



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

**Pwyllgor Deddfwriaeth Rhif 2
Legislation Committee No. 2**

**Dydd Iau, 10 Rhagfyr 2009
Thursday, 10 December 2009**

Cynnwys
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Local Government) Order 2010—Evidence Session 1

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

Jeff Cuthbert	Llafur Labour
David Lloyd	Plaid Cymru (yn dirprwyo ar ran Gareth Jones) The Party of Wales (substitute for Gareth Jones)
Val Lloyd	Llafur (Cadeirydd y Pwyllgor) Labour (Chair of the Committee)
Sandy Mewies	Llafur Labour
Jenny Randerson	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
Brynle Williams	Ceidwadwyr Cymreig Welsh Conservatives

Eraill yn bresennol
Others in attendance

Ceri Breeze	Pennaeth Tai, Llywodraeth Cynulliad Cymru Head of Housing, Welsh Assembly Government
Neil Buffin	Uwch Gyfreithiwr, Gwasanaethau Cyfreithiol, Llywodraeth Cynulliad Cymru Senior Lawyer, Legal Services, Welsh Assembly Government
Jocelyn Davies	Aelod Cynulliad, Plaid Cymru (Y Dirprwy Weinidog dros Dai) Assembly Member, The Party of Wales (Deputy Minister for Housing)

Swyddogion Cynulliad Cenedlaethol Cymru yn bresennol
National Assembly for Wales officials in attendance

Jonathan Baxter	Gwasanaeth Ymchwil yr Aelodau Members' Research Service
Sarah Beasley	Clerc Clerk
Gwyn Griffiths	Uwch-gynghorydd Cyfreithiol Senior Legal Adviser
Sarah Sargent	Dirprwy Glerc Deputy Clerk

Dechreuodd y cyfarfod am 12.58 p.m.
The meeting began at 12.58 p.m.

Cyflwyniad, Ymddiheuriadau a Dirprwyon
Introduction, Apologies and Substitutions

[1] **Val Lloyd:** Good afternoon, everyone, and welcome to this afternoon's meeting of Legislation Committee No. 2. We have received apologies from Gareth Jones, but I am delighted to say that Dr Dai Lloyd is substituting on his behalf. You are very welcome, Dai. There are a few housekeeping issues, as usual. We are not expecting a test of the fire alarm this afternoon, so if we hear it, it will be for real and you should make your way to the door, which is illuminated. Please turn off all mobile phones and suchlike gadgets, because they interfere with broadcasting equipment. I remind everyone that the Assembly operates through the media of Welsh and English. You can receive translation on channel 1 and amplification

on channel 0 on the headsets that are available.

12.59 p.m.

Gorchymyn Cynulliad Cenedlaethol Cymru (Cymhwysedd Deddfwriaethol) (Tai a Llywodraeth Leol) 2010—Sesiwn Dystiolaeth 1
Proposed National Assembly for Wales (Legislative Competence) (Housing and Local Government) Order 2010—Evidence Session 1

[2] **Val Lloyd:** For the record, the committee is scrutinising the Proposed National Assembly for Wales (Legislative Competence) (Housing and Local Government) Order 2010, and the role of the committee is to consider and report on the proposed Order, which we must do by 29 January, in line with the decision of the Business Committee. The purpose of our meeting today is to take evidence from Jocelyn Davies, the Deputy Minister for Housing. We welcome you to the meeting, Jocelyn.

1.00 p.m.

[3] **The Deputy Minister for Housing (Jocelyn Davies):** Thank you, Chair.

[4] **Val Lloyd:** You have brought some officials with you; would you like to introduce yourselves?

[5] **Mr Breeze:** I am Ceri Breeze, the head of the housing directorate at the Welsh Assembly Government.

[6] **Mr Buffin:** I am Neil Buffin, the senior lawyer with the housing team in legal services at the Welsh Assembly Government.

[7] **Val Lloyd:** Thank you. We will go straight into questions, and I will begin. Deputy Minister, could you set out the main differences between this proposed Order and the previous draft LCO relating to affordable housing?

[8] **Jocelyn Davies:** I suppose the main difference, for me anyway, would be the new definition of ‘social housing’ in this proposed Order. There is no need now to refer to specific landlord types, or to previous enactments. Those of you who have looked at the previous draft Order will know that there was a long list of the types of landlord that it applied to, but there is no longer any need for that, so it is much simpler. It is written in a different style. It also means that any housing provided by a social housing provider would be covered by the proposed Order. The relevant definition is at the bottom of page 2 and over the page:

[9] ‘(b) a person (other than a local authority) providing housing to people whose needs are not adequately served by the commercial housing market (whether or not it also provides housing to other people and whether or not it also has functions in addition to providing housing)’.

[10] That is very broad, and it allows us to be pretty confident that it covers every social housing provider that we want to cover, even if they have not yet been created.

