



**Cynulliad Cenedlaethol Cymru
The National Assembly for Wales**

**Y Pwyllgor ar y Gorchymyn Arfaethedig ynghylch
Tai Fforddiadwy
The Proposed Affordable Housing LCO Committee**

**Dydd Mawrth, 22 Ionawr 2008
Tuesday, 22 January 2008**

Cynnwys
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2008
The National Assembly for Wales (Legislative Competence) (No. 5) Order 2008

Cofnodir y trafodion hyn yn yr iaith y llefarwyd hwy ynndi yn y pwyllgor. Yn ogystal,
cynhwysir cyfieithiad Saesneg o gyfraniadau yn y Gymraeg.

These proceedings are reported in the language in which they were spoken in the committee.
In addition, an English translation of Welsh speeches is included.

Aelodau'r pwyllgor yn bresennol
Committee members in attendance

Lorraine Barrett	Llafur (yn dirprwyo ar ran Lesley Griffiths) Labour (substitute for Lesley Griffiths)
Peter Black	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
Alun Davies	Llafur Labour
Mark Isherwood	Ceidwadwyr Cymreig Welsh Conservatives
Leanne Wood	Plaid Cymru (Cadeirydd y Pwyllgor) The Party of Wales (Committee Chair)

Eraill yn bresennol
Others in attendance

Jocelyn Davies	Aelod Cynulliad, y Dirprwy Weinidog dros Dai (Plaid Cymru) Assembly Member, the Deputy Minister for Housing (The Party of Wales)
Helen Kellaway	Cyfreithwraig, Llywodraeth Cynulliad Cymru Lawyer, Welsh Assembly Government
Linda Whittaker	Cyfarwyddwr Tai, y Gyfarwyddiaeth Dai Director of Housing, Housing Directorate

Swyddogion Gwasanaeth Seneddol y Cynulliad yn bresennol
Assembly Parliamentary Service officials in attendance

Gwyn Griffiths	Cynghorydd Cyfreithiol y Pwyllgor Legal Adviser to the Committee
Ruth Hatton	Dirprwy Glerc Deputy Clerk
Gareth Williams	Clerc Clerk

Dechreuodd y cyfarfod am 9.45 a.m.
The meeting began at 9.45 a.m.

Cyflwyniad, Ymddiheuriadau a Dirprwyon
Introduction, Apologies and Substitutions

[1] **Leanne Wood:** I welcome everyone to this meeting of the Proposed Affordable Housing LCO Committee. I have received one apology, from Lesley Griffiths; Lorraine Barrett is substituting for her. I will not run through the usual rules—Members should be familiar with them.

Gorchymyn Cynulliad Cenedlaethol Cymru (Cymhwysedd Deddfwriaethol)
(Rhif 5) 2008
The National Assembly for Wales (Legislative Competence)
(No. 5) Order 2008

[2] **Leanne Wood:** The purpose of today's meeting is to take evidence from the Deputy Minister for Housing in connection with the Government's proposed legislative competence

Order on affordable housing. You will recall that, in our meeting on 13 December, the committee agreed its terms of reference, which were to consider the general principles of the proposed Order, whether legislative competence in the area identified in matter 11.1 be conferred on the Assembly, and whether the terms of the proposed Order are too broadly or too narrowly defined.

[3] Today's meeting is to take oral evidence to inform our work. I welcome the Deputy Minister for Housing, Jocelyn Davies, and her officials. I would be grateful if the Deputy Minister could introduce her officials for the record.

[4] **The Deputy Minister for Housing (Jocelyn Davies):** I have Linda Whittaker, the director of housing, with me, as well as Helen Kellaway, who is a lawyer.

[5] **Leanne Wood:** I will ask the first question, and other Members will then contribute. Could you remind the committee of the reason for seeking legislative competence in respect of the disposal of dwellings and dwelling-houses by social landlords?

[6] **Jocelyn Davies:** The purpose of the LCO is to enable the Assembly to amend, or repeal, Part V of the Housing Act 1985, dealing with the right to buy a dwelling-house, and sections 16 and 17 of the Housing Act 1996, dealing with the right to acquire a dwelling. This is so that, in due course, we can produce a Measure suspending the right to buy and the right to acquire in areas of pressure, in line with the 'One Wales' commitment. The loss of affordable housing for rent has resulted in a significant reduction of over 40 per cent in the social housing stock, and, in many parts, it is difficult for local people on modest incomes to find a home to rent that meets their needs and provides a suitable place to raise a family. In some areas, such as Powys and Ceredigion, 60 per cent of the social housing stock has been sold under the right to buy and right to acquire schemes. Therefore, in some areas, particularly in rural communities, few properties remain in social housing stock. Although the Assembly has taken some action, homelessness remains at a significant level. You will recall that this was a manifesto commitment of Plaid Cymru, Labour and the Liberal Democrats during the Assembly elections, so this fulfils those commitments.

