



**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, 5 Chwefror 2008  
Tuesday, 5 February 2008**

**Cynnwys**  
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2007  
The National Assembly for Wales (Legislative Competence) (No.5) Order 2007

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**

Peter Black	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
Alun Davies	Llafur Labour
Mark Isherwood	Ceidwadwyr Cymreig Welsh Conservatives
Leanne Wood (Chair)	Plaid Cymru (Cadeirydd y Pwyllgor) The Party of Wales (Committee Chair)

**Eraill yn bresennol**  
**Others in attendance**

Nick Bennett	Cartrefi Cymunedol Cymru Community Housing Cymru
Vicky Hiscocks	Sefydliad Tai Siartredig Cymru Chartered Institute of Housing Cymru
Steve Long	Sefydliad Tai Siartredig Cymru Chartered Institute of Housing Cymru
Yr Athro/Professor Steve Wilcox	Prifysgol Efrog University of York
Ian Williams	Cartrefi Cymunedol Cymru Community Housing Cymru

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

Gwyn Griffiths	Cynghorydd Cyfreithiol Legal Adviser
Ruth Hatton	Dirprwy Glerc Deputy Clerk
Gareth Williams	Clerc Clerk

*Dechreuodd y cyfarfod am 9.47 a.m.*  
*The meeting began at 9.47 a.m.*

**Cyflwyniad, Ymddiheuriadau a Dirprwyon**  
**Introduction, Apologies and Substitutions**

[1] **Leanne Wood:** I welcome Members to this meeting of the Proposed Affordable Housing LCO Committee. I have received one apology, from Lesley Griffiths, and there are no substitutes. In the event of a fire alarm, Members should leave the room by the marked fire exits and follow instructions from the ushers and staff. There is no fire alarm test forecast for today. All mobile phones, pagers and BlackBerrys should be switched off, as they interfere with the broadcasting equipment.

[2] The National Assembly for Wales operates through the medium of the Welsh and English languages. Headphones are provided, through which instantaneous translations may be received. For the hard of hearing, these may also be used to amplify sound. Interpretation

is available on channel 1, and verbatim proceedings are on channel 0. Please do not touch any of the buttons on the microphones, as that can disable the system, and please ensure that the red light is on before speaking.

9.48 a.m.

**Gorchymyn Cynulliad Cenedlaethol Cymru (Cymhwysedd Deddfwriaethol)  
(Rhif 5) 2007**

**The National Assembly for Wales (Legislative Competence) (No.5) Order 2007**

[3] **Leanne Wood:** The purpose of today's meeting is to take further oral evidence in connection with the Assembly Government's proposed legislative competence Order on affordable housing. I welcome Ian Williams, the chair of Community Housing Cymru, and Nick Bennett, the chief executive of Community Housing Cymru. We will also be taking evidence today from Victoria Hiscocks, policy and public affairs officer of the Chartered Institute of Housing Cymru, and Steve Long, the director of the Chartered Institute of Housing Cymru. Finally, we will be taking evidence from Professor Steve Wilcox.

[4] Could you please introduce yourselves for the record?

[5] **Mr Bennett:** Good morning. I am Nick Bennett, the chief executive of Community Housing Cymru.

[6] **Mr Williams:** I am Ian Williams; I am the chair of Community Housing Cymru, and the group chief executive of Hendre.

[7] **Leanne Wood:** Thank you. Members have some questions, so, if you do not mind, we will start straight away. The first question is from Peter Black.

[8] **Peter Black:** You indicate in your written evidence that it makes sense for power to be conferred on the Assembly to suspend the right to buy and the right to acquire in areas of housing pressure. I believe that many of your members would support a wide suspension of both schemes across Wales. In your members' view, has the Assembly Government used its existing powers to good effect, and why do you feel that these new powers are necessary?

9.50 a.m.

[9] **Mr Bennett:** Thank you for that question. We do support this proposed LCO, and our members would support the suspension of the right to buy in certain areas of high housing pressure. However, over the past 12 months, we have campaigned for more action when it comes to affordable housing, and most of the action that we believe is needed is not legislative. For example, it is about increasing the level of social housing grants and using existing planning powers. Existing powers have been used in this area by the Assembly by, for example, reducing the amount of discount available under the right to buy and the right to acquire. We have also called for the reform of the way in which housing associations are regulated. We do not believe that that reform requires additional powers, but it could generate significant additional investment in communities the length and breadth of Wales. We estimate that that reform could be worth as much as £110 million over the next four years in affordable housing units and community regeneration, but it would not require additional primary powers; it would require the use of existing instruments such as section 9 of the Housing Act 1996, and also reform of other instruments that have been used by the Assembly Government, such as the group structure.

[10] **Peter Black:** Out of interest, you indicated that some of your members wanted to go further, but are any of your members opposed to this Measure?

- [11] **Mr Bennett:** I am not aware of any members being opposed to it.
- [12] **Mr Williams:** Not everyone said that they were in favour of it, but no-one has said that they were against it.
- [13] **Alun Davies:** I was interested in reading your written evidence, because, in terms of the scope of the legislative competence Order, you say that its terms are sufficiently broad to provide flexibility for a number of different solutions. I am interested in that, because that is not the purpose of the Order—it is to provide a single solution, namely the right to buy and the right to acquire. Could you outline what other solutions you see as falling within the remit of this particular competence Order?
- [14] **Mr Bennett:** We think that this LCO is sufficiently broad to achieve the suspension of the right to buy in certain areas. However, as a Wales-based organisation, we support the principle of Welsh housing policy being made in Wales rather than in any other place. You will have received evidence from others that would suggest that there might be scope for delaying this Order and for looking at additional action when it comes to the use of planning powers, and that there might be need in the future for additional action when it comes to second homes, and that other legislation could affect land supply. We believe that those do not necessarily require a broadening of this LCO; however, they might require use of the new Planning Reform Bill.
- [15] **Alun Davies:** I am interested in that, because the LCO has been drawn up in order to address the right to buy and the right to acquire; it does not address other planning issues.
- [16] **Mr Williams:** We were talking about flexibility in different parts of Wales, and that is what we talked about in our evidence.
- [17] **Alun Davies:** So, are you saying that this LCO should include those other areas?
- [18] **Mr Bennett:** No, we are not. What we are saying is that we support this LCO, but in addition we would always tend to support the greater devolution of housing policy to Wales, for practical reasons, because we only cover Wales; we have a sister organisation that covers housing developments in England. There are also historic reasons for that: in 1957, Welsh affairs were part of the ministry of housing, so housing has always played a part in at least administrative devolution in Wales, and we would support the further political devolution of housing issues. We believe that Wales is the place where Welsh housing policy should be made.
- [19] **Alun Davies:** You also say in your evidence that you believe that it is important that the Assembly and the Assembly Government can react to different circumstances, as circumstances change. Can you talk to us about those other circumstances and how you believe that they will impact on the powers that we currently have and the powers in this LCO? We are actually talking about the right to buy here.
- [20] **Mr Williams:** With regard to the LCO, we were quite impressed that it seemed to provide a certain flexibility in where it would be applied in Wales. With regard to other powers, you already have a number of other powers and some of those have been demonstrated in some of the initiatives that have gone through. Homebuy was started in Wales. On those sorts of things, it is about finding Welsh answers to Welsh problems. We are certainly campaigning for the ability to deliver Welsh answers to Welsh problems, with policies that are made in Wales.
- [21] **Alun Davies:** Do you see any limitations in the proposed LCO that would prevent the

Assembly from subsequently passing Measures that would respond to the issues that you have identified, and not enable the Assembly Government to follow the sort of strategic approach that you are outlining? You have outlined an approach that includes many different legislative areas, not simply the right to buy.

[22] **Mr Williams:** I am not aware of any.

