid-market rent because there is no major private rented market. We can have a proper intermediate rental market only where we try to help people avoid high rent levels in private renting, but that is not always the case in different parts of Scotland.

Fraser Stewart: I want to add to that, in case housing associations are being characterised as just putting out the begging bowl without going to other places to see whether they can help out. It is important to look at all the things that we have done, but the fact is that we have run out of road. Our management costs are as low as we can get them and are comparable to those of any housing association in England. Our build costs are way down because we procure things in a better way than previously. In our case in the Gorbals, our acquisition costs are virtually zero because we work in a transformational regeneration area in collaboration with the council. Our borrowing costs are significantly cheaper than those for most historical, large housing associations in England. For example, the most recent bond that we got through the Housing Finance Corporation was just marginally above 5 per cent, so those costs are down at rock bottom. Organisations such as ours are looking to do their fair share of mid-market rented shared equity, but we have run out of road.

Alex Johnstone (North East Scotland) (Con): The Bramley research that was mentioned a minute or two ago has been used by the Government to define policy over the past couple of years. However, that research is now two years old. If it was done again today, what would it tell us about financial capacity?

Gordon MacRae: The Bramley research on housing need was done closer to 10 years ago. It obviously predates the economic crisis and the planned changes in welfare. We would expect that any such new research would paint a picture that would show that we require more shared accommodation and one-bedroom housing, because that is all that welfare will pay for in the future and there is a chronic shortage of such accommodation. The Scottish Government did some good analysis of the impact of the welfare reforms that identified that chronic shortage.

We are—going by Shelter's experience of people who turn up for advice and support—seeing a new generation of people who would previously have been able to access home

ownership but now have to look at other forms of housing to meet their needs. That is why we identify the private rented sector as an area that is worthy of reform so that it can give people the security of tenure that they cannot get otherwise because they cannot access home ownership or social renting. We need to give them security so that they can lay down roots in their communities and raise their children without being worried about losing their home after six months.

We therefore expect that a needs analysis now would give a slightly different picture of what the investment priorities should be.

10:30

David Bookbinder: Before Fraser Stewart comes in on housing associations specifically, the CIHS would make three brief comments on the more recent Bramley capacity report. It is generally felt that the report was just about right in estimating local authority capacity, although there was a feeling that there might, in some cases, even have been a slight underestimation.

On the housing association side, notwithstanding what Fraser Stewart will talk about, there were flaws in a number of the assumptions, including on the availability and use of reserves and what commitments were already in place for them. However, as Gordon MacRae said, things have changed even since then; for example, the lending regime, the lack of availability of reasonable lending rates and welfare reform, of course.

I warn again that the Bramley capacity research looked at things purely in terms of numbers rather than at exactly what could be provided, whether in regeneration or remoter rural development. Again, I give a warning about playing the pure numbers game.

I am sure that Fraser Stewart will have comments on the detail of the assumptions that were made on housing associations.

Fraser Stewart: No policy should ever have been predicated or premised on the Bramley report because the brief for that report did not allow it—even if the report was going to be any good in the first place—to get to the truth of the financial capacity of housing associations. Officials set up the brief so that, in effect, it preset a number of conclusions.

The report does not bear any relationship to reality. For example, there was absolutely no examination of any housing associations' business plans and forward projections; the report was based simply on a view of surpluses and accounts. Not enough situations were looked at and not enough people were interviewed.

My opinion is that the report is not worth the paper that it is written on, and things have moved on since then. It does not show the sector's financial capacity; rather, it simply reiterates what senior officials said to various committees several years ago, including Mike Foulis, who came pretty close to saying—using the regulator's figures—that housing associations are awash with cash. They are not, and are not anywhere near that to the degree that the Bramley report suggests. The report should not be given the currency or respect that it appears to have.

Alex Johnstone: To develop that theme slightly, I am aware that some housing associations sat on fairly strong reserves and were fairly well capitalised. Has the policy that has been pursued over the past two years been primarily about running down those reserves and forcing housing associations to become less well capitalised?

Fraser Stewart: Yes. That is unquestionably the case. I am not arguing that any significant surpluses that housing associations do not otherwise require should not be used, but we have said to the Government that other fairer means must be brought into the funding regime to bring those reserves into play. My association and others are, in effect, volunteering some of our reserves, but we will not volunteer all of them, particularly in Glasgow and the west of Scotland.

It should be remembered that our boards are made up of people who are involved in housing really because of the terrible housing circumstances that they were in either in local authority housing or in the private sector, where the highest rents were charged for the most miserable accommodation and no repairs were carried out. Those housing associations are not going down the route of bankrupting themselves or getting themselves into a position in which they cannot manage and maintain their current stock. Therefore, there is a point that cannot be gone beyond in looking at surpluses. If you want to do hard work on the matter and engage properly with the sector, there is a way of appropriately ensuring that reserves that are not otherwise needed are brought into play.

Alex Johnstone: Would it be fair to say that those reserves were an element of financial capacity and there was an option to squeeze them, but they can be squeezed only once and cannot be counted again once that is done?

Fraser Stewart: Absolutely. We have been squeezed—that is a fact. I know that that has happened to a number of other associations, too. Others, however, have not been in a position to be squeezed. As I said, it was suggested to Government officials that they should look more flexibly at how excess reserves—if you like—might

be used. Some associations—particularly larger ones—appear to wish to queue up to develop at all costs, but I do not think that that will be the position anywhere in Scotland. I am proud of a sector that is prepared to stand its ground and say, “I’m sorry, but we’re not prepared to develop at all costs.”

In England, the Home Group’s chief executive went to a Conservative Party conference fringe meeting to ask for the reserves and equity of smaller associations in effect to be given to larger associations, so that they could continue their development programmes. That is the shape of things to come in England. What is perhaps worrying for Scotland is that such organisations now control a significant number of Scottish assets.

Alex Johnstone: Is the message that smaller housing associations that still have their reserves should use them now, before somebody else does?

Fraser Stewart: The answer is no, because there is no prospect that, or reason why, housing associations that have looked after their businesses properly would have in any shape or form to join large United Kingdom-based associations.

Gordon MacRae: I apologise—I had thought that Alex Johnstone referred to the Bramley needs analysis earlier.

We need to remember the context in which the capacity research was undertaken. At that time, we faced the risk that the social house-building sector would disappear. The question was how we would find resources to keep things moving. The sector should be commended for responding, which has meant that housing associations went into reserves and has meant a far greater role for councils than they had before.

The sector entered into that activity on the basis that support would be provided in the future and that, once the reserves had been squeezed, at least a programme of finance would exist. However, when the accelerated capital investment was removed, the remaining figure became the base level for the budget in the following year. The overall spend in the last year of the comprehensive spending review period was lower, because funding had been spent in the previous year, but the final figure became the base point for the budget in the following year. That meant that we had a massive cut and it is why we now face a 45 per cent cut. The message from landlords is that they can go no further. If we are to have a sustainable future in which we build more homes and start to address need, we must have a new solution.

The Bramley capacity research was very much on a moment in time. In 2010-11, local authorities started to build more than 1,400 new homes; that figure has halved in the past year. A burst of activity happened, but the figure has dropped back again. We need to get it back up to the previous level.

Fraser Stewart: The Bramley research pointed out—rightly—that the situation will lead to pressure on rents, which will be the last port of call; we have driven costs down as far as we can, so the only place from which an increase in income can come is rent. The evidence shows that rents are going up significantly—we will submit a report on that in the fullness of time, once we have all the raw data. That trend will continue.

I do not think that anybody in the Scottish Government or the Scottish Parliament would like things to take that direction of travel, because the people who will suffer most from that are the poorest in our society and—particularly—people who are in low-paid work. When welfare reform and so forth kick in, the consequences will be serious for households and families.

Alex Johnstone: Given that the financial constraints are as they are—you have spoken extensively about that—what can feasibly be done to support the sector in the medium term?

David Bookbinder: We suggest genuine transparency from the Scottish Government about exactly what is being provided, and about what is not—because it is more expensive, for example—being provided.

Recently, a higher benchmark rate was put in place for houses with greener features, as was a benchmark relating to remote and rural areas. We are all keenly awaiting the outcome of the first of the three-year spending rounds through the local authority strategic programmes to see whether some of the more expensive provisions are being made because housing associations and local authorities are taking advantage of the somewhat higher grant rates. That illustrates the need for a thorough look at what is being provided and at whether that provision meets the right range of needs. It may well be that part of the answer is—if we are to widen the range of needs appropriately—slightly higher grant rates in some cases and considerably higher grant rates in others, if that makes the difference between making some provision and making no provision whatever.

Fraser Stewart: You cannot get something for nothing. We have reached the point at which there is no more to be done except to put rents up significantly, and that is where the pressure now lies.

I have no other suggestions. Government has done everything it can; every initiative has been tried. The fact of the matter is that quality and the meeting of a lot of other Government objectives have probably gone backwards; that includes a host of areas that we put in our submission. Nobody is measuring or has set targets for greater environmental sustainability, community regeneration, town centre renewal or the development of brownfield land. Those are only nice terms and aspirations, and there is no relationship between them and policy and funding. Were such a relationship to be created, you would see a miserable shortfall. For example, among all of that, environmental funding—which used to be part and parcel of the availability of grants—is gone.

