



OFFICIAL REPORT
AITHISG OIFIGEIL

Local Government and Communities Committee

Wednesday 24 February 2021

Session 5



The Scottish Parliament
Pàrlamaid na h-Alba

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website - www.parliament.scot or by contacting Public Information on 0131 348 5000

Wednesday 24 February 2021

CONTENTS

	Col.
DECISION ON TAKING BUSINESS IN PRIVATE	1
FAIR RENTS (SCOTLAND) BILL: STAGE 1	2
EUROPEAN CHARTER OF LOCAL SELF-GOVERNMENT (INCORPORATION) (SCOTLAND) BILL: STAGE 2	43
SUBORDINATE LEGISLATION	59
Non-Domestic Rating (Valuation of Utilities) (Scotland) Amendment Order 2021 (SSI 2021/59)	59
Non-Domestic Rate (Scotland) Order 2021 (SSI 2021/63)	59
Non-Domestic Rates (District Heating Relief and Renewable Energy Generation Relief) (Scotland) Amendment Regulations 2021 (SSI 2021/64)	59
Non-Domestic Rates (Levying and Miscellaneous Amendments) (Scotland) Regulations 2021 (SSI 2021/65)	59

LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE
9th Meeting 2021, Session 5

CONVENER

*James Dornan (Glasgow Cathcart) (SNP)

DEPUTY CONVENER

*Sarah Boyack (Lothian) (Lab)

COMMITTEE MEMBERS

*Keith Brown (Clackmannanshire and Dunblane) (SNP)

*Gordon MacDonald (Edinburgh Pentlands) (SNP)

*Alexander Stewart (Mid Scotland and Fife) (Con)

*Annie Wells (Glasgow) (Con)

*Andy Wightman (Lothian) (Ind)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Nina Ballantyne (Citizens Advice Scotland)

John Blackwood (Scottish Association of Landlords)

Tony Cain (Association of Local Authority Chief Housing Officers)

Aileen Campbell (Cabinet Secretary for Communities and Local Government)

Gordon Maloney (Living Rent)

Pauline McNeill (Glasgow) (Lab)

Professor Douglas Robertson (University of Stirling)

CLERK TO THE COMMITTEE

Peter McGrath

LOCATION

Virtual Meeting

Scottish Parliament
**Local Government and
Communities Committee**

Wednesday 24 February 2021

[The Convener opened the meeting at 09:00]

**Decision on Taking Business in
Private**

The Convener (James Dornan): Good morning, and welcome to the ninth meeting in 2021 of the Local Government and Communities Committee. Please ensure that all mobile phones are on silent. I remind members to wait a few moments after being called to speak, to allow broadcasting to operate their cameras and microphones.

We have apologies from Andy Wightman for agenda items 1 and 2, but he will join the committee at item 3.

Agenda item 1 is consideration of whether to take agenda item 5 in private. Item 5 is consideration of the evidence that the committee will hear on the Fair Rents (Scotland) Bill. As the committee is meeting remotely, rather than asking whether everyone agrees, I will ask whether anyone objects. If there is silence, I will assume that members are content. Does anyone object?

As no member has indicated otherwise, the committee agrees to take item 5 in private.

**Fair Rents (Scotland) Bill: Stage
1**

09:01

The Convener: The committee will now take evidence on the Fair Rents (Scotland) Bill. This is the first of two evidence sessions on the bill today. The committee will pick up on some of the issues raised by respondents to our call for views.

I welcome our first panel: John Blackwood, chief executive of the Scottish Association of Landlords; Tony Cain, policy manager for the Association of Local Authority Chief Housing Officers; and Gordon Maloney, national committee member from Living Rent. Thank you for being here and for your written submissions.

We have allocated about an hour for the evidence session. Before we start, I will go over some brief technical information. There is a prearranged questioning order, and I will call each member in turn to ask their questions for up to nine minutes. It will help broadcasting if members indicate which witness their questions are addressed to. There might be a short time for supplementary questions at the end. As there are three witnesses, please indicate clearly if you wish to answer the question—for example, by raising your hand—and do not feel the need to answer every question fully if your views are generally in line with points that have already been made. Please give broadcasting staff a second to operate your microphone before speaking.

Pauline McNeill, the member in charge of the bill, is in attendance and, if time allows, I will allow her to question the witnesses at the end.

Do the witnesses agree that there is a need to bring fairness into the private rented sector and to create a better balance of powers between landlords and tenants in Scotland?

Gordon Maloney (Living Rent): Yes, absolutely. The evidence that we have seen speaks for itself. Living Rent would point to the fact that, during the pandemic, that power imbalance has been made very clear. The response to the committee from the Scottish Association of Landlords cites a handful of examples of cases where landlords have been fairly generous with their tenants. We could cite just as many examples from the past 12 months of cases where, frankly, landlords have acted disgracefully—hiking rents, refusing to make repairs and treating tenants appallingly.

It has been frustrating to us that the Scottish Government's approach to the issue of rent—not evictions—during the pandemic has been that, where tenants are facing difficulty, they should

speak to their landlord and, in good faith, try to negotiate some kind of reduction. Sometimes, that has worked, and we have had a reasonable amount of success doing that. However, we have seen that, precisely because of the power imbalance, that is very difficult to do. We have spoken to lots of tenants who are facing extremely difficult financial situations and who were too afraid to even speak to their landlords, because they were worried about retaliatory evictions, retaliatory rent increases or other forms of harassment.

Just recently, we heard from a tenant who successfully took their landlord to court for harassment and failing to protect their deposit. Since then, they have been harassed and shouted at in the street by their landlord. Across the board, the cards are all in the hands of landlords, and tenants have very few options, so—

The Convener: I am sorry to interrupt you. Can you explain how the bill, which is solely about rents, would change that imbalance?

Gordon Maloney: Rents are one of the key exacerbating factors for tenants. In the Private Housing (Tenancies) (Scotland) Act 2016, the Scottish Government brought in a number of measures to protect tenants from eviction and give them greater security. We were supportive of that at the time, because they were positive changes. However, in the absence of measures to limit the amount by which rents can be increased, tenants still fear—for good reason or because of their past experience—that they can be evicted by rent increases.

The submission from the Scottish Association of Landlords claims that rents are not set by landlords but are a simple matter of supply and demand. However, the imbalance means that the worst thing that can happen to a landlord is that they spend a few more days without a tenant in the property, if they choose not to take someone because they do not feel that they offer the rent that they deserve, but a tenant faces homelessness and not having somewhere to live.

The Convener: I will let others come in but, surely, legislation has already started to combat the imbalance that you speak about. It is not as easy as it was for landlords to get rid of tenants. We are talking about fair rents.

Gordon Maloney: Sure, but it is still reasonably easy. All the tribunal decisions are public, and I think that there has been only one successful case where a tenant has challenged an unlawful eviction. We have had cases where tenants who have reported repair issues have been told weeks later that the landlord is choosing to move into the property, only for that property to reappear on Gumtree weeks later. I am not saying that every

landlord does that, but we need protections to stop the ones that do. Landlords who are not doing those sorts of things do not have anything to fear from such measures.

The Convener: We are veering away from the purposes of the bill, but thank you.

Tony Cain (Association of Local Authority Chief Housing Officers): In answer to your question, absolutely, there is a need to rebalance the relationship between tenants and landlords, and the bill probably does not go far enough.

We were not supportive of the 2016 act at the time, and I said to a parliamentary committee that I regarded it as a landlord charter and that it did not do enough to protect the rights of tenants, because it created far too many mandatory grounds for repossession, including the ground that, if a landlord is convicted of a criminal offence and therefore deregistered, the tenant is at risk of being summarily evicted, because it is a mandatory ground that the landlord is registered. Therefore, there are substantial problems in the way that the sector operates; the 2016 act entrenches some of those difficulties, and significant reforms are required across the board.

The other point is that we are not here to talk about fair rents. Fair rents are defined in the Rent (Scotland) Act 1984. Unfortunately, the briefing note that goes with the bill is incorrect in the way that it describes that act. The 1984 act required rents to be set on the basis of a balanced market. That is how to set fair rents and it is the level and type of rent control that would have an impact on rebalancing the sector and putting tenants in a better and fairer position.

However, if we are to move towards that kind of rent regulatory system, we must also have a policy process of creating that balanced market, and we are not having a proper conversation about how to ensure that the private rented sector functions in the market in the right way. At the moment, the sector provides housing for too many vulnerable and low-income households; something like a quarter of Scotland's poorest households are currently in the private sector, but they should be in the social rented sector.

John Blackwood (Scottish Association of Landlords): The bill highlights the perceived concern about rent increases and how unaffordable they are. However, my concern is that, as we said in our written submission, the bill will further exacerbate that. We believe that it will result in higher rent and more frequent rent increases, so any perceived imbalance will be exacerbated.

In the submission, we emphasise that we need to understand the sector more. We need to understand exactly what rents are being charged

and not just what is being marketed. We have an understanding of what our members tell us about the rents that they charge, but we do not know whether that represents the entire private rented sector in Scotland. Therefore, we certainly support the measures in the bill that would provide greater rent data, as we need an understanding of the exact position of rents and what is being charged in Scotland.

The Convener: That leads nicely to my next question. How robust is the data on rents? For example, what evidence is there that rising rents are causing affordability problems for tenants?

John Blackwood: The data on rents is not robust at all, and an important aspect of the bill is that it tries to deal with that. We do not have an understanding of what rents are nationally or locally; all that we have is data related to rents that are marketed, and we do not even know whether those rents are achieved. The bigger part of the private rented sector is those who are in existing tenancies. Are their rents increasing? As you will see from our submission, we contend that they are not, but we need to get real data on that so that we can understand it better.

The Convener: Correct me if I am wrong, but the bill would basically only affect those who are already in tenancies.

John Blackwood: It would, so it would not touch market rents at all. We need to sustain existing tenancies as best as we can. That is in the interests of tenants who want to secure a home in the longer term, and it is also in the interests of the private landlords who I represent. They want tenants to have continuing tenancies. However, as I say, we need to understand what rents are being charged.

Sarah Boyack (Lothian) (Lab): I draw members' attention to my entry in the register of interests on my former work at the Scottish Federation of Housing Associations.

I will ask slightly different questions of each of the panellists, although they are all focused on whether we need the proposed legislation and whether it is the right kind of legislation. I kick off with Tony Cain from ALACHO. You said that we need an approach that addresses the existing challenges and a balanced market that has fairer rents. Which bits of the bill do you think would be helpful? You have said that we need more affordable housing, but that is not happening on a scale that will make an impact any time soon. What are the key aspects of the bill that are worth the committee looking at, and which aspects of the bill are you particularly keen should be changed?

Tony Cain: It is a bill of two halves, as far as we are concerned. The proposal to improve data collection is welcome and important. We need

much better information. As John Blackwood said, what we know about rents is essentially based on asking rents rather than passing rents, or the rents that are actually being paid. We cannot track properties in the sector, because of the information technology system that landlord registration uses, so we do not know when properties were first registered or when they leave the system and come back. The same applies to landlords.

Our view is that we need a comprehensive review of the data requirements at national level so that we can make properly informed policy decisions about the intervention in the private rented sector. We also need that at local level to support regulatory oversight and intervention. We need a comprehensive review of our data sets and data gathering. I would extend that to the whole of the housing system. At the moment, data sets are denuded—they are not really fit for purpose, and we need to think about them again and look at how we improve them. The bits of the bill that relate to improving the data are important. They point to a key weakness, and we support moves to address that, although I would take them significantly further.

On the rent control issue, the bill would in effect create an implied term in every tenancy that rents will go up by the consumer prices index plus 1 per cent every year. That is higher than the long-run rate of rent increases in the sector in Scotland, and it is certainly higher than it is in most parts of the market. The problem is that setting a single rate across Scotland is a blunt tool, when we actually need a much more nuanced approach. Our preference would be that you focus directly on the relationship between landlords and tenants, and extend the framework so that tenants can appeal rents to the rent officer and, if necessary, the First-tier Tribunal. Further, those rents should be based on a balanced market and should be a fair rent, rather than a market rent.

However, if you are going to do that, you need to look at the policy options to move the private rented sector back to or into a market niche that is appropriate for a market sector, and that is not where it is at the moment. Around 40 per cent of private tenants spend more than 30 per cent of their net income on rent. That is not a target; it indicates pressure. Too many tenants are in that situation and too many people in the sector are under substantial financial pressure, which puts them in an even weaker position in relation to their landlord.

We need to be clear about the role that the private rented sector should play in the broader housing market and we need a policy framework that is properly informed by the data to drive the sector into that niche.

09:15

Sarah Boyack: Living Rent is sympathetic to the principle of fairer rents, but you are worried about the mechanism that the bill uses, which is the CPI metric. We just heard from Tony Cain that he does not like the principle of CPI plus 1 per cent, because it could lead to increased rents. If you could amend the bill, what alternative would you introduce?

Gordon Maloney: We agree with everything that Tony Cain said. CPI plus 1 per cent is too high, and that is not just because it would represent an increase that was in excess of the increases in big parts of Scotland—although increases in many places, such as urban areas, have been far above inflation. In many parts of the country, rents are already too high. We should start from the perspective of bringing them down and stabilising them, rather than locking in above-inflation increases.

Tony Cain is right that we need a nuanced approach that recognises the different circumstances in different parts of Scotland. In our submission, we suggested that CPI plus 1 per cent should be the maximum rent increase and that local authorities and broad market rental areas could set smaller limits, which would not be capped.

As we said in our submission, it is vital for any limits to be grandfathered—that is sometimes referred to as a second-generation approach—so that they carry over from tenancy to tenancy. As John Blackwood said, without that, the impact would be only on sitting tenants. If we did not have grandfathering, the impact on rent levels would not be meaningful in the long term—the graph of increases would be more jaggedly rather than following a stable curve.

I appreciate that this is a member's bill, which involves logistical restraints. We have published substantial research on the subject. It is interesting that rent controls are often treated as a fringe far-left policy, but the reality is that almost everywhere in Europe—including the United Kingdom for the best part of 80 years—has had rent controls in the past century. There is a wealth of peer-reviewed academic research about what does and does not work.