[23] **Mr Bennett:** We are satisfied that the LCO is sufficient to ensure Measures to suspend the right to buy. Longer term, looking at the broader issues, a number of pressures could occur. For example, only last week, or the week before, we heard that the Treasury has developed additional tax measures that could incentivise the purchase of second homes. That could have a disproportionate effect on certain localities in Wales, for example, Gwynedd, where I think that over 8 per cent of the housing stock is currently held as second dwellings. We would want to see this institution develop so that it has the flexibility to tackle those types of problems in the future. However, we accept that this LCO deals specifically with suspending the right to buy. Clearly, we are facing a supply-based crisis in housing in Wales now and this will not increase supply. It will stop the dilution of the supply of affordable housing, but it will not increase it. That is why we want to pursue other issues, such as regulatory reform, using existing powers, because we think that that will have a practical and real impact on people and communities over the next few years.

[24] **Mark Isherwood:** The whole objective behind this is to increase the supply of affordable housing for rent or assisted purchase. A property that is not sold under right to buy is a property that retains its tenant for a longer period of time—again, it is not a vacant property. You mentioned a number of other things that could be used to increase the supply of affordable housing, such as the use of section 106 agreements and publicly owned land. Can you explain how those would increase the supply of affordable housing? Do you believe that the Assembly should be seeking legislative competence in the field of planning accordingly?

[25] **Mr Williams:** That perhaps is a key. We made it quite clear in our evidence that what is proposed in this document does not provide one additional property. As you quite rightly said, it will just keep the house in the rental sector as opposed to transferring it to the owner-occupied sector. The real thrust of our argument over the past few months has been that we need to increase the supply, which is why we put the options in there. The information that comes back from associations is that the way that local authorities apply section 106 agreements varies considerably throughout Wales. There does not seem to be any uniformity. Whether you have the ability or whether you can get the ability to change that, I do not know—that is a legal matter—but when you see what has been achieved in some areas, compared with what has been achieved in others, you do have to wonder why. Why is one local authority very successful and another not so successful at it? That is the issue that we are trying to get at, if we could increase the supply in that way. Any way that you can come up with that will increase the supply of affordable housing has to be good for people. However, there does seem to be a strange anomaly that some local authorities seem to be able to achieve a lot through 106 agreements, and others do not. I cannot tell you why that is, but it is a fact.

10.00 a.m.

[26] **Mr Bennett:** To back that up with some facts, the statistics are vague, but I have heard some figures bandied around that refer to the fact that, last year, approximately 850 affordable units were developed in Wales using section 106 agreements. However, they were developed in 11 local authorities—850 units in 11 authorities and nothing in the other 11. On that basis, we think that it is an issue of applying existing powers rather than developing new ones.

[27] **Mr Williams:** If you could achieve the same number in the other 11 local authority

areas and have another 850 properties, it would be virtually equivalent to doubling the social housing grant in Wales.

[28] **Mark Isherwood:** Is there not a land supply issue here? I am aware that an authority in my own patch has won awards for being one of the better performers, but some of the larger housing associations there have quite healthy land banks, which has facilitated that and given them leverage with the council and with developers. However, developers are arguing that, according to Office of Fair Trading figures, they only have two or two-and-a-half year land banks and many of the local authorities are saying that, in the current financial environment, they cannot afford to let land go at sub-market prices, because they need to invest in education, social services and so on. So, how sustainable is this given the current land bank situation?

[29] **Mr Williams:** Land bank is a problem among members because of the high cost of land and the cost of meeting loan payments on that land while it is sitting there waiting to be developed. So, that is an issue. When land was very cheap, it was not such an issue, but now it obviously is. For example, you sit on a couple of acres of land in Cardiff for a few years and the interest charged on that would be considerable. So, that is an issue.

[30] We always run up against this problem with local authorities, namely their desire to help housing associations by releasing land to them at below reasonable prices and their desire also to maximise their receipt for the reasons that you have outlined.

[31] **Leanne Wood:** Did you want to come in on this point, Alun?

[32] **Alun Davies:** No, not on this point.

[33] We discussed earlier your sense of the LCO's scope and I would like to clarify some of the issues on that. This morning, we are discussing where decisions and power should lie over legislation in particular fields rather than Measures and individual policy approaches. So, it is about whether legislative competence should lie here or in Westminster, and then whether this proposed LCO delivers the legislative competence that the Government requires to implement its policy objectives. May I clarify whether you believe that the Assembly should seek legislative competence in the field of planning?

[34] **Mr Bennett:** We would support that, particularly where it allows for a greater range of instruments to assist housing development and implementation in Wales. I take on board fully the fact that this is a debate about where power lies, but that is not just about primary and secondary law-making powers around this LCO and whether we should have this LCO and perhaps, for example, framework powers on housing. There are certainly additional ways in which housing policy could be further devolved to Wales with regard to a huge number of challenges that will emerge. Some of them might be related to planning and the potential to devolve further powers through the Planning Reform Bill and others might be environmental. For example, I know that the 'One Wales' agreement refers to reducing carbon in Wales perhaps five years before the UK target. Obviously that will touch on building regulations. Certainly, in relation to that, the debate and where power lies is about a transfer of functions rather than looking at this specific LCO for an area of policy.

[35] **Alun Davies:** This LCO only covers the disposal of dwelling houses. Do you think that the scope should be widened to include other dwellings?

[36] **Mr Williams:** The definition is important, but it seems sensible, taking a common-sense approach—and I am not a lawyer; presumably you have access to legal advice on what the definition should be—that whatever the definition was when right to buy was granted, the same definition should be used in this. Obviously, that is a matter for the legal people to sort

out and I stress that I am not a lawyer.

[37] **Mark Isherwood:** The Assembly Government has started work, as you know, on a new national housing strategy and a 10-year homelessness plan. What are your views on the LCO in that context? Would there be advantages in delaying it to take account of those new strategies?

[38] **Mr Bennett:** No. I can expand on that slightly. If there is a willingness to suspend the right to buy, that should be pursued now. There is always a risk—forgive me for my cynicism—when it comes to strategy development. We fully support the development of a new national strategy for housing, but my understanding is that that work would take at least another 12 months. If you have to wait for the outcome of that and then pursue an LCO and then start developing Measures, it could well be 2010 or 2011 before this work is undertaken. So, we would suggest that, rather than wait, it is best to pursue this now. Otherwise, it will never happen.

[39] **Peter Black:** I am not sure whether you are familiar with the Housing and Regeneration Bill that is going through the House of Commons. Are you aware of any provisions within that Bill that might be used to increase affordable housing in Wales, and do you think that that could have been achieved through that Bill?

[40] **Mr Bennett:** Had the Bill contained framework powers, that could well have been the case. I am aware of several measures in the Bill that will have an impact on Welsh housing policy. There are proposals in there to increase the say of local authority tenants on the future of their homes, additional powers for social landlords to tackle anti-social behaviour, and mandatory sustainability ratings for all new homes. Again, that latter provision will clearly have an impact on Wales, given other issues around sustainability as well as the future of social housing. There are also provisions in there for Gypsies and Travellers to ensure that they have the same security of tenure on local authority sites as on private sites. Generally, it is hard to cite areas where legislation can have a direct effect on increasing the supply of affordable housing, but the way in which regulations are framed in Wales at present can have an impact on supply. For example, housing associations in Wales have a gearing ratio of only 25 per cent and we have borrowings of approximately £750 million against £3 billion-worth of assets. We feel that a more social-enterprise-based approach to regulation, when it comes to things such as group structures, section 9 consents, and other issues, would free us up to be able to service more debts and to invest more in communities. That is a very practical example of where secondary legislative powers, rather than primary legislative powers, could make a very direct and meaningful contribution to housing policy over the next few years, and I would be hard pressed to think of an example of a primary power that would have a similar impact.

[41] **Peter Black:** That is very helpful. Coming back to the LCO, you have expressed concern about the lack of reference to the community housing mutual model that has been promoted by the Assembly Government in the context of stock transfer. Could you give us a brief outline of what that model entails and tell us why you believe that a community housing mutual would not be classed as a social landlord as defined in the proposed LCO?