I work for a housing association that has deservedly won a lot of awards in the UK and Europe-wide for placemaking. We relied on generous grant levels and environmental grant assistance in order to achieve that. Many Government documents are predicated by saying that they want to replicate the Gorbals—that will not happen with the funding rates that are on offer.

Gordon MacRae: We suggest that there are three ways to support the sector. First, we need greater transparency in the budget-setting process so that we can see where the money is going and what we are getting for it. Secondly, if housing has to take a share of the cuts, its share should not be disproportionate, which means that the cut should be reversed to the 33 per cent average. Thirdly, we should build a national picture of the level of housing need. We are concerned that the building programme will, in effect, condemn a number of families to a life of poverty. That is not what we should aspire to as a nation.

Alex Johnstone: We have looked into this corner for quite a while now. Are there any affordable housing supply models that the Government should consider that are different from the model that it is pursuing and that might deliver housing—including affordable housing—in the future?

David Bookbinder: The development of intermediate rent has been an understandable flavour of the month in recent times and, where there is a market, there is absolutely no reason not to provide that. As I said earlier, looking at new markets is relevant. A small number of providers will look at market rent because they think that they can provide better rates than some private landlords. Again, that is perfectly legitimate.

A variety of potential private finance models are out there, but that is new private finance that replaces the old private finance that is no longer available from the banks.

Although many new things are going on, none of them provides the magic answer to the ultimate issue that some grant is needed to build houses for people on low incomes and people in low-paid work. Much as we appreciate Parliament's efforts to look around every corner and try to find answers, it is difficult to get beyond the fact that a grant is needed to build houses for social rent.

10:45

Alex Johnstone: You talked about mid-market rent. Could that be used in some parts of Scotland to assist the provision of social housing as part of mixed developments?

David Bookbinder: Sales—which are difficult in any sector at the moment because of the market conditions, with which we are all familiar—or full market rent may partly subsidise social rent. Mid-market rent may pay for itself, but it does not cross-subsidise social rent. We want to stamp down fairly heavily on the myth that it does. That is not to do down mid-market rent in any way, but it does not cross-subsidise social rent.

Alex Johnstone: I asked that question because, if it was achievable and we were considering doing it, we would face the problem that it would be achievable in some parts of Scotland but not others. Therefore, there would be a distinct geographical problem with that approach.

David Bookbinder: Indeed; you have hit the nail on the head. There are parts of Edinburgh, Aberdeen and other areas of Scotland where some element of cross-subsidy would be possible because of the existence of a wide range of rental markets, but there are other areas where it simply would not be possible.

Gordon MacRae: There is no direct replacement for grant subsidy to ensure the provision of social rented housing. There will always be a need for that. However, there are other things that we should do.

We are clear that we will not get the necessary level of social or private house building unless we have a buoyant private house building sector. We can do more to ensure that there is no land banking, that, when a planning application is passed, it gets going and that land that is identified for housing, and social housing in particular, is developed in a timely fashion.

Notwithstanding the pressures that house builders face, we can do more to ensure that the house building sector can grow again by examining the planning system and addressing issues with land taxation to encourage development and ensure that we get 25 per cent affordable housing on a site—affordable housing,

rather than social rented housing, although we would rather that it all went on social rented housing.

There is a role for the Government in encouraging the private house building sector to do more.

The Convener: That answer leads neatly on to my question. Land supply is generally believed to be a critical factor and, potentially, an important constraint on such a programme. Is there sufficient land supply—that is obviously a geographical question—subsidised or otherwise? I include section 75 affordable housing agreements in that. Is land supply a constraint on delivery of the Scottish affordable housing target? Are there particular local markets where that is the case?

Gordon MacRae: I am not able to answer the specific question on local markets, but Scotland is certainly not short of brownfield or greenfield land. However, we have sites that are more difficult to develop and sites that can more readily be developed. During this downtime, few sites are being developed at all. Our real fear is that we will not learn the lessons of the past but will, in a rush just to keep the industry going, lose the section 75 agreements and end up creating highly profitable small developments that do not start to address the need for a mixed community or help to address housing need, and that we will not cycle back into the healthy housing market for which we are calling.

Others may be better placed to talk about the impact on social house building.

Fraser Stewart: For our members, the land is available, but the issue is the cost of remediation work and, in many cases, the cost of purchasing land from the council. Because councils are under such extraordinary financial pressures, they are required to maximise receipts, so the cost of land can be significant, even when there is a further cost of remediation work. That tends to be what drives the issue with land supply. The land is physically there, but it is expensive to develop.

The situation is exacerbated because there is no money for acquisition. So even if good off-market deals in the private sector were possible, some associations could not do that because they do not have the money up front. In years gone by, they would have got money from the Scottish Government or the housing association grant to purchase land. That would become part of the land bank and would be in the pipeline for the future—it might be used in two or four years. However, associations no longer do that. Only the larger and more wealthy ones with surpluses can acquire sites. More can be done on that.

To answer the earlier questions about how to save money in the programme overall, the

Government will just have to bite the bullet and start paying for costs as they are incurred, because that is the most efficient use of public resources. At present, £3,000 of public money is being wasted per unit because the money is paid on completion. That is not efficient use of public money.

David Bookbinder: Obviously, if fewer houses are built across all sectors, less land is needed. Land supply is less of a problem now than it was felt it was in the boom time. As Fraser Stewart said, the issue is about the cost of land. Whether we are talking about remote rural land that might not be fully serviced, including by water, or about contaminated brownfield land, the issue is whether people can afford to use it.

The Convener: In your experience, are councils feeling pressure from house builders on the section 75 affordable housing agreements?

Gordon MacRae: We have certainly picked up on public statements that have called for a lessening or loosening of those strictures, but we urge decision makers to ensure that we stick to them. We do not want to repeat the history of failed communities. We would prefer to have quality developments and communities so that we do not end up in the situation in which the public sector has to step in and pick up the bills for failed developments, as has happened in the past.

Jim Eadie (Edinburgh Southern) (SNP): I turn to welfare reform, which the witnesses touched on earlier. In your written submissions, you all expressed concern about the introduction of universal credit and its impact on the supply of affordable housing. I imagine that, overall, the concern is about the impact on social landlords' income stream. What will be the impact of direct payment of universal credit to benefit claimants? What will be the impact of the reduction in housing benefit for those who are seen to be underoccupying a property?

Gordon MacRae: We anticipate that the direct impact will be an increase in homelessness. The number of people who are unable to afford to keep the home that they are in will increase. There is no prospect of a sufficient supply of one-bedroom properties or shared accommodation to mitigate the problem. It is because of the welfare reforms that we are so disappointed by the 45 per cent cut in the capital budget. As I said, it feels a bit like a one-two knockout punch to people who need access to such housing. We argue that, because of the welfare reforms, now is the time to invest more in new-build social housing.

David Bookbinder: The CIH puts a slightly different emphasis on the grave implications of welfare reform. We certainly agree with Gordon MacRae that, given the pressures that are already

on the private rented sector from welfare reform, increases in homelessness might well result.

In the social rented sector, if as a result of the bedroom tax the shortfall results in some tenants struggling to pay their rent, perhaps because they are in difficult circumstances or have chaotic lifestyles—or, in a very small minority of cases, because of blatant non-payment—I would not assume that that will result in more homelessness from that sector, because that would suggest that councils and housing associations would put such pressure on those tenants that there would be abandonments and evictions. I would like to think that that will not necessarily be the result.

However, if that is not the result, the implication is that social landlords will take the hit, and that is where income streams, the ability to maintain existing homes and, as has been alluded to already, any flexibility for funding new build will go. I think that we need to be wary of saying that there will be increased homelessness from the social rented sector, as that may not be the case. The implication is that social landlords will take the hit.

Fraser Stewart: I think that you have the answer to the question: the result will be either homelessness or arrears. Many housing associations are already modelling the arrears impact. In our case, we are presuming that the impact will be around 2 per cent, going up to 5 per cent for around five years, but that may well be overoptimistic. If our arrears go up to 5 per cent—if they more than double—the financial consequences will be absolutely horrendous. If we were to capitalise that, it would amount to a loss of £3,000 per existing unit. There were questions about the prospect of there being spare capacity and how it might be used, but any spare capacity will be eroded by that.

I echo David Bookbinder in saying that the social housing sector will need to find ways and means of ensuring that homelessness is not the result. However, there is a long way to go on welfare reform and when it actually happens there is no question but that it will be an absolutely massive social issue. I just keep my fingers crossed every day that no one ever finds a computer that is able to do it.

Jim Eadie: In the exercise that Mr Stewart referred to, was it possible to quantify specifically the impact of the direct payment of universal credit?

Fraser Stewart: No. There is other research that you could look at, and there were pilot schemes in England and one in Scotland. However, the pilots were so small that it is not really possible to draw any conclusions from them. Glasgow Housing Association has created a model that seeks to second-guess exactly what

the consequences will be, but we will not know until it happens—end of. We will not be able to judge the impact until a year or two thereafter because there will have to be a change in culture. However, the immediate impact of the direct payment of universal credit will be horrendous. There is no question about that. It will be bordering on the unmanageable for some associations.

Certainly, I think that every association will be planning to put all its available staff resources into bringing all tenants up to speed, to deal with vulnerable tenants and to try to ensure that the advice is out there. I know that the Scottish Government is very supportive of any initiative that seeks to mitigate the effects particularly of that aspect of welfare reform, and that is welcome.

Jim Eadie: Just on that very specific point about the Scottish Government's response, what further measures could the Scottish Government take to mitigate the reform's impact on housing supply?