[11] If you look at matter 11.5, managers are mentioned. There is a difference now arising from the Housing and Regeneration Act 2008, and there are a small number of people in Wales who are affected by that. Some people are tenants in properties in Wales that are owned by registered social landlords in England. There are also a small number of Welsh housing associations that have some properties in England, so we are ensuring that we cover

that. Also, this proposed Order does not contain the agreement that, should a future Assembly want to abolish the right to buy, it would need the agreement of the Secretary of State for Wales and Welsh Ministers. That has now gone. So, on the whole, it is simpler, it is in a different style, and it is broader.

[12] **Val Lloyd:** Thank you for that comprehensive answer, Deputy Minister. In relation to the matters within the proposed Order that relate to the previous draft Order, to what extent is the scope different?

[13] **Jocelyn Davies:** As I said, it is broader, because the previous draft Order focused on disposals by social landlords, and we have a range of other things included in this one. Disposals still feature in this proposed Order, under matter 11.5, but there are a number of other things as well. For example, it covers the regulation of housing associations, which will complete the powers that we have as the regulator of housing associations in Wales. It also covers tenancy, and if you look at the proceedings of the last committee, I said that that was something that we would like to take on; it has cross-party support to create one social housing tenancy rather than there being a difference, depending upon who your landlord is. The disposals are still there, and they include stock transfer, right to buy, the preserved right to buy, and the right to acquire. That is now a general power that covers both statutory and voluntary disposals. Housing-related support is also covered, and Members will know that we do a lot of work in relation to Supporting People, which would also be covered by that, as would any supported housing. There is also provision for local authorities in relation to caravan sites to be used by Gypsies and Travellers; that is part of the portfolio of the Minister for social justice, but it is included in this proposed Order because it is linked to housing. The proposed Order also covers homelessness, in order that we can fulfil our 10-year action plan. Homelessness is not defined, because we wanted its scope to be as broad as possible. It also covers council tax, and Members will recall that, just a few weeks ago, we had a debate in the Chamber where everyone supported the proposal to give local government as much flexibility as possible in relation to council tax, second homes and dwellings that are not the main residence. Even though this was almost completed then, we were not able to say that at the time, because it was not published. However, this certainly fulfils the spirit of that debate.

[14] **Val Lloyd:** I have one final question at this stage. As you say, and as you have explained in great detail, the proposed Order is much broader than the previous draft Order and you have mentioned a matter that did not feature in the previous draft Order. Could you tell the committee why you consider it appropriate to bring forward this broader proposed Order at this time?

[15] **Jocelyn Davies:** I think that we would all agree that housing has become a priority for the Assembly Government, not least because we have had the recession and we have specific commitments via the One Wales Government, in the 'One Wales' document and we have been developing this idea that local authorities should take a strategic role in terms of local housing. There has been an awful lot of policy development over the last two and half years. We have had the Essex review and the task and finish group into affordable housing in Wales that came forward with 43 recommendations.

[16] We have also developed a new national housing strategy, a new Supporting People strategy, and a new homelessness plan. However, one of the things that the Essex review strongly recommended is that we take a new approach to the development of housing policy in Wales. So, instead of us just responding to the report, as Ministers normally do, we set up work streams with the housing sector in Wales and we set about that work as equal partners with it. As a result of that, we are now undertaking a review into the housing revenue account system in Wales, a review of rents and a review of Supporting People. So, at the moment, we have a lot of goodwill within the housing sector in Wales and that is how we have been able to achieve so much in the last two and a half years. It is very important now that we go on to

develop policies with our partners, take forward those 43 recommendations from the Essex review, as well as responding to things that have happened within housing over the last two and a half years. I feel that we have a body of policy work that underpins this.

[17] **Val Lloyd:** Thank you, Deputy Minister. Brynle, I believe that you have some questions to ask.

[18] **Brynle Williams:** What benefits, in your view, will the National Assembly for Wales derive from the bid for these powers?

[19] **Jocelyn Davies:** Welsh Ministers have a number of specific functions in relation to housing. Most Assembly Members would say that it is a devolved policy area. It may surprise Members to learn that the Assembly has no legislative powers in this area whatsoever. So, one of the biggest benefits would be that we would be able to bring forward legislative proposals. Not only the Government, but committees and Assembly Members will be able to propose legislation that will be in the democratic control of the National Assembly for Wales itself. Even though a range of executive powers rest with Welsh Ministers, they are generally specific powers that are constrained by primary legislation. So, as this is an area that is generally accepted as being devolved, we think that having this more coherent approach would allow us to develop policy in a different fashion. So, I think that we would be able to propose legislation in line with policy and to consider more things than just having to rely on the specific powers that any Welsh Minister might currently hold.

[20] **Brynle Williams:** Have any matters or bodies been left out of the proposed Order, and, if so, why?

[21] **Jocelyn Davies:** I hope that we have given the broadest possible definition that we can for social housing and for social housing providers. Perhaps our lawyer would be able to come in on whether anything has been left out. Do you mean in terms of definition? I do not think that we could have a broader definition.

[22] **Mr Buffin:** The definition was intended to be wide to cover all social housing. It is the first time, in relation to Wales, that a definition of social housing has been provided. The first time in England was under the Housing and Regeneration Act 2008, but prior to that, there has not been any statutory definition of social housing. Indeed, various agencies had different definitions, so it was considered necessary to have a specific definition within the proposed LCO.