I would be happy to share the policy that we have pulled together to take the best parts from the models across Europe and the States in a way that would work best for Scotland. The short version is that rents need to be tied to quality. Not only is unaffordability an issue for many tenants in Scotland, but every second private rented home fails to meet the Scottish Government's standards. In some cases, that is serious. Rent controls could be a powerful tool to incentivise landlords to

improve properties, because the things that are in place do not work.

The bill is an important step forward. We would amend it, and we agree with Tony Cain that it does not go far enough in substantial ways. The bill is what it is, and we would support tweaks to it but, as we are going into an election period, I urge members to consider what that might mean for manifestos.

Sarah Boyack: To stick with the bill, you talked about mechanisms. We have a mechanism—the rent pressure zone—that could take a more area-based approach, but nobody has used it. Why not?

Gordon Maloney: That is a good question. You are right that, although a number of councils have tried, no council has used rent pressure zones, which were introduced in 2016. The City of Edinburgh Council was the first to commission a feasibility study, which found that the data that is required to make a successful application to the Scottish Government does not exist. The published feasibility study outlined correspondence with the Scottish Government in which the council asked for support in collecting the data but was told in no uncertain terms that the Scottish Government would not help. That was unfortunate, because the process would be relatively simple. The bill would go some way towards that.

Our view is that rent pressure zones are insufficient anyway, for some of the reasons that we have already heard. The minimum cap in a rent pressure zone is CPI plus 1 per cent, which we believe is too high. Rent pressure zones protect tenants only within tenancies, which we do not think will have any long-term impact on rent levels.

There is evidence from elsewhere, for example Germany, that caps that work only within tenancies risk creating a situation where landlords artificially increase rents between tenancies to compensate for a reduced ability to increase rents within them. That means that someone who is in a tenancy for the full four or five years of a rent pressure zone will benefit, but that some of the most vulnerable tenants, who may be there for only six or 12 months, are not protected at all. The feasibility study in Edinburgh found that the average length of tenancy here is only 18 months. Rent pressure zones also do not affect quality.

The proposals in the bill are better. The prospect of grandfathering the increases from tenancy to tenancy is vital, as is the prospect of including quality issues in the rent assessments carried out by a tribunal or rent officer.

Rent pressure zones have failed on their own terms. Even if it was simpler and easier for

councils to apply rent pressure zones to an area, that would be an insufficient measure.

Sarah Boyack: I see that I have run out of time, convener. Does that mean that I do not get a chance to speak to Mr Blackwood?

The Convener: You can ask him a question if you have one.

Sarah Boyack: We have heard from both of the other witnesses that we need more homes. That is one of your suggestions, Mr Blackwood; you say that the only effective solution is to supply more homes.

In the meantime, it has been suggested that rents are being paid for properties that do not meet Scottish Government standards. Do you accept that? Should dealing with that be a higher priority? How would your members approach that issue without new legislation?

John Blackwood: The first point is that we have legislation to tackle that issue. On behalf of our members, we support proper use of that legislation.

It is unacceptable that there is substandard accommodation in the rented sector or in any housing sector. We must take urgent action to address that. There have been moves to do that through other bills in the past 10 years. It is all very well to have legislation but, as Tony Cain suggested, there must be proper enforcement of that legislation. The emphasis should be on that.

I am keen to see a well-functioning private rented sector that provides a good service to tenants and is sustainable in the long term. We need a private rented sector, but there is pressure on that sector at the moment to house everyone. I do not believe that the private rented sector is the best place for some of the most vulnerable people in Scotland. As others have indicated, we would advocate for a larger social rented sector, where affordable rents can and should be offered to tenants.

Sarah Boyack: It will be some time before we reach that happy world. You have suggested that, in the meantime, we should collect more data and use the existing rent pressure zones. Is that practical? Will it happen?

John Blackwood: It is practical. I understand that the Scottish Government is working with a few local authorities to determine how they could make the rent pressure zones workable. The bare bones of legislation are there to address the issue if rents rise and continue to rise. I do not believe that that is currently happening in Scotland, but it has happened in the past and could happen again. We therefore need control measures that could be brought in to address that issue.

Without the data, we do not know what rents are being charged. How can we control that if we do not know what the problem is? The starting point is to get that rent data.

Sarah Boyack: To clarify, are you saying that your members would be prepared to provide data on rent that is not currently publicly available?

John Blackwood: Exactly. We work closely with rent service Scotland and already provide such data. It asks us for data on existing tenancies and passing rents, and we encourage our members to provide that information. We go through that process periodically. I understand that it is a difficult job for rent service Scotland to accurately gather the data. Landlord registration would be an appropriate tool to harness such information.

Alexander Stewart (Mid Scotland and Fife) (Con): Good morning. I will follow up on some issues that you have already touched on, Mr Blackwood. We have talked about rent policy and having a balanced market. It is quite apparent that there are good landlords—there is no question about that—but there are also rogue landlords, and we are aware of the difficulties that such landlords cause some tenants.

On rent, the crux of the matter seems to be affordability, supply and demand and what is proposed and provided. What other impacts would limiting rent increases have on landlords? If rents had to be tailored, reduced or classified as being fairer, what impact would that have on landlords in your organisation?

John Blackwood: [*Inaudible.*—how we feel, that both tenants and landlords would be adversely affected by the bill. For instance, landlords rely on rental income to maintain, repair and upgrade their properties, so any limit on the amount of rent that can be charged will have an adverse effect on what they can invest in their properties. During the past years, there have also been increased costs through taxation, which all, in effect, come out of rental income.

We need to ensure that the private rented sector provides tenants with proper energy efficient homes. Any investment in that regard is not tax deductible and is seen as an improvement, so landlords need to find additional resources to be able to invest in such properties. That is the right thing to do. Landlords say to us that they want to invest in their properties, but they can do so only if they have the money to provide sustainability in the long term.

Alexander Stewart: If the Scottish ministers had the power to vary the application of a fair rent cap, would that address any of the witnesses' concerns? In what circumstances should such a power be used?

Gordon Maloney: We support such a power because, as we have heard, there are some places where rents have consistently increased above inflation. The most recent Citylets report shows that, in the past 10 years, there has been a 40 per cent increase in Edinburgh and a 44 per cent increase in Glasgow. Clearly, those increases are well in excess of inflation, but there are other places where the increases have not been that high. As John Blackwood alluded to, there is a real risk that a cap of inflation plus 1 per cent would act as an incentive. For that reason, we support a stronger measure that imposes stricter limits in some places.

I will pick up on one issue about supply. As Tony Cain mentioned, the private rented sector is currently serving people whom it was never designed to serve. It has tripled in size since the 1990s. In order to strike the right balance, we need to be quite comfortable with the sector shrinking. We hear a lot about supply and demand and about reduced rents reducing the number of landlords in the sector. We should be quite comfortable with that. The sector has spiralled out of control not because tenants are exercising free choice, but because house prices have increased exponentially and wages have stagnated for a long time. Of course, we are also still suffering from the impact of right to buy and of social housing across Scotland being demolished and not replaced in the ways that it should be.

The private rented sector is being used by an entire generation of young people, but it is also being used increasingly by people in their 40s, those who have retired and those who have kids. The sector was never designed for that, and it cannot give those people security. If one of the consequences of reducing rents is that landlords choose to sell properties to families who are currently renting and would much rather buy, we should welcome that and embrace it.

09:30

Tony Cain: I think that I would rather that those landlords sold many of those properties back into the social rented sector so that they can be properly maintained and rented out at affordable rents.

I agree that the private rented sector is too big and that we need to manage it down. There is an important role for a high-quality market-led private rented sector. It adds flexibility and choice to the market. However, we need to be in a situation in which that sector is there for people who choose to be in that sector because it suits them, for whatever reason.

To go back to the original question, a variable cap would be an improvement. However, the

housing market in Scotland is so complicated and nuanced that ministers would struggle to keep up with the number of variations that would be required to reflect the situations in the rural market, in our remote and island communities and in some of our urban areas. A cap seems to me to be too blunt a tool, and I think that we probably need to focus on some of the bigger-picture issues about how we can transform our housing market more generally. People frequently say that our housing market is broken, but I struggle to find anyone who can set out what a fixed housing market would look like. We need to create a proper sector for private renters.

We have clear examples of that. There is unquestionably a place for a premium, high-quality private rented sector charging premium rates to people who choose that option. As Homes for Good in Glasgow has demonstrated, there is also a place for the community interest model—Susan Aktemel has done good work in almost single-handedly developing that proposition.

The private rented sector does not have to be all about premium properties, but it needs to be fundamentally about choice.

I worry a little bit about the way that poverty is talked about. Housing quality should not be negotiable. We need to be clear about the fact that the physical quality of a property should not be the subject of market forces. Instead of a minimum standard, there should be an absolutely clear acceptable standard for a decent house. The points of variation should depend on whether the property is big or small or is a house or a flat.

The other thing to bear in mind is the culture of the sector. This is not universal but the private rented sector does not focus very much on service quality and the interests of tenants. It focuses very much on property rights—that means landlord rights—and on the interests of the landlord. You need to change that culture. To be fair, John Blackwood is a notable and honourable exception in that regard. He understands the issue of service quality, and many of the landlords who he represents do, too. However, far too few of the rest do.

Without over-egging the issue, I must say that we also have the substantial problem of the association between private renting and serious and organised crime, and we are not making headway in removing those factors from the sector.

Alexander Stewart: My final question is addressed to all of you. We have discussed the premium nature of the market in our cities, where properties like that can be supported. However, I would like to ask about issues of rurality. In smaller communities the length and breadth of

Scotland—in the Borders, the Highlands and so on—there is a demand for housing to be provided in the rented sector so that we can keep those communities together in that environment. That touches on the issues of jobs and connectivity and so on. Can that realistically be achieved through the proposals in the bill?

Tony Cain: My microphone is still on, so I will carry on talking. I presume that there will be an island-proofing exercise associated with the bill, as there needs to be.

We need to acknowledge that, in many of our rural communities, the private rented sector is the biggest part of the rented sector, as the social rented sector has almost disappeared—in many communities, it has entirely disappeared. The private rented sector plays a critical role. The proposals are not about attacking private landlords or the private rented sector; they are about managing the housing system so that it meets a variety of needs appropriately, which the private rented sector is simply not doing.

In rural areas, there is a strong case for investment in community-based models of housing, which might involve housing associations, community interest companies or local authorities. We cannot expect the private rented sector to meet housing need. That is not what it is there for. That is not why landlords get involved in the sector. Meeting housing need and creating a balanced market is the preserve of public bodies.

The Convener: I ask everyone to keep their responses short, please.

Gordon Maloney: I agree with everything that Tony Cain said. The Scottish Government's efforts in Gaelic-speaking communities is one of the areas in which the issues that we are discussing are clear. Young people in Gaelic-speaking communities in the Highlands are forced out of the areas because they cannot afford housing. Not to put too fine a point on it, although supply is an issue, we have had 40 years of private landlords being able to charge whatever they want in rent and that has not answered the supply question. Therefore, we have to start to think seriously about the issues that Tony Cain is raising.

However, in the immediate term, while we wait for the new models to be put in place, we need to answer the question of affordability in the sector. The long-term issues of how we rebalance the sector and increase social housing provision cannot be dealt with overnight, and there is a danger that solving those problems will involve a huge cost to the public purse. Immediate fixes are urgently needed to address the challenges in the sector in the short term.

Keith Brown (Clackmannanshire and Dunblane) (SNP): I am conscious that Gordon Maloney said that the sector is trying to do something that it was not designed to do. However, I am not aware that the sector was ever designed.

Tony Cain, earlier, you made a point about the bottom of the market in terms of income—the poorer side of the market—representing up to 40 per cent of the total market. Is it your view that that section of the market should not be involved in the private rented sector, that the private rented sector should really be concerned with mid-market rents and higher rents, and that we should deal in other ways with those who do not have the income to pay those rents? You also mentioned trying to achieve a more balanced market, more generally. What other factors would we need to put in place in order to achieve a balanced market, beyond what you have already mentioned?

Tony Cain: Those are complicated questions, and they are not necessarily directly related to the bill. However, a balanced market would be one in which we are clear about the roles that the various sectors play, how big they are likely to be and what the pricing structure is likely to be across them. For example, the social rented sector ranges from around 12 per cent of the stock in east Renfrewshire to 32 per cent or 33 per cent of the stock in West Dunbartonshire, Inverclyde and Glasgow. I do not know how you judge either of those situations to be representative of a balanced market.

The core of the issue is about choice and affordability. It is about price across the board. We need to be clear that the purpose of interventions in the housing market is to deliver choice and affordable, high-quality options. Certainly for the past 40 years, a difficulty has been that we have not always been entirely clear about what we are trying to achieve with housing policy. We have continued to invest in social housing, although, over the piece, the numbers have gone down—we have fewer social rented homes now than we had 20 years ago, although the numbers have started to rise. We have a bigger private rented sector that has risen entirely opportunistically and, around that, we have developed other interventions such as mid-market rents and the build-to-rent sector.

We do not really have a comprehensive view or an agreed picture. That is not something that can be produced by one individual. We need to be clear about what we expect of our housing market, what the purposes of the various sectors are and how we can intervene and support them to achieve those purposes.

That is particularly the case in the social rented sector. Most people now regard social renting as some kind of welfare activity. It has never been

that. It is a market intervention because, without social renting—that is, direct provision by the state—the private market will produce expensive slums in large numbers. That is the evidence of history.

We need a more comprehensive understanding of what we are trying to achieve across the piece. When I think of this bill, I think of how we have always ended up trying to fix part of the problem in the private rented sector rather than coming up with a more comprehensive jigsaw of solutions that is directed at creating a properly functioning market in which people have choice.