Gordon MacRae: On what the Scottish Government can do to aid the likes of Fraser Stewart's tenants who are in hard-to-reach groups, we were disappointed that the mitigation money that came from Westminster was not passed on to advice services. It will be crucial that hard-to-reach tenants and others who are concerned about what will happen to their benefits are able to access impartial advice and support. At a Scottish level and at a local level, we are seeing deep cuts to advice services such as those provided by Shelter Scotland, Citizens Advice Scotland and others.

Fraser Stewart: I echo that. I was not aware of the fact that the Scottish Government had not passed on certain moneys that were expected to go into those services. It is crucial that those services are supported as generously as possible, because it will be a very difficult period for tenants and landlords alike.

11:00

David Bookbinder: The CIH is very glad to have been the recipient of a modest amount of Scottish Government support to help social landlords to prepare in as practical a way as possible for the reforms, and that support has certainly been very welcome. That on-going programme includes providing good practice guidance to social landlords, the first part of which will go out in the next week or so.

However, I think that the bigger picture is about advice services, exactly as Gordon MacRae said. We are talking about reserved matters, but a key part of the scene that is not reserved but which is within the gift of the Scottish Government is proper funding of advice services, whether through direct grants or through assisting and supporting local authorities to provide those. That is one area

where the Scottish Government can make a difference.

If I may add a general comment, I think that the Scottish Government and Scottish Parliament probably need to be aware that, while they are taking a very welcome interest in welfare reform, there is a risk of raising expectations that the Scottish Parliament can do more to mitigate the impacts than perhaps it can. That is something that I think the Parliament needs to watch.

Adam Ingram: This year, as we touched on earlier, we are moving to multi-year resource planning assumptions, with local authorities across Scotland taking much more of a lead in the development funding process and in marrying spend to local need. What do you expect will be the main advantages and disadvantages of that process in practice?

David Bookbinder: The process includes a number of very welcome elements. First, the fact that we now have a three-year programme is really significant. There was previously a bit of a stuttering start in the ability to plan ahead, so having a three-year programme will be good.

However, the three-year programme will not be a rolling three-year programme, so a potentially difficult issue could build up: if local authorities—and, indeed, the Scottish Government with its overview of the programme—are very cautious about what they approve next year and the year after that, by default we will have created a smaller housing budget from 2015 onwards. I believe that the Scottish Government is aware of that issue, but I think that we all need to work together to see whether we can create a rolling programme rather than just one three-year programme followed by another.

While we await the outcome of the new system—we hope that, within the next few weeks, we will see what year 1 of the new system has brought—there is one aspect of it that we very much welcome. Although it is entirely logical for local authorities with their strategic role to have greater influence over the distribution of resources, there are two things to watch. First, a challenge for some local authorities that are both builders and strategic planners will be to decide how much money goes into their own building and how much money goes into that of RSLs. We will be looking closely to see what that balance is. Secondly, we will also be watching the extent to which the money gets spent. Therefore, we very much welcome the fact that the Scottish Government will retain overall control, if you like, or at least an overview of the situation, so that if work at a site in one council area slips, the money can be vired quickly to another area, and the situation can be put right later. That retention of

overall Scottish Government control is certainly a very welcome feature.

Gordon MacRae: Adam Ingram asked about the advantages and disadvantages. An advantage should be a more strategic overview that ensures that homes go where they are needed rather than simply where there is the capacity to build them, although I am not sure that that will necessarily be the result. A disadvantage is that things will be less transparent in terms of the ability to say what is going where and when.

The other issue with the three-year plan, which should be an advantage, is that it should mean more homes. It is worth noting that £770 million is an increase on what was originally announced in the budget, but we have not seen an increase in the target, which remains the same target that was fully funded at around £620 million or £600 million when John Swinney first published the comprehensive spending review. We hope that a three-year plan will enable additional investment to be more quickly added to the pot and that the overall supply will increase when funds become available.

Fraser Stewart: What has been lost in all the changes is the submission by housing associations of annual strategy development funding plans, which allowed serious attention to be given to the bottom-up component of planning and allowed housing associations to bid for sites and to make the case for the strategic importance of what they were doing. That has been completely and utterly lost. We had quite a healthy combination of top-down and bottom-up approaches three or four years ago before there were any changes, with healthy compromises being made and nothing being overlooked. That was certainly an accountable and transparent planning process for everybody concerned, including the Government. We have lost that completely, and it should be reinstated—it is as simple as that. There was nothing wrong with the process, which worked very well.

I can talk only for Glasgow, where things are working well. There is a lot of support for and knowledge of local priorities as well as strategic priorities. However, that is not necessarily always guaranteed, so we could do with a system that had that as an in-built feature.

Adam Ingram: I return to the point about the programme not being a three-year rolling programme. In effect, approvals will set the budget for future years. Can you explain that a bit more? What do we need to do to ensure that that does not happen?

David Bookbinder: We all struggle to get our heads around the way in which the funding is to be paid out on completion. For instance, at the start

of the next spending round, from April 2015 onwards, the housing budget for 2015-16 will be spent on paying out on the completion of schemes that will have been approved 12 or 24 months before then. If not enough is approved in 2013-14 and 2014-15 because of the worry that that would involve making a commitment to spend money without knowing whether it will be there, by default the housing budget will be lower. It will not need to be higher, because if paying out is done only on completion and not enough has been approved, there will not be as much on which to pay out.

There needs to be cross-party working with the Government to ensure that a minimum, acceptable, decent level of homes to meet existing targets can be committed to into the next programme. Obviously, the next programme will cross into the responsibility of a new Administration, hence the need for a consensual approach to ensure that approvals do not quietly start dropping because of caution.

Adam Ingram: That seems to support the argument for having more strategic control at the Scottish Government level as opposed to devolving control to local authorities.

David Bookbinder: The system that we have now can be balanced in that regard. Ultimately, the money comes from the Scottish Government, and the CIHS is certainly comfortable with there being a local authority approach to dealing with it. However, neither local authorities nor the Scottish Government will be able to commit to a specific level of approvals without having some sense of a master plan to cover the start of the next spending review, otherwise we will see a fall by default.

The Scottish Government is retaining overall control, so it is not as if the process has been completely devolved to local authorities for them to provide funding from their own resources, as has happened in some other areas. The Scottish Government is still in control of the moneys, even for Edinburgh and Glasgow—they are still ultimately Scottish Government moneys.

Gordon MacRae: I concur with that comment. We all want to avoid a situation in which we sleepwalk into an underspend for a housing budget that has already been well cut. We will require to do more to support local authorities to get more approvals through before we hit the final date.

Fraser Stewart: Our concern flows from what Glasgow City Council has told us, which is that, as a consequence of what has happened, it has compressed all its planned site starts into the next financial year, which is 2013-14, and that it cannot plan for anything after 2014-15. That just seems crazy to us.

To get back to some of the initial questions, whether what the council plans to do is achievable is open to question. My association plays quite a prominent role in the affordable housing programme, and we are only now being asked to confirm that we can afford to do everything that we are pencilled in to do—and I fear that we cannot. That goes back to the projected 70:30 balance of the programme—it should be 100 per cent social rented housing anyway—drifting towards 30:70 to make the programme work. At that point, we get complete confusion. We are already in a situation in Scotland in which some social rents are higher than some so-called mid-market rents. A definition of social housing would probably help with all that, and a rolling programme is probably essential for longer-term planning.

Adam Ingram: I suppose that if you are moving towards more local decision making, the other aspect would be the effect of the pressures on the local government settlement on local authorities and how that impacts on their decisions and on local outcomes. In the context of cuts and a squeeze across the board, can we be confident that spending decisions on and the funding of affordable supply will be protected?

David Bookbinder: The CIH does not have worries about that money somehow disappearing. We expect complete transparency from local authorities and the Scottish Government on what the money in the affordable housing supply programme has funded. It is possible that the squeeze on general funding as a result of the financial pressures that local authorities are under might limit their ability to build up a package that enables them to use their £30,000 subsidy and supplement it with other local sources for their own house-building programmes. However, I do not expect financial pressures on local authorities to have any impact on making sure that money in the affordable housing supply programme is spent fully.

Gordon MacRae: I agree with that comprehensive explanation.

The Convener: Some of the answers have already alluded to the longer-term implications for the RSL sector of the way in which money is provided, the grant rates and the shift to larger associations, as we have seen south of the border. To what extent will the long-term impact of the shift in funding and provision for affordable housing affect the housing association sector? Is consolidation inevitable or desirable? If not, is it preventable?

Fraser Stewart: It is certainly not inevitable or desirable, and it is certainly preventable, although that could be helped by further legislation.

It is accepted and demonstrable that south of the border mergers and acquisitions were more related to the retirement age of chief executives than they were to any benefit flowing from those mergers and acquisitions. A lot of research and reviews have been done and they have not led to lower borrowing costs. We are all getting sick of people saying that you cannot borrow money unless you are absolutely huge—that is total nonsense. Big is not beautiful. There is a backlash in England at the moment, but those voices are not loud enough, and there is serious concern that some UK or England-registered organisations are acting in a fundamentally predatory manner. Any associations that feel that they have to merge with or become subsidiaries of UK-based organisations—for example, Irvine Housing Association and the West of Scotland Housing Association, which have up to 20,000 houses—need to look at how they have run their organisations for the past 10 or 20 years. It is certainly not something that has to be done by any of the organisations with which I am familiar. There is no clear attraction in it, and the loss of autonomy and commitments to physical communities and communities of interest would mean that the associations concerned would lose their *raison d'être*. Why would they continue? What is the point in being a housing association in such circumstances? In many respects, people would be happier with the accountability provided by a local authority rather than having a huge landlord that appears to have no roots among the tenants that they serve.