1.10 p.m.

[23] **Jocelyn Davies:** The definition that we have is such that if the free market does not meet your needs, then you are in need of social housing, and anyone who provides that service is a social housing provider. So, it is a very broad definition. Brynle, you mentioned matters that are not included; I suppose that energy efficiency is an obvious one in relation to housing, but the transfer of functions has taken care of that, and, of course, this does not touch on the private rented sector.

[24] **Brynle Williams:** Thank you for that answer, Deputy Minister. How has the development of the new national housing strategy shaped the proposed Order?

[25] **Jocelyn Davies:** I have the national housing strategy with me, and I can certainly provide committee members with a copy of it. It is a brief document, and it has a number of themes, such as providing the right sort of housing, using housing as a catalyst for improving lives, strengthening communities, reducing the ecological footprint, ensuring better services, and delivering together. Our approach, through the Essex review, has certainly helped us to

shape that strategy, and this document has certainly been developed with our partners in Wales. Ceri, do you want to add anything?

[26] **Mr Breeze:** It is fair to say that the strategy has had a huge impact on the breadth of the proposed LCO. An important point is that all the issues in the proposed LCO are very much interrelated, and the purpose of the strategy is to allow the Assembly to implement action that addresses all of those issues.

[27] **Jocelyn Davies:** We have a specific commitment in this strategy to review, for example, legislation around homelessness, and to look at tenure law, and you can see that they are contained in the proposed Order.

[28] **Brynle Williams:** This may not appertain, but earlier, Deputy Minister, you mentioned Gypsies and Travellers, and there is also another sector of homeless people who may have an acre or two of land with a mobile home parked on that as their primary residence. Does the proposed Order cover that situation?

[29] **Jocelyn Davies:** No, it would not. Matter 11.7 is related to the provision by local authorities of caravan sites for use by Gypsies and Travellers. The issue that you mentioned would be covered by planning. This is specific to the provision by local authorities of local authority sites.

[30] **Val Lloyd:** If you do not have any further questions, Brynle, I will pick up a few issues. Deputy Minister, have you given any thought to matters of a cross-border nature?

[31] **Jocelyn Davies:** I mentioned earlier that we are aware that there are English housing associations that have tenants in Wales, and that there are Welsh housing associations that have tenants in England. It does not affect many people, but it does affect some.

[32] **Mr Breeze:** There are a few issues on different performance standards in England and self-assessment arrangements for registered social landlords. We are in very close contact with the Department of Communities and Local Government and the Tenant Services Authority in England. There is discussion on clarity in these issues. Both are going in the same direction, but, as the Deputy Minister says, there are a small number of tenants either side of the border that it affects.

[33] **Sandy Mewies:** My questions relate to matter 11.2, which would give the Assembly competence to legislate regarding social housing providers. It also relates to the function of allocating social housing by social housing providers in line with the corresponding definition. What would be the overall effect of matter 11.2?

[34] **Jocelyn Davies:** You can take matters 11.2 and 11.3 together, because they are closely related. As I said, the Welsh Assembly Government is the regulator for housing associations in Wales, and shortly after I became Deputy Minister, the sector itself requested a review of the regulatory regime, which had not been updated for a number of years, and that is why we had the Essex review. Early intervention powers are identified as being lacking at present, and we would hope to get those powers, which would complete the powers in relation to the regulation of registered social landlords.

[35] As the sector requested the review, it is very much on board with our approach to regulation. In today's world, we have to accept that lenders are reducing their risks as much as possible. Looking at the way that the regulator operates influences their decisions, so we need to have a regulatory regime that suits the tenants and us as the regulator, but also gives comfort and confidence to lenders.

[36] **Sandy Mewies:** Thank you for that, Deputy Minister. The fact that you said that providers were knocking on the door goes some way to answering the next question, which is on what discussions have you had with social housing providers and any others regarding gaining the legislative competence to make regulatory changes. With your permission, Chair, I will not ask the next question, because I think that the Deputy Minister has answered fully what the effect of the Essex review is on what has happened so far.

[37] **Val Lloyd:** I agree with you, Sandy.

[38] **Jocelyn Davies:** I have not consulted housing associations about the wording, but they are aware of the Essex review, the work that we have done—we have just done a consultation on the new regulatory regime—and that the housing division has been restructured to be a strength for us in relation to regulation. So, they are aware of it, but I have not consulted them on the words. I am sure that, when you get their evidence, this will be warmly welcomed. It is not the case that housing associations have said, ‘Please, regulate us some more’, but they have asked, ‘Can we have an appropriate regulatory regime for the position that we are in at the moment?’.

[39] **Sandy Mewies:** Will the Order allow the way in which social housing is allocated to be completely reformed?

[40] **Jocelyn Davies:** Allocations would be covered by—

[41] **Mr Buffin:** By matter 11.2. Allocations are a statutory function of local authorities and there are also nominations in conjunction with registered social landlords at the moment. So, they are functions that are covered by matter 11.2. In addition, the definition of a social housing provider refers specifically to allocations, so it puts it beyond doubt that it is in the frame.