[42] **Mr Bennett:** The community housing mutual is a constitutional model. It has no legislative basis as such. On its characteristics, all tenants are members unless they choose not to be, which means that the housing assets can be said to belong to the tenants collectively. In that context, in a large-scale voluntary transfer—that means that the housing assets have been sold to the tenants and not to a third-party company or housing associations—the tenants hold the housing assets for the benefit of the community. Part of the community housing mutual's purpose is to ensure that tenants are empowered so they become closely involved in the regeneration and development of their own communities. That is reflected in a constitutional



obligation placed upon the board.

10.10 a.m.

[43] This model is designed to be dynamic rather than static; it is designed to evolve and adapt to meet the changing needs of the community that is served. Its democratic principles, which emerge from the mutual sector, are reflected in the memorandum of understanding and articles of association. As I said, this does not have a separate legislative basis. Most mutuals are companies limited by guarantee with specific issues in their memoranda and articles of association. Our issue is that they are different to housing associations; therefore, within the scope of the current LCO, you do not have a reference to registered social landlords.

[44] **Mr Williams:** We were looking at part of the definition that you use, which is

[45] ‘a housing association within the meaning of section 5 of the Housing Act 1985’.

[46] Community mutuals are not necessarily included within that. I assume that that is something that your legal team advise on, but the normal phrase is now ‘registered social landlord’.

[47] **Peter Black:** The community housing mutual model is a recent creation, and it is possible that, as the housing strategy evolves, other models may be put together. Would ‘registered social landlord’, rather than ‘housing association’, be a catch-all phrase or would it be better, as with the term ‘disposal’, to leave it undefined?

[48] **Mr Bennett:** If the term ‘registered social landlord’ were included in the definition, it would act as a catch-all term to include community housing mutuals as well as existing housing associations. It is important that the new LCO and the Measures that flow from it are able to not only deal with the current situation, but to anticipate change, because there has been a huge amount of change over the past two years, particularly with regard to whom the social landlord is and with stock transfer occurring in a total of six local authority areas.

[49] **Peter Black:** Is it the case that there are also older housing models, such as charities, that are not classed as housing associations but are registered social landlords, and that they would therefore be missed by this definition?

[50] **Mr Williams:** Yes. That is why we are proposing to use the term ‘registered social landlord’.

[51] **Peter Black:** The point about mutuals covers other models too, because they are not technically housing associations.

[52] **Mr Williams:** Our view is that the term ‘registered social landlord’ would give you the cover that you need, going forward and looking back.

[53] **Peter Black:** That is helpful; thank you.

[54] **Alun Davies:** On a similar issue, what do you understand by the term ‘disposal’? After your comment earlier about your not being a lawyer, I apologise for the question, but it is quite important.

[55] **Mr Williams:** We assume that the term ‘disposal’ is the normal phrase that most people would accept for selling a property. However, within the housing association movement, ‘disposal’ also means giving a charge over a property to a third party—usually a bank or building society—to raise money; it is the basis on which private finance is founded.

Associations can dispose of their properties only by getting section 9 consent from the Assembly. We must go through that process where we want to offer a charge on a property to a bank or building society to secure a loan—the private finance element of a scheme. I am sorry to go back to them again, but the one thing that I assume that your lawyers will have made sure of is that this does not prevent a housing association in an area to which a Measure would apply disposing of a charge on the property—raising private finance. That would be an absolute disaster; you would be chucking the baby out with the bath water and stopping the use of private finance. Therefore, ‘disposal’ must be carefully defined to ensure that it means selling a property, rather than offering a charge on a property.

[56] **Peter Black:** To amend section 9, you would need primary legislative powers. However, the Welsh Assembly Government has the power to waive the need for consent. Presumably, that is what you are asking for; rather than to amend section 9, you want the discretion to waive the need for consent?

[57] **Mr Williams:** You need to ensure that the reference to disposal does not prevent you from disposing of an interest in the property by giving a charge to a third party—to a bank or building society. That is the important thing. It must not prevent an association giving a charge over a scheme, which is how it secures its private finance in a scheme. If you prevented that, you would be stopping the association raising private finance from the scheme that it is developing. That is not what you are intending to do in this, but it might be a consequence.

[58] **Peter Black:** Yes, okay.

[59] **Alun Davies:** I am sure that those sorts of issues are best dealt with by a Measure rather than by the transfer of power. In terms of taking this chunk of power, if you like, and giving it to the Assembly in Cardiff, do you think that the term ‘disposal’, as it is currently used within the context of the LCO that we are discussing, for argument’s sake, could include a local authority stock transfer to a registered social landlord?

[60] **Mr Bennett:** The 1985 Act, which is referred to in the LCO, defines two different forms of disposal. There is statutory disposal, which includes the right to buy, and voluntary disposal, which includes stock transfer. So, we assume that this LCO will make it clear that the transfer of power refers to the disposal in a statutory, rather than a voluntary, sense.

[61] **Alun Davies:** What would be your view if the definition were broader?

[62] **Mr Williams:** Presumably, it would prevent stock transfer, which, we assume, is not what you are trying to achieve. These definitions have to ensure that they do not produce a consequence that you do not want.

[63] **Alun Davies:** Sure.

[64] **Mr Williams:** I am not sure whether I explained that very well.

[65] **Leanne Wood:** That is fine, thank you.

[66] **Mark Isherwood:** Do you agree that whereas the right to buy means transferring ownership to an individual or a collection of individuals, stock transfer means retaining a tenancy, thereby enabling the Welsh housing quality standard to be achieved?

[67] **Mr Bennett:** Yes, and I think that the issue here is that disposal in a stock transfer sense is voluntary, because the tenants must vote for it. Again, it comes back to the issue of choice and flexibility, given the myriad of challenges that we face in different communities.

[68] **Mr Williams:** Going back to your question, disposal through a stock transfer is a disposal from the local authority to the receiving organisation. Again, it all comes down to definition, but, in simplistic terms, it is a disposal, because a local authority is getting rid of its stock by passing it over to another organisation.

[69] **Leanne Wood:** Okay. Are Members happy with that, and does anyone want to come back on anything? I see that you are happy. Do the witnesses want to make any further comments before we finish?

[70] **Mr Williams:** We assumed that it would be covered, but we want to ensure that the definition of disposal did not prevent raising private finance in future. That is important. The right to buy and the right to acquire are not as important in the scheme of things for housing associations as they would be for local authorities. My association sold probably 750 to 800 units under the right to buy back in the 1980s and early 1990s, and we anticipate that we will not sell one this year. So, the emphasis has changed completely, simply because there are so many fewer secure tenants and, since 1989, properties have been available on assured tenancies. So, it does not have a major impact on associations, unlike local authorities. Some of the statistics show that the number of properties that have been sold is quite high.

[71] **Leanne Wood:** Thank you for your evidence. If you wish to make any further comments, we would be grateful if you could send them to us in writing. Thank you.

[72] I now call Victoria Hiscocks and Steve Long to the table. Good morning and thank you for joining us. Please introduce yourselves for the record.

[73] **Ms Hiscocks:** I am Victoria Hiscocks, and I am policy and public affairs officer for the Chartered Institute of Housing Cymru.

[74] **Mr Long:** I am Steve Long, the director of the Chartered Institute of Housing Cymru.

[75] **Leanne Wood:** Thank you. I invite the first question from Alun Davies.

10.20 a.m.

[76] **Alun Davies:** Thank you. I enjoyed reading your written submission. You indicated in your submission that you felt that the Assembly should have the appropriate legislative powers to enable it to implement quite a broad housing policy. You indicated a number of different areas where you feel that the Assembly should have legislative powers. Do you therefore feel that this legislative competence Order is sufficiently broad to deliver the sort of powers that you have discussed?

[77] **Mr Long:** Probably not, as it is specific to right to buy and only encompasses the issues around that. In terms of the aspirations in 'One Wales', and the desire to provide a greater supply of affordable housing, it is fairly limited. It probably has its place, but I take the view that, although it is not counterproductive, it may be a little unproductive given the current state of local authority stock, and the volume of right to buy in the past. Certainly, the statistics from the last 12 months show that there have been very few sales completed, especially in rural areas, where I would suspect that many of the housing pressures exist. So, on its own, it is fairly limiting, but nonetheless, we still support the principle that the powers should be granted to the Assembly.