11:15

David Bookbinder: There may be a slight implication that if a housing association is not developing, it needs to look at rationalising or merging. However, the opposite is perhaps the case now. If an association is not developing, it probably has a much lower risk profile than one that is, so there is no reason why even small associations with 500 units or fewer cannot carry on as landlords.

If rents are affordable and tenants are happy with the service, I cannot see why the development profile, which is changing because there are fewer developing associations, would have any impact on a small association's ability to survive into the future. We have heard about other threats, not least from welfare reform, but as far as the CIH can see, the lack of development does not in itself lead to a pressure to merge.

Gordon MacRae: Shelter Scotland is obviously not a landlord, so we are observers on this issue. Will consolidation happen? It appears to be the direction of travel in some places. Should it happen? It is up to the advocates of merger to

demonstrate the benefits that it would have for tenants and prospective tenants. We take a pragmatic view that anything that increases the overall supply of good-quality social rented properties in the right places should be welcomed, but such business management decisions are rightly the responsibility of individual associations.

At the national policy level, if there is capacity—be it in relation to land or borrowing—associations should be encouraged and supported to build as best they can.

Gordon MacDonald (Edinburgh Pentlands) (SNP): We have already touched on housing need and have heard that we need to build 10,000 social rented homes a year. Given that the spending allocation for new affordable homes will achieve less than that, what are your views on whether enough priority is given to rural housing, the development of brownfield sites and the building of special-needs housing? Is there enough targeting to meet the needs of people who are on low incomes, who are poorly housed or who are homeless?

Gordon MacRae: Fundamentally, we would say that not enough priority is being given to housing at the strategic level. There is clear evidence that people are suffering and that they are struggling to keep a roof over their heads. We are seeing people—be they renters or home owners—who are struggling to pay their household bills.

Looking forward, I think that the programme is a programme not to address housing need but to deliver the Government's target. We believe that the question is really about what sort of country we want to be. Do we want to be a country in which everyone has a secure, affordable home—whether they rent or own it—or a country that keeps a subsistence level of house building going? Looking forward, I think that we will be a country that has that subsistence level of house building. That is not the aspiration for Scotland that we would hope for.

David Bookbinder: We have to watch the potential disconnect between the housing supply programme and wider Government objectives. Let me give the example of the ageing population. We reluctantly have to accept that in recent years and probably in the next few years the amount of specialist housing and care provision for older people has not been and will not be what it once was. We would find it more difficult to accept inadequate provision of mainstream housing built to a standard that is suitable for wheelchair users, for example. That would be a serious disconnect, because although such housing involves an extra cost, it is nothing like as complex as building a specialist housing or care scheme for older people.

A Horizon Housing Association report that is coming out shortly and which is supported by the CIHS will highlight the shortfall in mainstream housing that is suitable for wheelchair users. Of course, if we are talking about our ageing population and the fact that people are getting older and becoming increasingly frail, it is very easy to say that we should build housing of the right standard to address a particular need, but the situation perfectly exemplifies our anxieties about slightly more expensive provision getting squeezed.

Fraser Stewart: Developing housing to cover all the issues that Gordon MacDonald mentioned, such as special needs, brownfield sites and remote and rural communities, costs money and will be the first thing to get squeezed. As I said at the beginning, the huge concern is that Government officials are not seeking to measure the impact of the proposals on such things. We should really agree as a society what the outturn needs to be and what we need to create, and then we should examine how policy and funding arrangements are contributing to those developments and the meeting of targets. However, targets are not being set and the incentive is not to do any of the things that Gordon MacDonald talked about. Brownfield sites, special needs and remote and rural locations are all expensive to deal with and aside from the little bits of money that are being given out—which I have to say are getting smaller and smaller—nothing is to be done to assist the situation. It is all about unit costs, and that approach is not going to meet the country's overall needs.

Gordon MacDonald: Many of the 32 local authorities cover rural areas. The Government has stated that 20,000 homes should be built for social rent, with authorities building 5,000 houses. Do you agree with that allocation? Is the council build target achievable?

Gordon MacRae: Although we welcome the setting of any target that allows us to identify what delivery has been, we would like that target to be higher. Local authorities could play more of a role than they have in the past, but I do not think that we should lose sight of the overall social housing picture. The fact that one part of the social housing sector is doing a wee bit more should not result in the other part doing considerably less. We are concerned about that.

Remote and rural communities have particular issues that have not yet been properly addressed. As Fraser Stewart and David Bookbinder have made clear, there are particular reasons why it is harder to address such issues, which is why we very much welcome the minister's commitment to carrying out a national overview of local needs analysis. We need to identify the homes that

Scotland requires and what we want social housing to deliver. Is it about better communities or is it just about throwing up units here, there and everywhere? Once we have a national programme that is about addressing housing need and building better communities, we can start to move towards a situation in which we build more homes than we lose every year. That would certainly be a positive move.

David Bookbinder: The issue of remote and rural areas is interesting, especially when taken with the question of the council house contribution to the programme. If, as the CIHS suspects, the proportion of the social rented programme that councils take on will need to increase, we will be intrigued to find out whether they can step into providing housing in more difficult sites—in, say, remote and rural areas—which has traditionally been provided by often very local housing associations with very reasonable grants. There is a broad, national issue about councils taking on a greater proportion of the programme, but the interesting question is whether they will take on the more difficult provision.

Fraser Stewart: I am not really in a position to comment on rural issues with regard to local authorities.

Gordon MacDonald: The date for delivering the 2012 homelessness commitment is almost upon us. What impact will the current levels of affordable housing supply have on that?

Gordon MacRae: It will make it harder for local authorities to ensure that there is settled accommodation for everyone who becomes unintentionally homeless. I am not sure whether the 2012 commitment will make things more complex for local authorities, but the overall reduction in house building simply adds to the pressure on overall supply. We need to recognise that the majority of people who get settled accommodation have spent time on the waiting list.

We would argue that the 2012 homelessness commitment is one of this Parliament's most progressive achievements and should be recognised as such. However, it requires local authorities to look again at prevention, support and advice. It is not just about supply or getting access to temporary accommodation but about the service that local authorities deliver to people who become homeless. After all, there is more that we can do to prevent homelessness in the first place.

The Convener: Members have no more questions, so I thank the witnesses for their thorough evidence. You have certainly given us a lot of questions to put to the relevant ministers.

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

11:25

Meeting suspended.

11:29

On resuming—

Water Resources (Scotland) Bill: Stage 1

The Convener: Item 2 is evidence taking for the committee's stage 1 consideration of the Water Resources (Scotland) Bill from energy and environmental organisations. I welcome to the meeting Dr Sarah Hendry, lecturer in law at the international hydrological programme—hydrology for the environment, life and policy, or IHP-HELP, centre for water law, policy and science, which some of us visited a couple of weeks ago; Adrian Johnston, technical director at MWH, who is representing the Institution of Civil Engineers Scotland; Marc Stutter, head of research: catchments and coasts at the James Hutton Institute; and Ian Cowan, co-convener of the water sub-group in the UK Environmental Law Association. I thank the witnesses for their written submissions and invite Margaret McCulloch to begin the questioning.

Margaret McCulloch: What is your view of the Government's overall ambition for Scotland to become a hydro nation? Does the bill go some way towards achieving that?

Dr Sarah Hendry (IHP-HELP Centre for Water Law, Policy and Science): Our centre is very supportive of the Government's decision to focus policy agendas on water. We are very keen to work with the Government and others on taking the hydro nation concept forward and certainly think that part 1 of the bill is an attempt to give some legislative expression to the ideas underpinning it.

Marc Stutter (James Hutton Institute): I second that. As an academic research institution that is tied up with Scotland's water environment, the James Hutton Institute recognises that this is an important step in firming up some of the hydro nation agenda. Scotland certainly has the ability to sell some of its water expertise under the hydro nation badge and the protection of the economic, societal and environmental benefits in the bill will add to those efforts. It would have been nice to have seen closer links between those elements; after all, the economic relies on the societal, which in turn relies on the environmental, and the bill could have wrapped those things a bit more tightly for important economic and revenue-creating sectors in Scotland such as food and drink, land management, tourism and energy.

Adrian Johnston (Institution of Civil Engineers Scotland): The Institution of Civil Engineers Scotland very much agrees. We very much welcome the bill and the part that it will play in pushing forward the hydro nation agenda,

although we recognise that it forms only part of that agenda. The bill and the overall agenda will very much help Scotland to maximise the benefits of what it is already good at doing in the water sector; to continue to build capability in addressing complex sustainable water management issues; and to further increase Scotland's competitiveness on the world stage in this area.

Ian Cowan (UK Environmental Law Association): UKELA supports the hydro nation agenda and the intention to make the most of Scotland's water resources and undoubted expertise in water matters. However, we are concerned about certain aspects of the bill.

Margaret McCulloch: How adequate was the consultation that took place prior to the bill's introduction? Are you satisfied with the Scottish Government's response to any concerns that you raised during the consultation phase?