[42] **Val Lloyd:** Dai, I believe that you have some questions on matter 11.3.

[43] **David Lloyd:** Further to what you have just said, Deputy Minister, but concentrating on matter 11.3, which, as you said, gives the Assembly competence to legislate regarding relevant social housing bodies, for the record, can you set out the effect of matter 11.3 in that regard? Can you also tell us what sort of bodies you envisage being encompassed under the title of relevant social housing bodies?

[44] **Jocelyn Davies:** It is as broad as we could possibly make it, as I mentioned earlier. We did not then have to worry about trying to list and define them all. Local authorities are obviously mentioned, but any body that provides social housing, under that very broad definition of social housing, would be covered by this. We would hold the competence here, but we could legislate in the future to define a social housing provider in a different way in the legislation that we pass. It would not necessarily apply to every body over which we have competence; any legislation that we passed could apply to a narrower group. However, we wanted to ensure that we covered everyone who operates in this fashion, and anyone who might operate in this fashion in the future.

[45] **Mr Breeze:** To give one example, it is not only those who provide social housing; management service providers would be captured by the definition.

[46] **Jenny Randerson:** Can you explain the significance of matter 11.4, which deals with tenure arrangements, for the record?

[47] **Jocelyn Davies:** Members will know that if you are a tenant of a local authority, you have slightly different rights than if you were a tenant of a housing association. Most of the

time, that does not bother people at all, but, during debates on stock transfer, when tenants think that their rights could be different, even if they are staying with the same landlord, it has been difficult to justify the differences, especially today. In those cases, normally, the local authority guarantees that its current tenants will keep all of their current rights, but that does not apply to any new tenants.

1.20 p.m.

[48] So, even if they have the same landlord, people can have different rights. That has been raised with me by tenants' representatives, at conferences, for example. People do not see why the differences exist, and they are difficult to justify. We would have universal support for creating a tenancy that is just for the social rented sector.

[49] **Jenny Randerson:** The Law Commission produced a report, 'Renting Homes', in 2006, and many of its recommendations are included in what you have put forward here. However, you have not sought to implement them in their entirety. Specifically, you have not included anything in relation to the private rented sector. Why not?

[50] **Jocelyn Davies:** In relation to the private rented sector, there has not been a lot of policy development in Wales, even since the One Wales Government has been in place. We have a national accreditation scheme, and I am pleased to hear that all local authorities have joined up to that. There are certain private sector landlords whom we have good relationships with, and they have to attain a certain standard before they are allowed into the accreditation scheme. However, this is not an area where there has been a lot of policy development, or where we have specific functions. Our focus has been on the social rented sector and the bulk of the policy work that we have done has been in that sector, and that is why the proposed Order is laid out in this way. We are aware of the Rugg review in England, and we hope that we can do something constructive on an England-and-Wales basis, but that is why it is not included here. Do you want to expand on that, Ceri?

[51] **Mr Breeze:** As the Minister said, the focus has been on social housing, and bringing clarity and simplicity to the different types of tenure. The Law Commission report goes for a consumer protection approach, with clear rights and simple arrangements, and deals particularly with tenure. The Rugg review that the Minister mentioned makes a number of recommendations, including landlord accreditation, so it is not as if nothing is happening in the private sector. The Rugg review recommendations included selective licensing and accreditation—or registration, as it put it—and some of these things are already happening in Wales. On this issue, we think that the best way of moving forward is jointly in England and Wales, as a sizeable area, and we will be consulting on this in the new year. In any arrangements, we will ensure that there are powers for Wales to vary the policy where necessary, as we have done in other areas, so that the specific circumstances of Wales can be taken into account.

[52] **Jenny Randerson:** The reason why I was surprised that the private rented sector was not included was that it is my recollection that, when there was England-and-Wales legislation on licensing houses in multiple occupation, we were given some freedom of interpretation in Wales, but not as much as many people wanted. We do not have the freedom to bring in a much more stringent regime, for example. I have considerable concerns because, in my own constituency, there are a large number of private rented homes, and people are always moving between the private and the social rented sector. The condition of some of the private rented sector remains an issue of great concern. Did you think about getting the powers over HMO licensing, for example, and then reject that option in light of the proposals for England and Wales? Are you absolutely satisfied that these proposals will reach fruition within a reasonably brisk timescale?

[53] **Jocelyn Davies:** If it is possible to do things on an England-and-Wales basis, and we want to do the same thing, then I am happy to do that. I have no hang ups about having to do things on our own. It was not something that we considered and then rejected. It is not an issue that has featured strongly in any other policy development. I am not saying that there is not an awful lot of work to be done on conditions in the private rented sector, but that at the moment, we are not in a position to be able to take this on. It would be a huge area of work and we just do not have the basis on which to take on that competence. I can justify the scope within this proposed Order because of the policy work that we have done. I do not know what the timetable is for the Rugg review, but officials have been heavily involved with Whitehall officials on the Rugg review. It was certainly felt that there was not a need for us to include it here. Perhaps, in capacity terms, we would not have been able to cope with that at the moment. As you can tell, I enjoy this system so much that I would be quite happy to return, at a future date, to have another bash at it. That would not bother me at all. However, for it to succeed, I must have the necessary policy work to have a credible case. I feel that we have that policy work for the current request that we have made.