[7] **Leanne Wood:** What do you want to achieve through the proposed Order that could not be achieved through existing legislation?

[8] **Jocelyn Davies:** We have some powers in relation to the right to buy—some Members will recall that, for example, the maximum discount was reduced to £16,000 some time ago—but we do not have the powers to suspend. This would allow us to do that, on application by a local authority.

[9] **Leanne Wood:** Therefore, why do the restrictions that are already in place not go far enough?

[10] **Jocelyn Davies:** It does not allow you the further option of a temporary suspension while the local authority takes other actions to improve conditions in those areas of high housing pressure. Some people on waiting lists never expect to be offered a property.

[11] **Lorraine Barrett:** In addition to the lack of powers relating to the variation of the qualification provisions of the right to buy and the right to acquire schemes, what are the other legislative limitations that prevent the Assembly Government from meeting the housing needs of people and communities?

9.50 a.m.

[12] **Jocelyn Davies:** In relation to the right to buy, it coincides with the fact that the stock

has not been replaced and that councils just stopped building council houses. That is a factor. Helen, I do not know whether you want to come in on the legal restrictions? We have a lot of powers in housing, and this is obviously something that should, appropriately, rest in the Assembly.

[13] **Ms Kellaway:** The only thing that I have to add is that we do not have the power, as stated already, to suspend the right to buy or the right to acquire in the circumstances outlined. That is why we are seeking widened competence in this Order.

[14] **Jocelyn Davies:** There have been some changes in relation to this in the past. The previous administration extended the time in which the housing authority had the right of first refusal to buy back a property when it was being resold.

[15] **Ms Kellaway:** That is in regulations at the moment. If tenants sell a property within 10 years, they have to offer that property back to the landlord, whether that is the registered social landlord or the local authority. The right of first refusal regulations dealt with that point.

[16] **Leanne Wood:** Alun Davies, did you want to come in on that point?

[17] **Alun Davies:** Yes. Deputy Minister, from that answer it seems that you are content with the range of powers that you have at your disposal, subsequent to this Order. Am I right to assume from your answer that, at the moment, you do not foresee requiring any further Orders in this Assembly?

[18] **Jocelyn Davies:** Do you mean in relation to the rights?

[19] **Alun Davies:** In relation to your housing policy.

[20] **Jocelyn Davies:** No, not in the 'One Wales' commitments. It seems that there is a slight anomaly in that we do not have powers over tenancy. I would like to see the development of a sole social housing tenancy, so that you do not have this falseness between whether you are a tenant of a registered social landlord or a local authority. I do not think that we will have the powers in relation to that; that is not a 'One Wales' commitment, but I think that that is an anomaly. It was hoped that there would have been UK legislation on that matter, under which we would have asked for clauses to give us those powers.

[21] The Housing and Regeneration Bill is currently at the committee stage at Westminster, which gives us certain powers. The housing field is highly regulated, but the regulation often seems to be piecemeal. I do not suppose that it would be easy to have an LCO that gave us everything in housing, but I would like to see the development of a single social housing tenancy, doing away with the completely false dichotomy that exists, whether you are a tenant of a council or of a registered social landlord.

[22] **Peter Black:** To clarify, you referred to previous legislation that extended the right of councils to buy back property on first refusal—that just applied to specified rural areas and not to the whole of Wales, did it not?

[23] **Jocelyn Davies:** No, I think that the original legislation that brought in the right to buy applied to rural areas but currently—

[24] **Ms Whittaker:** It applies to the whole of Wales. The right of first refusal relates to all social landlords—local authorities and RSLs—and it extends for up to 10 years after the first purchase.

[25] **Peter Black:** Does it apply to every community in Wales?

[26] **Ms Whittaker:** Yes.

[27] **Mark Isherwood:** I will pick up on two comments that you made. First, in relation to what you said about the stock not being replaced by councils, would you agree that the legislation from 20 years ago intended for that stock to be replaced by RSLs? It was not that stock ceased to be replaced. Secondly, you referred to the power to suspend, allowing local authorities to take action while putting other measures in place to remedy the gap, or something equivalent in your terminology. Would you agree that those properties can only be sold to tenants who meet specified criteria? Have you considered how many properties that would make available during that period, given that the properties are not vacant and are likely to remain occupied for several years?

[28] **Jocelyn Davies:** I can see the point that you are making, Mark. I cannot comment on whether it was intended, under legislation brought in by the previous Westminster Government, that registered social landlords would replace all the housing stock that was lost through the right to buy scheme. It is not my place to comment on the intentions of a Government that was in power in Westminster 20 years ago. I am just pointing out the fact that almost 140,000 dwellings have been sold and that, by and large, they have not been replaced. That is just a fact.