Dr Hendry: The consultation was generally good. There were two Government consultations, the second of which ran, I have to say, for a shorter period than we would usually expect. The bill team and officials who were working on the hydro nation agenda and the bill were really helpful and were happy to attend meetings that we organised on hydro nation and the bill. The only thing I would say is that, when the bill was published, part 2 came as a surprise to many of us.

Marc Stutter: The background to the overall hydro nation agenda has been quite good, with public meetings, discussions with the academic and water industry sectors and so on. However, I was more involved in submitting written evidence on specific wording in the bill, which is what we are discussing today, rather than with previous meetings.

Adrian Johnston: Similarly, I was not involved to a great degree in the consultation stage but, certainly, in the preparation of the written evidence and the discussions that we have had, we have found it to be a useful process.

Ian Cowan: I have nothing to add to what Sarah Hendry has said.

Malcolm Chisholm: The committee has heard evidence, mainly from Consumer Focus Scotland, that a recent European Commission consultation on the blueprint to safeguard Europe's waters might have implications for the development of Scotland's water resources and for the bill. What is your view on that? Are you satisfied that the bill takes account of the drive at European level in relation to developing water resources?

Dr Hendry: We need to wait and see what the output of the blueprint consultation is. It has been a wide-ranging exercise and I understand that it

will feed into a great deal of future work that the Commission will undertake on the issue of water in the medium term.

In the short term, I do not think that anything in the bill will cause a problem with regard to the blueprint. One issue that might arise from the exercise is water efficiency in buildings. The bill does not directly deal with that, but it certainly is not in conflict with that kind of policy step.

Marc Stutter: From my knowledge of the EU proposals going into the blueprint, I believe that some of the pillars involve the water quantity and quality aspects and that there is a desire to unite those with other key areas of policy such as habitat, societal benefits from water recreation and wellbeing. The industrial side is important, too. The fact that those policies act in isolation seems to prevent benefits from being realised in the water sector at times and might create conflicts between, for example, dredging under the controlled activity regulations and achieving flood management, or regulations around, say, a new technique for removing waste from sewage that is going into a water stream and regulations about where that sewage should be directed. Various policy trade-offs need to be considered, and there is an opportunity for the bill to start to unite those policies so that those clashes and trade-offs do not impede some of the more visionary stuff that it is trying to put in place.

Adrian Johnston: Building on that aspect, we think that the hydro nation agenda will need to pursue the best possible collaboration between various institutions and groups across Scotland to ensure that we have a truly integrated approach to the management of Scotland's water and how we talk to the rest of the world about that. The issue of collaboration and understanding how institutions can act in an efficient way, avoiding duplication and so on, is important.

Ian Cowan: UKELA has emphasised the need for the bill to recognise that water has inherent value on its own, in its place in the water environment. The European water framework directive recognises this by stating:

"Water is not a commercial product like any other but, rather, a heritage which must be protected, defended and treated as such."

Malcolm Chisholm: Sticking with the European theme, I have a question that I do not know whether you can answer. Are you aware of any other European countries that are carrying forward similar or parallel legislation with the aim of protecting water resources? Are you aware of any other water policies that are being legislated for by other European countries?

Dr Hendry: As far as I know, no one else is thinking about a hydro nation agenda in that broad

and focused sense—the hydro nation agenda is broad, and the Government is focused on it. Almost all European countries have made substantial changes to their water law and accompanying policy in recent years in order to implement the framework directive and the other EU water legislation that has come along with it, and that will probably continue. They have all been doing that, but not with the same hydro nation focus.

Malcolm Chisholm: Let us turn our attention to England and Wales rather than the whole of Europe. Other witnesses, including Consumer Focus Scotland and SSE, referred to the opening up to competition of the non-domestic water and sewerage market in England and Wales, and there was some discussion of the possible impact of that. How might that impact on the proposals in the bill, and how does the bill anticipate such changes?

Dr Hendry: There will be opportunities for Business Stream in the opening up of the market in England and Wales. There will be opportunities for companies in Scotland to take up the new challenge of a more open market south of the border, and the bill clarifies a number of issues relating to Scottish Water and the subsidiary companies, which will be helpful to that process.

The English bill is at an early stage, and what will happen in England is not wholly clear. It would be nice to think that those working in the water services sector in England are fully up to speed on all the interesting things that have already been done in Scotland to open up the retail market and that they are taking the fullest advice from the Water Industry Commission for Scotland, in particular, about our experiences here.

Adrian Johnston: What has been happening in Scotland is working well, and Scotland can see itself as an exemplar for how that could be progressed in the wider United Kingdom. Overall, however, on the issue of the horizontal layering of the different aspects of water supply and delivery, Scotland needs to—sorry, I will stop there. I will come back to that.

Ian Cowan: I do not really have anything to add, I am afraid. I cannot help you there.

The Convener: Do not worry—we can come back to that.

Adam Ingram: Mr Cowan has touched on the issue of the value of Scotland's water resource. There has been some criticism that the definition of value in the bill is too narrowly focused and is too much to do with the exploitation of the resource as an economic asset. How would you like the bill to be reshaped by the type of definition that you are looking for? Would other proposals flow from a redefinition?

Ian Cowan: As I said, the first thing that UKELA would like to see is an explicit recognition that water has an inherent value that is not economic but is a wider social and environmental value. The definition of value in the bill includes the phrase “economic and other benefit” and the responses to date have said that the environmental and social aspects are covered by that, but we still feel that the dominant drive is economic. In promoting such a wide agenda as the hydro nation agenda, it is difficult to find the right words to express in legislation what you are trying to do. It occurred to UKELA that legislation might not be the way to address the hydro nation agenda and that there may be other ways of doing it.

Now that a legislative approach has been opted for, it is important that the bill is explicit about the other values that need to be stated to make it clear to anyone reading it that it is not just about development. The words “development” and “value” have connotations, and the word “resource” could be viewed as quite an anthropocentric concept. In all those terms, there is a risk that economic values might be predominant. Rather than saying “economic and other benefit”, we think that it is important explicitly to say “economic, social and environmental benefits”.

11:45

Adam Ingram: I am curious to know other witnesses' take on that. Would it make any significant difference to the proposals in the bill if we altered the definition along the lines suggested by Mr Cowan?

Marc Stutter: It is a fascinating area. I see the bill as paving the way for lots of future developments by setting out the groundwork for those developments. It already does that—justifiably so—on handling effluents, waste and water abstraction, drought orders and things like that, but you could extend that further so that water can be seen as a test case for the important concept of ecosystem services, which is gaining steam throughout Europe. It is a nice way of uniting the positive and negative aspects of water, and putting the things that are put into water and the things that are taken out of it on a level playing field. If you were to take the ecosystem services approach in the bill, you could bring together the economic, societal and environmental benefits and pave the way for the use of some nice tools, such as payments for ecosystem services.

Adam Ingram: I look forward to your draft amendments.

Dr Hendry: I have a number of thoughts about section 1. On the amended provision about sustainable use, our centre feels that “sustainable

use” is a better term than what was there before, although we still feel that “designed to contribute to” is quite weak.

I agree with Ian Cowan that, at a minimum, the terms “social” and “environmental” should be included in section 1(3), instead of just “other”. We understand that the principal locus for defending the water environment is the Water Environment and Water Services (Scotland) Act 2003. Nonetheless, the focus on development, while important, needs to be balanced.

Another possibility that we suggested is a specific duty to take an ecosystems approach, just as Marc Stutter discussed. However, that still has an anthropocentric element to it—it is still really about human use. A statement that includes the inherent value of water in its natural environment would perhaps be the strongest thing that you could put into the bill. Those are all choices that could be made, but explicit recognition of the social and environmental aspects is certainly necessary.

Adrian Johnston: I very much agree with that. Although the focus on economic benefit is important, we increasingly need to better understand the social and environmental aspects. The area of ecosystem valuation is developing all the time, and more work is being done to understand what the different types of values are in terms of benefits that can be accrued. There needs to be flexibility in the bill to ensure that they are clearly recognised.

Ian Cowan: That development of an ecosystems approach is something that Scotland could export as part of its expertise.

Marc Stutter: What I failed to voice properly was the fact that it would be really nice and quite an exportable and tangible thing to be able to show that we can manage water well in Scotland using a concept such as the ecosystems approach. Water is central to a range of conflicting catchment uses—it is needed for renewable energy, for growing enough food and for providing habitat. Such an approach involves recognising that we have a number of competing users across a wide range of sectors and balancing all that so that we have enough water for all the users and services.

Adam Ingram: There is an issue that arises in relation to climate change. Driving towards an improvement in the standards for water and waste water tends to involve the use of quite a lot of energy. How do we balance the large energy input that is involved in achieving improved water standards with the need to meet our climate change carbon targets? How do we deal with that? There is nothing in the bill that would give you guidance on that, is there?

Dr Hendry: No—other than the requirement for Scottish Water to do more on our renewables agenda. Scottish Water is especially mindful of the difficulties that you talk about. As we move into the next regulatory period, perhaps we will see more emphasis on innovation—that is a word that I try to avoid using—and on solutions that are not low tech but more cognisant of the energy dimension of treatment.

Adam Ingram: I take it that you are looking for such issues to be covered by the bill’s wider approach and that you are not just focusing narrowly on the exploitation of the resource itself. Is that right?