[54] **Mr Breeze:** I would like to add a few points to that, because you raised some important issues that are relevant throughout Wales. The licensing of HMOs that was introduced in June 2006 under the Housing Act 2004 deals with standards, conditions and the management of HMOs. The initial focus for that was on large HMOs, which are defined as three-storey accommodation for five or more people. That was the mandatory requirement and that is what local authorities have focused on. Since then, there has been additional licensing, at the discretion of local authorities, on smaller HMOs and they are now also starting to implement that.

[55] The feeling on HMOs is that currently they are all the powers that are needed on standards, conditions and management. However, what you mentioned were tenure issues—

[56] **Jocelyn Davies:** Conditions and housing benefit—it is a huge area.

[57] **Mr Breeze:** Yes, and the Rugg review takes things a little further on issues such as landlord accreditation. There is also the Law Commission, which deals with tenure, and social housing has been the initial focus. However, as I said earlier, it is not that nothing is being done on the private rented sector.

[58] **Jocelyn Davies:** It is certainly an area on which we hope to develop policy in the future.

[59] **Jenny Randerson:** I am very pleased to hear it. May I take you back to social housing? You mentioned earlier in replies to me that you had held discussion with tenants. Have you had specific discussions with representatives of social housing tenants on the single form of tenancy?

[60] **Jocelyn Davies:** Yes. I regularly meet with the Welsh Tenants Federation and with the Tenant Participation Advisory Service. We have discussed this matter. They know that I have been keen to pursue this. I think that it was in a question-and-answer session at a joint conference of both those organisations that I said that we as a Government would like to see a sole social housing tenancy, and the tenants all said the same thing in response, which was, 'We have been hearing that for years and it will never ever be delivered.' So, I am confident that the tenants' organisations and tenants will be pleased with this proposed Order, as are all of the parties here in the Assembly. As I say, I meet regularly with those organisations and they often raise this point with me.

[61] **Jeff Cuthbert:** Could you set out the effect and significance of matter 11.5 and, at the same time, explain what the relevant parts of each of the five enactments listed in 11.5(c)

are and the effect of their inclusion in the matter?

[62] **Jocelyn Davies:** Members will recognise matter 11.5 as the scope of the previous proposed Order, so this is a general power over the disposals of registered social landlords. This covers stock transfer, the right to buy, the preserved right to buy and the right to acquire. So, it covers all of those statutory and voluntary disposals.

[63] You also asked about the enactments. I hope that you will forgive me, Jeff, for passing that over to the lawyer to answer.

1.30 p.m.

[64] **Mr Buffin:** Although most housing will be held by social housing providers, there may be certain parcels of land that are not. That is the reason, notwithstanding the breadth of paragraphs (a) and (b), for the inclusion of the enactments in paragraph (c). The first refers to parcels of land that may be held by local authorities for social housing purposes in general, but there may be exceptions. It would not be right to exclude those, because in a development, for example, there may be other types of land, in addition to social housing land, that may need to be covered.

[65] The reference to Part 5 of the Housing Act 1985 is to the right to buy. The right to buy arises where land is held by landlords—not necessarily social landlords—who have been cited in section 80 of that Act. Some of those bodies have come and gone. For example, in the past, social housing may have been held by the Development Board for Rural Wales. That body was disbanded and the land will have been transferred to other bodies. We are not necessarily sure who is now holding that land. So, we felt that it was necessary to include that.

[66] The third reference, which is to chapter 2 in Part 1 of the Housing Act 1996, is included because the right to acquire will arise not only in relation to land held by registered social landlords but land that has been purchased by grants given under section 27(a) of that Act. Those are grants to bodies other than registered social landlords. So, again, it is possible that land is held by bodies that receive public monies but that are not social housing providers.

[67] The last two, which are slightly simpler, relate to occasions when registered social landlords—or, in England, providers of social housing—have become insolvent and managers are appointed to oversee their affairs, and so, in effect, it is the managers who have possession of that land. Again, it was considered that competence would be needed to cover that circumstance.

[68] It is rather complicated, admittedly, but it is there for the avoidance of doubt, to ensure that all land that is or should be treated as land that is connected to social housing is covered.

[69] **Jocelyn Davies:** I could not have put it better myself.

[70] **Jeff Cuthbert:** Thank you. I thought that it was a matter relating to section 27(a); I just wanted clarification. [*Laughter.*]

[71] I will link together my three questions, because I think that they flow into each other. In relation to matter 11.6, on the provision of advice and non-financial assistance, can you explain—although, in a sense, it is rather obvious—why it is proposed that advice should be provided? On the use of the terms ‘This matter includes, in particular’, I understand the English and what those words mean, but is there any significance to adding that to the face of

the proposed Order? Why is it there?