[29] The details of any Measure would be subject to consultation, so I can only give a flavour of how I expect it to look, but we imagine—we would hope, anyway—that the Measure would allow a local authority to apply to the Assembly, providing evidence as to why it wanted to suspend the right to buy scheme in a specific area of extreme housing pressure. Along with that, we would expect the local authority to tell us what it would do in that area, while that suspension was in force, to increase the social housing stock. It is not a matter of just suspending the right to buy, because you make the very good point that the turnover of those properties in that area is likely to be very low. If the suspension has, say, a maximum of five years, it may be that none of those properties becomes available in that period or that some do. We do not have a huge turnover in those properties anyway. So, this would just give a local authority breathing space while it took other action, along with its partners in the registered social landlord sector. Local authorities would make the applications on behalf of the registered social landlord. This would not just apply to council stock; it would apply to all of the social housing stock.

[30] **Lorraine Barrett:** Why does the scope of the proposed LCO extend beyond that of the right to buy and the right to acquire schemes?

[31] **Jocelyn Davies:** It is because it applies to dwelling-houses—we did not want it to be very narrow, because that might have meant that, shortly, you would have had to go through this process again. This is a discrete area and it seemed more sensible to have quite broad powers in relation to what you want to achieve. As I mentioned, the housing field seems to have a lot of legislation and is very complex and you could easily leave something out and then find that you needed that power to achieve what you wanted to achieve a little later on.

[32] **Lorraine Barrett:** I do not think that we want to go into the Measures, as we are staying focused. So, I will not explore that any further; it will be for another time.

[33] The explanatory memorandum states that the scope of the LCO includes the suspension of the right to buy and right to acquire schemes in areas of housing pressure. What other areas are included in the scope of the proposed LCO? That sort of follows on from that last question.

[34] **Jocelyn Davies:** Helen, do you want to answer that?

[35] **Ms Kellaway:** The LCO as drafted extends to dwellings and dwelling-houses that are intended to be disposed of by the social landlord. That would sometimes include land that is with the dwelling, including agricultural land up to two acres, I think. Other than that, it would be land with the dwelling and it is unavoidable that that touches on some areas of uncertainty, but it is intended to capture dwellings and dwelling-houses.

[36] **Peter Black:** Jocelyn, are you content that the proposed affordable housing LCO as currently drafted is broad enough to enable you to meet your affordable housing policy objectives?

[37] **Jocelyn Davies:** Yes, because, as I mentioned earlier, in relation to the right to buy scheme, this would definitely allow us to suspend, on an application being made by a local authority, the right to buy in specific areas of high housing pressure. So, yes, this would achieve that.

10.00 a.m.

[38] **Peter Black:** Looking at the broader affordable housing spectrum—and I am thinking about private housing as well as social housing—what other powers could you look at that might help to meet those objectives? Are there any other powers that would do that? We have to be clear that ensuring affordable housing is not just about social housing.

[39] **Jocelyn Davies:** We are not seeking to regulate the free market. That would not be—

[40] **Peter Black:** Are you therefore content that, in terms of affordable housing policies for non-social housing, you have sufficient powers to deliver your objectives?

[41] **Jocelyn Davies:** Looking at the ‘One Wales’ commitments, this was the only one requiring a legislative competence Order.

[42] **Ms Whittaker:** There are certain issues around the affordable housing policy, and many things are under way to address them. In terms of this LCO being able to address them on the legislative side, however, this is probably broad enough to address the specific social housing issues that we need to deal with.

[43] **Peter Black:** Turning to the other objectives, should you need to make Measures to pursue them, do you already have the powers to do that?

[44] **Jocelyn Davies:** If we come across something for which we do not have the powers, we would bring forward another LCO, but we could not have included other things in this one, as that would probably have made it too broad.

[45] **Ms Whittaker:** It would also go on to other Acts, whereas, when looking at the release of land and so on, if we were looking at legislation on second homes, I do not think that we would be able to incorporate that in an LCO dealing mainly with the suspension of the right to buy. There may well be things that we need to look at within the ‘One Wales’ commitments, but not within this area.

[46] **Leanne Wood:** Did you want to ask something further to that, Alun?

[47] **Alun Davies:** I think that this LCO is drawn very tightly and, given some of things that are going on at the moment, that is probably no bad thing. However, I am interested in the contextual information for this. You said, twice now, that you do not foresee additional

powers being drawn down to implement the ‘One Wales’ programme, although you do foresee other areas over which you, as a Minister, may seek additional powers.

[48] You mentioned the Housing and Regeneration Bill currently proceeding through Westminster and the fact that you will seek clauses in that legislation. For our information, in terms of looking at the powers that are available through this LCO and through other means of acquiring powers here, what clauses are you seeking in that legislation? Also, why did you feel that an LCO was the appropriate means to get powers over the right to buy, rather than seeking framework powers through the legislation going through Westminster?