Marc Stutter: Yes. There are two sides to that. There are aspects that are not covered in the bill, such as how we can derive benefits from protecting the water environment through minimising diffuse pollution and by increasing soil carbon in the catchment so that soil erodes less and stores more carbon. There are complex underlying issues that are not dealt with in the bill, but there are aspects that are covered in the bill, such as driving down energy use in water treatment and supply, encouraging water reuse and recovering more resources from what are currently called waste streams. If, as a key player, Scottish Water acts in collaboration rather than in competition with small and medium-sized enterprises in that industry, the bill has the potential to balance that side of things.

Adam Ingram: You also think that the linking of water resource use to the land use strategy is a benefit that could flow from the bill. What is your view on that?

Marc Stutter: It would certainly be good if the two went ahead together. The land use strategy mentions water, so any water strategy should refer to the land use strategy, because it covers broader, competing aspects of habitat and land use that all impact quite heavily on the water environment.

Adam Ingram: What I am driving at is whether we need changes to the bill to create such linkages or to ensure that they happen.

Adrian Johnston: The Institution of Civil Engineers well recognises that sustainable water management is about much more than managing the assets for drinking water separately from doing all the other things. As you know, a lot of progress is being made in integrated catchment management and broadening the boundaries of the way in which we manage water.

I mentioned collaboration. It is necessary to ensure that there is strong collaboration between Scottish Water and its regulators and other stakeholders at a catchment level. Each catchment has different challenges and issues but,

through the river basin planning process and so on, there are opportunities to develop those more cohesive approaches. The bill could do more to underscore the importance of catchment-based approaches.

Adam Ingram: I have a couple of more specific questions about the directions that Scottish ministers might issue to the designated bodies. Dr Hendry's organisation has stated that the directions should be subject to a public consultation. What benefits would that bring? Is the list of designated bodies in the bill appropriate?

Dr Hendry: I have no concern about the list of designated bodies or the power of ministers to add to it with consultation. I know that some organisations have already asked whether they can be designated bodies. However, I have a general concern about directions in that, in effect, they have the force of law but they are not always published in the same way as a legal instrument. That is part of the reason why, in the centre's submission and its response to the Government consultation, we suggested that directions should be consulted on unless they are made in an emergency and there is simply no time to consult—that is different. It should be a public consultation and there should be a commitment to publish the directions. They are usually available somewhere, but they are not always easy to find. The issue that we raised was a general one about transparency in the use of directions.

Adam Ingram: Does anyone else have a view on the subject?

Marc Stutter: The bodies that are mentioned in the bill seem to be an appropriate group to bring together to try to resolve some of the issues with funding and innovation. It would allow discussion of regulation and the regulatory barriers that might stand in the way of some of that innovation being realised. Scottish Water is in a unique position to lead and flagship that development, and the involvement of SEPA, SNH and Scottish Enterprise would be good. The Forestry Commission should perhaps be represented as it is quite a big landowner, especially in protected source regions.

Ian Cowan: I echo what Sarah Hendry said about consultation. It is particularly important to consult the other designated bodies before one of them is directed. The Government does not know everything, and something can always be learned from consultation. I do not see what objection there can be to consultation in cases where there is no urgency.

Adam Ingram: There is a proposed reporting period of three years. Some people have said that that is too short and that it should be changed, but

others have welcomed it on the basis that it would fit with the six-year reporting cycle for river basin management plans. Do you have a view on the adequacy of the proposed three-year reporting period? What should the reports contain?

Adrian Johnston: We are concerned that three years is too long to wait for the reports. Given that the hydro nation agenda is important to Scotland's ability to make progress towards meeting its objectives, we believe that consideration should be given to more frequent reporting, certainly initially. That would establish momentum, ensure that progress is made and ensure that there is good return on the investment. The period could be reviewed in future.

12:00

Dr Hendry: We would like clarification that the reporting will be on-going. On one reading, section 4 could require a single report after three years or thereabouts. We also note that the bill repeals the high-level reporting mechanism under the Water Environment and Water Services (Scotland) Act 2003.

We would like on-going reporting—its periodicity is perhaps less important. We wonder whether an opportunity to coalesce exists, because reporting will still take place under the Flood Risk Management (Scotland) Act 2009. Reporting under WEWS is being removed, but there might be a rationale for having a single form of high-level reporting on the policy and legislative framework for managing water, which could incorporate action under all three acts.

Marc Stutter: The hydro nation agenda has built a head of steam in the past few months, and it would be nice to keep that momentum going. With that in mind, and given that the hydro nation is important, I believe that three years is a long time to wait for understanding and analysis of whether we are doing something correctly.

On the realisation of new flows of money into Scotland from European research and design sources, the hydro nation provides a good way for us to align with funds such as the EU framework funding for science and innovation under the horizon 2020 programme. If we are doing that wrong, there will be a big consequence down the line. I would like reporting to be done in stages and a bit earlier, if that is possible.

Ian Cowan: It is perhaps wrong to repeal the reporting duty on ministers under the 2003 act. The river basin management plan system has a six-yearly detailed reporting requirement, which serves a different purpose from that in section 26 of the 2003 act, which provides for an annual high-level report to Parliament. The provisions do not serve the same purpose.

Marc Stutter: As has been pointed out, it would be nice to review the bill in line with—and not in isolation from—all the other statutory instruments, as well as other tools for realising water benefits, to ensure that things are on track. That would be beneficial.

Adrian Johnston: A related matter on which we would be interested to see information is the type of reporting that is being talked about. Should particular measures be developed that align with the objective of the hydro nation agenda and which could be reported on in relation to the different aspects that we have discussed? Such measures could concern direct economic benefit or other aspects, such as improvements in employment, education and knowledge development transfer. That would ensure that the reporting system adequately covers the agenda's aspirations.

Adam Ingram: We will come back to that.

The Convener: I am sure that we will.

Alex Johnstone: I have questions on water abstraction, which was the surprise package in the proposals. Some of you have said that you have substantial concerns about the underlying purpose of—and even the need for—the provisions on abstraction. Will you explain your concerns and tell us how you might prefer the bill to deal with abstraction?

Dr Hendry: Our view—and, possibly more so, that of UKELA—is that a comprehensive set of abstraction controls already applies in Scotland under the controlled activities regulations and we struggle to see the added benefit that the bill will provide. I know that it is argued that ministers are better placed to consider economic and social aspects—UKELA's submission discusses that more fully—but we see no reason in principle why ministers could not exercise their call-in powers over abstractions that are of certain types and above certain limits.

The CAR regime is well established and works well. It is thorough and has good provision for third-party representation and so forth. We find it difficult to see the added benefit of another layer of regulation.

Alex Johnstone: The late inclusion of the abstraction provisions meant that they were not consulted on. Would there be merit in the Government consulting on them before the bill's final stages in Parliament?

Dr Hendry: I do not think that I could answer that question. It is clear that a consultation is going on now through the parliamentary committee, and that might be the best approach at this stage. Time constraints might impact on that suggestion.

Alex Johnstone: You should never overestimate the ability of a committee to influence the Government.

Dr Hendry: That is exactly what I meant. The committee is taking the matter forward, and perhaps that is a better place for the discussion at this stage.

Marc Stutter: My point was about how the 10 megalitres of water per day or the defined limit was reached in ministerial deliberation. The figure seems rather arbitrary. Obviously, the abstraction rate should be matched with the size of the water body or the other services that receive damage or losses because water is being abstracted, so it cannot necessarily be applied across the board as a single value. If that is dealt with in the CAR regime already, it will probably suffice, but if it is not, the bill should include something that looks a bit more specifically at where the water is taken from rather than a standard amount.

Adrian Johnston: I very much agree with that. We appreciate that a limit would be wanted for practical purposes, but every catchment is different.

The other issue for us is that we would like a little more understanding of the reasons for the particular exemptions that are identified. There seems to be a wide number of exemptions to the new power, and it is not clear to us why some of those activities would be considered differently from other more general abstractions.

Alex Johnstone: Will Mr Johnston and Mr Stutter say something about the concerns that they have expressed about the regime and the exemption of certain individuals or activities?

Marc Stutter: Obviously, a range of activities require water. I think that it has been discussed in previous evidence that some users or abstractors of water will return it virtually unpolluted, so they are simply temporary borrowers of it. Some may return water heated up, some may return it polluted, and some may evaporate it off to the sky.

Many different things can happen, and the question is whether the matter is dealt with successfully by an older system such as an abstraction licence system or whether it is time to look more at the quality of what is returned and look to consumption-based or usage-based financial schemes. That would take us more into payment for ecosystem services, but the bill could touch on that and make a new and fit-for-purpose scheme work.

Ian Cowan: I agree with that. The controlled activities regulations or the charging scheme that SEPA operates cover those nuances of consumptive and non-consumptive uses of water resources. However, things are not clear in the

regulations because of how they have been drafted.

The issue goes back to the purpose of the proposed new regime. As members know, the controlled activities regulations are required to implement the provisions of the water framework directive. One of the provisions of that directive is that when a proposed abstraction would cause a deterioration in a water body's ecological status—in other words, if an abstraction was so big that it would downgrade the water body's status—SEPA must conduct a major balancing exercise that is based on sustainable development principles. It is therefore required to consider economic and social as well as environmental aspects.

SEPA has a well-developed method for dealing with those decisions, which it applies quite frequently. It has also been successfully defended on appeal, so it has been subject to scrutiny by Scottish Government reporters. It is not therefore accurate to say that SEPA only looks at the environmental aspects of major abstractions. I will not question the need for the regime on that ground.