[78] **Alun Davies:** Much of the previous evidence session was taken up by a discussion on existing powers, secondary legislation regulations, and so on. We heard that there are a number of different tools within the range of powers available to the Assembly Government

that could be used to execute policy in this area. Do you consider that the Assembly Government has been sufficiently creative in the use of those existing powers, or has it been quite conservative and interpreted those powers quite narrowly?

[79] **Mr Long:** To answer your question indirectly, some of the difficulties have less to do with the Assembly's use of powers than with local authorities' choices in exercising those powers. They vary quite considerably from authority to authority, as demonstrated by the previous evidence on the number of authorities using section 106 agreements, for example. So, I am not sure that this is about the powers in the round, but the consistent application of powers across Wales.

[80] **Alun Davies:** Okay, we will leave it at that. Thank you.

[81] **Peter Black:** You highlight in your written evidence the significant number of properties lost from the social housing stock because of the right to buy, especially in rural areas. In the light of that point, is this an appropriate time to seek these powers?

[82] **Mr Long:** I would probably support the position that Community Housing Cymru took earlier, because I think that it is appropriate. I am not sure whether they will have a great impact, but, in some respects, it is quite frustrating that, with housing being devolved to the Assembly, we need to seek powers to carry out some of the simple things that we need to process. I suppose there is an argument that, if there was a review of the national housing strategy, you could delay and see whether this fits in with the wider debate. However, picking up on the point that Nick made, that may well be 12 months in germination before implementation. So, the fundamental position that we take at the Chartered Institute of Housing Cymru is that we support the Assembly in gaining these powers.

[83] **Peter Black:** Would you anticipate, for example, changes in the market leading to an increase in applications for right to buy?

[84] **Mr Long:** It is possible. One of the issues is that right to buy almost seems to be taken out of the market, and is seen as a stand-alone product—it is not seen within the whole housing market, which is dynamic, and, of course, we have seen changes recently because of some of the credit-crunch issues. House price increases and the move to reduce the maximum discount to £16,000 make right to buy less attractive than it was anyway. With average house prices in Wales at around £150,000, and entry price at about £120,000, that £16,000 is becoming more insignificant. Obviously, we have lost lots of the stock, and I daresay that much of the stock that has been sold is the more attractive stock, so we are left in a residual situation. However, it is not impossible to see that changing, if there were a dramatic crash in the market—though I hope that that does not happen. The £16,000 would then become a more significant proportion of the total and would allow people to access the market; that would be a possibility.

[85] **Peter Black:** Do you foresee that the passing of this LCO would lead to an increase in the number of applications?

[86] **Mr Long:** There may be an increase in the number of applications before it is passed, with people trying to get into the market. It is cause rather than effect.

[87] **Mark Isherwood:** You highlighted that CIH believes that suspending the right to buy and the right to acquire means limiting access to low-cost home ownership. Is the proposed LCO therefore counterproductive to moving the affordable housing agenda forward?

[88] **Mr Long:** I do not think that it is counterproductive; I am just not convinced of how productive it will be in achieving its purpose. We have already mentioned, and agreed, that

the numbers have fallen away anyway. So, unless circumstances change, the demand will probably be maintained at that, or a lesser, level. In some rural areas, there are very few properties left, so a small number could change the balance of local authorities' stock. It is limited as it deals only with the right to buy and addresses only those issues.

[89] **Mark Isherwood:** You say that you still support the principle, even though you are not convinced of how productive it will be. We know that there will be large time lags, because properties are currently occupied by tenants who will remain in those properties for many years to come. Even if there were an absolute ban in Wales today, it would be many years before that would have an impact on maintaining the current supply rather than increasing it. You also acknowledge that—as I am aware from my previous employment—every time there is a restriction on the right to buy, there is a boom in applications. That will eat into the supply again. Given all those factors, why do you still support the principle?

[90] **Mr Long:** You have already given the answer: at least it will maintain the stock so that it is not eroded any further. It does little more than that, but it does maintain the stock.

[91] **Alun Davies:** I want to return to the nature of this Order. We discussed whether it is appropriate that this legislative power lie in Cardiff bay to enable the Assembly Government to implement its broad housing policy, and I think that there was general agreement on that. You have said this morning, as have others, that this is a solution, not the solution. This enables and helps the Assembly Government to control the situation. It does not provide a silver bullet; this is not the means by which we will resolve affordable housing. I understand and accept that. However, in what areas do you believe the scope of this LCO could be broadened or increased to enable the Assembly to assume the powers that the Assembly Government would require to implement a housing policy similar to that which you have in mind?

[92] **Mr Long:** I am not sure that I am particularly qualified to interpret what powers the LCO would give you. I suppose that there are some issues around the conditions that you might be able to impose on the right to buy, such as the possibility of making that acquisition an asset in perpetuity, so that it is not lost immediately. There are some issues around the conditions that might be examined for the right to buy that would help in the longer term. At the moment, it is an outright buy or rent, and so once it is sold, it is sold, subject to the 10-year option to re-buy. Having said that, I am aware that local authorities may not necessarily have the resources to exercise that option. I am sure that there are some issues to consider around the detail, but I am not an expert on LCOs—

[93] **Alun Davies:** No-one is.

[94] **Mr Long:** Quite—at least for the moment. I am not sure of the parameters, and where it starts interfering with primary legislation and so on and what is not appropriate for an LCO. That is a bit of a non-answer for you.

[95] **Alun Davies:** But it is an interesting answer. The LCO process transfers primary legislation to Cardiff over the matters and fields that are described within it. I apologise if I am not being clear, but the purpose of my question is to try to identify whether, in relation to the right to buy—which we have discussed and agreed—there are other matters that the Assembly Government should be looking to include, in order to seek the competence to legislate, in fields such as planning, or any other area that you believe would have a greater impact on the availability of affordable housing.

10.30 a.m.

[96] **Mr Long:** That is where my difficulty is in not knowing what powers are needed in

the LCO to do that. One thing that we would strongly support, and we may have put it in our response, is a form of tenure-neutral homebuy, so that you have a more flexible range of products, which I suppose at present would sit alongside the right to buy, but there is no reason why the whole thing could not be one scheme. However, that would need a lot of investigation, and probably a pilot scheme, I suspect. However, there are many more benefits, such as the argument about keeping property in perpetuity, in that such a product would then be more responsive to the incomes of families and households, and so on; at present, the only qualification in the right to buy is that of residency as a council tenant.

[97] Widening it out into homebuy, and looking at different products that are more responsive to the market, may help those people who have some stake in the market, that is, some equity, to get some flexibility—perhaps a staircase up and down, depending on a change in circumstances. We thought that we might set that out in a further paper following today, but there is probably quite a bit of work to be done around that area. To go back to where you started, whether that is material to the LCO is another matter. I am not sure.

[98] **Alun Davies:** That is interesting. We look forward to that paper. You said earlier that the homelessness strategy that the Assembly Government is working on would create a requirement, if you like, for greater powers. However, this LCO provides for powers that are broadly around the right to buy. Do you see any argument for delaying this particular LCO until we have a strategy in place, and then to acquire a broader range of powers?

[99] **Mr Long:** It is a fairly simplistic argument. On the one hand, you say that you examine the whole thing in the round, so to delay, and then look at where the right to buy fits into that broader strategic framework; on the other, you take powers now while you can, and then look at how they fit into the emerging strategy. We would probably support your taking the powers now, rather than delaying, because goodness only knows when anything will actually come to fruition. We are probably looking at the end of the year for a new strategy, and then there are the planning and implementation stages, and so on.

[100] The other point is that we are in the early days of the LCO. I have seen some criticism in the press about the early rush for LCOs, but I cannot anticipate the future volume of them across the broader policy areas. If this becomes a regular feature and an easier process to administer, that is fine; if not, we may need to look at LCOs having a wider reach and wider powers in future. Whether that makes them more difficult to get from Westminster is another question again.

