

Agenda – Local Government and Housing Committee

Meeting Venue:

Committee Room 5

Meeting date: 29 September 2022

Meeting time: 08.45

For further information contact:

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Pre-meeting (08.45 – 09.00)

1 Introductions, apologies, substitutions and declarations of interest

(09.00)

2 Ministerial scrutiny session – Minister for Climate Change

(09.00 – 10.15)

(Pages 1 – 20)

Julie James MS, Minister for Climate Change

Emma Williams, Director of Housing and Regeneration, Welsh Government

Amelia John, Deputy Director Housing Policy, Welsh Government

Jo Larner, Head of Building Safety Programme, Welsh Government

Tanya Wigfall, Head of Residential Decarbonisation Programme, Welsh Government

Simon White, Head of Housing Legislation, Welsh Government

Break (10.15 – 10.30)

3 Ministerial scrutiny session – Minister for Finance and Local Government

(10.30 – 11.45)

(Pages 21 – 41)

Rebecca Evans MS, Minister for Finance and Local Government

Reg Kilpatrick, Director General, Covid Recovery & Local Government Group, Welsh Government



Claire Germain, Deputy Director, Local Gov Performance & Partnerships,
Welsh Government

Emma Smith, Head of Local Government Finance Policy, Welsh Government

4 Papers to note

(11.45) (Page 42)

4.1 Response from the Welsh Government to the report on the inquiry into second homes

(Pages 43 – 50)

4.2 Letter from the Counsel General and Minister for the Constitution in relation to local government electoral pilots

(Page 51)

4.3 Joint letter from Community Housing Cymru, the Chartered Institute of Housing Cymru and Housing Leadership Cymru in relation to the Welsh Quality Housing Standard

(Pages 52 – 53)

4.4 Letter from the Minister for Social Justice in relation to housing Ukrainian refugees

(Pages 54 – 56)

4.5 Letter from the Public Services Ombudsman for Wales in relation to complaint handling practices of local authorities in Wales

(Pages 57 – 63)

4.6 Further information from the Minister for Climate Change in relation to community assets

(Pages 64 – 89)

4.7 Paper from Dr Sarah Nason, Bangor University: Legislating to Empower Communities: Comparing Community Asset Acquisition Law in the UK

(Pages 90 – 120)

5 Motion under Standing Order 17.42(ix) to resolve to exclude the public from the remainder of the meeting

6 Ministerial scrutiny sessions – consideration of the evidence received under items 2 and 3

(11.45 – 12.15)

Lunch (12.15 – 13.00)

7 Consideration of the draft report on the inquiry into community assets

(13.00 – 14.00)

(Pages 121 – 190)

8 Consideration of the approach to homelessness work

(14.00 – 14.15)

(Pages 191 – 195)

9 Consideration of the approach to council tax reform work

(14.15 – 14.30)

(Pages 196 – 205)

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Evidence Paper from Minister for Climate Change on Housing for Local Government and Housing Committee scrutiny on 29 September 2022

Preventing homelessness

1. Local Authority homelessness and housing services continue to face considerable pressures with 8,134 people in temporary accommodation at the end of May 2022. There is evidence of significant rent increases in some areas in Wales, with considerable demand for private rented sector properties and a lack of affordable rented properties. This is exacerbated for those on housing-related benefits by a UK Government Local Housing Allowance (LHA) rate that was last updated in 2020 and which is pegged at the 30th percentile of local rents at that time. This is the rate at which housing-related benefits are paid to meet people's rent, and it is woefully inadequate - there is a significant gap between LHA and market rents across most areas in Wales, in some areas running into hundreds of pounds per month.
2. It is widely recognised that there is a need for more affordable homes in Wales – our ambition remains that every person has access to a decent and affordable home in their own community. In addition to our ambitious programme of work, including our commitment to deliver 20,000 low carbon social homes for rent and our action to address second homes and short-term holiday lets, intensive work is underway to increase medium and long-term accommodation to help both with the Ukraine response and to respond to the wider pressures in terms of those facing homelessness and in temporary accommodation.
3. We have also provided additional funding for local authorities to provide temporary accommodation to support our 'no-one left out' policy, and a £6m Homelessness Prevention Grant, giving local authorities maximum flexibility in using the funding to prevent homelessness. This might include, for example, providing bonds, rent in advance, clearing rent arrears and providing items of furniture.
4. The Committee will be aware of the commitment to take forward primary legislation that will reform the response to homelessness later in this Government term. In order that we build on the progress made during the pandemic through our 'no-one left out' approach in the interim, we will bring forward transitional regulations in the autumn. The consultation on the transitional measures closed on 20 June and I look forward to updating Members further on this matter in due course.
5. Work on the wider legislative reform is continuing in parallel. We have commissioned Crisis to convene an Expert Panel to inform the development of detailed proposals for legislative reform to end homelessness in Wales. The group will hold their inaugural meeting on the 31 August 2022, when it is expected it will agree a set of themes to guide their work over a twelve-month period. The group will provide their final report in August 2023.

6. Alongside the early work of the panel, we intend to publish a Green Paper in early 2023. The Green Paper will refer to the themes set by the expert panel and will provide additional and broad context into the proposed reforms, for consideration alongside the Expert panel's report.
7. As part of our published commitment to make the move to rapid rehousing, local authorities have been submitting their draft Rapid Rehousing Transition Plans to my officials for feedback. Final plans will be submitted by the end of September. These plans will set out how each local authority plans to put in place the required access to both accommodation and support in order to align with the rapid rehousing approach over the next five years.
8. The pressures on housing are huge – we are rightly supporting Afghan, Syrian and other refugees in temporary accommodation and want to support people to move on to longer-term accommodation as quickly as possible. Welsh Government is working with partners to increase the access to affordable housing as quickly as we can and we recognise the need to be flexible and creative. As part of this approach, we have established the Transitional Accommodation Capital Programme to increase accommodation to support existing housing pressures together with the Ukraine response. Phase 1 of this £65m programme has seen over £12m has being approved for bringing back into use 420 void properties. Phase 2 will see the delivery of additional homes over the next 12-18 months, as the focus moves to acquisitions, remodelling, demolitions and rebuilding work. Between them, Phase 1 and 2 will provide more than 1,000 homes.
9. We are also rolling out Leasing Scheme Wales to increase access to affordable homes in the private rented sector. Launched in January 2022, Leasing Scheme Wales is a key Programme for Government commitment, with funding of £30 million being made available by the Welsh Government over the next five years. Under the scheme property owners lease their properties to local authorities in return for a rent guarantee of Local Housing Allowance (LHA) rate. The funding being provided will cover the Local Authorities' costs in respect of administration, management, repairs and payment to landlords for any void periods.
10. To date 55 properties have been tenanted through Leasing Scheme Wales and the earlier pilot pathfinder. 15 local authorities have signed up to offering the scheme. It is likely that an additional two local authorities will join the scheme by the end of the year. Early indications suggest that local authorities will meet their Year 1 targets for bringing properties into the scheme.
11. Grant funding is available to landlords signing up to the scheme to improve the condition of their property, including for energy efficiency improvements. The level of grant available will depend on the length of time that the property is signed up to Leasing Scheme Wales. Grants range from £5,000 to £25,000.

Humanitarian response to the war in Ukraine

12. As a nation of Sanctuary Wales welcomes refugees from across the world. In order to support those fleeing the war in Ukraine, the Welsh Government established itself as a Homes for Ukraine super sponsor, providing accommodation and support services to Ukrainian people when they arrive.
13. Welcome Centres and other initial accommodation have been set up around Wales to offer accommodation and initial support, with a view to supporting people into longer-term homes as soon as practicable. We are working closely in partnership with local authorities, health boards and other public and third sector organisations to provide appropriate services and support; our partners have been outstanding in responding to the humanitarian crisis.
14. Securing accommodation is key to provision of support for those displaced by the crisis in Ukraine. This will involve a mixture of accommodation including individual hosting, the private rented sector and social housing.

Affordable Housing

15. Housing Need estimates show that 7,400 additional homes are needed annually across Wales. Under the central estimate, this additional housing need estimate of 7,400 is split into 3,900 additional market housing units (52% of the additional housing need) and 3,500 additional affordable housing units (48% of the additional housing need).
16. Local authorities undertake periodic reviews of housing need, discharged through the Local Housing Market Assessment (LHMA) process. The quality and currency of the outputs from the assessments are particularly important to the evidence base for Local Development Plans and play a vital part in delivering market and affordable housing and in meeting housing need.
17. A new approach to undertaking LMHAs was published on 31 March 2022. This new approach provides more consistency in how LHMA's are undertaken by providing a pre-populated tool. The new approach also includes Welsh Government review and sign-off of LHMA's.
18. From the Housing Need estimates, it is clear there is a need for all types of housing across Wales. As the Committee will be aware, this government has committed to deliver 20,000 new low carbon homes for rent in the social sector. The first data showing progress towards delivering the target is expected in the Autumn.
19. To support the commitment to deliver 20,000 new low carbon homes for rent in the social sector, record levels of funding have been provided. £250m in 2021-22 was allocated to the Social Housing Grant, doubling the budget from 2020-21. Record levels of funding have also been set through the budget in this current year (2022-23) with £300m being committed, and indicative draft budget allocations of £330m in 2023-24 and £325m in 2024-25.