Keith Brown: There is a close relationship between rent and capital going into the markets, whether it is in the social rented sector, the private rented sector, the student rented sector or whatever. As Tony Cain was saying, if you go back over the past decade rather than the past 20 years, you can see that there have been increases in social rented housing. However, we have also seen a massive flight of capital from the markets, apart from in the student rented sector. What would be the impact of the bill on the ability to bring more capital to bear to improve the rented sector?

John Blackwood: We need greater investment in the private rented sector, which is about the number of units as well as what is invested in those individual units—that is really important. My concern is that the bill could result in disinvestment and encourage landlords to leave the sector. There are two issues with that: one is about supply, and the other is about the quality of the service that is offered to tenants. During the past few years, we have seen an increase in the quality of accommodation and the service provided, but I am the first to admit that we need to see higher quality and that the private rented sector needs to deliver on that. We can do that only if we have people who are committed to providing the best service possible. If we lose investors in the future—which the bill would encourage—that is not good news for a vibrant, well-functioning private rented sector.

Keith Brown: There seems to be a bit of consensus about the data element of the proposed bill. On the issue of an appeal for a fair rent review, if I may call it that, what would that mean for the rural sector, which Alexander Stewart mentioned? There seems to be consensus that it is a bit of a blunt instrument and that it might even force rents up, when they are not going up just now. I think that I am the only committee member who does not live in a city. What do the witnesses think would be the impact on the rural sector in particular of the ability to appeal for a market rent review?

Gordon Maloney: You are right that what is before us is too blunt in some ways. We could make changes, such as allowing for a more nuanced approach in different areas, which would go some way towards addressing that. It is important to say that even this is significantly more nuanced than the rent pressure zone metric.

On the ability to appeal rent levels, that would, in effect, just correct an oversight in existing legislation. It is already in legislation that tenants can appeal rent levels, but we would never suggest that our members do that because, although the rent officer and the tribunal can agree with the tenant and reduce the rent as well as disagree and leave the rent as it is, they also have the ability—the decisions on this are all publicly accessible—to increase the rent. Therefore, tenants cannot have faith in that process, because there is a real risk that they will end up in a worse situation. The bill seeks to change that so that the worst thing that can happen to a tenant who appeals their rent is that the appeal is not upheld rather than their ending up with a higher rent.

Tony Cain made the point that the quality of housing should be the minimum and that it should not be about incentivising landlords. If landlords make what should be a very basic improvement, they should not expect to be entitled to massively increase the rent. That gets into some of detail of the bill. Our view is that the approach to the relationship between rent and quality should be more stick than carrot. It should be a process in which tenants have recourse to a process that can force repairs to be made. That is not the case currently.

We speak to tenants all the time, and, this week, I was speaking to a tenant who has gone three months without water and heating in winter. Although there are, in theory, processes in place to allow a tenant to seek redress for that, the reality is that they are extremely difficult and slow. More often than not, tenants choose to leave the property rather than going through months of waiting for the tribunal. As we said in our submission to the committee, if the process is done right and made quick, it could be a way to ensure affordable rents in non-urban areas where quality is a particular concern as well as an important mechanism for forcing up quality in the private rented sector.

09:45

Keith Brown: I want to come back on that before we go to the others. It must surely be the case that, if one talks about fair rents, somebody considering the issue objectively can say that what is charged for rent is not sufficient for the landlord to be able to invest to the required standard. If

your objective is to say that it should be a fair rent, that rent must be able to go up as well as down.

Gordon Maloney: Sure. There is no shortage of mechanisms for the rent to go up, which is the problem here. Landlords are able to increase rent—even in the proposals before us, it is extremely easy for landlords to do so and there is little recourse for tenants to do much about that.

There is a shortage of mechanisms for tenants to bring the rents down to affordable levels. Although I agree that there are situations in which landlords charge far less than market rent, it is already possible for them to increase it, so we do not need to strike that balance here. What we do need, and what is missing, are processes whereby tenants who are charged unaffordable rents can do something about that.

Keith Brown: Can I hear from John Blackwood on the rurality issue, if I still have time?

The Convener: Yes, on you go.

John Blackwood: On the impact on rural areas? Sorry—the internet connection has gone weird.

Keith Brown: Yes—specifically on the different kind of impact, if any, that the proposal in the bill about the ability to appeal for a fair rent would have in rural areas compared to urban ones.

John Blackwood: It is similar across the board. We made a representation in our submission about the bill potentially stopping any rent increase at all, referencing subsections (5) and (6) of proposed new section 22B of the Private Housing (Tenancies) (Scotland) Act 2016, and we have concerns about the impact that that would have. I concur that the bottom line is that the landlord needs the rent to be able to invest in the property. If that is curtailed in any way, there will be a lack of investment in the property, which is not good news for anybody. There would be a disproportionate effect on that investment in rural Scotland, simply because of the lack of supply.

Gordon MacDonald (Edinburgh Pentlands) (SNP): A point was made earlier about the lack of data. I can talk only about my experience representing an Edinburgh constituency. The Scottish Government private sector rent stats for 2010 to 2019 highlight that in Edinburgh and the Lothians, private rent levels for a two-bedroom flat have increased by 46 per cent over the 10-year period, when inflation has been only 29 per cent. The effect that that has had is that a two-bed flat in Leith is £420 a month if one rents it from the council, but the same flat in the same block is £1,000 a month if it is rented from a private landlord.

The Citylets report that came out on 9 February highlights that across Scotland, for the year to

December 2020, rent rose by 3.6 per cent, while inflation was only 0.7 per cent. I am curious—what more data do we need before we introduce some form of fair rents bill?

The Convener: That question is probably for John Blackwood, first.

John Blackwood: Interestingly, in Edinburgh, rents are coming down, which has been an issue over the past few months. The Citylets report talks about a reduction of 4 per cent in the past quarter and it could potentially be more than that. Again, there is a differential between what is marketed, what is achieved and what the passing rent is for existing tenancies. At the moment, landlords in the city of Edinburgh struggle to let one and two-bedroom flats because there is an oversupply, which results in those market rents coming down—and that is how the market operates through supply and demand.

I appreciate that, in the past, there has been greater demand in the area and, therefore, rents have risen. If that is the case, we need real data to understand what passing rents are in the city of Edinburgh and all over Scotland. We do not have that at the moment but, once we have it, we will be able to tackle the problem and work out what we need to do. However, as I said, it is interesting that in Edinburgh, which is the hot spot for rent increases in the whole of Scotland, rents are starting to come down. That is for a number of reasons; of course, the pandemic has had a major impact but, generally across Scotland, people are moving outwith the cities into more rural areas so, again, we need to tackle that, in the long term, so that we understand why it is happening and what it will do for rents that are charged in more rural areas in Scotland. The data should underpin the legislation that we introduce.

Gordon MacDonald: How would that data be collected and what would be the benefit of collecting it?

John Blackwood: The benefit would be an understanding of the marketplace; the majority of properties are not brought to the market, so we never know what rents are being charged. Landlord registration is a tool, because landlords have to register and provide various bits of information to the local authority so that the condition of the property can be determined. Landlords have to provide prescribed information and answer questions and, if requested by the local authority, they need to provide evidence. In addition, we could ask them to provide information on the rents that they charge.

In our submission, we talk about how it could be important to ask landlords whether they have increased rents since their last registration, three years ago, what that rent was—because we do not

have that data—and what the rent is now. I hope that that would allow rent service Scotland to collate that data and analyse it more thoroughly. As I said earlier, it would be a tool for harvesting information. We are lucky that, in Scotland, we have landlord registration that could do that.

Gordon MacDonald: If landlords have to put that information in only at the time of registration, or every three years when they reregister, that information will be out of date quickly, so what use would it be in challenging rent increases?

John Blackwood: It would still be useful, because rent service Scotland is asking landlords for the same information at the moment, and it would have asked for it two years ago. Again, it will never have accurate, up-to-date information, but it would be more information, and any information that we get would be useful.

Gordon Maloney: Gordon MacDonald made an extremely good point. With regard to the increases over the past year that he cited, the Cytilets report talks about a 7.3 per cent increase over the past 12 months in Glasgow, 7.7 per cent in South Lanarkshire and 8.6 per cent on one-bedroom flats in Renfrewshire. It is important to note that those are not just above-inflation increases; they are above-inflation increases during a time when tenants have faced some of the most difficult economic situations as a result of the pandemic.

Although it is true that Edinburgh has had a very small decrease over the past few months, that is a product of 10,000-odd Airbnbs temporarily being turned into flats and—because Edinburgh is a big student city—a significant number of students choosing to stay at home elsewhere. Both things are very temporary, and I imagine that rents in Edinburgh will spike back up massively.

However, the point about how much more data we need is crucial, because we know that the sector is ballooning out of size, that the number of people in significant financial difficulty who live in the sector is increasing dramatically and that tenants are being put in really difficult situations. The Joseph Rowntree Foundation described private tenants in Scotland as the new face of poverty. We could always have better data, and there is a danger that we spend years in pursuit of the perfect amount of data, while tenants are forced further into poverty and desperate situations.

One product of the dramatic rent increases that Gordon MacDonald described is that tenants are trapped in the private rented sector. A tenant who pays £1,000 a month in rent as opposed to £400 or £500 for a council flat cannot put money towards savings that could form a deposit on a house purchase. When we talk about rebalancing

the sector, having affordable rents that allow tenants to put money aside is a crucial part.

I do not disagree with the point about investment in the sector, which is important, but we have a question to answer about where the investment should come from. As we heard, the investment currently comes from some of the poorest people in the country, which is an intolerable situation.

As we come out of the pandemic—when tenants have had their hours cut, have lost jobs and have spent what little savings they had—if we do not address such issues, we will face a serious problem of poverty and eviction from the private rented sector. Rebalancing through rent controls and more affordable housing in the private rented sector must be a part of our national recovery from coronavirus.

Gordon MacDonald: Would Tony Cain like to speak?

Tony Cain: I am happy to. There is quite a lot in that. On the student market, I make it clear that the bill would have no effect on students who rent from specialist providers or their institutions, because they are not covered by the 2016 act—they were excluded from statutory protection under that act. The bill would not affect the Unites of this world, the universities and the other specialist providers, because student tenants have no statutory protection—it was withdrawn from them back in 2016, which was an issue that we raised at the time.

All the figures that are being quoted are asking rents, not passing or achieved rents. We have no information on what is actually being paid in the sector. I do not see the difficulty in requiring landlords to update the register when they change rents. Most landlords do not raise rents during tenancies. The average tenancy is for less than a couple of years, and landlords adjust their rents when they re-let properties.

Most landlords want tenants who stay for the long term and pay their rent. Landlords know that, if they push the rent to the market's limit, their tenants will not stay for as long.

Keith Brown asked about the impact on areas that are outside cities. I suspect that the bill would not have a lot of impact there; the risk is that it would push up rents, but the likelihood is that it would make no difference. I come back to the housing market's nuanced nature and the partial coverage that we have when it comes to protection.

The Convener: I call Pauline McNeill, who introduced the bill.

Pauline McNeill (Glasgow) (Lab): I will start by asking John Blackwood to clarify a point. Did you

say that, if people cannot afford rents in the private rented sector, perhaps they should not rent there? Do you acknowledge in any way that, for many people, living in the private rented sector is not a choice?

There is a great deal of poverty and, to repeat what Gordon MacDonald said, the Government's statistics show that

"Lothian and Greater Glasgow have seen average rents increase above the rate of inflation between 2010 and 2019 across all property sizes",

and that the average private rents for two-bedroom properties rose at double the inflation rate. Greater Glasgow and Lothian represent a large part of Scotland in which rents have increased at a rate that is dramatically above the inflation rate. Given that we have high poverty levels, how does it help tenants or landlords for people to be at breaking point in paying their rent?

John Blackwood: I completely agree. I was trying to make the point that, over the years, we have expected the private rented sector to pick up the slack from all the rented sectors. We now find that some of the most vulnerable people live in the private rented sector, which is not the most appropriate place for them to live. We should have an affordable social housing sector, which would best meet their needs, so that the private rented sector returns to becoming the sector of choice rather than the sector of last resort. That would be good for tenants and landlords.

The point was made that we have not had a proper strategy for developing the private rented sector. What is its function? What should it do? I am pleased that the Scottish Government has tried to address that in the past few years and set out the function that the sector could provide, but a lot more work needs to be done. The sector is caught in a difficult place between the lack of supply in social housing and the lack of ability—for those who want it—to become homeowners. Where else do people live? We need a vibrant, well-functioning rented sector in Scotland, of which the private rented sector is an important part. We need to redress the balance and look at what we want our private rented sector to do and what service it should provide in the long term.

10:00

Pauline McNeill: There might be a consensus about the need for more choice for all tenants. Surveys show that a high percentage of people are in the private rented sector because they want to buy property or because they want to get on to a waiting list for social housing. In that time, until we get those solutions, do you not agree that, for some people, rents are too high?

John Blackwood: For some people, they are unaffordable. I have sympathy in that regard. For those people, you would argue that they are forced to live in the private rented sector, because there is nowhere else for them to go.

I am sure that you will speak about this later when you take evidence from Douglas Robertson, but it is interesting that, in the Shelter Scotland report "An Evaluation of Rent Regulation Measures within Scotland's Private Rented Sector", the important point was made that rent restrictions

"primarily offer a useful stop gap, a breathing space, but not a long-term solution",

when it comes to the private rented sector and its growth and development.

We need to think about the long term, not just the short term. I appreciate what you are trying to do with the bill, but my concern is that its short-term impact could be to have completely the opposite effect: it could raise rents, when, as our evidence shows, they are not rising for sitting tenancies. We think that the bill would encourage landlords to raise rents—

Pauline McNeill: Well, I will come to that question. My next question is about why landlords need to increase rent above inflation for—

The Convener: Excuse me, Pauline, but you have only a certain amount of time, so, just to clarify, are all your questions for John Blackwood, or do you have questions for the other witnesses?

Pauline McNeill: This is my final question for John Blackwood. Is that okay?

The Convener: Yes. It is your time.

Pauline McNeill: Why do landlords need to raise rent above the rate of inflation? Surely the rent level is set in relation to the investment and the whole picture. We have a picture across Scotland, and, in some places, rent rises are triple the rate of inflation. Why do landlords need to do that? If they are doing it, why should there not be a cap?