[49] **Jocelyn Davies:** We had some discussions during the drafting of the Bill, but the Bill was not broad enough to give us these powers. There are clauses in the Housing and Regeneration Bill that relate to the right to buy, so we are gaining some competences via that route, but when the Bill was finalised, it was just not broad enough to give us these particular powers. If we could have done it that way, we certainly would have, because that would have saved a huge amount of resources and time in the Assembly. If we can gain competences via a Bill that is already going through Parliament, that is certainly the preferred route. Helen has been working on the Housing and Regeneration Bill, so she can tell you that parts of the Bill do not really apply to Wales—it makes a major difference in England—but there are aspects that apply to us.

[50] **Ms Kellaway:** The provisions relating to the right to buy in the Housing and Regeneration Bill are minor amendments; they are not seeking Measure-making powers. Such powers can be sought via a Bill or through an LCO, and the choice was made to follow this route. As I say, the right to buy amendments just keep matters in line with the provisions in England until these new provisions, hopefully, come into force.

[51] **Jocelyn Davies:** There was a hope that there would have been clauses on tolerated trespassers, which we were very keen to include; a tolerated trespasser is a tenant who is subject to a possession order and has been granted one by the courts, and who loses his or her status as a tenant while the possession order is active. So, that person has no tenancy rights whatsoever. I do not think that is deliberate; it is just the way in which the law has developed over time. So, these people occupy the property but have no tenancy rights at all, including the right to buy and the right to succession. They do not have the right to have repairs, and cannot claim any of their tenancy rights. These people are called tolerated trespassers, but it is an intolerable situation, which can sometimes continue for many years. We talked about that, but, unfortunately, when the Bill was published it was not included. However, we would have sought for that situation to be addressed. Anomalies are being addressed in the Housing and Regeneration Bill. It is a long and complicated Bill, but we are hoping that the tolerated trespasser clauses will come back at some point, perhaps as a Government amendment during Committee Stage. So, we are also having to devote time to following that Bill. There are also some clauses in relation to stock transfer, and I think that there is a section that will make a ballot a statutory requirement, but in Wales we have always required a positive ballot before it could proceed. There may be others.

[52] **Ms Kellaway:** Clause 267 of Schedule 9 is about disposals by a local authority.

[53] **Jocelyn Davies:** There is also a clause on the ability of tenants to trigger a ballot, and we would have commencement powers in relation to that.

[54] **Alun Davies:** I find it curious that a Bill covering all of these different areas does not have the scope to include the powers that are being sought through this LCO process.

[55] **Jocelyn Davies:** I am afraid that that is the case—the breadth of the Bill did not allow that.

[56] **Ms Whittaker:** There is only one specific element relating to right to buy, which broadens the rights that already exist, and that is in relation to someone who has already exercised the right to buy. For instance, if that person has a leasehold flat and the local authority want to do works on the whole block, the local authority can take an equity share of that property. That is as broad as it goes. So, it would not go anywhere near to enabling the suspension of the right to buy scheme.

[57] **Jocelyn Davies:** We tried.

[58] **Alun Davies:** I am sure that you did.

[59] **Jocelyn Davies:** It would have been the most efficient way of getting the powers, but there we are.

[60] **Mark Isherwood:** Why has land other than dwelling and dwelling-houses been excluded, and what impact do you anticipate that that will have on the Assembly Government's affordable housing objectives?

[61] **Jocelyn Davies:** This is about someone exercising a statutory right to purchase, whereas local authorities already have discretion to dispose of land if they wish, and they do so all of the time. Are you suggesting that we should seek the right to prevent local authorities from using their discretion to sell land? This policy objective is about enabling local authorities, and they already can sell land, so it would not have been appropriate.

[62] **Leanne Wood:** Do you want to ask anything further on that, Mark?

[63] **Mark Isherwood:** On the basis of that answer, I do not need to ask a supplementary question.

[64] **Peter Black:** The point is that the LCO does not refer to the right to buy—

[65] **Jocelyn Davies:** No, it is the disposal of dwellings and dwelling-houses.

[66] **Peter Black:** Yes, it talks about disposal, so the question makes sense in that context, and I think that it is important to understand what type of land will be excluded from the scope of the Order.

[67] **Jocelyn Davies:** It is more to do with what is included, because 'dwelling and dwelling-house' would include the garden and access and so on, as you would normally expect with residential land. However, local authorities already hold the discretion to sell all other land.

10.10 a.m.

[68] **Peter Black:** What if you are a tenant of a local authority garage?

[69] **Jocelyn Davies:** Garages are included.

[70] **Peter Black:** They are included only if they are part of the dwelling-house.

[71] **Jocelyn Davies:** Yes, because if there is a row of garages and you are renting one, you would not now have the right to buy it, so we would not need to include it because you cannot exercise a statutory right to purchase it. The local authority could sell it to you, if it so wished, but it does not have to do so.