I have some data on the numbers of authorised abstractions under the controlled activities regulations around the 10-megalitre threshold, if the committee is interested. The data that SEPA gave me exclude public water supply because of concerns—well, I will let SEPA explain that if it wants to. Public water supply would be exempt under the proposals anyway.

There are currently 199 authorised abstractions exceeding 10 megalitres per day, of which 177 would be exempt under the proposals. The remaining 22 are for industrial process water, although it is not clear from the data that I have received whether that is for cooling or other industrial uses. Below that threshold, there are about 100 abstractions of between 2 and 10 megalitres per day, so there are more in the higher category. Under the current proposals, we would be looking at 20 abstractions over the five years since CAR came into force.

Alex Johnstone: On a slightly different tack, the centre for water law raised the issue of the ownership of water and the possible bulk sales of water outwith Scotland. Can you expand on those comments and tell us how that might impact on the proposals in the bill?

Dr Hendry: The committee has already had evidence from Stephen Rees. You asked him about ownership and I generally agree with everything that he said.

The history of who owns water in a mixed jurisdiction such as Scotland is very complex. We have our roots in Roman law, which was also very complex. We would generally say that there is no

ownership of water as such, at least of running water, but that there are property rights that might amount to or look quite like some elements of ownership in terms of the degree of use that can be afforded.

The Water Environment and Water Services (Scotland) Act 2003 and the controlled activities regulations were not challenged in terms of prior ownership rights over water, which was really heartening. It indicates that users in Scotland are cognisant of the need for a modern water law regime that allocates water under a sensible licensing system.

Ownership is not really an issue for the policy and legislative framework. To be honest, I am not convinced that bulk water supply is an issue either, at least not in the sense of major transfers for public use. There are environmental and engineering issues around the bulk transfer of water. However, as the centre for water law understands it, in many places around the world when bulk transfers out of a jurisdiction are attempted, it triggers a lot of concern among the public and non-governmental organisations. At that point, questions around ownership might become a little livelier.

In our submission, we were just drawing attention to the fact that the position is not wholly clear. In many ways, the question has been overtaken by the current modern statutory framework, but issues might still arise, particularly in the context of bulk supply.

Alex Johnstone: Can you not imagine circumstances during the projected lifetime of the proposed legislation in which, if the bill does not deal with those issues, it will be found to be inadequate?

Dr Hendry: Should the bill deal with ownership? When I am in other countries, I tend to take the view that the best thing that a water resources act or a water code could provide is that water is held in public trust. That answer to the ownership question is generally unobjectionable and hits all the right notes, in that the state has control over water in the public interest and can allocate it for beneficial uses and so on. That would be my preference in the framing of a modern water act.

When WEWS went through, the issue did not really have to be addressed so—perhaps sensibly—it was not. However, the general approach that I would take is that water should be held in public trust.

12:15

Ian Cowan: I support that. There might be an opportunity through the bill to clarify the matter, which, as Sarah Hendry says, is not clear. That

approach would chime with Scottish Water's status in Scotland, which contrasts with the situation in England. Scottish Water is our only public water company, so there is an opportunity to take such an approach.

To return to Alex Johnstone's previous point, it would be a good idea for the Government to consult on the proposed new abstraction regime. That issue deserves wider scrutiny.

Marc Stutter: Perhaps it is more in line with the approach here that people should be regarded not as water owners but as custodians, and therefore as having to act in ways that minimise pollution or waste. People would never have ownership but would be responsible for water while it is on their land.

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

Through its arm Scottish Water Horizons, Scottish Water is already investing in renewable energy sources and waste management activities. Therefore, is part 3 of the bill necessary?

Dr Hendry: I think that part 3 adds a deal of clarity and makes provision that does not currently exist. There are specific requirements on developing the assets and renewables. Although Scottish Water does those things anyway, the bill perhaps makes it clear that they are part of the hydro nation agenda. We also have a new definition of core functions. Sections 25 and 70 of the Water Industry (Scotland) Act 2002, when read together, are not wholly clear or the easiest provisions to read. Section 24 in the bill is certainly an improvement in that it specifies for the first time that the core functions relate to water and sewerage services.

The Convener: Does that represent an expansion of Scottish Water's core functions?

Dr Hendry: We have reflected a lot on that. Our concern is about the phrase "relating to". Perhaps the issue is more about the policy context rather than the bill, but we wonder what the phrase

"relating to the provision of water or sewerage services" means.

If Scottish Water generates renewable energy on-site for use in a treatment facility, that clearly relates to water and sewerage provision and so is core business that is regulated and paid for by the customers. If Scottish Water generates energy that goes solely to the grid through Scottish Water Horizons, that is on the non-core side. However, there could be grey areas where it is harder to draw the line, perhaps if some energy is used in-house and some is exported. Therefore, we need clarity on what is regulated business and what is

Scottish Water Horizons business. That is what we are looking for.

The Convener: In written evidence, the James Hutton Institute said that there is a need for

"localism' in distribution, water reuse, waste stream separation and treatment."

Will you expand on that and say how it relates to the proposals in the bill?

Marc Stutter: Lots of innovation is needed in the water sector to overcome the status quo of the inherited systems of distribution—particularly in a country such as Scotland that has a fragmented population—and our treatment of what are currently viewed, rather wastefully, as wastes. However, to do that requires infrastructural change on quite a large scale.

The fact that Scottish Water is a public body that is able to act outside the constraints of shareholders and so on puts Scotland and the hydro nation agenda in quite an enviable position, certainly in Europe. If we can capitalise on that and if, with the support of the bill, Scottish Water can take some slightly brave steps towards putting some of the infrastructure in place, we can perhaps do things more innovatively in the future. We can begin to separate wastes locally so that domestic waste is not being mixed with industrial waste and the potential reuse of the resource is not lost because it is contaminated.

If we can get Scottish Water to act a bit more innovatively and implement such local solutions as local water distribution and treatment to drive energy usage down, we can use that as an exportable model of how Scotland is a bit more revolutionary in how it is doing things. I see Scottish Water's role as a pillar in the hydro nation agenda in contributing to such innovation.

The Convener: Concerns have been raised by the energy and waste management sectors that granting these powers to Scottish Water will give it and its subsidiaries an unfair competitive advantage in the market. Does that concern you? Is that the reality?

Marc Stutter: Yes. We would not want to skew the marketplace against small companies that are trying to act on their own footing. The Parliament should, instead, come up with something whereby Scottish Water is seen as a big player in the hydro nation agenda along with the academic part of the research and development sector. If those two—Scottish Water and the academics—came together for the hydro nation agenda with the Scottish Government as an enabling body, and if Scottish Water was carefully positioned so that it did not act in competition with the SMEs but was a collaborator and enabler, that would hopefully

resolve the issue. It is quite important that it is resolved.

Adrian Johnston: On the flipside, one of the fundamental things to be encouraged, as far as Scottish Water is concerned, is resource efficiency. Whether that involves Scottish Water generating energy, which helps it to reduce its energy use, or making best use of the by-products of water treatment, thereby maximising the recovery of resources, it should be very much encouraged. That, again, could be used as an exemplar for other water companies and organisations that process inputs and produce outputs.

Fundamentally, it is a matter of moving away from the concept of an organisation producing a water and sewerage service and not worrying about everything else towards the maximally efficient use of resources through the operations that the organisation performs.

Gordon MacDonald: Part 4 of the bill allows Scottish Water to enter into agreements with landowners in order to undertake works to prevent deterioration in water quality. Concerns have been raised about the nature of those agreements, and it has been suggested that some clarification is required.

The written evidence from the centre for water law and UKELA asks that linkages between the proposals in part 4 and the existing regulation of raw water quality under the Water Environment and Water Services (Scotland) Act 2003 and the water framework directive be made more explicit. How could that be achieved?

Dr Hendry: We support part 4. We think that there is a great deal that water services providers, when they are vertically integrated, could and should be doing in terms of catchment protection at that scale.

The diffuse pollution regulations have been introduced and are being enforced by SEPA, although we understand that SEPA's monitoring of water quality has been reducing for various reasons. We want to ensure that there is adequate tying-in of the two sets of activities—certainly, those are things that Scottish Water should be doing. We have suggested that there could be a specific duty on Scottish Water to co-operate with SEPA on processing and perhaps a wider duty of co-operation, such as we see in the Flood Risk Management (Scotland) Act 2009, to ensure that it works with all the key stakeholders when it takes forward the catchment initiatives.

We would be concerned to ensure—as I am sure will be the case—that nobody incentivises a land manager to do something that the criminal law requires them to do anyway.

Gordon MacDonald: Does anyone else want to add anything?

Ian Cowan: Sarah has covered it.

Marc Stutter: I will add one thing. It is a matter of linking the catchment of water source with the water itself. That is key and it brings in all the things that we said earlier about water being a limiting factor for developing other assets, such as renewable energy and food. As it is written, however, the bill is quite vague about that aspect. For example, section 28(2) states that Scottish Water

“may enter into agreements with ... owners and occupiers of ... land”,

as well as with local authorities to carry out “activities”. The use of words such as “agreements” and “activities” creates vagueness, compared with specific references in other parts of the bill to, for example, fats going down into the sewer network.

I do not know whether the wording in section 28(2) has been left vague for a purpose, but the issue is clearly important because Scottish Water is undertaking catchment-based solutions for some of their source-water problems—for example, with pesticides in the Ugie. SEPA obviously knows, from its priority catchments, that the issue is important and that it wraps up all the catchment aspects, such as the water blueprint that it is trying to implement. It is a big and important issue.