John Blackwood: Inflation does not bear any relation to what the landlord needs to invest in the property—that is the problem. What a landlord invests will be way above inflation. As you can see in our submission, the costs of taxation, repairs and maintenance are way above inflation, so there is no correlation. A link to the consumer prices index, as is suggested in the bill, is almost irrelevant to what landlords need to invest in a property. We want to encourage landlords to invest. I do not want them to have an excuse to say that they cannot invest in a property because there is not enough rental income; it is about addressing that need for future investment in the

property, which, sadly and ultimately, comes from rental income.

Pauline McNeill: Gordon Maloney, is it helpful to establish in law the principle, at least, that there should be rent controls? You have said quite a bit about rent pressure zones. Do you agree that, even where those are used, that is a power that local authorities can exercise but that does not give tenants any rights?

Gordon Maloney: I absolutely agree. You make a vital point that it is all well and good for us to think about the long term, how we rebalance the sector and what housing in Scotland will look like in 20, 30 or 40 years. The reality is that, right now, there are tenants in Scotland who are being forced into absolutely impossible situations, such as having to choose between heating their homes and feeding their families and being forced to rely on food banks. A Shelter study showed that as many as one in five tenants now fears being made homeless as a result of Covid. Therefore, although we need long-term solutions, we urgently need a short-term—and an immediate-term—correction to the track that we are on.

Rent pressure zones are insufficient. They do not go far enough. The bill is a significant and substantial step forward in that regard.

It is interesting that you talk about establishing in law the principle of rent controls. In my view, the 2016 act did that. It was an acknowledgement from the Scottish Government that the private rented sector and the market forces within it are not capable of delivering affordable housing. The 2016 act accepted that in principle, but the policy mechanisms that it put in place were totally insufficient to address the issue. We have cross-party consensus that, on its own, the market cannot deliver affordable housing—indeed, housing benefit exists to recognise that. We talk about interference in the market, but we already interfere in the market in big and dramatic ways. However, we desperately need to go further, and the bill is an important step in that process.

Pauline McNeill: I have no further questions, convener.

The Convener: That completes our questions to our first panel of witnesses. Thank you for taking part today. Witnesses can now leave the meeting by pressing the red telephone icon.

I suggest that we have a short suspension for the changeover of witnesses.

10:06

Meeting suspended.

10:09

On resuming—

The Convener: Welcome back. I am pleased to welcome our second panel of witnesses. Nina Ballantyne is strategic lead in social justice at Citizens Advice Scotland, and Professor Douglas Robertson is a consultant and housing researcher at the University of Stirling. Thank you for attending.

We have allocated about an hour for this session. We have a lot of themes to get through; you might have heard my remarks to the previous panel that, if you agree with what a witness has already said, you should feel free simply to confirm that, rather than give a full answer.

Again, members will ask their questions in a pre-arranged order. At the end, if time allows it we will have supplementary questions. It will help broadcasting staff if members say to which witness their questions are addressed. Everyone should wait a few moments after being called to speak to allow broadcasting staff to operate your cameras and microphones.

Pauline McNeill is again in attendance for this session. If time allows it, I will allow her to come in at the end to put questions to witnesses.

We move to questions; I will ask the same questions that I asked the first panel. Do the witnesses agree that there is a need to bring fairness into the private rented sector and to create a better balance of power between landlords and tenants in Scotland?

Nina Ballantyne (Citizens Advice Scotland): I agree with that. I thank the convener for inviting Citizens Advice Scotland to the meeting today.

When we are advising clients across the country, we see that there have been some improvements in legislation on and provision in the private rented sector, but compliance and enforcement is challenging because there is a disproportionate weight on vulnerable tenants to enforce their rights and to be well enough informed of their rights to carry through the full process that is required. We therefore support the principles and aims of the bill, but are not convinced that it will entirely tackle the more fundamental structural issues within the PRS and the housing sector overall, because the PRS does not exist in a vacuum and is affected quite a lot by other outside factors.

Professor Douglas Robertson (University of Stirling): [*Inaudible.*]*—*the 2016 bill to get a better balance and I think that that was achieved to a point, but the result was an imbalance within the private rented sector. Politically and economically, that will always be there, so the question is

whether legislation wishes to improve that balance.

Tenants are reluctant to challenge landlords. I have been involved in recent work with the Indigo House consultancy on the impact of the 2016 act, which has shown that landlords and agents who go to tribunal are represented by solicitors, but tenants who go are not, so even in trying to get an adjudication at tribunal, there is a power imbalance. I am not sure how far we can get around that, even with legislation.

The Convener: Will the bill help to reduce poverty and to support low-income tenants and families? Would that one action alone help?

Professor Robertson: I am concerned about the fair-rents proposal of using the consumer prices index plus 1 per cent. That has been running within the social rented sector and generating significant surpluses. The Scottish Housing Regulator is trying to stop housing associations and local authorities putting rents up; the question is how we do the same within the private rented sector.

The proposal seems to be misplaced, given that there are two particular areas in Scotland where there seems to be a problem with high rents—central Edinburgh and the west end of Glasgow. According to evidence and recent material that John Boyle from Rettie & Co has put together, in the past five years Glasgow has had CPI plus 1 per cent, which is above inflation. In Edinburgh, it has been CPI plus 2 per cent. Therefore, if Parliament were to introduce that measure, you would be looking only at Edinburgh, so the question is whether you need national legislation to deal with a problem that is specific to one location.

That said, and drawing on research by the Nationwide Foundation, rents are one thing, but what people can afford is another. What is shocking is that although 12 per cent of tenants pay less than 20 per cent of their net income on renting, 30 per cent record that they pay between 20 and 30 per cent, and 50 per cent that they spend more than 30 per cent of their income on housing. The research shows that 22 per cent of tenants pay between 30 and 40 per cent, 21 per cent of people pay between 40 and 50 per cent and, unbelievably, 8 per cent of people pay more than 50 per cent. However, only 11 per cent of tenants say that they find their rent difficult to pay, which I find really peculiar.

10:15

Previously, in social housing, 25 per cent of income being spent on rent was treated as a maximum. You can see from the figures that we are way over that. The rents might not have

increased, but the relationship between rents and what people are earning, or are able to earn, is really out of kilter. I do not think that the so-called fair rent proposals address that. Provision of a cap of CPI plus 1 per cent does not make housing affordable.

The Convener: If we turn the issue on its head, what evidence is there of whether rising rents cause affordability problems for tenants? Do we have data to back an opinion either way?

Nina Ballantyne: There has been a lot of discussion about data in the meeting; it is fair to say that the PRS as a whole is a pretty murky world in terms of transparency. It is difficult to know about what is going on with regard to rent levels and about cases that should go to a tribunal but do not, and to get easily accessible information about tribunal decisions.

We are in favour of the rent register that is proposed in the bill. There being a rent register would differ from the existing situation; at the moment, our information on rents in the PRS is based on—*[Inaudible.]* It is based only on advertised rents, and does not include calculation of rent that is actually paid once the tenancy is signed, or take into account in-tenancy increases. We are also missing a lot of information in relation to, for example, properties that are let to friends or family, or through Gumtree and other informal parts of the market.

In the past three quarters, we have supported and given advice to more than 4,000 clients with private rented sector issues, so we have data. Over the course of the pandemic, the PRS has been hit harder than other sectors. We have data on the amount of—*[Inaudible.]*—through the citizens advice network in Scotland. A proportion of that advice would typically relate to local authority rent arrears and other RSL rent arrears, but we see that, over the course of the pandemic, the proportion of advice given on those matters has gone down. However, the proportion of advice relating to PRS arrears went from 6 per cent in April to December 2019 to 14 per cent in April to December 2020. That alone suggests that PRS tenants are in a much more precarious position than tenants in other sectors. They have been hit harder by any changes and economic consequences.

The Convener: There is clearly a lack of security in the private rented sector that does not exist in the social rented sector. Do you think that the power of Scottish ministers to vary application of the fair-rent cap would address concerns about the CPI plus 1 per cent provision? If so, when do you think the power should be used?

Nina Ballantyne: Our view on CPI plus 1 per cent is that, for most tenants, it would offer only

predictability rather than real affordability. It would be great for people to know what their maximum rent would be, but their rent might already be pushing at the limits of what they can afford every month.

We have mentioned city centre and urban areas where rents are too high, but that is also an issue in a lot of rural areas due to the lack of housing that has been caused by short-term lets. That aspect has not been touched on yet, but it is a crucial part of the problem. We might talk about it later.

There are issues of affordability across the country. For rents that are already too high, saying that they will increase by only a wee bit does not do much. Ministers being able to change the cap would be a more positive step.

Another of the proposal's shortcomings is that it is a national measure for an issue that is very localised. As Gordon MacDonald mentioned earlier, PRS rents in Leith are higher than social sector rents there, but Leith rents are much higher than rents in Gorgie, which is just on the other side of the city. It must be recognised that there is no single Scottish housing market—markets are very local. To use only one measure across the country does not recognise nuances, and would perhaps not be as beneficial or effective as a more local approach.

The Convener: Does that suggest that the solution is to tighten up, change and make more workable the rent pressure zones?

Nina Ballantyne: The rent pressure zones' advantage is definitely that they can be more local and regional. However, Gordon Maloney touched on the shortcoming whereby if there is no control of between-tenancy increases, the overall problem is not necessarily ended. We are talking about a market that is not really a functioning market like there is in any other consumer area, because there is huge constraint in supply in the PRS, and in housing in general, that is caused by long waiting lists for social housing, a huge increase in short-term lets, an increase in the price of property—[*Inaudible.*]

If we think about tenants as consumers—if we want to treat the PRS in that way—they do not have meaningful choice in the sector. There is nothing to prevent people from putting properties on the market for the first time at extremely high rents, then shifting up prices between tenants, which would also incentivise landlords to get rid of tenants. If landlords felt that they were not making enough money, they could increase the rent and that could also potentially—[*Inaudible.*]*—*who do need to move, because they know that moving is when they are likely to see an increase in their rent.

The Convener: Thank you. I have overrun on my time, but does Professor Robertson have a quick comment on what Nina Ballantyne said?

Professor Robertson: One of the unintended consequences of the 2016 act was, in effect, that it introduced annual rent rises announced three months before the increase. Again, however, from research from tenants' and landlords' perspectives, we see that 60 per cent of landlords do not increase rent; it just stays the same. Only a quarter of tenants' rents have risen in the past couple of years.

The information about rents is basically about bid rents. The Scottish Government's figures come from rent service Scotland and are generated from broad housing market areas in order for the local housing allowance to fix housing benefit. It is second-hand data, the majority of which comes from websites, so it is about bid prices. We therefore do not actually know what rent people are paying. All the figures that people, including me, have been quoting this morning are based on asking prices, and not necessarily on actual rents.

To go back to the bill, I note that the point about information is fundamental. All regulation mechanisms across Europe must have decent information on the quality of the housing stock and rents. The Scottish Government and politicians are passing legislation, so surely they want to know what impact it is having. The bill is being sold on the basis that it will achieve certain ends, but the dataset cannot provide information. When we compare the amount of information that we have on social housing with what we have for private renting, we see a massive difference. However, private renting houses almost as many people as social housing does. There is a great imbalance in the data, and one of the cuts that went through the Scottish Government reduced the quality of data. How, therefore, can the Government assess the impact of its legislation? That seems to be a strange way to go about things.

The Convener: Thank you—Sarah, do you want to come in?

Sarah Boyack: Yes. Thank you.

I want to follow up that point with Professor Robertson. You made a clear point about the huge imbalance between private rented sector data and social rented sector data. There is also a huge imbalance in rents between the sectors. What controls are appropriate for the private rented sector? The Scottish Association of Landlords would say that rents should be left up to the market and will just bottom out. However, in your opening comments to the convener you referred to the percentage of people who are paying incredibly high percentages of their incomes for rent. Do we need a rethink? What lessons from

European countries that take a different approach could we apply in Scotland in terms of rent controls, fairer rents and rebalancing of the system? What are the key findings from your research that we should think about in relation to the bill?

Professor Robertson: I have circulated our report on rent regulation. It has to be said that rent regulation does not work and that how to fix it is a challenge. Ireland is a good example. It has had rent regulation for the Dublin and Cork housing market areas; however, the problem is that people who want to get a particular house quite happily abandon their rights and pay market rent.

If the market is concentrated—to be blunt, I note that the committee discussed the topic a few weeks ago—short lets are an absolute disaster. They increase demand and there is less private rented housing available. The reason why prices are going down is that short lets are coming back on to the market, although that is not necessarily long term.

In doing my research for the Scottish Government, I was completely shocked to find that because of short lets, there is no rented housing or homelessness accommodation available on Skye. The issue of short lets, which you discussed earlier, is critical. However, are you going to limit short lets? That does not look likely. Are you going to limit private rented property? A market solution is needed.

Again, as can be seen from the report for Shelter that Gillian Young and I were commissioned to do, we need to provide more housing, and it needs to be social housing. There is a very peculiar market situation in private renting, whereby 31 per cent of tenants want to move into owner-occupation—whether they can do so is a different question—and 23 per cent want to go into social renting. Private renting is tenure that the majority of people do not want to be in. That is a very unusual situation that I think does not apply to owner-occupation or council housing.

Following the financial crisis and all the changes that happened from 2008 onwards, some private renting appeared overnight and, subsequently, short lets. Sarah Boyack will know that from her constituency. That is a massive change and those things are happening really quickly. We need more stability. To go back the point that was made by Tony Cain and others, what is the Scottish Government's housing strategy, and what do we want to achieve? In the crisis that followed 2008, the private rented sector was used. However, as John Blackwood said, it is not suited to a lot of people.

A lot of the affordability points that I made earlier shock me. My daughter pays 50 per cent of her gross income on rent. That is ridiculous. Her rent is £500, shared with her partner. Anyway, for certain people, it is a massive amount. They see it as temporary and acceptable, but it is clearly not a housing solution. We need a better understanding.