[72] **Alun Davies:** Minister, when you were introducing this LCO in the Chamber, you discussed the role of receipts and the ability of local authorities, for argument's sake, to use or dispose of receipts from the right to buy scheme. In your view, does this LCO give you, as Minister, and the Government powers to make law on the use of receipts?

[73] **Jocelyn Davies:** The use of receipts would not come under this legislation; I think that that is covered by the housing revenue subsidy system. I suppose that all local authorities in Wales will have a debt with the UK Treasury—that is how they built the properties—and, on sale, the local authority has some discretion as to how it will use that receipt in terms of servicing the debt or reusing, or partly reusing, some of the receipt in terms of spending on the rest of its stock. So, it might use it for improvements and so on, or it may use it to reduce the debt that it has with the Treasury. However, that is covered by an entirely different system.

[74] **Alun Davies:** Are you content that you do not require any powers in that system, or that that could cross over?

[75] **Jocelyn Davies:** The Housing and Regeneration Bill contains a mechanism whereby local authorities could, if they wanted to, after negotiation with the Treasury, come out of that system altogether, so they would then be self-financing. It might require a one-off payment to the Treasury, and I understand that there are pilot schemes in some local authorities in England, but I do not think that any local authorities in Wales are likely to do that because they would then, of course, have to pay the rent rebates out of the rents that they were collecting. So, it does not look as if local authorities in Wales would take that up. That is being dealt with, to a degree anyway, in the Housing and Regeneration Bill. Local authorities could consider it, if they wanted to, but, at the moment, they have the discretion to deal with the receipts as they choose.

[76] **Alun Davies:** I take it that you would not seek to take those powers back?

[77] **Jocelyn Davies:** Local authorities are responsible for their finances and they answer locally for how they deal with those finances. They may choose to service their debt or to partly service the debt, and I think that that is what most of them would do. Typically, most of them would use the receipt partly to reduce their debt and partly to improve other properties, but I think that that is really a matter for them. As you will know, all local authorities that still have their housing stock have a 30-year business plan and those assumptions are part of that business plan, so we are aware of what each local authority is doing because their business plans are based on the finances that they have and how they intend to use them for the next 30 years to achieve the Welsh housing quality standard and beyond.

[78] **Leanne Wood:** Mark, you wanted to come back on that.

[79] **Mark Isherwood:** On the answer that it is a matter for local authorities, could you help us to understand why, uniquely among the devolved administrations, the Assembly Government is also paying back housing revenue moneys to the Treasury? I think that it has fallen significantly in the latest budget, but there is still £48 million being paid back to the Treasury. Why is Wales doing that when the other devolved administrations are not?

[80] **Jocelyn Davies:** This is £85 million actually, is it not?

[81] **Mark Isherwood:** It was.

[82] **Jocelyn Davies:** Okay. This is the system that I was describing earlier, where that money goes back. We have no discretion whatsoever. It appears in the accounts, but we

cannot claw it back and decide what to do with it. It passes through the Assembly back to the UK Treasury. It has only recently appeared in the accounts; it has always happened, but you can actually see it now. So, I think that you will find that the system would be the same in Scotland.

[83] **Ms Whittaker:** It is a revenue account subsidy and it is how housing benefit is managed. Whereas previously it went directly to the Department for Work and Pensions, three years ago, it changed so that it is on our books, but it is an annually managed expenditure. We do not have any control over it; we never see the money. It goes directly to the Treasury in our budget line.

[84] **Jocelyn Davies:** Yes, but it appears there. I do not know whether or not it appears in the accounts of the other administrations. However, that does not mean that it does not happen.

[85] **Leanne Wood:** They still pay it.

[86] **Jocelyn Davies:** Yes, they still pay it. So, the local authorities collect the rent. Some of that goes back to the UK Treasury and rent rebates are paid.

[87] **Mark Isherwood:** Would it be possible to have further advice on that because I have been advised that the administrations do not have an equivalent responsibility?

[88] **Jocelyn Davies:** It may not appear on their balance sheets, but it has always happened. This Housing and Regeneration Bill would allow a local authority to opt out of that system if they could negotiate that with the Treasury. So, they would collect the rent and pay their own rebate rather than it being a system that happens throughout the UK.

[89] **Leanne Wood:** As that is not really related to the LCO that we are discussing today, I think that we should move on from that line of questioning.

[90] **Peter Black:** It relates to stock transfer more than anything else, which is a very important aspect.

[91] On definitions in the LCO, why have the terms 'dwelling-house', 'dwelling' and 'social landlord' been defined by cross-reference to other items of legislation?