20. This budget is allocated to local authorities using a formula and each local authority is responsible for bringing forward schemes to meet its strategic housing priorities. The Welsh Government formally approves these Local Authority Programme Delivery Plans (PDPs).
21. Work has also been undertaken to align the Social Housing Grant (SHG) funding process more closely with evidence of local housing need. Local authorities are required to produce a “prospectus” which outlines their strategic housing priorities for SHG. Local authorities will be encouraged to utilise evidence from their LHMA’s to inform their funding prospectus going forward.
22. The Land Division currently has approximately 25 parcels of land within its portfolio that are being considered for new home development. Four sites were transferred for housing between (February 2021 – January 2022) and have the potential (subject to local planning approval) to deliver 707 new homes of which 421 will be affordable. A further five sites are in the pipeline for transfer in the next 12 months which will deliver 441 homes of which 226 will be affordable. It is envisaged that construction will begin on these sites within the next 12 months.
23. We are also actively applying for planning permission on assets held by Welsh Ministers to build homes for social rent and market sale.
24. We want our developments to lead by example. Our schemes will aim to deliver 50% low carbon social housing and adopt Welsh Development Quality Requirements (WDQR 21) standards across all tenures, encourage innovative designs, support biodiversity, make greater use of modern methods of construction and embrace the placemaking principles.

Housing standards (including decarbonisation and adaptations)

25. Welsh Development Quality Requirements (WDQR 2021) – New Homes: In response to the Independent Review of Affordable Housing Supply 2019, a new housing quality standard called the “Welsh Development Quality Requirements 2021 – Creating Beautiful Homes & Places” (WDQR 2021) was launched in July 2021, setting new quality requirements for social housing centred on flexibility, space and sustainability. New general need homes constructed with Social Housing Grant (SHG) must comply with WDQR 2021. The standards favour good design and generous space to ensure people live well in their homes. This is not only intended to boost wellbeing and keep communities together, but to respond to the changing needs of residents over time.
26. Through WDQR 2021, the social landlord sector is now leading the way in terms of requiring new build homes funded with public money to be high quality, beautiful and low carbon. These standards are designed to maximise community, economic and wellbeing outcomes, and support equalities and social justice. The aim is that these standards will be applicable to all new-build homes in Wales in future.
27. On 11 May, we launched the consultation on a revised quality standard for existing social housing – Welsh Housing Quality Standard 2023 – (WHQS 2023).

The public consultation on the standard ran until 3 August and received 291 responses from a range of stakeholders, landlords, representative bodies and tenants.

28. The original WHQS was introduced in 2002, to boost the quality of existing social housing in Wales and, by the end of 2020, 99% of social housing in Wales had met the original WHQS. Reflecting on the levels of achievement of the current standard, and after 20 years, the standard was due to be reviewed, especially to acknowledge the considerable changes to how people live, work and feel about their homes. Now is the right time for the standard to be reviewed, acknowledging this shift, as well as the unprecedented cost-of-living crisis facing the people of Wales.
29. Together with our social landlord delivery partners, we have invested billions of pounds over two decades to significantly improve and maintain the quality of social homes across Wales through WHQS. Spanning six administrations, WHQS is an example of how government can take the long view: investing in long-term policies and programmes, with long-term funding models. We have enabled social landlords to confidently invest over the long term in assets and communities. This has resulted in driving up the standard of social housing in Wales.
30. The proposed standard for WHQS 2023 builds on the achievements of its predecessor. The new standard keeps anti-poverty requirements at its heart, introducing the requirement to provide flooring throughout the home at each new tenancy, improve energy efficiency, and minimise exposure to noise, with the aim of putting more money in tenants' pockets and supporting their comfort and well-being. It also introduces water efficiency standards and encourages landlords to consider biodiversity opportunities.
31. Officials are currently analysing the results of the consultation and we will bring forward our proposals considering the feedback we have received from the consultation process. We have worked very closely with a wide range of stakeholders, listening, and taking into account their concerns and challenges during the drafting of the proposed new standard. This collaborative approach has underpinned the development of the WHQS 2023 thus far and will continue to underpin our approach to refining the standards moving forward, as we take into account the important feedback provided and issues raised.
32. Along with the proposed focus on decarbonisation in the revised WHQS 2023 standard we continue to invest in the Optimised Retrofit Programme (ORP), focussing at present on social housing. We have invested £70m to date and are investing £150m in the Programme over the next three years to continue to learn how to decarbonise social homes efficiently and effectively. What we learn from social housing will amplify, and accelerate, efforts to reduce carbon emissions for all homes.
33. We are, however, changing the operation of ORP moving forward. We will no longer be operating the programme as a competitive bidding process and instead propose to fund social landlords on a formula basis to ensure the engagement of

as much of the social housing sector as possible moving forward. We will also provide indicative funding to landlords across a 3-year period to enable better planning.

34. A formula funding approach will better support equity and will go further to ensure that the whole of the social housing sector is being supported by the ORP investment. Annual funding can lead to short-termism that is inefficient so moving to a longer-term consistent investment, will address that potential short-coming and create a culture of continued co-investment that will support the developments and expectations of WHQS 2023
35. Over the next 3 years, the Welsh Government is also investing around £1m into a new Housing Net Zero Carbon performance Hwb. The 'Hwb' brings together expert guidance on all aspects of decarbonising residential homes on a 'For Good' basis. In the first instance, the Hwb will provide social landlords with access to expert advice, research and development, materials guidance, procurement, and best practice under one virtual roof. After the first year, it is anticipated the services offered by the Hwb will be expanded to help private landlords and homeowners.

Building Safety

36. Building safety remains a priority for this Government and we have made £375 million available over the next three years to invest in Building Safety work. This is alongside plans for a significant programme of legislative and cultural reform to establish a fit for purpose building safety regime in Wales. This funding is substantially more per capita than the equivalent investment in England. In addition, we have adopted a holistic approach in Wales that is not focussed solely on cladding, but which takes account of both internal and external factors.
37. Our priority remains that leaseholders should not have to pay for fire safety defects that are not of their own making. We have been clear from the outset that developers must step up to their responsibility in matters of fire safety. To this end, we have written to 47 developers in the first instance, including those which have committed to the UK Government's Building Safety Pledge and other developers who operate at scale in Wales.
38. From the initial list of 47 developers, 42 of have replied, with 28 confirming they do not have any medium or high-rise buildings in Wales. We are awaiting confirmation this is the case from one more developer.
39. A roundtable meeting was held on 11 July with the remaining 13 developers. During this meeting, all confirmed their intention to sign the Welsh Government's Developers' Pact, which commits them to address fire safety issues in buildings they have developed in Wales over the last thirty years that are 11 metres and over in height. I have issued the Pact to these developers and asked for their signature. Officials continue to engage with developers and a further roundtable meeting is scheduled for 6 October.

40. Officials are working closely with the Home Builders Federation, who are representing a number of our developers in discussions regarding the Welsh Government Developers' Pact.
41. Our Leaseholder Support Scheme opened on the 27 June 2022. This scheme is the only one of its kind in the UK and offers targeted support to individual leaseholders who find themselves in significant financial hardship due to escalating costs associated with fire safety issues.
42. The scheme allows such leaseholders to access advice and help, and where appropriate, provides an option for them to sell their property and for them to either move on or rent the property back. We have worked with partners and sector experts to identify an appropriate route for property valuation, clear eligibility criteria, and to create a comprehensive property purchase process. We will keep the eligibility criteria under review to ensure that the scheme continues to provide support to those who most need it.
43. Our Welsh Building Safety Fund opened on 30 September 2021 for Responsible Persons of medium and high-rise residential buildings in Wales to submit Expressions of Interest. This is the starting point for accessing support from the Welsh Government. If anyone is unable to identify a Responsible Owner for their building, we would encourage them to contact the Welsh Government's building safety team for more information.
44. To date, we have received 258 Expressions of Interest. Each of these has been subject to a digital survey, which includes assessing existing building condition information and fire risk assessments, other evidence and survey reports. Where information and evidence is unavailable, out of date, incomplete or raises concerns about fire safety risk, those buildings have been identified for further intrusive survey work.
45. To date, 161 buildings have been identified for intrusive survey work, which is currently underway and will continue over the summer.
46. Both the digital and intrusive survey work is being paid for by the Welsh Government. The work will help responsible persons in medium and high-rise buildings to gain a comprehensive understanding of any works necessary to restore the fire safety integrity of their building.

Renting Homes (Wales) Act 2016

47. A Written Statement was issued announcing that implementation of the 2016 Act would be subject to a delay of 4½ months, from 15 July to 1 December. Whilst regrettable, this decision was taken in light of the unprecedented pressures currently being faced by social landlords in particular, including Covid recovery and supporting those who are fleeing the war in Ukraine. This will allow more time for landlords to complete the necessary preparations ahead of implementation and, most importantly, get it right for tenants.

48. Concerns have been expressed by some regarding the retention of a ‘no-fault’ ground within the 2016 Act. However, under the arrangements operating in Scotland and proposed in England, tenants can still be evicted with only two months’ notice when they are not at fault – in effect, this means that no-fault evictions have not been, and will not be, ‘banned’ in Scotland or England. Indeed, in Scotland the ‘no fault’ ground was replaced by a range of other grounds, which in some cases provide as little as 28 days’ notice for tenants. The UK Government appears to be taking the same approach in its recent Renters Reform White Paper.
49. Given that this notice cannot be served in the first six months of occupation, this will give tenants security of tenure for at least a year where there is no breach of contract. The principle we have adopted in Wales is clear: as long as there is no breach of contract, tenants will always have the security of a year’s tenancy and six months to find somewhere else to live.