My problem with the proposal on CPI plus 1 per cent is that that will just inflate all rents. The majority are below that. That is a serious issue. It is about getting better data so that we better understand the market—then, we can interfere.

My other problem is that rent pressure zones were designed not to work. They are cynical policy. I spoke to Margaret Burgess, who was then the relevant minister, when I was doing the Shelter report, and she was quite happy not to include them, as was Alex Neil. However, the Scottish Government made a commitment to have them; it introduced them but there is no intention that they will work. The data requirements are way beyond what anybody can do.

As a stopgap, you could maybe look at rent pressure zones—at fixing the rent on a property and limiting it to a specific rise. However, as I have said, that was done in Dublin and people just did not ask what the previous rent had been, because if they had done that the landlord would not allocate to them because they were expecting to know what the increase had been. The whole rent regulation mechanism was, therefore, caught. The same thing has happened in Berlin, Paris and Lyon. When the market is pressured, people rights in order to secure a property. That is the nature of a market system.

Sarah Boyack: So the challenge is about what the change would be, whether there is anything in the bill that would be helpful and what other mechanisms we could use.

I want to put that question to Citizens Advice Scotland. The convener is looking at me, which I think means that Professor Robertson has used up my allocated time. That is not a criticism, as he gave very useful feedback.

I have a brief question for Citizens Advice Scotland about tenants' rights. There are people in private rented accommodation who would rather be somewhere else but who have no choice. What elements of the bill does CAS think are helpful? Are there other short-term measures that could address what is clearly a systemic problem?

10:30

Nina Ballantyne: We do not want to throw the baby out with the bath water. The rent register is vital. I would suggest that there should be a version of the rent register that has slightly more

information and, crucially, that all the information that landlords submit about properties should be publicly accessible. Professor Robertson just said that tenants have no way of checking previous rents or are not confident enough to check them. That information should be available for tenants to peruse when they are checking whether their landlord is registered and it should be available for organisations such as ours and to the Scottish Government or members of the Parliament to see, too.

That would give a more accurate picture of what is happening, rather than only the register managers having access to that information. Democratising that is a vital foundation for a better policy on affordable housing across all forms of tenure, not only in social or affordable housing but in housing overall.

Rent controls could make a real difference for citizens advice bureaux clients but, as Professor Robertson suggested, that will happen only if we ensure that the other elements of tenancies are also suitably managed.

The regulation of short-term lets is vital. Part of the reason for the massive growth in short-term lets is not only that they are facilitated by services such as Airbnb but that some landlords looked at the new private rented tenancy and regulations and, even though they were pretty mild and not very radical, thought, "Actually, there's no requirement to do anything in the short-term let market." That was an easier move, with more money and fewer burdens. We must tackle that and make some sort of parity in the effort that is required of private landlords between short and long-term lets.

There are around 150,000 people on waiting lists for social housing around Scotland. That must be addressed, but it will need a longer-term fix. It takes time to get properties into the social sector.

Those are the issues that we must tackle. We must think about rent controls if they are to be sustainable and to work in the way that I think the bill intends.

Sarah Boyack: Would it help to rebalance power towards tenants? The committee has heard a lot of evidence about what it means to go to a rent tribunal and about tenants not feeling confident that they will be listened to or being concerned that they will be up against lawyers. Are there things in the bill that you think could be useful?

Nina Ballantyne: There is limited content in the bill that tackles that imbalance in challenging a landlord. There is a lack of funding for specialist housing advice in Scotland. Obviously, as an advice organisation, we would say that, but we know that there is demand that we struggle to meet on our resources.

Even if it was not CAS that offered that advice, it is the case that tenants working on their own will struggle to follow through on all the information and processes required at a tribunal. They can do that if they have access to advice and support, but many do not. They certainly do not have professional representation whereas letting agents and landlords more often do have professional representation at the tribunal. A small point, but something that we have thought about, is that there is a need for resources to improve education for school leavers. We know that people who appear at tribunals tend to be younger. They are inexperienced and less confident in their rights. [*Inaudible.*]—your rights and responsibilities as a tenant as part of a range of other essential skills might create a generation of confident renters.

Alexander Stewart: Panel members probably heard my question to the first panel. I was trying to ascertain the difference between urban and rural issues. Professor Robertson, you indicated that there are dramatic issues with rented accommodation in rural areas. You gave the example of Skye, where it is not possible to have a private rental sector. Therefore, I will ask a similar question: how will the bill help on the rural side of things to ensure that there is a supply of rented accommodation as a result of this process?

Professor Robertson: I do not think that the bill would do that. It would increase rents, so it would go against that intention. Again, it is an unintended consequence. CPI plus 1 per cent is generating surpluses in the social housing sector, which the Regulator of Social Housing is concerned about, but it is way above what the overall level of rent rises has been across Scotland for the past 10 years, with the exception of a few hotspots. The problem is that we do not have the data at a scale small enough to pin down rents, as was desired for rent pressure zones. The rent service Scotland data, which the Scottish Government uses, is, as we have already heard, basically bid price data on what people are asking. In Lothian, the average rent for a two-bedroom property is £969. In Edinburgh, it is £1,134, if you go to Rettie. Therefore, we can see that these broad housing market areas in the Government data hide certain rent rises. The average rent in the Ayrshires, for example, is £469 for a two-bedroom property, and the average for Scotland is £798. Therefore, we can see that there are massive variations in the rents charged for the same size of property in different locations, so there will be problems in specific areas.

On Skye, short lets have led to the disappearance of the private rented sector. Fort William, which is not necessarily rural, has the same problems. The post office service is intermittent; students could not get accommodation so they could not go to colleges;

college staff could not get accommodation; and the smelter could not get the work carried out because workers could not rent accommodation to come in to do the smelting work. We now see that the smelting work is progressing because Airbnb accommodation is not open. Therefore, you can see that the housing market situation in rural areas is much more intense. The focus has been on Edinburgh, but it has been intense in other places. This is a new player in the rented market system, so if you are basing your housing strategy on markets, that is what is going to happen.

I have a problem when people say, "We have no housing; we need to build more housing," at the same time as they are renting out housing that is surplus to their requirements in order to make money. That is a political decision that you guys need to deal with. Is it acceptable for public money to be spent on building new houses when there are houses currently being used for short lets and when schools are being closed and jobs and local facilities—post offices and the like—cannot be supported? You are the arbiters of some of these decisions.

With regard to the information, the bill is fundamental and very good, but it would not result in fair rent; it would be inflationary.

Alexander Stewart: You identified that, if the bill progresses, it could have a detrimental effect on communities that are hanging on by their fingernails when it comes to schools, facilities and amenities. You also spoke earlier about the fact that many landlords—I think that you said that it was 60 per cent—do not increase the rent for long-term tenancies. That must have an impact on the way in which the rent process is managed and what we can see developing from that. It is the short-term tenancies—one or two-year tenancies—that are the problem, and it would appear that that is exacerbating the situation in the whole sector.

Professor Robertson: We are taking our rent information from bid prices, not from what is actually being charged. We need to get that information. The suggestions about landlord registration and putting in the rent and other details and information about the quality of the property will give a better insight but, at present, we are basing it on a system that was designed for a completely different purpose, which was to fix the local housing allowance for housing benefit purposes. It is not a housing system—it is basically a benefits system that we are using to try to assess rents.

We did a critique of the data collection for rent service Scotland, which fed into the Scottish Government's data. In the recent publication, I note that the Scottish Government has accepted the criticism that the data is bid rents from large

areas, and that most of the extra information that it generates is taken from the same websites. Citylets is a business that is collecting information, but it is also looking for people to invest in renting. Therefore, it is looking at high-point rents, not at what people are actually paying.

Alexander Stewart: You identified the private landlord registration scheme, which is administered by councils for their local areas. In evidence, some councils have suggested that funding mechanisms would be required to ensure that the additional workload could be managed effectively, and to allow the database to hold the required information. If the councils are having an issue with that, how will we square the circle?

Professor Robertson: If you are filling in the form, it is just a matter of entering the data into the system. The councils administer landlord registration, but the data is held centrally. The councils feed into a centralised system, so I do not see a particular problem. Councils already charge landlord registration fees.

Alexander Stewart: Some councils have raised the issue, but it is not something that you identify as a concern.

Professor Robertson: No.

Gordon MacDonald: Before I ask my questions, I would like to ask for clarification from Professor Robertson. A couple of times, you have mentioned that a lot of the private rented data is based on bid prices. What is the relationship between a bid price and the actual rent that is paid? Are you suggesting that, in many cases, the actual rent could be a lot higher than the bid price?

Professor Robertson: No. The rent that is being asked may be achieved. In Edinburgh, particularly in Leith, I would imagine that those are the rents that are charged. However, that is only a small proportion of properties that are coming on the market. The average tenant stays in their house for two and a half years, and a significant proportion—60 per cent—of those tenants will not see a rent rise over that period, although some will. Those rents will be lagging behind the bid prices. The Scotland data gives you the high rent, but we are not sure whether those rents would necessarily be achieved in other locations. In the Ayrshires, your rent could be £490, but I am not sure that you would be able to get a house in Leith with a rent of £490. People might want a higher price, but they will not always get it. Some people are paying those rents, but other people certainly are not. You need to try to understand what rents are actually being charged before you can say how high they are.

The counter issue is that some people are on low incomes, and it is not only the rent that is being charged that is causing problems but the

bigger issue of in-work poverty. As usual, it is people on low incomes, single parents and black and minority ethnic groups who struggle in such a market system.

Gordon MacDonald: Thank you. I want to ask about the fair open market rent provisions in section 2 of the bill. We have talked a lot about rent levels. Nina Ballantyne, I am keen to understand what information your organisation has from people you have represented about the poor condition of properties, failure to meet repairing standards and poor energy efficiency. Is there data on the condition of many of those rented properties?

10:45

Nina Ballantyne: Yes. Within the private rented sector, repairs and maintenance would usually account for the biggest areas of advice in the citizens advice network. Looking at the detail of the cases, we find that that is almost always to do with blatant non-compliance by the landlord. It is not that the legislation on that side of things is insufficient; it is just that tenants are finding it impossible to enforce it. That is not just an urban issue; it is the case in rural areas, too, and it is very concerning.

Once someone is fully informed of their rights, they are supported in going to the tribunal. That takes quite a long time, and the housing and property chamber of the First-tier Tribunal for Scotland reported having way beyond the anticipated number of cases to deal with in its first year. There will obviously be backlogs from the pause over the past year with the pandemic. Additional resources for the tribunal and the time needed to get anything changed are therefore among the issues.

There is an even more basic issue. In December 2020, we had a case in which an adviser was helping somebody with rent arrears that had arisen because of the pandemic. As the adviser was helping with the case, they realised that the landlord was not even registered. That had been the case for years.

There is a lot of discussion on ensuring that landlords are informed and supported and that they meet all their obligations. However, that kind of level of non-compliance is inexcusable. The fact that the onus is all on a tenant, who is in a vulnerable situation and is risking the roof over their head, to make a challenge, is a difficult point. That would come into play when we are discussing fair rents.

The criteria for what might help people to qualify for a rent reduction are sensible, but there is no indication that the starting level from which rents could be reduced would be fair or affordable

anyway. If there is nothing wrong with the property, how do we judge whether the rent is fair? As has been discussed, the market rate has been distorted by short-term lets and other constraints on supply.

Gordon MacDonald: Thank you.

Professor Robertson, you have given us a paper about the experience in Europe, to which we have referred. What can you say about what happens in other countries regarding the quality of private rented housing stock?

Professor Robertson: Everybody likes looking at European examples, but the culture is obviously very different. I tried to show in the report that certain areas have a long tradition of rent control, with very different arrangements in France and Germany, for instance. The best example is probably Sweden, where the context is very much social democratic, and the rents would be determined according to quality standards, and they would be fixed. Whoever was providing the property would only be able to charge that rent. I do not think that we are there at all here. There is only a limited amount that we could get from looking at other cultures.

Ireland, with its similar history and legal system, is an example of where there have been attempts to introduce some form of rent regulation in a free-market situation. That has been an on-going battle and it has been highly problematic. With the arrangements that they have put in place, the Irish authorities have good information, and the Scottish Government took a lot of advice from the Irish Government on how to develop a mediation service. We have had some challenges in dealing with the tribunal, and it still seems highly legalistic for tenants to get resolution of certain matters.

As for the fundamentals of rent control, you need good information that tells you what is going on and makes it possible to fix certain figures. That is the big problem. In many policy areas, the Scottish Government does not have good information, so I do not know how you can judge some of the policies in this area.

Regarding rent restriction zones, asking for a level of information that is way beyond what the Scottish Government itself controls suggests a big move to improve our understanding of quality and rents. We now at least know who the landlords are, but it has taken 20 years.

Keith Brown: On that last point, I am trying to pick through the bones of what we have heard today, to see what might be worth taking forward. The most obvious element seems to be data. I am struggling to understand the position, probably because of my ignorance of the field. Is it possible to use technology and smart legislation to develop a completely up-to-date data source that tells us

exactly when rents are paid and changed and perhaps even tells us the conditions of houses that are being rented? Surely that is not hugely difficult. I would like both witnesses to answer that question.

Professor Robertson: You are right; it could be done through landlord registration and the use of electronic data. Alternatively, if the tenancy deposit scheme collects information, that could give you information about housing quality. The challenge is to find the method that is the best way to do that and then to ensure that the data is live. I do not see a problem with that.

For example, 40 years ago, I was working for Glasgow City Council, campaigning for a national house condition survey, but I notice that we are now using only 3,000 cases to carry out that survey. We have seen the quality of that survey veering quite significantly and now, because of cuts in resource, the survey is very small. The Scottish Government needs to accept that we need to have decent information, because that is what drives everything. The rent-setting models across Europe are all predicated on a far better data set than we have. We are using a second-hand data set, which was created for welfare and benefit reasons, to make assessments of rent in Scotland. That is not good enough. For the Scottish Government to have carried through a substantial set of reforms on private renting but to have no idea from the initial information of how that has gone seems negligent, to be honest.