[92] **Jocelyn Davies:** I think that the lawyer should answer that. I think that there is always an attempt, when drawing up legislation, to be consistent, and definitions can make a huge difference. Even though, as lay people, you might say, 'Well, I know what a dwelling is, or what premises are', and it is often the case that these things are defined in relation to other pieces of legislation. We had quite a debate about the Welsh version of the legislation on banning smoking in public places and why it had to be in exactly that form even though some people said that the term was not usable in Welsh. However, it had to be in those terms in order for it to be legally binding.

[93] **Ms Kellaway:** We needed to define it with reference to existing legislation and it tied in nicely with 'dwelling', which is defined in the Housing Act 1996, and 'dwelling-house', which is defined in the Housing Act 1985.

[94] **Peter Black:** Would it not be better to give those definitions in the Measure? By including the definitions in the LCO, you are effectively narrowing the scope of the LCO and leaving yourself subject to changes in those definitions through subsequent Acts of Parliament.

[95] **Jocelyn Davies:** The lawyers have given some thought to this, because often, if you read any Act of Parliament, there will be a list at the end of everything that was repealed, and the definitions are generally there. We are content with these.

[96] **Peter Black:** Acts of Parliament are changed, previous Acts are consolidated, and definitions are changed as a result of that. By including these in the LCO, you are effectively narrowing the scope of your future Measures. Whereas if you included the definitions in the Measures, you would be able to have stand-alone definitions that apply to Wales as opposed to being subject to future UK legislation. The point is that by including those definitions in the LCO, you very much narrow the scope of your legislation.

[97] **Ms Kellaway:** I think that we need to define, for the purposes of the LCO, what ‘social landlord’ is; we needed some certainty in there as to what a social landlord is. The definition is based on the definition in section 80 of the Housing Act 1985. Because of the way in which housing has developed historically, for example, we refer to ‘a housing association within the meaning of section 5 of the Housing Act 1985’ and ‘the relevant authority within the meaning of section 6A of the Housing Act 1985’. All the other definitions, as I say, are taken from section 80 of the 1985 Act.

10.20 a.m.

[98] **Peter Black:** In that case, instead of referring to the Act, would it not be better to incorporate those definitions in the LCO? In that way, you would not then be subject to any changes to UK legislation, which would then change those definitions.

[99] **Jocelyn Davies:** Westminster would want some certainty—

[100] **Peter Black:** Instead of referring to sections of the 1985 Act, would it not be better to write those definitions into the LCO? That section of the 1985 Act may be changed in future by a subsequent Act of Parliament, and that may change what your legislation is talking about.

[101] **Jocelyn Davies:** I can see your point, Peter, but we have chosen to do it in this way to create absolute certainty about what we intend to do. That is something that lawyers like very much.

[102] **Peter Black:** My argument is that that actually gives you less certainty. It is our role to scrutinise that and make recommendations. I am suggesting that that approach narrows your LCO quite considerably.

[103] **Jocelyn Davies:** We feel that the way that the LCO is drafted would give us the powers that we need for the policy objective that we intend to pursue.

[104] **Leanne Wood:** Are there any further comments on definitions? We have covered question 10, Mark Isherwood, so please ask question 11.

[105] **Mark Isherwood:** On a related issue, why has the term ‘disposal’ not been defined by cross-references to other pieces of legislation?

[106] **Ms Kellaway:** It is a reference to the disposal of land, so it is pretty certain what that means. For example, the disposal of land under section 32 of the Housing Act 1985 is the disposal of land by the local authority. I can check, but it was not defined because the normal meaning is the disposal of the freehold or leasehold of a property.

[107] **Jocelyn Davies:** We did not feel that it needed to be defined. We think that

everybody will understand what that means.

[108] **Alun Davies:** Let us test that then. Would you, for example, include stock transfer as disposal?

[109] **Jocelyn Davies:** I think that this probably touches on stock transfer.

[110] **Ms Kellaway:** Because of the difficulty in separating voluntary from statutory disposals of land, it covers stock transfer to an extent but not in its entirety, as drafted.

[111] **Jocelyn Davies:** All of these things overlap.

[112] **Alun Davies:** I understand that, but I wish to press you on that, Minister. In answer to Peter's question you said that you wanted certainty, and I agree with your objective. However, in answer to my question you said that perhaps it touched upon stock transfer. That sort of language does not sound to me as though it provides certainty for the future. I accept that it was a casual answer to the question, but the term 'touch upon' does not imply certainty does it?

[113] **Jocelyn Davies:** It is not so narrowly defined as to say that it will deal only with the right to buy and suspension of the right to buy, because, as I said earlier, you do not want to find later that, because you have done it that way, there is a power missing or that you are subject to judicial review because you are not certain that you have that power. All of these things overlap slightly, but this LCO would not give us competence over stock transfers.

[114] **Alun Davies:** Is that a definite no or a possible no?