Regulation of Registered Social Landlords

50. In January, we introduced a revised regulatory framework. The revisions included revised statutory regulatory standards which all Welsh RSLs must comply with. Responding to emerging risks and issues, some of the key changes to the standards include a much greater emphasis on tenants and on equality, diversity and inclusion.
51. To make judgements clearer and easier to understand, we also introduced new “traffic light” judgement reports. Since January, 8 judgment reports have been published and 1 “judgement under review notice” has been published. This is a new feature of the revised framework, giving public notice the regulator is looking into matters which could affect an RSLs judgement status.
52. Feedback to the revised framework has largely been positive to date and the regulation team is working with the sector to capture feedback and learning from its implementation.
53. We remain committed to supporting the housing sector through unprecedented challenges that have been caused by the pandemic new Ministerial and Government priorities as well as the ongoing cost of living crisis.
54. As part of this support, we will be looking at how the regulatory function for Registered Social Landlords in Wales is supported. This will include a re-evaluation of the role and function of the Regulatory Board for Wales, which was a Ministerial advisory Board in connection with the social housing regulation, which has been dissolved.
55. Board members have been thanked publicly and personally for their commitment and engagement throughout their terms, most recently of course in very difficult circumstances through the pandemic.

56. Engagement with the sector will continue through the Regulatory Advisory Group which is made up of a wide range of stakeholder representatives.

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LOCAL GOVERNMENT AND HOUSING COMMITTEE GENERAL SCRUTINY EVIDENCE PAPER

This evidence paper provides an update on priorities relating to the local government elements of my portfolio, including delivery against Programme for Government commitments.

Implementation of the Local Government and Elections (Wales) Act 2021

The majority of the Local Government and Elections (Wales) Act 2021 (the 2021 Act) is now implemented. The coming into force of the remaining provisions occurred on May 5th for the incoming local government administrations.

Promoting access to local government

I will be publishing the final sets of guidance relating to amendments made in the Act to the Local Government Act 2000, the Local Government (Wales) Measure 2011 and new provisions relating to the duty to encourage public participation, participation strategies, petition schemes and new duties to promote high standards of ethical conduct on political group leaders and Standards Committees shortly. This guidance has been the subject of a 12 week consultation and has been co-produced with local government.

I will shortly be commencing work on exploring whether further local authority meetings should be required to be broadcast. The 2021 Act requires principal councils to broadcast full council meetings, I will be working with councils and engaging the public on whether this should be extended. Councils are not prohibited from broadcasting other meetings and many do, so it will be important to balance the need for further regulations with voluntary actions already taking place.

I also intend to start work on consulting with local government, the public and other stakeholders as to which other senior roles in local government should be open to job sharing in addition to cabinet posts. This, for example, could include chairs of committees.

I will review the interim guidance issued in April 2021 on hybrid local authority meetings to reflect the experience of councils over the last two years or so. However, I do not anticipate major changes as a result and feedback from principal councils is extremely positive about the flexibility this change has enabled.

Corporate Joint Committees (CJCs)

Four CJCs have been established based on the geographical areas requested by local government and reflecting existing regional collaborative arrangements. CJCs are one of the most significant, strategic reforms of this Welsh Government, helping to support the delivery of important, specific local government functions at a regional scale where it makes sense to do so.

The Welsh Government made £1m available to support the establishment of CJCs in 2021-22. The funding aimed to support regional transitional planning arrangements and enable preparatory work for the establishment of CJCs to begin.

From 30 June 2022 CJs came under duties to prepare Strategic Development Plans and Regional Transport Plans. CJs now have the power to do anything to enhance or promote the economic well-being of their areas.

A programme of work has been undertaken over the last year to put in place the legal framework which underpins CJs and ensures they operate, and are treated, in the same way as local authorities.

I will be meeting with the Chairs and Vice Chairs of each of the CJs to discuss their progress and ambition. This will inform wider engagement with the CJs in the coming months to support their ongoing implementation.

Performance and Government Regime

The Local Government and Elections (Wales) Act 2021 requires each council in Wales to keep under review the extent to which it is meeting the 'performance requirements', that is the extent to which:

- it is exercising its functions effectively;
- it is using its resources economically, efficiently and effectively;
- its governance is effective for securing the above.

The duty to keep performance under review commenced on 1 April 2022. This means that the first self-assessments are being prepared in relation to 2021-22. Officials have engaged with the WLGA to ensure best practice and challenges in the preparation of assessments are shared.

Self-assessment will be complemented by a panel performance assessment once in an electoral cycle, providing an opportunity to seek external insights (other than from auditors, regulators or inspectors) on how the council is meeting the performance requirements. The duty to undertake a panel assessment started after the local government elections, which means one will need to be undertaken before the next local government elections take place.

Community and town councils

All provisions affecting community and town councils have come into force. The general power of competence came into effect for eligible community councils from 5 May 2022. I published statutory guidance on 10 June 2022 to support community and town councils to discharge their new powers and duties under the Local Government and Elections (Wales) Act.

Community councils are now required to publish annual reports as soon as practically possible after the end of the financial year and to produce training plans – the first of which is expected by November 2022. The new requirements to report on their work will make it easier for communities to understand the role and contribution of their council in their communities.

Electoral Reviews

All principal council electoral review orders were made and implemented in advance of the May elections. This enabled the elections to take place on a much needed updated basis. I am already looking to the future and have spoken to local

authorities, the WLGA and the Local Democracy and Boundary Commission about the lessons learnt and improvements which could be made to the process. I intend to consult on these proposals as soon as possible.

Diversity in Democracy

I published a statement on 8 July ([Written Statement: Diversity in Democracy – Update \(8 July 2022\) | GOV.WALES](#)) which provided members with an update on diversity in democracy.

Supporting Sector Led Improvements

A range of work is underway to strengthen the autonomy and effectiveness of local government and support them in the delivery of the aspirations in the Programme for Government.

I have agreed £800,000 for the WLGA Improvement Support Programme to support sector led corporate improvement within councils. I am also funding digital transformation through the WLGA.

Work is also underway to build the capacity and capability of community councils, particularly around core financial management and governance.

Reducing the administrative burden on local authorities

A task and finish scoping exercise is underway, engaging colleagues from across the Welsh Government, local authorities, the WLGA and SOLACE to explore perceived barriers and key areas that are identified as unnecessary areas of administrative burden. The intention is to identify opportunities for change to some of our existing processes and requirements and agree a set of underpinning principles to shape how we define the need for, and shape of, administrative and other bureaucratic overheads for local government going forward.

Keeping regional partnership working under review with local partners

The Review of Strategic Partnerships reported in June 2020. A key principle behind its recommendations was efforts to simplify partnership working should be led locally. It recommended local partnerships play an active role in aligning partnerships in their area, with Public Service Boards (PSBs) and Regional Partnership Boards (RPBs) taking a strategic leadership role, and the Welsh Government offering support to facilitate these discussions.

The Covid-19 pandemic has accelerated joint working in some areas. There are examples of some simplified arrangements such as the merger of the PSBs in Gwent.

As part of the Cooperation Agreement, I am working with the Designated Member to carry out a comprehensive review of activity to rationalise regional partnership arrangements with the strategic partnerships themselves. We will gather evidence on activity and progress in reviewing partnership arrangements; views on opportunities and barriers; and options to accelerate progress.

I will report findings to the Partnership Council for Wales in the new year.

Council Tax Reform

Significant progress has been made towards our Programme for Government commitments to reform the council tax system to ensure a fairer and more progressive system, and to make the case for clear and stable tax devolution. Much needed changes to the local taxes, council tax and non-domestic rates, will contribute to a stronger, greener and fairer Wales and will be delivered in close collaboration with local government.

On a fairer council tax, I published a [Phase 1 Consultation](#) on 12 July. This seeks views on an ambitious package of reforms to create a more progressive system, which is up-to-date and rebalances the tax burden more fairly. Once I have considered those views, a Phase 2 Consultation in due course will outline more detail about our proposed new council tax system. I have worked collaboratively through the Cooperation Agreement and with local government colleagues to establish broad support for the proposals. The consultation outlines a roadmap to delivery of initial reforms in 2025, while we continue in parallel to consider more fundamental reforms over a longer timeframe.

On 29 March, I set out a programme of non-domestic rates reform to be delivered over the next four years. The Welsh Government's ambition for a fairer, greener and stronger Wales forms the basis for any potential changes to the non-domestic rates system. We have listened to calls from stakeholders for more frequent revaluations, ensuring the tax-base reflects the economic conditions and environment in which businesses and organisations are operating. We aim to move towards a three-yearly revaluation cycle and are exploring options for shorter revaluation cycles. During the autumn, we will be consulting on a broad range of proposals for reform of the non-domestic rating system.

The next non-domestic rates revaluation in Wales will take effect on 1 April 2023 and will be based on property values as at 1 April 2021. We moved the revaluation date to 2023 so that the rateable values on which rates bills are based will better reflect the impact of the pandemic. Rateable value changes as a result of the revaluation are not yet known. The revaluation is carried out independently from the Welsh Government by the Valuation Office Agency: the VOA will publish a new rating list in draft by the end of this year. The Welsh Government will review the impact on the tax-base and consider whether transitional support is appropriate going forward.

I will continue to engage openly on both areas of work, building on the extensive evidence base published in February 2021 in a [Summary of Findings on Reforming Local Government Finance in Wales](#).

Finance

The Final Budget approved in March this year set out budgets for the three-year spending review period to March 2025. For local government this provided a significantly increased Settlement, with an increase of 9.4% overall for 2022-23 reflecting the range of pressures and opportunities raised by local government Leaders in my discussions with them. This settlement specifically included funding in recognition of the additional costs of introducing the Real Living Wage for care workers and the decisions made around the 2021/22 teachers' pay deal. Local Authorities are expected to manage costs arising from the 2022/23 teachers pay deal

and decisions on local authority workforce pay negotiations within this overall funding.