Nina Ballantyne: I agree with Professor Robertson that there is no reason why we cannot have live data. We know that the burden, such as it would be, would only—*[Inaudible.]*—maximum anyway, because it is already in the legislation that rent can be increased only every 12 months, and I do not see why, every time that the tenant is given three months' notice of a rent increase, that information could not also be submitted to a register at the same time. That seems completely feasible to me, and it would be much more useful than the system that we have just now which, as Professor Robertson has mentioned, does not capture accurate real-time rents. We know that there will be rents that are below the bid price and rents that are above the bid price, and that there will be changes within tenancies, but we are not seeing that information at the moment, so we are making policy in the dark, to an extent.

Keith Brown: On that part of the bill, the conclusion that I would draw is that we could aim a bit higher than is proposed and act in a more comprehensive way.

On the other parts of the bill, Professor Robertson's report says:

"Ultimately, it is supply-side policies, embracing both land-use and the financing new social rented housing, that will have a much bigger and more positive impact on the affordability issues impacting on lower income groups within society."

Given that view, and all that we have heard about how some of the measures in the bill would increase rents across the board and have a limited impact on one or two areas, would it be better if we looked at other solutions to the problems? Do either of you think that there are other parts of the bill that we should retain because they alleviate the situation?

Professor Robertson: On the supply of new social housing, the conclusion was reached in 1917 that the private market failed to provide decent housing for the working classes. We seem to have come back to that conclusion, and we have realised that there are certain people who are not well housed in private renting.

To go back to rents, there is an interesting situation currently whereby tenants of social housing, whether housing association or local authority housing, are paying higher rents as a result of the CPI plus 1 per cent approach. The surpluses are being used to build the new council houses. I think that the situation affects about 30 per cent of the tenants of housing associations and 50 per cent of local authority tenants—Tony Cain will know those figures better than I do. It seems strange that the poorest in society are contributing to building new houses through their high rents.

We must consider the fundamental question of how we fund the housing system. We have gone down a particular road, but we need to have a much bigger review. The stopgap of using private renting to house certain people it is not available. We must also consider the issues in the private housing market, such as the demise of owner-occupation and of people being able to buy into owner-occupation.

I do not think that the fair-rent proposals in the bill will help. Having rent regulation in hotspots will mean a return to rent pressure zones. I think that, when you were considering issues around Covid, someone from the University of Glasgow suggested having small areas where rents are registered and increases of only certain percentages are allowed. However, again, when I look at what is done in Dublin, Paris, Berlin, Lyon and other major European cities, I can see that tenants who want those properties will not use their tenancy rights, because the market system means that, if they have the money, they can get that property. The approach does not protect certain people and it results in people being forced out of those hotspots, because landlords see the opportunity to get in other tenants. That means

that the measures might add to the problems rather than solve them. It might be that the previous Administration was right to take the view that rent pressure zones are not a particularly good idea.

Keith Brown: Could Nina Ballantyne answer the question, too? Do you think that, other than on the data side of things, there are elements in the bill that could be progressed, even if they need to be amended or changed?

Nina Ballantyne: The intention to achieve more affordable housing in Scotland, including in the private rented sector, is a good one. However, I think that the measures in the bill will probably not achieve that in the short term, because the PRS does not exist in a vacuum and issues around short-term lets, including the financialisation of that sector, and the shortage of social housing will mean that the measures will not be as effective as you would hope that they would be.

However, the key aspect that the bill has helpfully brought to light is the need for a better understanding of the difference between a fair rent, a market rent and an affordable rent, and I hope that we can see further progress on that in the next session of Parliament. At the moment, because of the factors that we have discussed today, the PRS market is distorted—I refer back to what Tony Cain said earlier about the market being unbalanced—and I do not think that we can say that the market rent is really a fair rent. However, fair rents as described in the bill would not lead to affordable rents, because affordability is not only related to how much rent a person is paying; it is related to how much income they have. Therefore, even in the social sector, for example, rent at the higher end might officially be categorised as affordable, but it might not actually be affordable to a tenant who is on a low income.

My hope is that, along with issues around data, the bill can inform better policy making in the future and draw out evidence from witnesses such as the evidence that you have heard today. Fair rents, market rents and affordable rents are different, and we need to get better at deciding what we are trying to pursue and what the best mechanism is in that regard.

The Convener: I will bring in the member who introduced the bill, Pauline McNeill, to ask a couple of questions.

11:00

Pauline McNeill (Glasgow) (Lab): John Blackwood said that CPI plus 1 per cent is not enough, and Professor Robertson has suggested that it is too much and it would have unintended consequences. I commend Professor Robertson's excellent report, which was done in partnership

with Indigo House, which I read at the weekend. The report, which you have sent to the committee, acknowledges that, in all, 40 to 50 per cent of people are paying 30 per cent of their income on rent. What action, if any, would you suggest as an alternative to CPI plus 1 per cent? Are there any short-term recommendations that you would suggest to address the issue?

Professor Robertson: CPI plus 1 per cent has been a higher benchmark in the markets across Scotland, with the exception of Glasgow, Edinburgh and Aberdeen—although Aberdeen has collapsed over the past few years and is now a low-rent area. [*Inaudible.*] The issue is really poverty—I think that Pauline McNeill knows that. The rents are fixed at a certain level, but the issue is about who can afford them and whether our welfare system is up to supporting people on rents if they are in low-paid employment. I have to say that I find the affordability figures that the study threw up quite shocking.

However, only 11 per cent of tenants thought that their rent is not unaffordable, if I can put it that way. We really need to tease out what we mean by affordability. We are all dealing with a blunt instrument. We said 20 or 30 years ago that paying more than 25 per cent of gross income on rent in the social sector would be unaffordable. Clearly, we are now way above that, even in the social rented sector. We have used the social rented sector as a cash cow to support local government, and now it also supports the Scottish Government to build new council houses. Is it right that the poorest in society—

Pauline McNeill: Would you propose any actions, even short-term action, to address that?

Professor Robertson: You have to provide more housing somehow, but you also have to improve the welfare system so that people are not subjected to that situation. I think that we are dealing with a blunt instrument. The rents are the rents because that is where the market is at. Whether people can afford the rents is fundamentally a question of what their financial position is. That is the problem—we do not have an understanding of affordability. We bandy about the word “affordability” all the time, but what does it mean? In my old housing association days, I saw it as meaning 25 per cent of someone's gross income. I do not see housing associations or local authorities register that today. In effect, the poorest people have become poorer as a result.

The great benefit of our housing system—again, I am using Mark Stephens's research at the University of Glasgow—was that we used housing as a means to subsidise poverty. We kept rents down and we allowed people to have good-quality housing, for which they were not paying too much. That was part of the old arrangement. From 1988,

we broke with that idea and created a market system for private renting, and we did not restrict the social rented sector. Now we have a system in which housing is expensive and it is creating poverty as opposed to alleviating it. I think that the only way to deal with that is to put resource into providing new housing, to undermine the market position that exists.

As I say, that was the solution in—*[Inaudible.]* I do not think that it has changed.

Pauline McNeill: *[Inaudible.]*—rents, you would not propose any action.

Professor Robertson: The evidence does not suggest that that works. I would like to say the opposite, but the evidence of rent restrictions across Europe shows that countries with a long tradition of rent restrictions—Denmark, Sweden and Germany—have better and more affordable rents. They can determine that because they traditionally made a judgment about the quality of the house, then fixed the rent for that quality of house, which the landlord had to accept. I am not sure that we are in a position to do that. If we had the data, I would argue for such a system whereby we could assess the quality of housing.

I think that, under the Rent Act 1965, it was called the fair rent system, which I think went reasonably well. However, I do not think that the bill proposes a fair rent system. We need to have information about housing quality, then determine rents on that basis. That would be a good system in which landlords and John Blackwood's organisation could be involved, too. However, would that necessarily overcome the issue that significant numbers of people are extremely poor and need accommodation? That would not be the housing solution for them.

Pauline McNeill: I just wanted to press Professor Robertson on that. He is not proposing any action to take.

I have a question for Nina Ballantyne. You said that a local approach is better. Do you acknowledge that rent pressure zones have not worked? They do not give tenants any rights. I will quote some figures, because it is not just Glasgow and Edinburgh that have high rents. According to last year's figures, two-bedroom properties rent for £780 a month in greater Glasgow, £677 a month in East Dunbartonshire, £652 a month in Aberdeenshire and £630 a month in West Lothian. If you do not support a national approach, how do you think that a local approach could work?

Nina Ballantyne: In our most recent submission on the bill, we said that high-pressure markets are not confined to Edinburgh, Glasgow and, previously, Aberdeen. Advisers have told us that, in rural areas, there tends to be social lets that increase demand on PRS stock, that there are

often higher concentrations of holiday homes, that many homes are tied to employment and that there tends to be less investment in new affordable homes. All that contributes to higher rents. We recognise that the issue is not confined to any particular corner of Scotland. However, given the scale of the problem, we have to recognise that the solution might be slightly different in different places because of the factors that I have just mentioned.

I agree that rent pressure zones are not a panacea either, but the one advantage that they have is the opportunity to influence rents more locally. That does not negate the criticisms that I set out and the challenges with the current rent pressure zones, but it is an approach that can take account of local factors, which will be required to make rent controls sustainable. Does that answer the question, or do you need any more detail on that?

Pauline McNeill: I just need a yes answer or a no answer for my final question. Does that mean that you support, albeit only on a local basis, the concept of caps on high rents?

Nina Ballantyne: Yes, but with one caveat on the short-term lets regulation. The huge swing that we saw from long-term lets to short-term lets over the past 10 to 20 years has to be tackled as well, otherwise we will see further constraints on the supply of short-term lets in the PRS, which will not solve any of the problems. We need to have more parity between short-term lets and long-term lets. That will be important if we are thinking about this as simply a market issue, otherwise we risk seeing properties being taken off the market. That is no bad thing in the long term if they become social housing or owner-occupied properties. However, while we are still trying to recoup the losses in social housing, we have to bear in mind that situation, make sure that the short-term lets regulation in place is suitable and recognise that income is a factor, as social security and wages also affect affordability.

The Convener: That completes our questions and concludes this evidence session. I thank the witnesses for taking part in the meeting and helping identify some of the key issues in relation to scrutiny of the bill. Our next session on the bill is on 3 March, when we will take evidence from the Minister for Local Government, Housing and Planning and then from Pauline McNeill, the member in charge of the bill.

I suspend the meeting for around five minutes to allow a changeover of witnesses.

11:10

Meeting suspended.

11:16

On resuming—

European Charter of Local Self-Government (Incorporation) (Scotland) Bill: Stage 2

The Convener: Item 3 is stage 2 consideration of the European Charter of Local Self-Government (Incorporation) (Scotland) Bill. Our fellow committee member Andy Wightman is the member in charge of the bill and will move and speak to his amendments. I am pleased to welcome the Cabinet Secretary for Communities and Local Government, Aileen Campbell, to move and speak to amendments on behalf of the Scottish Government.

I will make some brief comments before we begin, because these are our first remote stage 2 proceedings. I will take things a little slower than I would normally, particularly when it comes to disposal of amendments after a debate.

If you wish to object to agreement of an amendment—that is to say, if you want to put it to a vote—please raise your hand when I call that amendment, to register your objection. I hope that that will be captured in the gallery view of proceedings. However, to be sure that your objection is noted, I suggest that you type “Object” or “No” in the BlueJeans chat box. I will pause to take note of whether anyone has objected in that way.

If there are any votes on amendments, I will call the vote alphabetically by roll call, to aid recording and transparency. I will put the question on the amendment and ask each member in turn whether they agree or disagree to the amendment or wish to abstain. My vote will be recorded last, and I will then read out the result.

Interventions on someone’s speech are, as ever, permitted, but bear in mind that it is harder to catch a speaker’s attention in a remote debate and that broadcasting needs a second to catch up. Overall, I would encourage you not to intervene if you have the option instead of making your point in a short speech.

I will call those who have amendments that are being considered today in the usual order. If any member wishes to contribute to a debate in a grouping, even when they do not have an amendment in the group, they should catch my attention by typing “R” in the chat box.

Section 1—The Charter Articles

The Convener: Amendment 1, in the name of the cabinet secretary, is in a group on its own.

The Cabinet Secretary for Communities and Local Government (Aileen Campbell): Good morning to the committee. Before I describe the detail of amendment 1, I extend my thanks to Mr Wightman and his team for the helpful discussions and collaborative work in the lead-up to stage 2 of the bill. The amendments that he and I have lodged will lead to an improved bill—subject, of course, to the committee’s agreement to those amendments.

Amendment 1 is an important amendment that needs some explanation. It would ensure that the charter is applicable, subject to any reservations, objections or interpretative declarations by the United Kingdom. That is important because, as it stands, the bill does not reflect the two declarations made by the UK in relation to the European Charter of Local Self-Government.

The first declaration provides that the charter applies to councils in Scotland under the Local Government (Scotland) Act 1994. That is mentioned by Mr Wightman in the policy memorandum to the bill and is useful in ensuring that the bill does not apply to any other bodies that exist or might be established in future that have functions that are similar to those of local government. Currently, the best potential example in Scotland might be the national park authorities. The second declaration simply provides that the UK considers itself bound by all the paragraphs in part 1 of the charter, in accordance with article 12. The declaration reflects the menu structure of the charter.

The effect of the amendment is simply to ensure that incorporation exactly mirrors the UK’s international obligations in relation to the charter. Neither of the declarations impact on the policy aims of the bill, and neither does amendment 1. However, it is necessary to ensure that the bill is compatible with the UK’s international obligations.

The policy intention of the bill is to achieve the incorporation of the charter into domestic law in Scotland in order to give it legal effect and allow compliance with the charter to be enforced in the Scottish courts. Amendment 1 will ensure that that intention is fulfilled. Inclusion of reference to the declarations is consistent with incorporation and would avoid any potential for confusion.

Without such an amendment, there may be an argument that the bill is not compatible with international obligations. As such, there would be a risk that the bill could be challenged under section 35 of the Scotland Act 1998.