[101] **Alun Davies:** It is a very big question.

[102] **Peter Black:** You have stated that any modification of the policy on the right to buy should involve a consideration of how the scheme can deliver affordable housing in perpetuity, not just to benefit the first purchaser. In your view, does the proposed LCO achieve that?

[103] **Mr Long:** I am not sure that it does, no. All it does is look to adjourn the local agenda for a while, while it gives the local authority opportunities to look for other ways of providing affordable housing. It just holds the line for a limited time.

[104] **Peter Black:** Is there anything that could go into the LCO to make that objective more achievable?

[105] **Mr Long:** I do not think so. The LCO is reasonably narrow in its focus, and I can understand why that is the case. I think that we are looking at a much broader agenda of affordable housing and low-cost home ownership products.

[106] **Mark Isherwood:** In your response to that last question, you said that it would adjourn the local agenda for a time. You previously said that it would take many years for a suspension to produce vacant lettings. So, what is the purpose?

[107] **Mr Long:** That is a really good question. I suppose that it can almost act as a catalyst for the local authority to be proactive in seeking alternatives options for the provision of affordable housing. The whole rationale is that it not just suspended in isolation or indefinitely; it is suspended for a specific time for other alternatives to be sought. I see it as being a tool in that area, and probably no more than that.

[108] **Mark Isherwood:** We are talking primarily in the context of the supply of council housing. We have had reference to housing associations, but they concluded by telling us that it is not a huge issue for them, as Nick explained.

[109] **Mr Long:** I would agree with that. It is probably not a huge issue across the board, given the volume of sales already concluded and rising house prices, and the low volume of sales over the past few years, particularly in rural areas; in some areas, that has been nil.

[110] **Mark Isherwood:** However, is not the overall supply of affordable housing for rent or assisted purchase the issue? Since legislation two decades or more ago, the social housing grant was reconfigured towards registered social landlords rather than councils, and the supply continued to grow; it was just that it was being supplied by someone else. So, should we not be talking about the social housing stock in that broader context, rather than just talk about running down council house stock?

[111] **Mr Long:** It is all part of that broader agenda, and it is almost simplistic to try to pick off the different bits of it and make some sense of it; it needs to be part of a coherent whole. One reason why we will submit further evidence on tenure-neutral homebuy is that it overcomes many of those issues. You also get the gains that you had from the right to buy in encouraging mixed tenure and equity stakes, and so on. So, you are right that the right to buy is separate in any case. I do not think that it is even included in the technical advice notes' definition of affordable housing; it has been omitted from that. It is almost a separate part of the market, which has led to an artificial situation, because, ultimately, the market decides the price of everything.

[112] **Mark Isherwood:** You have largely answered my next question about neutral tenure, which you have referred to a few times. You mentioned a few ways in which you would see it increasing the supply of affordable housing, but are there any broader ways in which tenure neutrality would increase that supply?

[113] **Mr Long:** It needs to be tested, obviously, but it gives more of an opportunity for consumer choice as well as for flexibility. People have changing circumstances throughout their life cycle—staircase up, staircase down—and so, if these were designed properly, they could be responsive to their needs. One problem that we have generally in Wales is an ageing stock and an ageing population, and lots of people in the wrong place at the wrong time. I can only see that continuing. Perhaps it also opens the door to bringing flexibility to the home market, to allow people to look at their needs, rather than their just ending up with something.

[114] **Mark Isherwood:** Whether it is registered social landlord or council-owned.

[115] **Mr Long:** That would require changes to the grant regimes and possibly to bits of legislation, so it is not as simple as it sounds. It does not sound like a bad idea, but it is quite complicated. However, I do not mean that we should not be aspiring to that. We can give you more detailed information on that.

[116] **Leanne Wood:** Okay, thank you very much. Alun, do you want to come in on the housing strategy?

[117] **Alun Davies:** I feel that we have dealt with that question.

[118] **Peter Black:** What are the advantages and disadvantages of defining the terms 'dwelling-house', 'dwelling' and 'social landlord' by cross-referencing them to other items of legislation? Do you think that we could narrow the scope of the LCO by doing that?

10.40 a.m.

[119] **Mr Long:** I would probably make the same point as Ian made, and I suppose that the definitions must achieve what you set out to gain. There is always much more clarity when consistent terms are used across different pieces of legislation—I think that, probably, more lawyers will become rich on the interpretation of what something means—but, really, the important thing is what you want to achieve from it, as far as the definitions are concerned. The other side of having consistency is getting hung up on terms that are already there. I think that they have to be fit for purpose. This is around the construction that lawyers give to them and that there is clarity in the definitions. I am not particularly interested in the semantics, as long as they achieve what you want them to.

[120] **Peter Black:** We have discussed, in previous meetings, the idea that, because we are referring to Acts of Parliament for our definitions, if those definitions were to be changed by future Acts of Parliaments, that would have a knock-on effect and change the meaning of our Measures. We were thinking that it might be to our advantage to either leave them undefined or to define them ourselves, separately, in the Measures. Do you have a view on that?

[121] **Mr Long:** That is a very good point and is something that I had not thought of before. It sort of goes against convention, if you like. It is almost like defining your own terms, quite distinct from what you already have, so that you have your own meanings for them, whereas if you tap into whatever is there, as you say, if there is then a change, you will obviously end up with something that you did not intend.

[122] **Peter Black:** In a way, we are creating new conventions because we have a new way of legislating here.

[123] **Mr Long:** Call them all something different then.

[124] **Peter Black:** Exactly. How do you understand the term 'disposal'?

[125] **Mr Long:** I suppose that 'disposal' is the transfer of land or an asset for a defined purpose. It is not discarding something, but actually changing ownership. However, I would stress that it is for a specific defined purpose. In a broad sense, that is it. There are some definitions in the local authorities general disposals regulations that are fairly adequate, but that is my understanding of 'disposal'.

[126] **Peter Black:** So, as it is used in this LCO, do you think that it is fairly understandable and that common sense will prevail?

[127] **Mr Long:** I think that it is fairly plain.

[128] **Peter Black:** Okay, thank you.

[129] **Leanne Wood:** Are there any other comments that you wish to add?



[130] **Mr Long:** I do not wish to add anything this morning, but I would like to pursue the potential around the tenure-neutral homebuy, which may not form part of your further discussions on the LCO, but might inform the debate on the national housing strategy.

[131] **Leanne Wood:** That would be very useful to us, thank you. Do Members have any further questions for these witnesses? I see that they do not. Thank you for your contributions. A draft transcript of today's proceedings will be sent to you by the clerk, for correction, before it is finalised. Thank you and we look forward to seeing you again.

[132] Our final witness is yet to arrive, so, with Members' permission, I would ask that we suspend the meeting for 10 minutes and come back at 10.50 a.m.. Can we go into an informal session for 10 minutes, while we wait to see if Professor Wilcox is going to arrive? If we are going to go into informal session, we will need to clear the public gallery and turn off the broadcasting equipment.

*Gohiriwyd y cyfarfod rhwng 10.43 a.m. a 10.50 a.m.  
The meeting adjourned between 10.43 a.m. and 10.50 a.m.*

[133] **Leanne Wood:** Welcome to the reconvened Proposed Affordable Housing LCO Committee meeting. I am pleased to welcome Professor Steve Wilcox. Could you please introduce yourself for the record?

[134] **Professor Wilcox:** I am Steve Wilcox, professor of housing policy at the University of York. In previous lives, I worked at Cardiff University and for the Chartered Institute of Housing and the London Boroughs Association.

[135] **Leanne Wood:** Thank you. I invite Alun Davies to ask the first question.

[136] **Alun Davies:** Good morning, Professor Wilcox and thank you for taking the time to contribute to our discussions. Can you outline how you believe that the suspension of the right to buy would contribute to improving the availability of affordable housing in Wales?