The budget set out indicative figures for 2023-24 and 2024-25 to aid longer term planning. The budget also identified specific grant funding for local authorities of over £1.1bn in each year. At the same time, the Government also revised and increased the Local Government Settlement for 2021-22 to provide additional funding of £60m. This in-year increase was intended to support authorities in managing services and budgets more effectively over the period 2021-22 to 2024-25, particularly in the context of the inflationary pressures which were then becoming increasingly apparent; the ending of the Local Government Hardship Fund and; to assist continuing work to decarbonise services and respond to the climate and nature emergency.

This context of sharply rising inflation has only sharpened with the Bank of England's Money Policy Committee most recent report suggesting inflation of over 13%. Local authorities and others continue to report increasing costs for services while the cost of living impacts on individuals and households is expected to increase demand on some local authority services. I continue to engage regularly on this with local government Leaders informally, and formally through the Partnership Council and the Finance Sub Group. There has been no recognition from the UK Government of these pressures on the Welsh Government's own budget, on the impacts on public services generally or on individuals and households across the Country. I allocated all the funding I could make available during the last budget retaining only a prudent reserve which is being used to respond as necessary to priorities such as the cost of living crisis and the response to the war in Ukraine and our commitments as a nation of sanctuary.

Ukraine

I and other Ministers continue to work closely with local authorities in our work to support people seeking sanctuary in Wales from the ongoing war in Ukraine. I want to pay a strong tribute to the work being done by local government, and other partners, to deliver on this important work. The commitment from local authority officers and elected members to this work is inspiring. Following local government elections in May I and Ministerial colleagues have met with local authority leaders on 9 June, 28 July and 11 August to restate our shared commitment to these efforts and to plan for our ongoing team Wales response. It was also discussed at a recent meeting of the Partnership Council for Wales on 6 July. Officials continue to work closely with local government officers on the day-to-day response, as well as in developing the longer term capacity and capability needed to support people from arrival in a Welcome Centre or local home, to a settled and successful life in Wales.

Net Zero

We are working closely with local government to support and accelerate progress towards Net Zero by 2030, the Welsh ambition for the public sector. It is essential to join up the climate and nature emergency responses, with the focus on a just transition. The recent Audit Wales reports on public sector decarbonisation in Wales recognise the positive actions public bodies are already taking, but advises that to meet the collective ambition the pace of change needs to be accelerated and strong leadership is needed.

I have agreed with local government that climate change will be a standing item on the agenda for the Partnership Council for Wales in recognition of the importance and urgency of this work. The Partnership Council oversees the work of a strategic group of local government chief executives, WLGA, Natural Resources Wales and other key experts to provide oversight and direction, including for the Welsh Government funding of £1.4m (to end of FY 2024-25) to the WLGA to deliver a support programme to all 22 authorities. The programme focuses on sharing direction, best practice, lessons learned, with the principle of minimising duplication, maximising resource and 'doing once for Wales'. The majority of local authorities in Wales have declared a climate emergency and all 22 have action plans in place, which the programme will support them to review and develop before an overall assessment to monitor progress takes place early next year. I have allocated £20m additional capital each year for next 3 financial years to help support key projects across local authorities in addition of course to programmes under other Ministerial colleagues portfolios such as the funding for Sustainable Communities for Learning.

All local authorities submitted data last year for the overall Wales public sector emissions reporting and are set to do the same this September, giving us an essential baseline and monitoring of progress. Through the Strategy Panel local authorities developed their own challenging commitments which were included in the Net Zero Wales plan last autumn, and delivery of those is underway.

Whilst responsibility for Local Government Pension Schemes (LGPS) is not devolved, I recognise that investment funds such as LGPS can play an important role in tackling climate change and achieving net zero. I am keen to see more progress on this important issue, noting that progress is already being made. The Government supported and agreed a motion brought to the Senedd in May to work with the public sector to agree a strategy to decarbonise pensions by 2030, thus bringing them into line with current public sector Net Zero targets.

Agenda Item 4

Local Government and Housing Committee

29 September 2022 – papers to note cover sheet

Paper no.	Issue	From	Action point
Paper 3	Inquiry into second homes	Welsh Government	To note
Paper 4	Forward work programme	Counsel General and Minister for the Constitution	To note
Paper 5	Forward work programme	Community Housing Cymru, the Chartered Institute of Housing Cymru and Housing Leadership Cymru	To note
Paper 6	Housing Ukrainian refugees	Minister for Social Justice	To note
Paper 7	Forward work programme	Public Services Ombudsman for Wales	To note
Paper 8	Inquiry into community assets	Minister for Climate Change	To note
Paper 9	Inquiry into community assets	Dr Sarah Nason, Bangor University	To note

Julie James AS/MS
Y Gweinidog Newid Hinsawdd
Minister for Climate Change



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref JJ/2340/22

John Griffiths MS,
Chair,
Local Government & Housing Committee

John.Griffiths@senedd.wales

26 July 2022

Dear John,

Thank you for the Local Government and Housing Committee report, following on from your enquiry into second homes in Wales. As you will have seen and heard, this is a multidimensional and complex issue. I and other Ministers have been clear that the Welsh Government does not have all the answers as we seek to counter the effects that large numbers of second homes and short-term holiday lets have on our communities in some areas of Wales. I welcome the Committee's very broad and helpful enquiry and its report as they provide important additional information and evidence.

I and my Ministerial colleagues have reviewed your recommendations and provide our responses below.

Recommendation 1. The Welsh Government should consider how it defines second homes clearly for the purposes of policy development. The proposed new planning use class definitions provide an opportunity to provide consistency. Combined with a registration or licensing scheme for holiday accommodation, this will ensure a clear distinction is drawn between second homes for personal use and properties used as short-term lets.

Accept

The Welsh Government is currently considering opportunities to harmonise, as far as possible, the definition of a second home across its various uses (for example for national and local taxes, planning and tourism purposes). Our decision to bring forward subordinate legislation drawing clear distinctions in a Use Class context between primary homes, second homes and short-term holiday lets offers one such opportunity. A consultation exercise on statutory licensing for all holiday accommodation (including short-term holiday lets) will commence later in 2022.

While a single definition is not without challenge, given the multiple applications across taxation, planning and other domains, we will continue to consider where greater alignment can be achieved.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Financial implications: None. Any additional costs will be drawn from existing programme budgets.

Recommendation 2. The Welsh Government should provide updates to the Senedd every six months on developments in the Dwyfor pilot, including its assessment of the effectiveness of the measures and the basis of that assessment. The updates should include how the effectiveness is being evaluated.

Accept

We will be pleased to provide ongoing six-monthly updates as to developments within the Dwyfor pilot and its evaluation.

Financial implications: None. Any additional costs will be drawn from existing programme budgets.

Recommendation 3. The Welsh Government should set out how it intends to monitor the long-term impact of the interventions happening as part of the Dwyfor pilot, including any impact on the visitor economy.

Accept

Independent evaluation of the pilot is being commissioned and it will be designed to enable analysis of some of the long-term impacts of the interventions. However, the quality and availability of data to monitor impacts continues to be explored and the evaluation needs to be able to draw on appropriate high quality data sources. Where feasible, this will include impacts on the visitor economy and further exploratory work will need to be undertaken to determine how this will be done.

Financial implications: None. Any additional costs will be drawn from existing programme budgets.

Recommendation 4. The Welsh Government should commission further research on the impact tourism has on the sustainability of communities.

Accept

There is already work underway on understanding resident attitudes to tourism, as part of a commitment in our tourism strategy 'Welcome to Wales: priorities for the visitor economy 2020-25' to listen to the views of local residents, visitors and businesses.

Resident perspectives will be crucial in understanding the impact of tourism on communities. We will run the survey with residents this year and review the findings and consider whether further research would add value to this topic.

Financial implications: None. Any additional costs, beyond work in train, will be drawn from existing programme budgets.

Recommendation 5. In assessing the interventions put in place as part of the Dwyfor pilot, the Welsh Government should include how the Well-being of Future Generations Act has influenced policy development.

Accept

The Well-being of future Generations Act has underpinned our policy development. The well-being goals are at the heart of what we wish to achieve, in particular: a Wales of vibrant culture and thriving Welsh language; a Wales of cohesive communities; a more equal Wales; and a more Prosperous Wales. The five ways of working are integral to our approach – collaboration with partners and integration are fundamental, as is prevention in achieving our long-term aspirations for communities, and involving people, communities and partner organisations in Dwyfor and across Wales. This will continue to be the case as we seek to ensure that local people, including young people, can continue to access affordable local housing across tenures; the pilot will play a critical role in this.

Financial implications: None. Any additional costs will be drawn from existing programme budgets .

Recommendation 6. The Welsh Government should provide an update to the Senedd on taking forward recommendations from the Equality, Local Government and Communities Committee 2019 report on empty properties. The update should be provided by December 2022.

Accept

The Welsh Government will provide an update by December 2022.

Financial implications: None. Any additional costs will be drawn from existing programme budgets .

Recommendation 7. The Welsh Government should clarify how local and national strategies will ensure a sufficient supply of housing that is of the appropriate type to meet local requirements and affordable in the context of local earnings.

Accept

Housing Need estimates show that 7,400 additional homes are needed across Wales per year. Under the central estimate, this additional housing need estimate of 7,400 is split into 3,900 additional market housing units (52% of the additional housing need) and 3,500 additional affordable housing units (48% of the additional housing need). From these estimates, it is clear there is a need for all types of housing across Wales. This level of need, and the requirement to address it, is clearly referenced in Future Wales and therefore forms a key component of the planning system in Wales.