The Convener: I apologise, cabinet secretary, but I have been told that the first amendment should be amendment 17. I will suspend the meeting to get that sorted out.

11:21

Meeting suspended.

11:26

On resuming—

The Convener: I invite the cabinet secretary to come back in.

Aileen Campbell: Thank you, convener. Given the necessity to explain the rationale behind amendment 1, I will repeat a wee bit of what I said before we were cut off.

Without amendment 1, there could be an argument that the bill is not compatible with international obligations and there would be a risk that the bill could be challenged under section 35 of the Scotland Act 1998. That would prevent the bill from being submitted for royal assent. The amendment removes that risk.

Amendment 1 also deals with other risks. The UK, and not Scotland, is a party to the charter; it is therefore an international obligation of the UK. The subject matter of international relations is reserved to the UK Parliament by the Scotland Act 1998. Although we can make some laws in that area—such as this bill—if we did not pass amendment 1 and the UK departed from the terms of the treaty at some point in the future, it would present some risks. We would still be bound by international law to comply with the charter under the terms set by the UK, but we would have this act, which would now say something different. That issue would need to be resolved.

If the area was within devolved competence, the Scottish Parliament could legislate—but what if it was not within devolved competence? It might not be as simple as amending the act to make it compliant with the terms set, should we wish to do so. Amendment 1 removes those risks. It provides for a flexible approach in incorporating the charter and gives effect to the treaty in accordance with the UK's international obligations.

Finally, this type of provision is not unusual. For example, the amendment is similar to the provisions included in section 1(3) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill and section 16(2) of the Commissioner for Children and Young People (Scotland) Act 2003. I hope that the committee supports it.

I move amendment 1.

Andy Wightman (Lothian) (Ind): I echo the cabinet secretary's opening remarks and thank her and her team of officials for their constructive engagement up to this point. Amendment 1 is one of the amendments lodged by the cabinet secretary, Aileen Campbell, to which I did not add

my name in support. That is due to the fact that I did not have time to consider it fully ahead of the lodging deadline; indeed, this is the first time that I have heard the justification for the amendment.

I understand the rationale for the amendment as presented by the cabinet secretary. I emphasise that there is nothing problematic in either of the two declarations that are referred to by the cabinet secretary, which were made by the UK when it ratified the treaty. However, my reason for opposing the amendment at this stage is broader and is one of principle.

I do not believe that the Scottish ministers should be bound by the charter articles only to the extent that the UK, as a state, is bound by those articles in international law. My view is that the incorporation of the charter into Scots law should subsist for so long as the bill, if enacted, is not amended or repealed, even if the UK departs from the terms of the charter at the level of international law.

11:30

As I understand it, the effect of amendment 1 would be that if the UK made new declarations, the content of the obligations under the bill would change. Because amendment 1 seeks to mirror the UK obligations internationally, as they

“may be in force from time to time”,

it would, in my view, undermine the policy intention and put the on-going policy purpose of the bill squarely in the hands of the UK Government. That is a strange policy position for any member of the Scottish Parliament to adopt. I believe that, in any event, it is likely that a court would interpret the charter articles by reference to the two existing UK declarations, without the need for amendment 1, as they were the basis for UK ratification in 1988. I do not believe that amendment 1 is necessary for that reason.

If, in the future, further declarations were made on behalf of the UK state, a Scottish Government could reflect those new declarations or reservations by seeking to amend the act in primary legislation. I would prefer a process that would allow consideration as to whether any new limitations on the UK's international law obligations need to be reflected in the act as a matter of domestic law, rather than a situation where that would be automatic, which I believe would be the effect of amendment 1.

Finally, on the drafting level, the language of amendment 1 appears to be a straight carry-over from section 1(3) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill. However, as a Council of Europe treaty, the charter uses language of declarations

and denunciations and, so far as I am aware, there are no provisions in the charter for “objections”, which is one of the terms that is used in amendment 1.

I am not supportive of amendment 1 at this stage. I would like to have further conversations with the cabinet secretary about its exact purpose and whether it could stray into reserved matters. This is the first that I have heard of that concern so, rather than vote amendment 1 through at the moment, I would prefer to have conversations in advance of stage 3. However, I am in the hands of the committee as to what you wish to do with the proposal that is before you.

The Convener: Thank you. Cabinet secretary, would you like to wind up?

Aileen Campbell: I have a great deal of sympathy with much of what Andy Wightman has set out. I recognise that the issue emerged fairly late in the day, but we cannot ignore it. In pursuit of the positive outcome that the bill will bring, we need to be live to the risk that the bill might not receive royal assent, for the legal arguments that I have set out. Amendment 1 would remove that risk, but it would not change the policy intent. As Andy Wightman pointed out, that provision has already been presented within other bills, such as the UNCRC bill and the 2003 act, as I mentioned. Therefore, although it is in within that constitutional framework, it is not an unusual provision within a bill. It is not new; it has been used and has been inserted into other bits of legislation. It takes away the risk that the bill might not receive royal assent.

In pursuit of getting the bill to the place where we want it—which is passed and enacted—I believe that removing that risk is worth agreeing to amendment 1, so I press amendment 1 in my name. However, ahead of stage 3, we commit to continuing the dialogue with Andy Wightman to further reflect on refinements or suggestions that he might wish to make. The risk is there, so it is important that I point that out to the committee and I hope that you understand that I do so in the pursuit of ensuring that the bill gets to the place where we want it to be, which is enacted and doing the positive things that we all agree that it can achieve. We will continue to engage with the member who is in charge of the bill ahead of stage 3, but I press amendment 1.

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

Andy, I think that you oppose the amendment, but I cannot see anything in the chat box.

Andy Wightman: My understanding is that I do not have a vote, convener.

The Convener: Oh right—my apologies.

Amendment 1 agreed to.

Section 2—Duty to act compatibly with the Charter Articles

The Convener: Amendment 2, in the name of Andy Wightman, is grouped with amendments 3 and 4.

Andy Wightman: My amendments 2 and 4 are technical amendments to address an ambiguity in language in section 2(2) that was drawn to the committee’s attention in written evidence by Professor Chris Himsworth. It relates to how the definition of “act” as including failure to act in section 2(2) interacts with section 2(1). The formulation that is proposed in the amendments provides for better consistency of language between sections 2(1) and 2(2). I believe that it is clearer and more effective in making acts and failures to act challengeable in court if they appear to be incompatible with charter articles. Otherwise, the nature of the duty on ministers in section 2 and its effect will remain unchanged.

The cabinet secretary’s amendment 3 helps to clarify what is excluded from the section 2 duty on the Scottish ministers to act compatibly with the charter, and for that reason I support amendment 3.

I move amendment 2.

The Convener: Before we go any further, I will suspend the meeting.

11:37

Meeting suspended.

11:39

On resuming—

Section 1, as amended, agreed to.

Schedule 1 agreed to.

Section 2—Duty to act compatibly with the Charter Articles

The Convener: Amendment 2, in the name of Andy Wightman, is grouped with amendments 3 and 4.

Andy Wightman: My amendments 2 and 4 are technical amendments to address an ambiguity in language in section 2(2) that was drawn to the committee’s attention in written evidence by Professor Chris Himsworth. It relates to how the definition of “act” as including failure to act in section 2(2) interacts with section 2(1). The formulation that is proposed in the amendments provides for better consistency of language between sections 2(1) and 2(2). I believe that it is clearer and more effective in making acts and failures to act challengeable in court if they appear to be incompatible with charter articles. Otherwise,

the nature of the duty on ministers in section 2 and its effect will remain unchanged.

The cabinet secretary's amendment 3 helps to clarify what is excluded from the section 2 duty on the Scottish ministers to act compatibly with the charter, and for that reason I support amendment 3.

I move amendment 2.

Aileen Campbell: As Mr Wightman said, amendments 2 and 4 are technical ones that deal with the way that the critical duty in section 2 is interpreted and applied. The discussions on the issue were probably the longest and most technical ones between our teams. I am pleased that we were able to work together and I agree that the new formulation of the duty as proposed by Mr Wightman clarifies its effect and will ensure that section 2 works as intended.

My amendment 3 is a technical amendment that amends the exclusion from the definition of "functions" in section 2(2). The exclusion means that the section 2(1) duty does not apply to the preparation or introduction of bills, or the exercise of other functions in relation to bills. Essentially, amendment 3 makes two minor adjustments. First, it clarifies the intended effect by excluding from the section 2(1) duty functions that specifically relate to bills rather than primary legislation more broadly.

Secondly, the amendment replaces the term "promotion", as that is not a term that is normally used to describe the progress of a bill through Parliament. The term "promotion" might not cover some of the Scottish ministers' parliamentary and non-parliamentary functions in relation to bills. For example, the function of lodging a motion to withdraw a bill in accordance with rule 9.13 of the Parliament's standing orders would not be "promotion" of the bill. The effect of amendment 3 is to make it clear that the functions that are excluded from the section 2(1) duty are not only the preparation or introduction of bills but the exercise of other parliamentary and non-parliamentary functions in relation to bills.

Accordingly, I ask members to support my amendment 3 and Andy Wightman's amendments 2 and 4.

Amendment 2 agreed to.

Amendment 3 moved—[Aileen Campbell]—and agreed to.

Amendment 4 moved—[Andy Wightman]—and agreed to.

Section 2, as amended, agreed to.

Section 3—Duty to promote local self-government

The Convener: Amendment 5, in the name of the cabinet secretary, is in a group on its own.

Aileen Campbell: The purpose of amendment 5 is to clarify the scope of the consultation duty in section 3. It will amend section 3(4) to specifically require the Scottish ministers, in complying with their duties under sections 3(1) and 3(2), to consult

"such persons appearing to them to be representative of the interests of local authorities".

That covers consultation with the Convention of Scottish Local Authorities, the Society of Local Authority Chief Executives and Senior Managers and any other similar representative body, and local authorities. I believe that it is right that the interests of local authorities should be highlighted as being of special importance, given the bill's purpose and the fact that consultation is an essential part of the duty to promote local self-government.

Amendment 5 will also require the Scottish ministers to consult

"such other persons as they consider appropriate".

That covers any other person whom the Scottish ministers consider to have a particular interest in local self-government and the autonomy of local authorities. That would include academics with relevant expertise in relation to those matters.

I move amendment 5 and ask members to support it.

11:45

Andy Wightman: I have nothing to add to what the cabinet secretary said on amendment 5, which I support.

Amendment 5 agreed to.

Section 3, as amended, agreed to.

Section 4—Interpretation of legislation

The Convener: Amendment 6, in the name of the cabinet secretary, is grouped with amendments 7 and 8.

Aileen Campbell: Amendments 6 to 8 are minor technical amendments that make it clear that the interpretation duty in section 4 is to apply only to acts and subordinate legislation to the extent that their provisions are within the legislative competence of the Scottish Parliament. I ask members to support all the amendments in the group.

I move amendment 6.

Andy Wightman: I have nothing to add to what the cabinet secretary said. I support all three amendments in the group.

Amendment 6 agreed to.

Amendments 7 and 8 moved—[Aileen Campbell]—and agreed to.

Section 4, as amended, agreed to.

Section 5—Declaration of incompatibility

The Convener: Amendment 9, in the name of Andy Wightman, is grouped with amendments 10 and 11.

Andy Wightman: Amendment 9 is a technical amendment to provide clarity that the court that is referred to in section 5(5)(a) is the Supreme Court of the United Kingdom. The amendment responds to a point that Professor Chris Himsworth raised in his written evidence to the committee.

Amendments 10 and 11 are technical amendments that, together, adjust the positioning of the word “only” in section 5(7). The effect is to provide greater clarity that a declaration of incompatibility may be made in respect of a provision only if the provision is within the legislative competence of the Scottish Parliament.

I move amendment 9.

Aileen Campbell: As Mr Wightman said, the amendments in this group are minor and technical in nature. Amendment 9 is a clarifying amendment that simply makes it explicit that the supreme court that is referred to in section 5(5)(a) is the Supreme Court of the United Kingdom. Amendments 10 and 11 make minor adjustments to clarify the effect of section 5(7).

I support Andy Wightman’s amendments 9 to 11 and I ask members to vote for them.

Andy Wightman: I have nothing to add except that I will press amendment 9.

Amendment 9 agreed to.

Amendments 10 and 11 moved—[Andy Wightman]—and agreed to.

Section 5, as amended, agreed to.

Section 6—Power to take remedial action

The Convener: Amendment 19, in the name of Andy Wightman, is grouped with amendments 13 and 13A.

Andy Wightman: Amendment 19 addresses an issue that the Delegated Powers and Law Reform Committee raised in a letter to me of 9 October 2020 and in its report on the bill. It is not the policy intention that the delegated power in section 6 should be used to create criminal offences or

modify existing offences. Amendment 19 will make that clear in the bill and I am hopeful and confident that that will address the issue that the DPLR Committee raised.

Amendment 13 is a substantive policy amendment that will introduce a super-affirmative procedure for regulations that are made under the powers that are delegated to ministers by section 6. The DPLR Committee, in its stage 1 scrutiny of the bill, and the Law Society of Scotland, in its stage 1 written evidence to the committee, commented on the breadth of those powers.

The delegated powers under section 6(1) are intentionally broad in order to ensure that they can be used to address a declaration of incompatibility, however the courts choose to express it. The powers are available to the Scottish ministers only in very specific circumstances—namely, in the event that a court makes a declaration of incompatibility in respect of a provision of an act or subordinate legislation and if it considers it “necessary or expedient” to use the powers in consequence of such a declaration.

Having reflected on the feedback in the stage 1 evidence, I decided that additional checks and balances would be appropriate in relation to the powers in section 6. Amendment 13 proposes a super-affirmative procedure, which is the most appropriate way to deal with the issue. The effect of the amendment will be to introduce a super-affirmative procedure and ensure that there is enhanced scrutiny of any regulations that Scottish ministers make under section 6(1). The amendment will introduce a period of at least 60 days during which the Parliament may undertake the required scrutiny.