[72] **Mr Buffin:** There is a legal maxim—and I will not quote the Latin to you, especially as I have quoted a number of sections in my previous answer—that states that where you express one thing, it excludes another. The concern has been raised in relation to the drafting of previous LCOs that if you say ‘includes’, the list could exclude other items, even though you have said ‘includes’. In effect, it is a drafting device that the Office of the Welsh Legislative Counsel uses to overcome that. Therefore, although it refers to advice and non-financial assistance, it does not just refer to that; it can include other matters.

[73] **Jocelyn Davies:** I think that it is to have legal certainty that this list is not exhaustive. In ordinary, everyday language, if I said ‘includes’ to you, you would know that it means other things, but lawyers prefer to say ‘in particular’ to make something absolutely legally certain that other things are also included.

[74] **Jeff Cuthbert:** So, it does not mean that greater emphasis is being given to these matters than to other matters; it just specifies that they are there.

[75] **Jocelyn Davies:** Yes, and to make it absolutely clear and unchallengeable that it does not exclude things. I would like to have heard the Latin, but—

[76] **Jeff Cuthbert:** Oh, I thought that you were familiar with that already. *[Laughter.]*

[77] **Brynle Williams:** On matter 11.7 in relation to Gypsies and Travellers, can you explain the effect and significance of this matter?

[78] **Jocelyn Davies:** Currently, this would be for the Minister for social justice, but we are happy to include it here. The Gypsy and Traveller strategy has been developed, and financial incentives are in place for local authorities. This is a provision that I hope the National Assembly will never need to legislate under, but the very fact that there are powers that could relate to local authorities’ provision of sites means that those sites, where there is an identified need, will exist without the need to resort to legislation. So, this really is a clear signal that these powers will rest with the National Assembly, and they could be used by a future Assembly or Government if the strategy and the incentives that are in place do not produce the sites that have been assessed to be needed.

[79] **Brynle Williams:** That is very clear, thank you.

[80] Incidentally, what discussions have you had with the relevant stakeholder groups about the transfer of competence in relation to matter 11.7?

[81] **Jocelyn Davies:** This is not something that is within my portfolio, but because the strategy has been developed, I can assure you that consultation will have taken place. Local authorities would also welcome the fact that they will have to provide sites. Also, the fact that we will be able to legislate might crystallise local authorities’ minds in identifying suitable sites. This will not set hares running, if you like, by the fact that this is there—I think that they will welcome the fact that the National Assembly is the body with which these powers should appropriately rest.

[82] **Val Lloyd:** Before I bring Sandy in, I would like to take you back to matter 11.6, Deputy Minister. I think that we all got so exercised by the fact that our lack of Latin might show up that we hurried the point. Could you answer the first question that Jeff asked? That is, can you explain the effect and significance of matter 11.6, and why is it necessary to include the second part of matter 11.6 in the proposed Order?

[83] **Jocelyn Davies:** This is about support to help people to stay independent, and, as I mentioned earlier, most of us would identify that with Supporting People, although it does go somewhat wider than that. Members will know that significant resources are given to Supporting People every year. Currently, it is £140 million. It is a large sum, and when a Government gives money out in grant, you can put conditions on it, but it is far better and more transparent if we consider that there could be legislation in this area.

[84] **Sandy Mewies:** Deputy Minister, matter 11.8 looks at legislative competence to deal with homelessness. Can you explain the significance of this matter and expand on whether it would allow for the complete reform of homelessness legislation?

[85] **Jocelyn Davies:** Yes, it would allow for complete reform. One of the things that we say in the housing strategy is that we would review the entire legislative framework. This is one of those areas in which Welsh Ministers hold specific functions, and because they are specific, they might not necessarily join together in a coherent bundle, if you like, that would allow one to develop policy in a comprehensive way. It is therefore important that this is an area where we have that. Our focus is on prevention. The current legislation is about dealing with people once they become homeless. We are trying to have policies that talk about prevention, using powers that are focused on what you do when someone becomes homeless. There are also currently no powers for the National Assembly in this respect, just with the Welsh Ministers. So, I feel that it is about time that we are able to propose legislation in this area that better matches what we are trying to do and which will be more democratic in as much as it will be open and transparent and that it will be legislation.

1.40 p.m.

[86] **Sandy Mewies:** Thank you, Deputy Minister; that was clear. You have spoken in great detail about my last question and the reason why executive powers in relation to homelessness, which are currently held by the Welsh Ministers, are considered to be insufficient to meet the Government's policy objectives and the needs of homeless people.

[87] **Jocelyn Davies:** Yes, this is certainly something that local authorities would welcome. The legislative framework does not focus on the prevention side, which can use far fewer resources and prevent a lot more misery than if you just focus on how to deal with people once they become homeless. Ceri, you wanted to add something.

[88] **Mr Breeze:** This is a good example of the interrelatedness of the issues. The Supporting People programme plays an important part in preventing homelessness: early intervention—the upstream effect, if you like. This links with matter 11.8 on homelessness.