[115] **Ms Kellaway:** As drafted, as stated, it partially covers it. Therefore, the current draft of the LCO does not cover stock transfers in their entirety.

[116] **Alun Davies:** In that case, could you outline the partial coverage, please?

[117] **Ms Kellaway:** Yes. It is land sold with a dwelling or dwelling-house, as opposed to land under a different part of the Housing Act 1985. For example, parts of that Act cover land not used for housing purposes.

[118] **Alun Davies:** That is quite a broad overlap.

[119] **Ms Kellaway:** It is land sold under the right to buy. If you are selling a dwelling or dwelling-house under the right to buy, under the 1985 Act, if it comes with land, it would constitute disposal as that would be the land with the dwelling.

[120] **Alun Davies:** So, in practice, it covers large parts of stock transfer.

[121] **Jocelyn Davies:** Well, you say 'large parts', but I am not sure how you would exercise that, touching on the stock transfer.

[122] **Ms Kellaway:** It comes down to the difficulty that we have had separating a statutory disposal, under Part V of the Housing Act 1985, for example, which deals with the right to buy, from a voluntary disposal under section 32 of that Act.

[123] **Jocelyn Davies:** Those stock transfers are large-scale voluntary transfers.

[124] **Ms Kellaway:** They are usually made under section 32 of the Housing Act 1985.

[125] **Jocelyn Davies:** I have no problem with the Assembly Government holding some powers in relation to stock transfer, but that is not the motive or the intention here. However, if it needs to be drafted in such a way as to give you some powers in relation to stock transfer later on, arguably, that is well and good. The motive and the intention of this LCO is in relation to the suspension of the right to buy; that is all that I can say. Whether it means that we will hold a cluster of powers in relation to stock transfer, I do not know, but I think that that might be inevitable.

[126] **Alun Davies:** I appreciate that. On wider housing policy, we probably need those powers. However, in testing any transfer of power or Order of this nature, it is important that we understand the powers that it gives the Assembly Government, and whether those powers are sufficient to carry out its policy objectives as they stand, or whether they are deficient in any way. If you are taking powers, whether as the prime motivation of the LCO or as a consequence of it, I want to know whether you have any plans to legislate following the transfer of that power.

[127] **Jocelyn Davies:** The only plans that we have are for bringing forward a Measure that would allow us, on application by a local authority, to suspend temporarily the right to buy in areas of the highest housing pressure. Very often, when you take advice from officials on whether you can do something, they tell you, 'You can use these powers or possibly even those'. You can achieve the same thing using several different powers, so these things never fit neatly in a box.

[128] **Alun Davies:** I appreciate and understand that, Minister. We have had quite an interesting conversation. On the one hand, you have been very hard in your response to Peter Black's question about the definitions that you are using in this LCO, saying that you must define strictly and tightly the terms 'dwelling' and 'dwelling-house', and I accept that you need to do that, though I think that Peter's view is probably more convincing—

[129] **Jocelyn Davies:** I would not say that I rejected Peter's view; I just said that this is how we decided to do it, and these are the reasons why. I am not rejecting Peter's point, so I think it a bit unfair to say that I have been 'hard'.

[130] **Alun Davies:** I am glad that you have clarified that, Minister, and I hope that you will take on board the suggestion that Peter made, because I think that it might help to improve—

[131] **Jocelyn Davies:** No doubt the committee will have a view on it. That is the purpose of the committee scrutinising the LCO at this point, is it not?

[132] **Alun Davies:** On the second definition that we discussed, that of 'disposal', you seem to take a different view on that, and there is a lot more flexibility. We have established that 'disposal' means disposal to individuals who acquire the right to buy, and that it will have an impact on stock transfers and will create an overlap—and whether that overlap is large or small, I will leave aside for a moment, but it is there. In your understanding of the term, do you see it as having additional or consequential meanings by way of disposal to other bodies?

10.30 a.m.

[133] **Jocelyn Davies:** I just took the view that I thought that I knew what disposal meant. I have not instructed the lawyers not to give it a definition and, if they chose to do so, I would not be surprised, but nor would I be surprised if they did not. I am quite comfortable with the term 'disposal', whether it is defined or not, and I am happy for it to go through in those terms. If the Government decided at a future date that it wanted to do something in relation to stock transfer that had not previously been done and the lawyers said maybe that could be done under those powers, so be it. However, that certainly is not the intention. That is all that

I can say to you on that. If the committee thinks that it ought to be defined to exclude that, I suppose that, from a devolutionist point of view, I would probably say that I am content with it as it stands.

[134] **Alun Davies:** We are trying to test unintended consequences.

[135] **Jocelyn Davies:** It may be unintended, but I am not uncomfortable with it.

[136] **Alun Davies:** I am content with that, and glad that you are comfortable, but my concern is that I understand what powers are being transferred and the extent of them. As it happens, I am also content with it, but I would be more comfortable if we understood that in more detail.