That will be facilitated by a statement that will have to accompany a draft of the proposed regulations. In the statement, ministers will have to outline clearly, first, the nature of the incompatibility that the draft regulations relate to; secondly, how they will address the incompatibility; thirdly, whether they include any provision that goes beyond what is necessary to address the incompatibility and, if so, why that was included; and finally, why ministers propose to use the power under section 6(1) rather than remedying the incompatibility through other action, such as by introducing primary legislation.

The cabinet secretary’s amendment 13A is an amendment to my amendment 13 that seeks to add the possibility to expedite the procedure by dispensing with the 60-day pre-laying period. I understand the need for that in the context of other legislation such as that on human rights, under which ministers might have to act quickly as a consequence of a declaration of incompatibility, but I do not believe that the remedial action

powers in the bill will ever require an expedited procedure.

A declaration of incompatibility by the courts would not affect the validity or continuing operation of a provision, so the law would not need to be changed immediately as a consequence of a declaration. Furthermore, it is very unlikely that a case will arise related to the bill that is so urgent that the 60-day pre-laying period will need to be dispensed with. If there is ever such a situation, there will always be the option of emergency legislation. For that reason, I do not support amendment 13A.

I move amendment 19.

Aileen Campbell: Mr Wightman's amendment 19, which provides that regulations under section 6 must

"not create, widen the scope of, or increase the penalty for, a criminal offence",

deals with an issue that the DPLR Committee raised at stage 1. I am happy to support the amendment.

Andy Wightman's amendment 13 will require that, at least 60 days before Scottish ministers lay a Scottish statutory instrument that contains regulations under section 6, they must lay before Parliament a draft of the regulations and an explanatory statement. This amendment was also lodged as a response to concerns that the DPLR Committee raised at stage 1. Mr Wightman responded by proposing that the power in section 6 should be subject to a super-affirmative procedure, and I am pleased to support amendment 13.

I believe that my amendment 13A, which is an amendment to Andy Wightman's amendment 13, will help to future proof the bill. Its effect is to allow for a draft SSI to be put before Parliament before the expiry of the 60-day period that is required in amendment 13. Scottish ministers would need to explain why the 60-day requirement was not being met.

I accept the position that Andy Wightman set out in his letter to the committee dated 19 February, which is that

"the law will not need to be changed immediately as a consequence of a declaration"

of incompatibility and that

"it is unlikely that issues related to this Bill—e.g. local government law—would require such an expedited process".

However, I emphasise the word "unlikely". It does not mean never, so the prospect is not eliminated.

Amendment 13A will provide for an exception to allow the additional pre-laying period of 60 sitting days to be dispensed with. If there is no exception,

that period will apply to all regulations under section 6(1), on top of the conventional affirmative laying period of 54 days. That means that the period from the laying of draft regulations and an explanatory statement to the making of the SSI could be 114 sitting days. Depending on when in the year the draft regulations and explanatory statement were laid, that could equate to up to eight months.

The committee commented in its stage 1 report on the legal uncertainty that arises from the bill, which was also mentioned in members' contributions to the stage 1 debate. That uncertainty means that the bill should provide a degree of flexibility in the procedure that will be put in place by amendment 13. My amendment 13A seeks to provide an exception for use in unforeseen circumstances where it would be desirable to act more quickly than the procedure under amendment 13 will allow, but the circumstances do not justify an emergency bill.

Amendment 13A will not eliminate the elements that will be put in place by amendment 13. It will retain the requirement for the Scottish ministers to lay before Parliament draft regulations and an explanatory statement before they lay a draft SSI that contains the regulations for approval. Amendment 13A will also require the Scottish ministers to explain to the Presiding Officer why the 60-day requirement was not being met.

Crucially, it will not prevent effective parliamentary scrutiny, as the draft SSI will still be subject to the affirmative procedure with the conventional laying period of 54 days. That will mean that regulations cannot be made without parliamentary scrutiny and approval. That is an important point and I stress it.

Amendment 13A offers a practical and sensible solution to ensure that the bill will provide the correct balance of flexibility and scrutiny where there is a need to act more quickly than is provided for under amendment 13. Scottish ministers are unlikely to rely on the exception to the process under amendment 13 often, but I hope that members are persuaded that there may be circumstances in future where the exception will be required and that it is better to build in that flexibility now.

I urge members to support my amendment 13A and Andy Wightman's amendments 19 and 13.

Amendment 19 agreed to.

Section 6, as amended, agreed to.

After section 6

Amendment 13 moved—[Andy Wightman].

Amendment 13A moved—[Aileen Campbell]—and agreed to.

Amendment 13, as amended, agreed to.

Section 7—Power to remove or limit retrospective effect of decisions etc

The Convener: Amendment 14, in the name of Andy Wightman, is grouped with amendments 15 to 17.

12:00

Andy Wightman: Amendments 14 and 15 are technical amendments that would provide for a slight restructuring of section 7(1)(b) to make it clear that the test that is set out in subparagraph (ii), like the one that is set out in subparagraph (i), is something on which the court is required to reach a view, rather than it just being a matter of fact.

Amendment 16 is a technical amendment for clarification. Section 7(1) currently states that one of the circumstances in which a court has the power to remove or limit the retrospective effect of a court decision, or to suspend its effect, is, as per paragraph (b), when pre-existing subordinate legislation is found to be “incompatible”. At present, that is defined by reference to when “this Act” comes into force, but that risks causing uncertainty because there is no single date on which the act will come into force. Therefore, the effect of amendment 16 is that the test would be whether “section 2” is in force.

The reason for amendment 16 is that, as soon as section 2 is in force, ministers will be under a duty to ensure that anything that they do, including making subordinate legislation, is compatible with the charter. As a result, if charter-incompatible subordinate legislation were to be made after that date, that would constitute a breach of the section 2 duty. The section 7 powers are already available for that scenario by virtue of section 7(1)(a).

Amendment 17 is another technical amendment, which clarifies that what determines the availability to a court of the section 7 powers is the nature of the legislation—for example, subordinate legislation when primary legislation does not prevent the removal of the incompatible subordinate legislation—and not which court it happens to be. As the bill is drafted, there is a risk that section 7(1)(b)(ii) could be misinterpreted. Amendment 17 would remove the risk of misinterpretation by rewording the provision as the converse of the condition in section 5(4)(b).

I apologise, convener. Those are technical amendments, but I assure the committee that they are worth while, and I would welcome support for them.

I move amendment 14.

Aileen Campbell: As Andy Wightman said, amendments 14 to 17, which I support, are technical amendments that will improve clarity in section 7.

Amendment 14 agreed to.

Amendments 15 to 17 moved—[Andy Wightman]—and agreed to.

Section 7, as amended, agreed to.

Sections 8 and 9 agreed to.

After section 9

The Convener: Amendment 18, in the name of the cabinet secretary, is in a group on its own.

Aileen Campbell: Amendment 18 will insert a new section that confers on the Scottish ministers the power to make ancillary provision. It is a positive change, which I hope will improve the bill. The amendment will insert a standard provision, which is a feature of many bills that pass through the Parliament, including the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill, which is another incorporation bill.

The purpose of conferring the new power on the Scottish ministers is to allow for greater flexibility in giving full effect to the act or any provision that is made under it. Although ancillary provisions are not always needed, they provide a useful implementation tool and safeguard. They are used proportionately and appropriately, for instance when consequential provision is required to make necessary changes to related legislation. Further, incidental or supplementary provision might be required to address any oversight or unforeseen situation. That might involve filling in some detail that is consistent with, but missing from, the resulting act and is required to make it work.

Transitional, transitory or saving provision might also be required to deal with any legislative changes made by virtue of the act, in particular by regulations under section 6(1). That could help to tailor the application and effect of those regulations before the new law comes into force. It could also help to manage the impact of any changes on the existing functions of local authorities. Given the potential need for incidental, supplementary or consequential provision, the power expressly enables the modification of any enactment. That includes the act itself.

The ancillary power is limited, in that it must be used only where

“appropriate for the purposes of, in connection with or for giving full effect to this Act or any provision made under it.”

It would be outwith the scope of the power to use it to subvert or undermine the substantive effect of any of the act’s provisions. It could not be used to

make provision that is contrary to or inconsistent with the act's purposes or provisions.

Without the power to make ancillary provisions, it might be necessary to return to Parliament with another bill to deal with a matter that is clearly within the scope and policy intention of this bill. Again, I emphasise the need for flexibility.

Finally, any regulations made under the proposed new section would be subject to the affirmative procedure and would therefore require to be closely scrutinised and approved by Parliament. The Delegated Powers and Law Reform Committee, in particular, carefully scrutinises the scope and substance of any subordinate legislation that contains an ancillary provision.

I move amendment 18 and ask members to support it.

Andy Wightman: I hope that members are familiar with ancillary provisions, because they often appear in bills. However, they are rarely scrutinised. My bill contains no ancillary provisions, because I considered that none were necessary. The committee is now being invited to decide whether ancillary provisions should be inserted by amendment 18.

In discussions over the past few weeks with the cabinet secretary and her officials, I expressed scepticism about the necessity of such provisions and emphasised that the onus is very much on the cabinet secretary to justify here, before the committee, why they are necessary, their precise scope, and whether, in particular, regulation-making powers that can modify the act itself are necessary. This is the first time that I have heard on the record the precise purpose of ancillary provisions—when they can and cannot be used, and the role of the DPLR Committee—all of which is very helpful for members. On balance, I am satisfied that the cabinet secretary has set out, for the record, the purpose of ancillary provisions. I am content—although not with the greatest enthusiasm—to recommend that the committee supports amendment 18.

Aileen Campbell: I am grateful to Andy Wightman for indicating his support for amendment 18, albeit with the caveat that he outlined. I reiterate to the committee that this is a standard provision that enables us to have greater flexibility and give full effect to the act or any provisions made under it. The power is limited and will have appropriate scrutiny attached to it. Its use will be scrutinised under the affirmative procedure. The power would be used proportionately and appropriately, with the aim of implementing the bill's provisions fully, effectively and efficiently, in accordance with the will of Parliament. I underline again those parameters, which set out clearly that

it will be for Parliament to scrutinise any use of the ancillary power, which gives us the flexibility that will be necessary for the bill. However, I repeat that the power would be used proportionately and appropriately, if at all. I am pleased that the member has indicated his support and urge members of the committee to do likewise.

Amendment 18 agreed to.

Sections 10 and 11 agreed to.

Long title agreed to.

The Convener: That ends stage 2 consideration—

Andy Wightman: Convener, I was not given the chance to wind up on the group that included amendments 13 and 13A. I say for the record that I look forward to some further conversations on amendment 13 as amended, perhaps to ensure that some of the language is improved on a little. Apologies, convener, for that late intervention.

The Convener: Not at all. My apologies for not calling you.

Andy Wightman: No problem. Thank you very much.

The Convener: That ends stage 2 consideration of the bill. The bill will be reprinted as amended at stage 2 and it will be published tomorrow morning. The Parliament has not yet determined when stage 3 will be held. Members will be informed about that in due course, along with the deadlines for lodging stage 3 amendments. In the meantime, stage 3 amendments can be lodged with the clerks in the legislation team.

I thank the cabinet secretary for taking part in our meeting. Cabinet secretary, you can leave the meeting by pressing the red telephone icon. I remind committee members that we remain in public for the next item.

Subordinate Legislation

Non-Domestic Rating (Valuation of Utilities) (Scotland) Amendment Order 2021 (SSI 2021/59)

Non-Domestic Rate (Scotland) Order 2021 (SSI 2021/63)

Non-Domestic Rates (District Heating Relief and Renewable Energy Generation Relief) (Scotland) Amendment Regulations 2021 (SSI 2021/64)

Non-Domestic Rates (Levying and Miscellaneous Amendments) (Scotland) Regulations 2021 (SSI 2021/65)

12:11

The Convener: Agenda item 4 is consideration of negative instruments SSI 2021/59, SSI 2021/63, SSI 2021/64 and SSI 2021/65, as listed on the agenda. I refer members to paper 3, which contains further detail. The instruments are laid under the negative procedure, which means that the provisions will come into force unless the Parliament agrees to a motion to annul them. No motions to annul have been lodged. The Delegated Powers and Law Reform Committee considered the instruments at its meeting on 16 February 2021 and determined that it did not need to draw the attention of the Parliament to the instruments on any ground within its remit. Does any member have comments on the instruments? If so, they should type R in the chat box.

Sarah Boyack: I particularly welcome the fact that the Non-Domestic Rates (District Heating Relief and Renewable Energy Generation Relief) (Scotland) Amendment Regulations 2021 are in front of us. You may remember from the discussions that we had last year on the Non-Domestic Rates (Scotland) Bill that that was one of the issues that I raised, so I am very pleased to see it—especially given that we passed the Heat Networks (Scotland) Bill at stage 3 yesterday.

I want to put on record that I hope that the impact of the regulations will be reviewed by the Scottish Government, particularly given that there is a reduction in non-domestic rates from 2021 through to 2023-24. I think that that is quite a short timescale, so I hope that the Scottish Government will keep an eye on that and will potentially come back with an extension, because getting heat networks up and running is quite a challenging process and it is important that the statutory instrument delivers in practice what the

Government hopes—and certainly I hope—that it will deliver.

The Convener: Thank you very much for that, Sarah. Your comments will of course be on the record.

I invite the committee to agree that it does not wish to make any recommendation in relation to the instruments. Does anyone object? No. That is agreed.

That concludes the public part of the meeting. We will resume in private on Microsoft Teams. Please accept the clerk's meeting request for the private discussion, which will be sent shortly.

12:14

Meeting continued in private until 12:41.

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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

All documents are available on
the Scottish Parliament website at:

www.parliament.scot

Information on non-endorsed print suppliers
is available here:

www.parliament.scot/documents

For information on the Scottish Parliament contact
Public Information on:

Telephone: 0131 348 5000

Textphone: 0800 092 7100

Email: sp.info@parliament.scot



The Scottish Parliament
Pàrlamaid na h-Alba