Gordon MacDonald: We have touched on SEPA. Some of the evidence that we have received has argued that it would be better for SEPA, rather than Scottish Water, to take on the new powers over raw water quality. Can you explain the reasoning behind that view, which I think came from the centre for water law and UKELA?

Dr Hendry: I think that we were making the point that SEPA has traditionally had the expertise in monitoring raw water quality and seeking to manage diffuse pollution. The diffuse pollution regulations in Scotland were quite innovative—very few countries have gone down that particular route—but they have not had a great deal of time to become embedded.

We recognise that the water services provider can play a key role as well, and we understand that there may be situations in which it would be in a better position to come to an agreement with a land manager than the regulator might be. We are not therefore suggesting that Scottish Water should not do such things, but we think that it is important that it co-operate closely with SEPA in particular and with other authorities.

Marc Stutter: SEPA is certainly the best regulatory body for undertaking the monitoring of whether water is fit for purpose. However, until quite recently with its excellent approach to the general binding rules, SEPA did not always make things happen on the ground. It is undertaking the priority catchment actions at the moment, but that work began only quite recently and there should be more of it.

Other bodies can do more of that work, too. Scottish Water is trying to do it in its own way, which appears to be very successful. Other bodies exist in Scotland, such as catchment management partnerships, which include SEPA and designated bodies and which are good models.

Ian Cowan: It is important for the committee to understand, if it does not already, that the diffuse pollution regulations, as part of the controlled activities regulations, involve no contact between individual operators and SEPA. The general binding rules are observed only in their breach, if you like. Basically, if someone complies with the rules, they are authorised and there is no contact with SEPA.

It is therefore important that a partnership approach is used by public bodies and that they share their resources in trying to enforce the regulations, because it is an enormous task. That is also why it has to be done on a priority basis, as Marc Sutter has said. However, it will be a long time before Scotland can say that we know that we have dealt with the diffuse pollution issue.

Marc Stutter: When that work started, the general binding rules were poorly understood, particularly among the farming community. It took SEPA's wise actions in communicating them in a national campaign and then undergoing demonstrations and catchment walks before the message sunk in. Perhaps the bill could further the enabling of that kind of local, on-the-ground co-ordination.

12:30

Margaret McCulloch: I will ask some questions about septic tanks, if you do not mind. The bill will allow an individual to take action if two, three or four individuals share a septic tank, but at least one person will need to take action to get the septic tank sorted. They would need to pay up front and try to recover the costs from the other owners, which could end in court action. How effective will those provisions be in ensuring that maintenance of septic tanks occurs, taking into consideration that some owners will not want to pay for it? Could such situations be tackled in any other ways?

Ian Cowan: I think that it will be a huge improvement on the existing situation. Currently,

even in a situation where one or more willing householders know about a problem and are willing to take action to do something about it, they are stuck. The provisions will at least improve the situation to the extent that one willing owner will be able to force—through legal action, if necessary—their fellow owners to help. The provision is not ideal, but it will be a big step forward.

Of course, SEPA has powers to deal with septic tank problems, but there is a similar enforcement issue. When groups of householders share a septic tank it is difficult to attribute blame even-handedly. Another thing is that SEPA does not yet know where all the septic tanks in Scotland are. The register is not yet complete because of the pragmatic approach that SEPA adopted to the implementation of CAR in the early years. A septic tank is brought to SEPA's attention when there is a problem. Once people complain, registration happens and action occurs.

I support the measure. I cannot think of how to deal with a situation where there is not a willing owner, unfortunately, unless SEPA comes in. Inevitably, enforcement can require a heavy-handed approach. Perhaps there is no middle way.

Dr Hendry: I agree. We suggested the possibility of Scottish Water having a budget and being more proactive in taking over septic tanks in rural areas. I appreciate that there is a sense that that might interfere with individuals' property rights, although in many cases if one is unlucky enough to be part-owner of a malfunctioning tank that would be quite welcome. There would certainly be a cost involved. You might say that that was equitable and that those of us who are lucky enough to live in the middle of Scotland get part of our mains drainage funded by Scottish Water, or you might say that it is too high a cost. We accept that that is not what has come forward in the bill.

Given the complexity, I tend to agree with Ian Cowan. The provision will solve the most common situation, where there is perhaps one recalcitrant owner. It will not solve situations where there is a whole group of them and just one person is expected to find the funds.

We also support the provision suggested in the UKELA response that if that part of the bill remains, standard forms should be made available in schedules to the bill. That would be really helpful to owners in those situations.

Marc Stutter: In addressing the regulation of water resources, we need to look at multiple-occupancy septic tanks, which are the next level down from water treatment works, rather than the much more diffuse individual tanks in rural environments. It is worth directing a little resource

spend towards ascertaining whether those tanks are failing, because we can probably get more of a benefit for our money by tackling them rather than putting money into individual household tanks.

There are barriers with regard to some of the eco-innovation aspects of tidying up those effluents—for example, the use of willow biomass treatment beds. Even if the water in the bigger multiple-occupancy tanks is taken to a very clean state by some of those tertiary treatments, the rules say that it still cannot be discharged, so it would need to be piped away. There are some policy regulation clashes in that regard, and it would be sensible to target some actions at resolving those issues.

Margaret McCulloch: I do not have—and have never had—a septic tank, so I do not know what the repair costs might be. However, from a home owner's point of view, if only one out of four people was willing to pay up front to get the septic tank repaired, there could be a large bill for that person. They may have to take out a personal loan to pay for it, knowing that they will have court costs to pay on top of that. With that in mind, do you think that a lot of people would be proactive in getting their septic tank repaired?

Ian Cowan: I have a septic tank, and I unfortunately had to get repairs done last year, although not to the tank itself. I share not the tank but the soak-away, which is where the effluent from the tank is dissipated into the ground; that is effectively the discharge point.

It cost £2,000 between three households to dig up and replace the whole soak-away, which was malfunctioning. I think that there would be concerns about getting disadvantaged householders to fork out.

Marc Stutter: Coupling the tank to its effluent outflow field is important when we come to deal with the specifics. People often talk about the tank when that is only about a third or a quarter of the treatment, most of which is done by filtration through the soil in the outflow field. In a lot of cases, that is piped directly to a stream when there is no effective treatment through the soil.

Margaret McCulloch: The written evidence that we have received is generally supportive of the proposed water shortage orders. Do you have any concerns about the new orders, particularly with regard to whether they might have a negative impact on businesses that rely on water use?

Dr Hendry: There are two ways in which a business might be affected, one of which is through the water-savings measures in schedule 2, whether they are being recommended as a preliminary stage before an order or accompanying an order. The other relates to businesses whose abstraction rights are affected

by the new controls that are brought in. There is not much that we can do about that. If we are going to bring in a water shortage order that allows Scottish Water to make additional abstractions, one consequence will be a reduction in what other people can abstract.

On the water-saving measures, we argued strongly in the second Government consultation that the measures should apply to businesses as well as households in the first place, and I think that that is now the case. Consumer Focus Scotland suggested that that part could be a bit clearer, because it refers to people. It is important on equitable grounds that the measures apply to both domestic and commercial users, and the right balance has now been struck in part 7.

The Convener: As there are no further questions, I thank the witnesses for their evidence. It was very helpful for our consideration of the bill. I ask the witnesses to leave quietly so that the committee can crack on with the rest of our agenda.

Subordinate Legislation

Road Works (Inspection Fees) (Scotland) Amendment Regulations 2012 (SSI 2012/250)

12:40

The Convener: Members have paper 5 and the accompanying instrument. No motion to annul has been received in relation to the regulations. Does anyone have any comments?

Alex Johnstone: I did not see it in the accompanying notes, but I assume that the regulations are being amended to take account of a rise in inflation. I notice that footnote (c) in paragraph 2 of the regulations indicates that there have been regular annual rises, so I presume that they were fee increases to take care of inflation.

The Convener: I think so.

Alex Johnstone: In that case, a £1 rise on £32 is inflation rounded up, and I have no problem with that.

The Convener: Does the committee agree that it does not wish to make any recommendations on the regulations?

Members indicated agreement.

European Union (Priorities and Engagement 2011-12)

12:41

The Convener: The committee will now review its European Union priorities and a report on its EU engagement activity in 2011-12. Members will recall that we agreed our list of EU priorities earlier this year and that they were debated in the chamber along with the priorities of other committees. Paper 6 includes two annexes that have been prepared by the committee's former EU reporter, Aileen McLeod. I thank Aileen for her work throughout her time as the EU reporter. Given her background in Europe, that work has been invaluable.

The paper provides a useful handover to our next EU reporter, who will be appointed at our next meeting. The committee is invited to note Aileen McLeod's update on each of our EU priorities, which is in annex A. Are members content to note the update report?

Members indicated agreement.

The Convener: Annex B is a report on the committee's EU engagement during the past year. The European and External Relations Committee has asked all committees to submit a report on their EU activities, and it will consider those reports as part of its review of the first year of the Parliament's EU strategy. Are members content to note the report and agree to submit it to the European and External Relations Committee for its consideration?

Members indicated agreement.

The Convener: That is the end of our business for today. Our next meeting is on 31 October, when we will continue our scrutiny of the Water Resources (Scotland) Bill.

Meeting closed at 12:43.

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