It is the responsibility of Local Authorities to undertake periodical reviews of housing need, discharged through the Local Housing Market Assessment (LHMA) process. The quality and currency of the outputs from the assessments are particularly important to the evidence base for Local Development Plans and play

a vital part in delivering market and affordable housing and in meeting housing need.

A new approach to undertaking LMHAs was published on 31 March 2022. This new approach provides more consistency in how LHMAAs are undertaken by providing a pre-populated tool. The new approach also includes Welsh Government review and sign-off of LHMAAs.

Not every community will face the same challenges. Where evidence demonstrates that second homes present a challenge to the supply of affordable housing we expect to see this reflected in LHMAAs, including consideration of the impact on the Welsh language. The LHMA will also identify specific housing needs provision.

LHMAAs are vital in determining local housing requirements and form a key part of Local Development Plans (LDPs). Local authorities are required to undertake an LHMA every five years and refresh their LHMA every two years. This assessment in turn informs local authorities' LDPs, which include targets for the number of affordable homes the authority aims to deliver over the plan period. LDPs must also set out how and where the authority intends to provide the affordable homes to meet the target they have established.

Financial implications: None. Any additional costs will be drawn from existing programme budgets.

Recommendation 8. The Welsh Government should provide an update to the Senedd on how it intends to achieve its target of building 20,000 new social homes within the term of this Senedd. We would like the update to include a breakdown of where it intends these new homes to be built, according to the demand and need of communities.

Accept in Principle

From the Housing Need Estimates, it is clear that housing is needed across the whole of Wales. Whilst Welsh Government remains committed to delivering 20,000 new low carbon homes for rent in the social sector, the government does not build homes itself. Partners within the housing sector are relied upon to build the homes that Wales needs in line with the Local Housing Market Assessment (LHMA) process. Local authorities are best placed to understand the local housing need they face and the location of these homes needed, from the LHMA and Local Development Plan process.

To support the commitment to deliver 20,000 new low carbon homes for rent in the social sector, record levels of funding have been provided. £250m in 2021-22 was allocated to the Social Housing Grant, doubling the budget from 2020-21. Record levels of funding have also been set through the budget in this current year (2022-23) with £300m and indicative draft budget allocations of £330m in 2023-24 and £325m in 2024-25.

This budget is allocated to local authorities using a formula and each local authority is responsible for bringing forward schemes to meet its strategic housing priorities. Welsh Government formally approve Local Authority Programme Delivery Plans (PDPs).

Work has been undertaken to align the Social Housing Grant funding process more closely with evidence of local housing need. Local authorities are required to produce a “prospectus” which outlines their strategic housing priorities for SHG. Local authorities will be encouraged to utilise evidence from their LHMA’s to inform their funding prospectus going forward.

The first data showing progress towards delivering the target is expected in the Autumn and a further update can be provided following this.

Financial implications: None. Any additional costs will be drawn from existing programme budgets .

Recommendation 9. The Welsh Government should lead by example and ensure that suitable land it owns is made available for housing development, including seeking opportunities to do so as part of the Dwyfor pilot. Details of how the Welsh Government achieve this should be included in the regular updates we have requested on the Dwyfor pilot.

Accept

Welsh Government land which is suitable for housing is being advanced for this purpose. The Welsh Government is actively seeking land to develop all over Wales (including Dwyfor) and will provide updates on progress as requested.

Financial implications: Any additional, further, costs will be drawn from existing programme budgets .

Recommendation 10. The Welsh Government should outline how it proposes to work with private sector landlords and letting agents within the Dwyfor pilot area to increase the supply of homes for rent.

Accept

The pilot offers an opportunity to work with the private rental sector. Beyond the pilot, Leasing Scheme Wales was launched in January 2022, it is a key Programme for Government commitment, worth £30 million over five years. The scheme will improve access to longer term affordable housing in the private rental sector. Delivering security for tenants and confidence for landlords. Gwynedd Council has signed up to offering the scheme.

Property owners will be encouraged to lease their properties to local authorities in return for a rent guarantee of Local Housing Allowance (LHA) rate. Additional funding of up to £5K is available to meet the standards necessary and/or to improve the EPC rating to a C. Up to £25K grant funding is available for empty properties. Payments for void periods will be made to the Landlord, and repairs to the property are covered during the term of the lease at no cost to the Landlord. The Landlord can sign up to the scheme for between 5 and 20 years helping to give them confidence and certainty as to the income that will be secured over the period.

Financial implications: Any additional activity and costs will be drawn from existing programme budgets, subject to Ministerial approval .

Recommendation 11. The Welsh Government should provide clarity on how a commission on Welsh-speaking communities would work with and enhance the work of the Welsh Language Commissioner.

Accept

The main aim of the Commission on Welsh-speaking communities is to make recommendations to strengthen policy in relation to the linguistic sustainability of those communities. This includes use of Welsh as a community/social language within different areas and situations. The Welsh language belongs to us all, and this work will take place within the context of national strategy.

However, we believe that the continuation of Welsh as a community language in areas where it is widely used as the main language of the community, or where this has been the case until relatively recently, is essential to those communities and also for the Welsh as a national language. This is vital too to achieving a target of one million speakers by 2050. Reaching the million will be much more difficult if there is a significant linguistic decline of Welsh speaking areas.

The commission will lead on a socio-linguistic analysis of the health of the language in our communities. This will provide a better understanding of the linguistic, socio-economic and social restructuring challenges facing our communities. This includes analysing the 2021 Census results when they are published later this year.

The detailed work carried out by the Commission will ensure that Public Authorities including the Welsh Language Commissioner will further enhance their work and understanding of the linguistic context and perspective of Welsh-speaking communities which we all serve.

Financial implications: None. Any additional costs will be drawn from existing programme budgets .

Recommendation 12. The Welsh Government should ensure a commission on Welsh-speaking communities prioritises obtaining improved data on the correlation between communities with high numbers of second homes and the number of Welsh speakers, starting with analysing the 2021 census as a matter of urgency.

Accept

The Commission on Welsh-Speaking Communities will analyse in detail the results of the 2021 Census and other relevant data as and when they are released. This will ensure that the Commission and Government are better informed in creating a robust evidence base.

Such work will involve analysis of correlations between density of second homes in particular communities and the percentage of Welsh-speakers in those communities, and the relevance of this within a policy framework. This will take place within the context of a wider analysis of correlations between the Welsh

language at a community level and a number of societal and socio-economic indicators with possible public policy considerations.

Financial implications: None. Any additional costs will be drawn from existing programme budgets .

Recommendation 13. The Welsh Government should commission research on the impact of Brexit and the Covid-19 pandemic on housing trends to assess the scale of movement from urban to rural and coastal areas.

Accept

It is unknown if there is high quality data that would enable analysis on these topics at an appropriate geographic scale. Officials will explore the feasibility of undertaking this research, including exploring the availability and quality of data required.

Financial implications: Any additional costs, post-exploration of feasibility will be drawn from existing programme budgets .

Recommendation 14. The Welsh Government should ensure the Dwyfor pilot is subject to thorough independent evaluation to inform future national, regional and local policy.

Accept

The pilot will be subject to a robust independent evaluation. Preparatory work on the evaluation has already commenced.

Financial implications: None as previously approved and in train. Any additional costs will be drawn from existing programme budgets .

Recommendation 15. The Welsh Government should work with the Welsh Revenue Authority to ensure that data on second homes and buy to let properties is clearly separated and available at a community level to help inform policy development.

Accept

We recognise the potential for access to this type of data – and data more generally on land and property in Wales – to open a range of opportunities to support both policy development and the delivery of Welsh public services. As the Welsh Government and Welsh Revenue Authority progress the range of initiatives in this area, including a statutory licensing scheme for short term holiday lets and developing a national framework for local variation of LTT rates for second homes and holiday lets, we will consider how these initiatives can help to support meeting wider data requirements and opportunities to inform future policy development.

Financial implications: None. Any additional costs will be drawn from existing programme budgets .

Once again, please accept our thanks for the Committee's careful consideration of this patently complex area. I and colleagues will look forward to updating Members as we continue to apply our resources to effect the necessary balanced interventions.

Yours sincerely

A handwritten signature in blue ink that reads "Julie James". The signature is written in a cursive, flowing style.

Julie James AS/MS
Y Gweinidog Newid Hinsawdd
Minister for Climate Change

Mick Antoniw AS/MS
Y Cwnsler Cyffredinol a Gweinidog y Cyfansoddiad
Counsel General and Minister for the Constitution

To: Huw Irranca-Davies MS, Chair, Legislation, Justice and Constitution Committee
SeneddLJC@senedd.wales

John Griffiths MS, Chair, Local Government and Housing Committee
SeneddHousing@senedd.wales

cc. David Rees MS, Chair, Llywydd's Committee

2 August 2022

Dear Huw, John,

I am writing to the Committee to provide you with an update on the electoral pilots that were delivered in Wales as part of the Local Government Elections in May 2022.