[137] **Professor Wilcox:** Frankly, I do not believe that it will. I have submitted papers to you, containing a value-for-money evaluation of the right to buy that I did a few years ago. It looks at how the right to buy stacks up in terms of the public purse and what is the most efficient use of public sector resources. The key equation is recognising that, when a property is sold under the right-to-buy scheme, it is not sold with vacant possession; it is sold to a sitting tenant who has the right to occupy at a subsidised rent. There is not comparable data for Wales, because you do not have an annual survey like the Survey of English Housing, but the data available from England show that, on average, folk who have exercised the right to buy in England have remained in occupation for about 15 years, although there is some possibility that the later cohort of purchasers may be leaving, on average, a little more rapidly. So, in a sense, the cost to the public purse of a right-to-buy sale is the loss of the re-let in 15 years' time.

[138] For that first 15 years, on average, the household that has exercised the right to buy is the same household that occupied it when it was considered as being in housing need. The household is simply occupying it as a homeowner, based on a subsidised purchase price, rather than as a tenant, based on a subsidised rent. There is a trade-off there. If you use the Treasury financial methodology for looking at capital investment over a run of years and do the mathematics, you find that it works out that a discount of the order of 30 to 35 per cent represents reasonable value to the public sector for the nature of the asset being sold and for the conditions under which it is being sold. In the past, particularly throughout the 1980s and early 1990s, average discounts were 50 and 60 per cent—they were way above that 35 per cent level and there was a very significant cost to the public purse, as a result of the sales

during that period. However, since the introduction of lower cash limits in England and in Wales, the level of discounts has come down and they are now significantly lower than 30 per cent in Wales.

[139] So, right-to-buy sales have got to the point where they represent reasonable value for money for the public sector. The logic, essentially, is that if you can sell three properties under the right to buy, you will have enough receipts to reinvest in two more properties, which will get you two new lettings now against the three re-lets that you lose in, on average, fifteen years' time. It will also compensate for the fact that you only have two rental streams rather than three. Those are the basic mathematics of it. You can twiddle it a bit in terms of the assumptions and how you do the calculations, but that is the basic approach. The key point is about recognising that it is a sale to a tenant who has sitting tenant rights at sub-market rents, not a sale on the open market. That has a value. So, if you want to maximise the supply of affordable lettings in the public sector going forward, provided that you can keep the discounts below the level that represents a good return to the public sector, you will get more affordable housing to let by permitting sales with discounts at those levels, whereas if you allow discounts to go too high, there is a net cost over time.

[140] **Alun Davies:** I understand the point that you are making, but we are discussing this particular legislative competence Order. Do you believe that the proposed policy direction in this Order would play any significant role in addressing the issue of affordable housing in Wales?

[141] **Professor Wilcox:** I do not think that it will play a significant role, and that is partly because, with the lower cash limits that have been introduced in Wales, as in England in recent years, the number of right-to-buy sales has fallen significantly as market values have increased. Perversely, the areas of high housing demand tend to be those areas with higher property values, so the discounts with the cash limit are an even lower percentage of the value, and therefore represent even better potential value to the public sector with regard to taking receipts for reinvestment.

[142] **Alun Davies:** Accepting that point of view, could this LCO be broadened to provide the Welsh Assembly Government with powers to amend or reform the right-to-buy legislation in any meaningful way?

[143] **Professor Wilcox:** Yes, I do. The original structure of the right to buy, with the very high level of discounts, still exists, but there are now caps on that, which almost render meaningless the underlying structure of the discounts. It also introduces a perverse incentive. Under the original discount structure, for every additional year of occupation, you gained an entitlement to a slightly higher discount; that does not happen any more, because, from day one, the minute you qualify, the amount of discounts that you will get will be set by the cap and not by the underlying discount rules. Therefore, there is no incentive for people to think about staying as tenants for a further couple of years before they exercise the right to buy, because they no longer gain a higher discount rate for doing so.

[144] The system is operating very poorly at present. The caps have served a purpose in preventing sales that were imposing a very high cost on the public sector, but they operate in a very crude way. There is scope to reform the underlying discounts of the right to buy. Consider the model in Scotland, which they call the 'modernised' right to buy. They have set discounts in a range of 25 to 35 per cent, with people getting additional years of discount depending on the length of the tenancy. Those discounts seem to be of the right order to represent good value to the public sector. On one hand, it maximises investment and the flow of affordable lettings to rent, but, on the other hand, it offers the opportunities of choice to existing residents with regard to being owners or tenants. I am not saying that you should adopt the Scottish scheme, but it is worth looking at it. In particular, it is worth thinking about

restructuring the level of the discounts as a far more effective tool than looking simply at suspensions.

[145] There are other tools; there are limited powers with regard to having the first right of refusal in the case of resales. In some rural areas particularly, where there is a very limited supply of appropriate housing for let, you could look at more extensive use of those powers. Rather than it being something that you might do only in the first 10 years, you might say that, in particular areas, every sale would be subject to the right of first refusal. Therefore, you can think in terms of having a pool of receipts from sales that you are reinvesting over time.

[146] With regard to maximising the supply of affordable housing, in the past, not only were the discounts at very high levels that did not represent good value to the public sector, but, in effect, the receipts were used to reduce the supply of new funding from central Government for new investment in housing and used locally to reinvest in improving the existing housing stock. What we have not done is reinvest in the replacement housing that was required as a result of the right to buy. However, that is done; that cannot be undone. We start from where we are, so, to take this forward, we must get the balance of those policies right.

[147] **Mark Isherwood:** You have covered most of the points that we were going to raise, so I shall ask about a subject that you have raised in e-mails with me. With regard to the housing revenue account subsidy payment, there is some dispute—whether it is a misunderstanding or a lack of understanding—about the differential regimes applying in the devolved areas of Scotland, Northern Ireland and Wales.

11.00 a.m.

[148] There is a view that, in Scotland, for example, the money has to be paid back, but in other ways, whereas in Wales, we will pay £48 million to the Treasury in the next financial year. The advice, or the response, that we have received from the Minister here was that that is simply a Treasury annually managed expenditure, an automatic revenue transfer, over which the Assembly Government has no control. Why is the situation different in Wales and what should we be doing to attempt to repatriate that money so that it can be used to increase the supply of affordable housing?

[149] **Professor Wilcox:** My understanding of this, which is on the basis of doing quite a bit of work in Scotland around these issues, is that the key issue in terms of housing subsidy goes back to 1989, when legislation was introduced in England and Wales that linked housing subsidy and housing benefit subsidy. As a result, those authorities that had the benefit of a very low historic cost were required, in a form of national rent pooling, to contribute some of their rental income to cover the costs of housing benefit for their tenants, whereas other authorities received all of the moneys to cover the cost of housing benefit, plus an additional subsidy, from central Government. However, that regime only ever applied in England and Wales—it never applied in Scotland. At the time, politics and all sorts of things were different, but there were also difficulties with legislative timetables and Scotland got off the hook on that one, as the Treasury had it in mind to try to get the contribution from rental surpluses from low-debt authorities in Scotland to pay for housing benefit as well, but it ran out of time and it was never introduced in Scotland.

[150] At the end of 2003-04 the subsidy regime in England and Wales was ended. The Treasury convention is that when legislation changes responsibility for expenditures, an adjustment is made to the bottom line budget for the respective departments. So, in England there was a transfer of budget from the then Department of the Environment, Transport and the Regions or the Office of the Deputy Prime Minister, or one of its incarnations, to the Department for Work and Pensions. Similarly, an arrangement was made that there would be

a transfer from the budget of the Assembly to the Treasury to cover the additional costs that the Department for Work and Pensions would be taking on, because there was not the direct use of rental income to pay the cost of housing benefit within the accounts of the local authorities. It is quite clear that, within the budgets of the Assembly, those payments are continuing to be made because of that adjustment, although the figures in future years seem to be going down, and I guess that that is as a result of the stock transfers, which are in train. However, they are still quite significant amounts of money.