[137] **Jocelyn Davies:** Okay. If she cannot tell us now, perhaps we should ask the lawyer to produce a note to outline the exact implications for stock transfer using this definition. The committee may find that useful, unless Helen can tell you now.

[138] **Ms Kellaway:** The only thing that I want to add is what is proposed in the LCO. We can amend or repeal Part V of the Housing Act 1985 and sections 16 and 17 of the Housing Act 1996, which deal with the right to buy and the right to acquire respectively. That achieves the policy intent in the way that it is drafted.

[139] **Leanne Wood:** I think that it would be helpful if you could write to clarify that point of questioning, and then we might return to it at a future meeting.

[140] **Jocelyn Davies:** You will have it for your record then. You may require us to return at some date in the future to explore this further. I cannot say any more than I have already said.

[141] **Leanne Wood:** Thank you, Minister. Would any other Members like to come back?

[142] **Peter Black:** Yes, please. I meant to ask this question earlier. I understand that the powers that you are drawing down will enable you, on the application of a local authority, to define a particular area where the right to buy and the right to acquire would be suspended for a time for the dwelling-houses already in that area. Would it also enable you to give a local authority a dispensation to exclude or suspend the right to buy on new social housing that might be built in that area within a defined period subsequent to that Order?

[143] **Jocelyn Davies:** These powers would certainly allow that. Theoretically, I suppose that this would allow you to abolish the right to buy altogether. However, we would consult with stakeholders as to the exact content of the Measure. However, theoretically, Peter, yes, it could.

[144] **Peter Black:** That is what I was trying to clarify. I wanted to make sure that the power was there. That was the important thing: to future-proof social housing that may be built in a particular area in that respect.

[145] **Jocelyn Davies:** I think that you could abolish the right to buy altogether using these powers.

[146] **Peter Black:** Could you abolish it specifically for new houses, but then restore it for existing houses but not the new ones?

[147] **Jocelyn Davies:** Do you mean for new houses or for new tenants?

[148] **Peter Black:** I am trying not to get into Measures here, but if you had an area of high demand with 100 existing social housing units and you suspended the right to buy there for five years, could you then say, after the five years, that it would be restored but that any houses built within that five-year period would not have the right to buy restored to them?

[149] **Jocelyn Davies:** I think that this would give us total discretion over that policy area. They have certainly done something along those lines in Scotland, have they not?

[150] **Peter Black:** I think so.

[151] **Jocelyn Davies:** Perhaps it is not the case for new housing, but it certainly is for new tenants. Where is my other official?

[152] **Mark Isherwood:** I think that they could apply to suspend it temporarily, but they could not impose a permanent abolition.

[153] **Jocelyn Davies:** No, that will be in the Measure, but I think that the powers that you draw down would probably allow that.

[154] **Peter Black:** That is important, as long as you have the powers. That is what we are concerned with here.

[155] **Jocelyn Davies:** But that is not the intention.

[156] **Peter Black:** We will discuss it when we come to the Measure.

[157] **Jocelyn Davies:** Okay, but at the moment that is not the intention.

[158] **Leanne Wood:** Mark, did you want to ask something else?

[159] **Mark Isherwood:** Yes, please. Wearing the hat of my previous profession for a moment, if a council successfully applied to suspend the right to buy, would that apply to applications for the right to buy only from that date? Would it exclude people who were already in the process of buying their home, had already successfully applied for a mortgage, and had instructed solicitors? Would they still be able to proceed?

[160] **Jocelyn Davies:** As I say, it would be a matter for the Measure, but legislation is not generally retrospective, is it? You do not normally backdate legislation. People would have plenty of notice that this was going to happen, because we would require local authorities, before they made the application, to consult fully those who would be affected. So, people would have plenty of notice that this was going to happen. We would take that point on board, because, given the costs and everything involved in buying a house, it would be unfair for people to have started the process only to find that this was happening. It could get untidy. So, it would probably apply to new applications, as we would all see that as fair. It could not be sprung on anyone.

[161] **Leanne Wood:** Okay, thanks for that. Do Members have any other questions for the Deputy Minister? I see that you do not. I therefore thank the Deputy Minister and her officials for their contributions. Thank you for agreeing to write to us with regard to the definition of 'disposal'.

[162] **Jocelyn Davies:** We did not say that we would provide a definition of 'disposal'; we said that there would be implications of having no definition of 'disposal'.

[163] **Leanne Wood:** Yes, thank you for clarifying that, Minister. We may ask you to come

back in future for further clarification.

[164] The next meeting of this committee will take place on 29 January, when we will take evidence from the Welsh Local Government Association and Shelter Cymru. I declare the meeting closed. Thank you very much.

Daeth y cyfarfod i ben am 10.37 a.m.
The meeting ended at 10.37 a.m.