[89] **David Lloyd:** I would like to turn to matter 12.18, which you touched on earlier. This matter would enable the Assembly to pass legislation relating to the council tax charged on dwellings that are not the main residence of an individual. I have a couple of questions that flow from that. Could you outline the significance of this matter? Secondly, how do you see it panning out in respect of second homes? Would you require further legislative competence? How do you see it in relation to 'One Wales' commitments? There is a phrase there about drawing on the model of control for houses in multiple occupation in respect of second homes. How do you see the issue as regard second homes and council tax panning out? Thirdly, how do you see council tax manipulation or alterations relating specifically to addressing the issue of empty properties?

[90] **Jocelyn Davies:** This would apply if that empty property was not the main residence, but it would not apply otherwise. This would have no bearing at all on something that is a part of a business, because this is just to do with council tax, it is not about non-domestic rates. This would come under local government finance and would potentially give local authorities

greater flexibility in varying council tax on a residence that is not the main dwelling—so, it could be second homes or it could be an empty property. As I mentioned earlier, quite recently, when we had the minority party debate on this, there was consensus across the Chamber in relation to the fact that local authorities are best placed to know their local circumstances. So, this is certainly something that they will welcome. Even though there are considerable executive powers in relation to council tax, it cannot be varied above the statutory limit and they are just executive functions that rest with the Ministers. This would allow us to make legislation in that area. In my regular meetings with local authorities over the last two and a half years, this is certainly something that has often been raised.

[91] **Ceri** has done a lot of work on this, so perhaps he can give you the background and explain how we got to this point.

[92] **Mr Breeze:** You mentioned the ‘One Wales’ commitment on this, which talks about three things: more powers for local authorities, houses in multiple occupation, and controlling conversions of properties into second homes. As the Deputy Minister has said, we looked into this in a huge amount of detail. The houses in multiple occupation dimension looks at licensing and standards, but it cannot control the number of second homes or the number of HMOs and would not therefore release properties for affordable housing, which is the nub of the issue. The second part was controlling conversions, which comes under planning law.

[93] Research commissioned by the Assembly Government in 2002 looked at this very issue. It depends on local circumstances and we understand that case law does not favour evidence that is subject to local circumstances. Therefore, there are considerable difficulties in enforcement and it is not a real option in controlling the number of second homes. The council tax dimension comes in as an attempt at discretionary power for local authorities. It is up to local authorities because we know that this is more prevalent in some areas than others. It offers the potential to generate funds that could be invested in affordable housing to try to offset the effects of second homes in some parts of Wales.

[94] **Jocelyn Davies:** Since the setting up of ‘One Wales’, the Taylor review in England mentioned the use of planning powers in relation to second homes, but it only suggested a trial. That suggestion was rejected as it was not enforceable, and local authorities have considerable concerns around that. Members will probably remember the Joseph Rowntree Foundation report into housing in rural Wales, which suggested that the council tax system would be able to yield resources that the local authority would have at its disposal and use them for affordable housing, and that it might be a more practical way forward than using a system that could be unenforceable and from which we would get no benefit. That is the reason why we have gone for this.

[95] **Val Lloyd:** Are you content with that, Dai?

[96] **David Lloyd:** Very content.

[97] **Jeff Cuthbert:** This is on a subject that always gets the blood racing: definitions and interpretations. Why did you feel it necessary to include interpretations on the face of the proposed Order, as opposed to leaving them for future Measures? Can you provide further information on each of the interpretation provisions, in particular ‘relevant social housing body’ and ‘social housing provider’?

[98] **Jocelyn Davies:** Is it okay if I ask Neil to answer that?

[99] **Jeff Cuthbert:** Yes.

[100] **Mr Buffin:** The terms that are defined are the ones that we considered would not be

sufficiently clear from the context in the proposed LCO. As I mentioned before, historically, a number of definitions have been suggested for ‘social housing’ by various housing bodies, but it is only recently that there has been a statutory definition. It was considered that it needed to be defined in the Housing and Regeneration Act 2008. Turning to ‘social housing providers’ and ‘relevant social housing bodies’, the intention was to move away from the construction that was adopted in the affordable housing LCO, which made a specific reference to bodies by way of legislation. The problem with that was that if the enactment cited changed, you would need to look at changing the wording in the LCO. So, giving it a definition by virtue of describing the functions made it clearer than the approach that was adopted previously. With other matters, for example, homelessness, it is clear from the general context what ‘homelessness’ means.

[101] **Jocelyn Davies:** All the interpretations are subject to discussion with lawyers, which go on for what seem to be lengthy periods, with and without Latin. This is the broadest and simplest that we can get it, using the natural interpretation of those words. Some of it is legalistic because of the requirement of being certain.

[102] **Mr Buffin:** Another point that is worth making is that the definition of ‘social housing provider’ is sufficiently flexible to allow for new bodies to be brought in in future. We also wanted to ensure that it was futureproofed.

[103] **Jenny Randerson:** Does the answer that you have just given us explain why the term ‘social landlord’ is not used in this proposed LCO, whereas, in the affordable housing LCO, it was?

1.50 p.m.