[151] That cross-transfer of funding never happened in Scotland, and still does not. Within what is called annually managed expenditure there are all sorts of expenditure, including expenditure on housing benefit, which is part of those programmes, and, obviously, some of it happens in Scotland and some of it happens in Wales. However, in Scotland, contribution is not made from income that is available to it through council rents towards the cost of housing benefit. There are some marginal areas where there are various incentives schemes about officer error, and so forth, where all authorities incur costs. That is common in England, Scotland and Wales. However, there is not in Scotland the systematic transfer of funds that relates to the notional surpluses that were in place under the previous financial regime, because that only applied to England and Wales. So, my understanding is that there is an anomaly now in Scotland, in that because Scotland never had that regime before, there is no requirement for income from council rents in Scotland to contribute towards the cost of housing benefit for council tenants in a way that there still is in Wales. That is my understanding, but it is one of those murky arcane areas.

[152] **Leanne Wood:** This is something that the committee would want to look into further, but we will leave it there for now.

[153] **Mark Isherwood:** That was illuminating for all of us. Thank you.

[154] **Leanne Wood:** Are there further questions, or would you like to come in at this point, Peter?

[155] **Peter Black:** I was going to move on to my question. I was interested in that answer, because that means that there is less incentive to do stock transfer in Scotland than there is in Wales, in financial terms.

[156] **Professor Wilcox:** Indeed. A number of the authorities with low levels of historic debt are able to meet the Scottish equivalent of the decent homes standard without having to undergo stock transfer.

[157] **Peter Black:** Moving on to the evidence, you talked about the use of capital receipts and their value to the public sector. Does your analysis depend on the way that those capital receipts are used? I understand that, at the moment, just 25 per cent of capital receipts are being reinvested, and the remainder are kept in a central fund. Would that have to be altered to achieve the value for money that you are talking about?

[158] **Professor Wilcox:** That is about distribution of the receipts. The basic analysis is in terms of what constitutes value for money for the public sector as a whole. In essence, the remittance of 75 per cent of the receipts to pay off debt underpins part of the budget that the Assembly Government is able to make available in terms of new, additional borrowing by authorities—it is a redistributive device. The alternative approach would be to enable the authorities to have 100 per cent of the receipts for reinvestment, but then you would have less capacity to support other forms of borrowing. However, from the local authority point of view, I understand why they might take a jaundiced view of the right to buy, because they see just 25 per cent of the receipts—if they see this only in terms of the receipts that stay within their control, then it will always appear to be poor value to them, even if it is good value for

the public sector as a whole.

[159] **Peter Black:** Of course, it also makes it more difficult for them to build new houses in response.

[160] **Professor Wilcox:** Indeed, yes.

[161] **Peter Black:** In terms of the evidence, again, we talked about—

[162] **Leanne Wood:** Before we go on to your next question, Peter, Alun Davies has to leave for another meeting soon, so perhaps we could take his question now, and then come back to you. I apologise for that.

[163] **Alun Davies:** I apologise for having to leave; you can be sure that it is not out of choice. You discuss in your paper the existing right of first refusal. Could you outline for us the reasons why you believe it does not go far enough as it stands in statute at the moment? Do you believe that the scope of this legislative competence Order should be broadened or expanded to ensure that the Assembly Government has the tools with which to address any issues that it might have with the right of first refusal?

[164] **Professor Wilcox:** I am more clear about the way in which that power has been exercised, and it has been exercised in a fairly limited way. I have not gone back to the original statute on that point, to see whether the power in that statute would enable you, without any further powers—that is, by regulation—to make more extensive use of the right of first refusal. I think that it is an appropriate policy tool to be more widely used, but you would have to ask your legal advisers, I am afraid, about whether you would need to seek more powers to give you more flexibility and wider scope for utilising the right of first refusal.

[165] **Alun Davies:** You were saying in your evidence that the right to first refusal, as it stands today, does not go far enough.

[166] **Professor Wilcox:** I have not gone back to the statute to see what the underlying power is. I am just talking about the way in which it has been used as a power, and there is scope to use it more widely. However, I am sure that your legal advisers are far better placed than I to tell you whether you need additional statutory powers in order to do that, or whether you can do that by regulation under the existing powers.

[167] **Peter Black:** You talked about the Scottish model, and you have done quite a lot of work on that, I understand. You also talked about how we can restructure the right to buy, to make it better value for money. Do you know whether the Assembly currently has the powers to do that, or would you think that this LCO would need to be amended to give us those additional powers?

[168] **Professor Wilcox:** My understanding is that you do not have those powers, and the powers that you are seeking are relatively narrow, focusing on the right of suspension, which, indeed, is one of the areas of competences that has been introduced within the Scottish legislation. However, frankly, it is the other aspects of the Scottish legislation, with the new modernised right to buy, that are of more interest, particularly in looking at ways of restructuring the discount so that you get that proper balance between opportunities and choice for existing tenants, and ensuring that you protect the public purse and ensure opportunities to maximise investment in new affordable housing going forward.

11.10 a.m.

[169] **Mark Isherwood:** You have largely answered my question, referring to the 30 to 35 per cent discount representing reasonable value for the investment on the two-for-three basis. In response to Peter, you have already largely explained the current restrictions preventing the right-to-buy receipts being used to invest in new affordable homes, because of the impact that that would have on borrowing and so on. However, is the scope of the proposed Order broad enough to enable the Assembly to modify those current rules and should it, or should we, maintain the status quo? Is there an advantage to modifying those rules?

[170] **Professor Wilcox:** My understanding of the Order is that it would not be sufficiently wide to enable you to take on a restructuring of the discount. I have made the point that I think that there are sound value-for-money arguments for assessing those options. Most of my work is as a policy analyst and policy adviser and I am quite happy to try to advise and assist you in reaching your decision, but, ultimately, those are policy choices about exactly how you want to pitch things and exactly what your priorities are.

[171] To give you a topical example, given what was in this morning's newspapers about council tenants seeking employment, if you took a view that welfare to work was your priority policy, you might look at the structure of discounts and decide that the right-to-buy discount should be related to the levels of rent that tenants pay out of their own income rather than where it is supported by housing benefit. I give you that as an example, because there are many policy issues involved and value for money is just one part of them, but it is an important part to take on board when you are reaching your decision.

[172] **Mark Isherwood:** What role would there be for lenders? I speak as a previous mortgage lender. All of this is predicated upon agreement by the Council of Mortgage Lenders. What do you think its views would be on such modifications?

[173] **Professor Wilcox:** I would guess that it would not be too troubled by them. In a sense, moving to a more flexible system and recognising that in some places the current discounts are preventing sales that would be good value to the public sector, and introducing a regime that protected the public sector and maximised resources for investment, but, at the same time, permitted rather more sales than are currently taking place is likely to be welcomed by it. Some people who exercise the right to buy run into financial difficulties and there have been scams around the edges with which I think that everyone will be familiar. However, the main experience of the lenders is that folk who have exercised the right to buy are no more likely than anyone else to run into financial difficulties. That is, in part, because they have equity cushion in the discount to assist them if things become difficult.

[174] **Leanne Wood:** We are going a bit off topic there, Mark.

[175] **Mark Isherwood:** I just want to highlight that, whatever we do, we may need others to agree to it.

[176] Several witnesses have argued that suspending the right to buy will make a relatively modest contribution to the supply of affordable housing in Wales. How do you believe that the LCO could be modified to enable us to improve access to affordable housing more comprehensively? You have touched on some of that in your previous answers on other areas.

[177] **Professor Wilcox:** The impact will inevitably be modest, because of the very modest level of sales currently taking place as a result of the discount cap, but it is a mistake to focus only on the transfer of the dwelling from the public sector to private ownership, as if that is all that has happened. Forgive me for the caricature—it is to make a point—but it is almost as though there is a belief that once the house is sold under the right to buy, it becomes a dead parrot and does not play any role whatsoever in the housing market. On average, the house continues to be occupied for some 15 years by the same household to whom it was allocated

as being in housing need. After that, it is resold in the housing market and will continue to play a part in the housing market, which will vary from area to area. The long-term impact following further resales are quite diverse—sometimes they are more beneficial and sometimes they are less so. However, the key point is that if you want to maximise investment, you need to go for rather wider powers than those that you are seeking.