The Electoral Commission is required by law to evaluate every electoral pilot scheme undertaken in Wales. As such, they have evaluated the pilots undertaken in May 2022 and have today published their report which can be accessed here:

<https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/our-views-and-research/our-research/advance-voting-pilots-evaluation>

I have also issued a written statement updating Senedd members on progress which can be found here:

<https://gov.wales/written-statement-electoral-commissions-evaluation-report-welsh-electoral-pilots>

Yours sincerely,



Mick Antoniw AS/MS
Y Cwnsler Cyffredinol a Gweinidog y Cyfansoddiad
Counsel General and Minister for the Constitution

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Papur 5 / Paper 5
Agenda Item 4.3



ARWEINYDDIAETH
Tai



9th August 2022

Annwyl John Griffiths MS,

The Welsh Government recently published its proposals for the future of the Welsh Quality Housing Standard - WHQS2023. The proposals include the ambitious decarbonisation target of achieving EPC A on all social housing by 2033.

The social housing sector in Wales has grave concerns about the Welsh Government's proposals as they are not deliverable. We have written to the Minister for Climate Change to set out these concerns.

The proposals require the social housing sector to achieve a higher EPC standard ahead of other parts of the UK with no long term funding available. The proposals would place colossal unfunded pressures on social landlords which would have a significant impact on services and the ability to build new homes. Furthermore, the sector is currently experiencing significant supply chain pressures which the WHQS proposals would almost certainly exacerbate.

These proposals will impact a number of sectors including housing associations, local authorities, tenants and tenant support groups, the construction industry, and finance lenders for decades to come.

As social landlords we are determined to meet the challenge of net zero and understand the key role that housing plays in supporting the Welsh Government to reach the 2050 target. Achieving this however requires a fully funded and deliverable plan, which takes advantage of changes in technology, maximises the opportunity to build a Welsh based supply chain and provides an economic boost to Welsh communities.

We would like to see the WHQS reflect an ambitious but achievable target date. The 10-year programme was initially proposed in very different economic conditions to the one facing tenants and social landlords today. We would like to work with the Welsh Government to develop an alternative roadmap which prioritises investment to provide support to fuel poor households and balances further investment over a deliverable time period that allows the supply chain and workforce/skills provision to scale- up alongside the demand.

Secondly, **this must be accompanied by a long term grant programme.** We understand that the cost of decarbonisation is huge and will require a blended approach. However, significant long term investment must be part of this and it is impractical for a standard to be

introduced without a funding mechanism in place. As the proposals stand now, they would place colossal unfunded pressures on social landlords.

Thirdly, we recognise that the forthcoming net zero skills strategy provides an opportunity to build our Welsh based skills and supply chains to support this work. However, this simply will not be achieved in time to meet the targets currently set out in the consultation. **Smoothing the delivery over a longer time period, alongside a complementary skills strategy** enables Wales to reap the full economic and environmental benefits of retrofit.

Finally, we know that **this has to be something that is done with tenants**. The Optimised Retrofit Programme has rightly required that methods for effective tenant engagement be integrated into programmes so that the learning acquired can feed into future programmes. We are still learning how best to engage with tenants on decarbonisation and this process cannot and should not be rushed

This standard is being consulted on in an incredibly challenging environment. The cumulative impact of excessive costs for development and maintenance, rising workforce costs and pressures, and increasing social pressures as a result of global events and a rising cost of living is having a significant impact on social landlords and their tenants. As the Chair of the Local Government and Housing Committee we would welcome the opportunity to discuss these challenges and ideas with you. Please let us know if it would be helpful to organise a briefing session or meeting.

Yours sincerely,



Stuart Ropke, Chief Executive, Community Housing Cymru
Matt Dicks, Director, Chartered Institute of Housing Cymru
Sam Parry, Chair, Housing Leadership Cymru

Agenda Item 4.4

John Hutt MS
Y Gweinidog Cyfiawnder Cymdeithasol
Minister for Social Justice



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA/JH-/2496/22

John Griffiths MS
Chair, Local Government and Housing Committee
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seneddhousing@senedd.wales

3 August 2022

Dear John,

Thank you for the Local Government and Housing Committee's letter of 13 July and the Committee's commitment to continue to monitor the Welsh Government's response to the humanitarian crisis in Ukraine and the arrival of people from Ukraine in Wales.

I would welcome an opportunity to appear in front of the Committee in due course. I was pleased to read that witnesses were generally supportive of our response to date— it has been a Team Wales response, and we will continue to take this approach in the weeks and months to come.

I can confirm that we will give the third sector, and all of our key partners, advance notification about any change to our super-sponsor scheme. We have reviewed our position again and will maintain the pause on new applications until September. I have set this out in a written statement.

You will be aware the Scottish Government has also paused its super-sponsor scheme, taking a similar approach to us – to focus on ensuring everyone who has been issued with a visa has good-quality accommodation and wrap-around support on arrival.

I will now turn to the substantive issues the committee has raised in your letter.

The Home Office publishes data about Ukrainian arrivals in Wales on a weekly basis. At the time of writing, 4,447 Ukrainians sponsored by the Welsh Government or Welsh households have arrived in the UK – more than 2,079 people have arrived via the super sponsor scheme, which is double our initial commitment of supporting 1,000 people. The information is available here:

<https://www.gov.uk/guidance/ukraine-sponsorship-scheme-visa-data-by-country-upper-and-lower-tier-local-authority>

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

It is challenging to provide a timescale for when the remaining visa beneficiaries will arrive in Wales because each individual or family will make their own decision about when they want to travel, based on their own circumstances.

Our Wales Nation of Sanctuary Contact Centre has been contacting all super sponsor beneficiaries to discuss their travel plans. The information this offers is helpful for planning purposes but is, inevitably, incomplete because not all individuals are contactable and not everyone is ready to discuss travel plans. In addition, plans change given the dynamic situation in Ukraine. We have used this information to develop a model which illustrates trajectories for likely arrivals.

People are arriving at an approximate rate of 25 people per day. Modelling suggests the number of applicants to the super sponsor scheme arriving in Wales could reduce significantly towards the end of 2022.

I can confirm that people from Ukraine who have been placed in Welsh Government-arranged initial accommodation – whether that is in a welcome centre or another form of accommodation, such as an hotel or hall of residence – will not be moved on by us to their onward accommodation until it and any host have had checks carried out.

However, we cannot guarantee this will be the case for those people who are arriving under the individual Homes for Ukraine scheme because the timescales involved do not always enable local authorities to undertake and complete all checks before the Ukrainian person arrives. This is the way the UK Government has designed the Homes for Ukraine scheme.

The UK Government has now started to process Homes for Ukraine applications for children and young people under 18 who are either unaccompanied or are travelling with an adult relative who is not their parent or legal guardian. Those children and young people who already had applications in the system will have their visas processed first. New applications from children and young people will be possible from mid-August.

My officials are working closely with local authorities in Wales and their counterparts in the other UK nations to ensure this scheme works effectively and that safeguarding considerations are front and centre. Unfortunately, we cannot progress applications from unaccompanied children to our super sponsor route because the wellbeing needs of these children require well-planned initial and onward accommodation options, which were not in the design of our existing provision. We are currently developing guidance for local authorities.

I meet Lord Harrington, the UK Government Minister for Refugees and Neil Gray MSP, the Scottish Minister with responsibility for the Ukrainian response, on a fortnightly basis and I continue to raise the inconsistent approach the UK Government has applied to the Ukraine Family Scheme.

I continue to push for parity of funding between the Homes for Ukraine and Ukraine Family Scheme and for the same supply of data in respect of those who have arrived in Wales under the family scheme. However, this has not been forthcoming. The outgoing Prime Minister has made a commitment to enable switching between schemes, but the implementation of this seems a way off at present.

We have committed to providing “thank you” payments to secondary hosts for those people who are offering a new placement in the event that the initial placement made under the Ukraine Family Scheme ends. These secondary placements must be agreed by the relevant

local authority to enable funding to be provided. As with all other Ukrainian visa holders, the funding will be available for the first 12 months after visas are granted.

We have recently launched a new campaign to encourage more people and landlords to offer to host people from Ukraine. This will support move-on from welcome centres and help ensure we have a pool of potential hosts as we approach the six-month milestone since the start of the Homes for Ukraine scheme. I would appreciate it if committee members were able to support our efforts to promote this campaign in their constituencies. More information can be found at: <https://gov.wales/offerhome>

Ukrainian visa holders have the right to freedom of movement within the UK and many will want to move between the nations of the UK. There has never been a barrier to Ukrainians moving in this way. However, we need to work with the other UK nations to ensure that when such movement happens, the funding follows the person to enable 'thank you' payments and the tariff for public services to be provided. We can confirm that a process has been established to enable this to happen, but it requires the receiving local authority to have formally agreed to the re-match into their area.

We have provided guidance to Welsh local authorities to explain the related processes and we will be updating the Sanctuary website and our guidance for sponsors/hosts.

Yours sincerely,


A handwritten signature in black ink that reads "Jane Hutt". The signature is written in a cursive style with a long horizontal stroke above the first letter "J".

Jane Hutt AS/MS


Y Gweinidog Cyfiawnder Cymdeithasol
Minister for Social Justice

Our ref: MAM/AR/mdm

Ask for: Michelle Morris

 01656 641152

Date: 7 September 2022

 Marilyn.morgan
@ombudsman.wales

John Griffiths MS
Chair of Local Government and
Housing Committee
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Dear John

During the year we have continued our work as Complaints Standards Authority for Wales. For the first time, we now have data on complaint handling practices of the Welsh Local Authorities for a full financial year.

Since the Committee has indicated an interest in our Complaints Standards work in the past, I am pleased to attach a briefing presenting the 2021/22 data that we collected from the Welsh Local Authorities.

I trust that you will find this publication useful and that it will be of interest to the Committee. Please do not hesitate to contact me if you would like to discuss this publication in further detail.

Our Complaints Standards work commenced with Local Authorities but is being extended to include Health Boards and Trusts and larger Housing Associations. We will publish data on these separately in due course.