[104] **Jocelyn Davies:** The term ‘landlords’ was used, but with ‘social housing provider’, we are talking about low-cost home ownership where you are not a landlord, but you still might be providing social housing such as a community land trust or a co-operative. We could think of a number of things, and we are trying to get away from that obsession as to whether you are an owner or a tenant, and trying to have a flexible approach to tenure. We feel that ‘social housing provider’ is a better term than ‘landlords’, which would mean having to list all of those that provide social rented housing.

[105] **Jenny Randerson:** Moving on to something slightly different, can you clarify why the interpretation of ‘caravan sites’ specifically excludes tents?

[106] **Jocelyn Davies:** This is the provision by local authorities of caravan sites for the use of Gypsies and Travellers. They are not necessarily caravan sites that you might stay on—this is about the provision of local authority sites. I do not think that any local authority sites provide pitches for tents.

[107] **Mr Buffin:** Yes, that is right. The matter is about the provision of sites, and not about the management of sites. It also reflects the definition that is used in the Caravan Sites and Control of Development Act 1960, so we have tried to preserve the ongoing statutory definition.

[108] **Jenny Randerson:** Finally, are there any interpretations or provisions included in other Orders or Bills that apply to the matters in this proposed Order?

[109] **Mr Buffin:** None that we are aware of.

[110] **Val Lloyd:** Just as Jeff was excited about the questions relating to interpretation, I get excited about my question, which is about exceptions to competence. The proposed LCO does

not set out any exceptions to the competence that it would confer. However, that competence would need to be considered against the general exceptions set out in paragraph A1 of part 2 of Schedule 5 to the Government of Wales Act 2006. Now you know what I mean by getting excited about the question. Will you explain the exceptions applicable to the proposed Order as a result of the National Assembly for Wales (Legislative Competence) (Exceptions to Matters) Order 2009, and their effect?

[111] **Jocelyn Davies:** I am really hoping that Neil can answer this question. When we were looking at the proposed Order as it was developing, we did not want to have exceptions if possible. There could have been an exception in terms of housing benefit, but I draw Members' attention to matter 11.6, which refers to non-financial assistance. Therefore, there was no need to put in an exception about housing benefits. So, it is just worded in a way that does not require an exception. I hope that that has given Neil enough time to think of an answer to the question.

[112] **Mr Buffin:** That is absolutely right. The exceptions Order adds floating exceptions to fields 10 and 15 of Schedule 5. The ones that we thought would be of most relevance were the independent living funds and social security exceptions, but, as the Deputy Minister said, we feel that that is covered by the reference to non-financial assistance in matter 11.6.

[113] **Jocelyn Davies:** I am delighted that I answered that question without even knowing that I was answering it. [*Laughter.*]

[114] **Val Lloyd:** That is very creditable indeed, Deputy Minister—you should not have let us into that secret. Members, are there any other questions that you wish to put to the Deputy Minister and her advisers? I see not. Deputy Minister, do you have any additional comments to make, or are there things that we have not covered?

[115] **Jocelyn Davies:** Not that I can think of, but if Members want a note on anything, the Chair can write to me and we will provide you with the information as quickly as possible. I am grateful that you are trying to keep to the timetable that has been set for you, but I am happy to come back before the committee if you need to speak to me again.

[116] **Val Lloyd:** Thank you, Deputy Minister—we are cognisant of that. Thank you very much for the detailed contributions of you and your advisers. We will send you a transcript of today's proceedings before it is published.

[117] The next committee meeting will be in the first week of term—we are moving to Wednesday mornings, so it will be held on Wednesday 13 January, when we hope to take further oral evidence from organisations working within the field. If you do not have any further points—

[118] **Jeff Cuthbert:** On that, I assume that we have double-checked that our Wednesday meetings next term will not clash with other committee meetings. I normally have a Wednesday committee meeting, but I assume that that will be moved to another day.

[119] **Val Lloyd:** They all rotate.

[120] **Jenny Randerson:** It will be held on a Thursday.

[121] **Sandy Mewies:** Do we know what is happening on Thursdays?

[122] **Val Lloyd:** Everything moves around in a circle.

[123] **Sandy Mewies:** It rotates.

[124] **Val Lloyd:** It is rotated so that the three terms are different and so that everyone's committee moves around. The meetings of the committees that we are on now will be held on a different day. Those meetings that are currently held on a Wednesday will be held on a Thursday morning; committee meetings that have been held on a Thursday morning will be held on a Thursday afternoon, and Thursday afternoon committee meetings, like this one, will be held on a Wednesday morning.

[125] **Jeff Cuthbert:** I dare say that there is some logic behind it, but—

[126] **Jenny Randerson:** The logic is entirely to do with the fact that it removes the obligation on one group of people to always be here on a Thursday afternoon. I gather that the Business Committee was very aware that, for north Wales Members in particular, it means that they often cannot get to constituency events.

[127] **Jeff Cuthbert:** That is quite right.

[128] **Sandy Mewies:** Okay.

[129] **Val Lloyd:** Before I close the meeting, I wish everyone a restful recess; enjoy the Christmas festivities. Thank you very much for your contribution.

*Daeth y cyfarfod i ben am 1.56 p.m.
The meeting ended at 1.56 p.m.*