[178] Just looking to stop the right to buy in areas where discounts exist already because of the cap, at a level that represents good value for money, is not helping in terms of the potential net additions of lettings of affordable housing that could be made available if the receipts from those sales were to be reinvested. It is about looking at restructuring the discounts to get the balance right so that you are comfortable with the long-term effects.

[179] **Peter Black:** Following on from that point, in terms of the overall housing stock and the balance between houses that are socially affordable and houses that are owner-occupied, do you think that there is an optimum balance in terms of the proportion of affordable rented housing as part of the housing stock? If so, could you justify the suspension of the right to buy in terms of maintaining that balance?

[180] **Professor Wilcox:** If you utilise the receipts and reintroduce new lettings, in a sense you are redressing the balance through that route. I do not think that there is an absolute number in terms of what the balance should be between the sectors, so I would not argue for seeking to accelerate to a particular level of home ownership any more than I would argue that there should necessarily be a particular level of renting. There are other policy instruments available, such as the operation of the benefits system and the role that that plays, or rather does not play in supporting home owners who are running into financial difficulties. This is one of the policy instruments that you need to look at in terms of trying to come up with ideas for an overall policy, rather than having a fixed view about what the mix should be between renting and owning.

[181] **Peter Black:** It depends on the replacement to maintain that balance, and given that that replacement has not happened in many parts of Wales, is there a valid argument to suspend the right to buy for a period to enable you to catch up?

[182] **Professor Wilcox:** You never will catch up—the sales that have gone have gone; their effects on re-lets will follow slowly over a run of years, so there is no going back on that. Looking to the future, it is about getting the balance right and what will maximise the investment. A sale tomorrow, on average, will lose you a re-let in 15 years' time; if you have three sales tomorrow and if you structure the discounts at a sensible level, you can reinvest and get two new lettings tomorrow that you would not otherwise get. Essentially, that is the trade-off—two new lets today along with the existing three right-to-buy households continuing to occupy the dwellings that are allocated for another 15 years each, on the basis of being owners rather than tenants, but in the same households, and the loss of three re-lets in three years' time. That is an equation that adds up.

[183] **Peter Black:** To return to the question that I meant to ask you—[*Laughter.*] The Assembly Government is preparing a new housing strategy and a 10-year homelessness plan, and some have suggested that it might be prudent to delay this Measure until that is in place so that it could form part of that overall strategy. Do you concur with that, or should we plough ahead in any case?

[184] **Professor Wilcox:** If what you are doing is looking at a policy that will maximise your capacity to increase the level of new lettings going forward by getting the balance of discounts right, whether those lettings are used for homeless households or other households—or whatever other priorities emerge from a review of your homeless policy—you will still be in a better place.

[185] **Mark Isherwood:** I am sure that you will be familiar with the provisions of the Housing and Regeneration Bill, which is currently going through Westminster—

[186] **Professor Wilcox:** Actually, I am not familiar with the detail, only some of the broad outlines; I have had my head down doing a few other things of late, so I have not followed the details of the Bill.

[187] **Mark Isherwood:** Thank you for your honesty. In that case, are you aware of any provisions within the Bill that could be used to increase affordable housing in Wales?

11.20 a.m.

[188] **Professor Wilcox:** I have not seen the precise detail, but there are issues around the ways in which housing associations can undertake more investment without the use of public sector funds. It may not come out of the Bill directly, but one of the things that I have been doing recently is an evaluation for the Department of Work and Pensions of local housing allowances in the private-rented sector, and the market analysis was published the other week. The key thing that it showed was that although private landlords had been concerned that if the housing allowance was paid direct to the tenant instead of the landlord, then landlords would withdraw from the sector, there was in fact no evidence of that. Over the two-year period of the evaluation, the number of claimants on housing benefit in the local housing allowance areas rose just in line with the national trend. There were some ins and outs in terms of different attitudes between landlords, but there was no net withdrawal of private sector landlords from the sector.

[189] One of the other points that emerged regarding the local housing allowance was that it is transparent and straightforward—you know upfront the allowance level for a given size of dwelling in a given area. That means that anyone who is looking for investment in low-income households knows the maximum housing benefit rate, and therefore knows how to plan intermediate rented housing with the safeguard that if they cannot provide it to key workers, they can certainly let it to households in receipt of housing benefit. Alternatively, it may be that if you want to increase supply in the short run, and there are not enough funds for conventional grant-aid funding at traditionally affordable rents, you could use section 106 powers to create affordable rented housing schemes, and that investment could be undertaken by the unregistered wings of housing associations. That is a potential source of rented accommodation going forward, and I know that there are a number of housing associations in England that have been looking at that kind of model. So, in terms of supply options, that is certainly one area to think about.

[190] **Leanne Wood:** Before we move on to the issue of definitions, do you think that the proposed LCO seeking legislative competence in other areas, such as planning, would impact upon the availability of affordable housing?

[191] **Professor Wilcox:** I am sorry, but I have not looked at the other powers. My understanding of the powers is quite narrow, about suspending the right to buy. There is a case for a broader range of powers, but as far as the right to buy is concerned, the main thing is to look at the structure of discounts, and perhaps, if necessary, at the right of first refusal.

[192] **Leanne Wood:** Is there anything in planning?

[193] **Professor Wilcox:** I could not think of anything in planning that is specific to the right to buy. I must say that I came along here partly because I was intrigued about this whole constitutional process, because it is not one that I am familiar with, and I am delighted to see you looking to exercise it.



[194] **Peter Black:** I have been asked to ask about definitions. The LCO defines the terms ‘dwelling-house’, ‘dwelling’ and ‘social landlord’ by referring to previous legislation—Acts of Parliament, in fact. Are there any disadvantages or advantages in doing that?

[195] **Professor Wilcox:** I think that you always want to follow precedent unless there is a good reason to do otherwise. However, this is not my technical area of expertise. Thirty years ago, I used to do textual examinations of statute, but that was a long time ago, and I have not done it recently, so I would hesitate to advise you.

[196] **Peter Black:** A concern has been expressed about the fact that the definitions refer to Acts of Parliament. If a future Act of Parliament changed the definition of those terms, then that would impact upon stand-alone Welsh legislation by changing its meaning.

[197] I also want to ask about the term ‘disposal’, which is largely undefined in the LCO. What would you understand that to mean? I understand that it is a technical question.

[198] **Professor Wilcox:** There are times when it can be quite helpful to have loose phrasing that can encompass a number of different forms of disposal. However, you need your lawyers to advise you on that, rather than someone like me.

[199] **Peter Black:** That is useful, thank you.

[200] **Mark Isherwood:** We heard from the previous witness that there are two types of disposal defined in the Housing Act 1985, one of which is voluntary disposal, which involves a ballot of tenants, and that would only apply to transfer of stock, usually to a registered social landlord, in order to attain the quality housing standard. Do you feel that it would be useful to have that within the term ‘disposal’ in this LCO, or should it be kept outside it?

[201] **Professor Wilcox:** It is a very different issue from the right to buy. You would need to think about why you might want to change the arrangements around stock transfers before going down that route. There are many issues relating to stock transfers, but that is not what I came prepared for today, so I would hesitate to blurt something out.

[202] **Mark Isherwood:** So, there are some legal definitions of disposal that you would leave outside.

[203] **Professor Wilcox:** Yes.

[204] **Leanne Wood:** I thank Members for their questions. Would you like to add any further comments to what you have already said this morning?

[205] **Mr Wilcox:** As a courtesy, I would like to let you know that, if it has been resolved and it is not deemed to be a conflict of interest, I have been approached to advise the committee in Westminster should it receive a request for this legislation.

[206] **Leanne Wood:** Thank you very much for your contribution. A draft transcript of today’s proceedings will be sent to you by the clerk for correction before it is finalised.

[207] The next meeting will be on 19 February. Details for that meeting will be circulated in due course. Thank you for your attendance. I declare the meeting closed.

*Daeth y cyfarfod i ben am 11.26 a.m.  
The meeting ended at 11.26 a.m.*