Yours sincerely



Michelle Morris
Public Services Ombudsman for Wales

CC - Peredur Owen Griffiths MS, Chair of the Finance Committee

Briefing

Complaints Standards Authority

Complaints handled by Welsh Local Authorities

April 2021 to March 2022

September 2022



At Public Services Ombudsman for Wales, we have three main aims:

- we handle complaints about public service providers
- we handle complaints about breaches of the Code of Conduct by councillors
- we drive systemic improvement of public services.

We are independent of all government bodies and the service we provide is free of charge.

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Mae'r ddogfen hon hefyd ar gael yn y Gymraeg.
This document is also available in Welsh.

About this briefing

The Complaints Standards Authority (CSA) was created by the Public Services Ombudsman (Wales) 2019 Act. The CSA works to support effective complaint handling by Public Bodies within our jurisdiction. The CSA achieves this by:

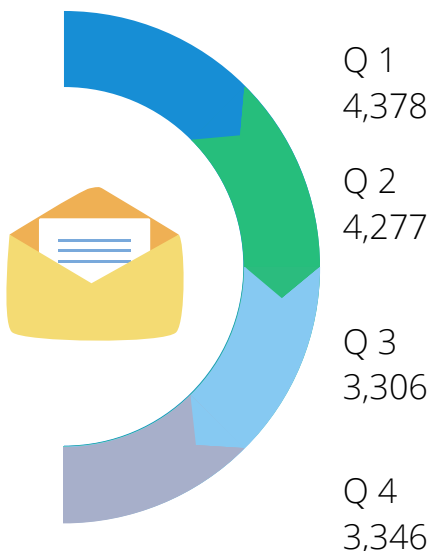
- setting model complaints policies and guidelines
- offering advice and delivering bespoke training packages
- collecting and publishing data on complaints handled by Public Bodies.

After every quarter of the year, the CSA requests complaint handling statistics from Welsh Local Authorities. This briefing paper firstly outlines the main trends in the **complaints handled by Welsh Local Authorities** in the reporting year April 2021 to March 2022. It then provides details of **complaints about Local Authorities made to us**, as well as numbers of **complaints about Local Authorities concluded by us** during the same period. These details indicate how satisfied complainants were with Local Authority responses and how sound the Local Authorities' complaints decisions were. More detailed data is available [on our website](#).

NOTE We report on information on complaints about Local Authorities that are made to us in more detail in our [Annual Report & Accounts](#) and in [Annual Letters](#) that we send to Local Authorities. The Annual Report & Accounts also discusses our work on setting model complaints policies and guidance, and on the provision of complaints handling training.

Our Complaints Standards work commenced with Local authorities but is being extended to include Health Boards and Trusts and larger Housing Associations. We will publish data on these separately in due course.

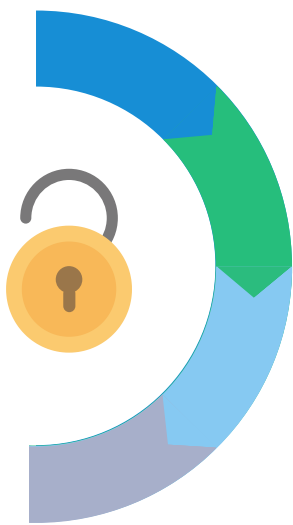
New complaints received by Local Authorities



In quarter 4, Local Authorities received 3,346 new complaints - **bringing the total for the year to 15,307.**

What this means: Complaint volumes are now higher than before the pandemic.

Complaints closed by Local Authorities



Q 1
3,987 - 78%

In quarter 4, Local Authorities closed 2,905 complaints. 77% of complaints were closed within 20 working days. **Overall, 14,187 complaints were closed in 2021/22 - 76% within 20 working days.**

Q 2
4,137 - 76%

This measure of performance is important to people who use complaints services. However, although it is important that complaints investigations are conducted promptly, we stress that investigations should not be cut short simply to meet a target.

Q 3
3,158 - 73%

Q 4
2,905 - 77%

The statistics for quarter 4 show the lowest number of closures. According to our data, during 2021/22 Local Authorities **received 1,120 more complaints than they closed.**

This suggests that Local Authorities now have larger backlogs than in the previous year.

Uphold rate of complaints closed by Local Authorities



Q 1
50%

In quarter 4, Local Authorities upheld 43% of complaints that they considered - **producing an overall uphold rate of 46% for the year - about the same as previous years.**

Q 2
48%

What this means: The uphold rates have been decreasing during the year. Our data does not show the reasons for this. Whilst upheld complaints show that something went wrong, they also show a willingness to acknowledge that and put things right.

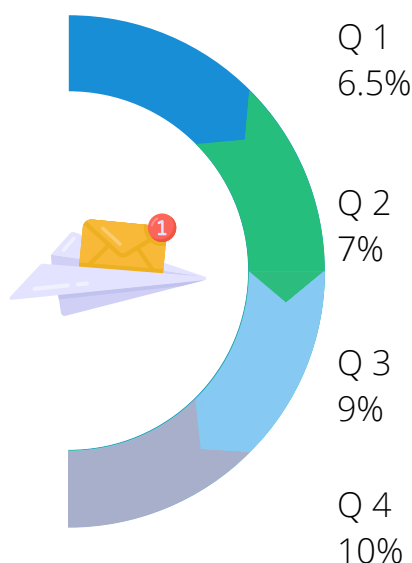
Q 3
39%

Q 4
43%

The lower uphold rate could be a result of improvements made by Local Authorities (for example, the complaints do not hold merit), or reduced willingness to acknowledge failings. The work of the CSA aims to support transparency.

Complaints about Local Authorities made to us

If people are not satisfied with the Local Authority's response to their complaint, they can refer that complaint to us.



In quarter 4, 10% of all complaints considered by Local Authorities were referred to us - bringing the **yearly figure to 8%**

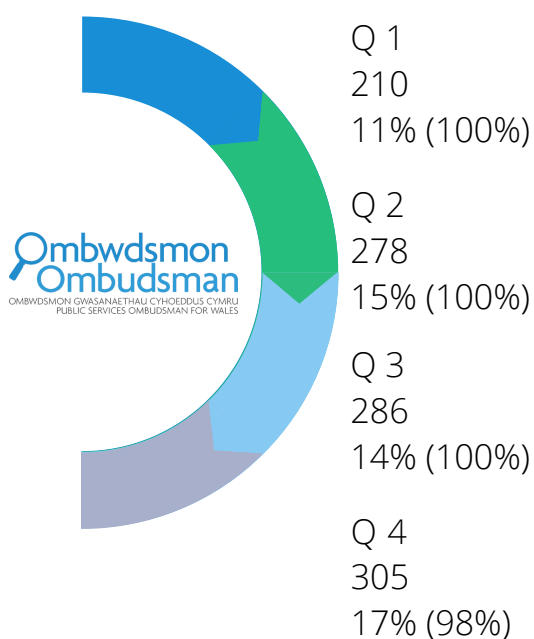
What this means: 8% of people who had their complaints considered by Local Authorities during 2021/22 still wanted to continue their complaint. This proportion has increased during the year.

This trend could be an indicator of how well complaints are being handled by Local Authorities. If so, the increase in the proportion of referrals is not necessarily a positive trend.

However, people are also more likely to refer complaints to us if they are unhappy with the outcome. Therefore, the lower uphold rate by Local Authorities could also lead to more referrals to us.

Trends in our complaints about Local Authorities

The volume of complaints handled, closed and referred by Local Authorities provides some context for our own caseload about those bodies.



In quarter 4, we closed 305 complaints about Local Authorities - making the total **1,092 for 2021/22**.* Some of those complaints would have been referred to us during the quarter; others would have been received before that period.

We **intervened in 17% of the cases in quarter 4**, by recommending Early Resolution or upholding a complaint after an investigation. The vast majority of the remaining cases were out of our jurisdiction, so our intervention rate was **98%** when taking this into account.

What this means: We continue to find opportunities to improve public services in the same proportion of cases.

* This total does not include our closed complaints about Rent Smart Wales.



Ombwdsmon
Ombudsman

OMBWDSMON GWASANAETHAU CYHOEDDUS CYMRU
PUBLIC SERVICES OMBUDSMAN FOR WALES

Agenda Item 4.6 Division contribution to LGH Committee response

1. Further information about the cross-Government mapping exercise that looks at policies and programmes relating to communities

As part of the preparatory work for developing a new Welsh Government Communities Policy, a mapping exercise has been undertaken across Welsh Government to identify programmes, policies and funding streams which provide support to local geographic communities and/or specific communities of interest. This exercise identified more than 100 relevant programmes, which are listed below. Although an broad and inclusive approach was used, the list is not intended to be exhaustive and work is continuing to enlarge our understanding of how the Welsh Government currently works with an support people and activity in their own communities.

As indicated in the [Written Statement](#) issued by Ministers on 4 July, officials have now begun to widen engagement with this work through pilot work in a few areas, which will build on this mapping exercise, working initially with a smaller set of Welsh Government programmes drawn from the full list, to explore how they interact with each other and with communities themselves at the very local level. In the first instance we will engage with Public Service Boards to seem their views on the best approach.

Climate Change & Rural Affairs Group

- Transforming Towns
- Rural Housing Enabler Programme
- Communities Creating Homes
- Private Renting Sector - Leasing Scheme Wales
- Independent Living
- Renting Homes Implementation
- Residential Leasehold Reform
- Homelessness Prevention Programme
- Housing Support Grant
- Community Food Strategy
- Local Places for Nature
- Enabling Natural Resources and Well-being
- Landfill Disposals Tax Communities Scheme
- Welsh Government Energy Service
- Welsh Government Local Energy Loan Fund
- Welsh Government Hydropower NDR Fund
- Support to Community Energy Wales
- Marine Renewable Energy
- Bus Services Support Grant
- Ultra Low Emmission Transformation Fund
- Accessible bus services (Fflecsi bus & Bwcabus)
- Car Clubs

Covid Recovery & Local Government Group

- Academi Wales
- Community Fire Safety
- Community Support Officer Grant
- Safer Communities Network Grant
- Evaluation of interventions supporting vulnerable people to meet council tax liabilities
- Review of the Council Tax Reduction Scheme

Education, Social Justice & Welsh Language Group

- ACEs (Acute Childhood Experiences) plan & trauma framework
- Children & Communities Grant

- Flying Start
- Community Schools
- Grant to support policy development and implementation of the whole school approach to emotional and mental wellbeing.
- CAMHS – Schools in Reach (Child and Adolescent Mental Health Practitioners)
- School Holiday Enrichment Programme (SHEP)
- Free School Meals
- Additional meal allowance for Year 7 pupils
- Free Breakfast in Primary Schools
- PfG commitment to take forward the proposals of the Interim Youth Work Board to develop a sustainable delivery model for youth work
- Strategic Voluntary Youth Work Grant
- Youth Engagement and Progression Framework
- Youth Support Grant
- Grant Hybu a Hyrwyddo Defnydd o'r Gymraeg (Grant Promoting and Facilitating the Use of Welsh)
- Welsh Language Communities Housing Plan
- Period Dignity in Schools
- Period Dignity in Communities
- Brexit Support Programme for Disabled People's Organisations
- Community Cohesion Programme
- Equality and Inclusion Funding
- EU Citizens Rights Project
- Migrant Support
- Settled Status and Immigration Advice
- Tackling Hate Crime and Community Cohesion Action
- Tackling hate crime and racism in schools
- Discretionary Assistance Fund
- Income Maximisation
- Credit Union funding programme
- Digital Communities Wales: Digital Confidence, Health and Well-being
- Single Advice Fund
- Communities for Work
- Communities for Work Plus
- Parents, Childcare & Employment
- Community Asset Loan Fund
- Community Facilities Programme
- Third Sector Knowledge Portal
- Working Wales
- ReAct+ (employability support programme addressing barriers to employment)
- ReAct (employability support programme addressing barriers to employment)
- Traineeships
- Employability Skills Programme
- Jobs Growth Wales
- Education Maintenance Allowance Scheme
- Further Education Learning Grant Scheme
- Financial Contingency Fund for Higher Education
- Higher Education Student Support
- Equality, Race and Disability Evidence Units co-production approach

Economy, Treasury & Constitution Group

- Business Wales
- Community Entrepreneurship
- Arfor Innovation Fund (Welsh Language business entrepreneurship scheme)
- EU Settled Status Advice Services
- EU Settled Status Appeals Service

- MOU with the Independent Monitoring Authority for Citizens Rights Agreements
- EU Citizens Rights
- European Social Fund

Health & Social Services Group

- Out of Work Service
- In-Work Service
- Accelerated Cluster Development
- Age Friendly Wales Strategy
- Loneliness and Isolation Fund
- Primary Care Contract Reform
- New Integrated health and care centres
- Compassionate Cymru
- Mental health improvement funding
- Substance Misuse Action Fund
- Promoting Positive Engagement for young people at risk of offending grant (*included in the wider Children and Communities Grant*)
- St David's Day Fund (*included in the wider Children and Communities Grant*)
- Adoption Support
- Foster Wales
- Health and Social Care Regional Investment Fund
- Intergrated Community Hubs for Health & Social Care
- Voices from Care
- Children in Wales
- Action for Children
- Cyfannol Women's Aid
- Ethnic Youth Support Team
- National Youth Advocacy Services – Project Unity (for Care-experienced mothers)
- National Youth Advocacy Services – Parent Advocacy
- Platform for Change (safe space for young people)

2. Further information relating to local authorities use of available funding to support communities / the range of funds available for community assets

- The Welsh Government's Community Facilities Programme (CFP) offer grants of up to £250k and can be used to purchase or improve community assets. The CFP has a budget of £6.5m in 2022/23, 2023/24 and 2024/25, a total of £19.5m to invest in communities in Wales. More information at: [Community Facilities Programme | GOV.WALES](#)
- The Community Asset Loan Fund (CALF) offers long term loan finance to help communities take ownership of assets. Loan of up to £300k are available up to a term of 25 years. The CALF is operated on our behalf by Social Investment Cymru, part of the WCVA. More information on loan products operated by SIC can be found at: [Social Investment Cymru - WCVA](#)
- The UK Government's Community Ownership provides grants of up to £250k to help communities take ownership of assets. It can provide up to £1m if the community is intending to take ownership of a sporting facility. The £150m Fund expects to commit around £7m in Wales, will operate to 2024/25 and will hold a minimum of 8 bidding rounds. More information can be found at: [Community Ownership Fund: prospectus - GOV.UK \(www.gov.uk\)](#)
- Funding Wales is an online portal which provides information on a wide range of funding options to suit all types of community project. More details can be found at: [Funding Wales](#)

ewmpas

For economic and
social change
Welsh Government
Social value review
Summary Report

June 2022



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Foreword

As we already know, 'social value' is a broad term that has been used to describe the social, environmental, cultural and economic impacts of actions taken by communities, organisations, governments and individuals. Welsh public sector procurement is one of many powerful levers that has the ability to deliver social value outcomes for the well-being of Wales.

In December 2021, CWMPAS were commissioned to engage with the Welsh public sector to undertake a mapping exercise with the purpose of reviewing the social value landscape in Wales and provide a set of recommendations for taking both the narrative and the practical implementation of social value forward within a Welsh context.

Whilst this summary report acknowledges that there is confusion regarding the meaning of social value in Wales, resulting in the inconsistent application of approaches to deliver social value; both within procurement and at an organisational level, the report provides a clear approach to resolving the inconsistencies.

It was found that social value, within Wales, needs to be viewed through the lens of the Well-being of Future Generations Act (WBFGA), whilst also recognising the need to align with any future direction linked with Procurement Reform and The Social Partnership and Public Procurement Bills.

In order to deliver a consistent approach for embedding social value, Welsh Government will provide the leadership required to deliver the recommendations detailed in this report, working with the Welsh public sector to drive a long-term solution for the delivery of wellbeing outcomes in Wales.

This work will ensure a clear thread from the WBFGA runs through the procurement lifecycle; from pre-planning to evaluation and reporting. However, it is important to note that the responsibility for social value does not just sit with procurement; social value needs to be considered holistically within organisations, with 'buy' in from Senior Leaders. Moving forward we know that public sector colleagues want to see consistency in terms of the approach, measurement and reporting of social value.



John Coyne
Director, Commercial and Procurement
Welsh Government

Introduction

Cwmpas (formerly the Wales Co-operative Centre) was commissioned by the Director of Commercial and Procurement within Welsh Government to map the current social value landscape within Wales.

It was acknowledged that 'social value' is a broad term that has been used to describe the social, environmental, cultural, and economic impacts of actions taken by communities, organisations, governments and individuals. Welsh public sector procurement is one of many powerful levers with the ability to deliver social value outcomes for the well-being of Wales; we know public bodies in Wales spend over £7 billion each year procuring a range of goods, services and works. This is nearly a third of total devolved Welsh annual expenditure, and it is estimated that over the next decade Welsh public services will spend over £70 billion.

Methodology

The Welsh Government outlined a list of participants that they wanted to take part in the research. Following an email from the Director of Commercial and Procurement, explaining the reason for and scope of the work, the individuals were contacted by Cwmpas and virtual interviews were arranged.

The semi-structured interview questions were agreed with the Welsh Government and the interviews were conducted between late January and March 2022. In total, 36 people were interviewed from 18 different organisations, including a number of Welsh Government Departments.

The majority of the interviews were audio recorded and anonymised quotes have been used to illustrate the issues identified.

Findings

There were two prominent findings from the interviews. The first was that the majority of the interviewees thought that the overall picture of social value in Wales was one of confusion, with a lack of consensus on what social value really means. There appears to be confusion at different levels:

- The overall meaning of social value, within a Welsh context.
- How to put social value into practice; both within procurement and at a strategic level.

The following quotes illustrate the confused picture:

"A lot of people do have different perceptions and they have different perceptions on how they measure it. It will help us across the board if everybody was doing the same".

"I guess there is no current unified approach being implemented and considered and that just leads to confusion".

“Where is the consistent approach that we're going to apply to Wales? there's no standard metric. There's no standard approach and standard reporting. So, you can't have a cohesive picture about what's going on in Wales”.

The second issue was that social value, in a Welsh context, has to be viewed through the lens of the Well-being of Future Generations Act (WBFGA), in terms of both the seven well-being goals and the five ways of working. Social value also needs to reflect the social, economic, environmental and cultural outcomes of the Act. Participants highlighted that the social value, as interpreted by the Public Services (Social Value) Act 2012, referred to here as 'the Social Value Act', is English rather than Welsh legislation.

A number of participants considered that opportunities to include cultural outcomes are often missed, for example:

“There's definitely a tendency within procurement contracts that culture, the cultural dimension of well-being gets dropped, because what happens is you have the Social Value Act gets adopted and all that fit that social value, but that importantly doesn't reflect the cultural dimension.”

The following themes were also highlighted during the interviews:

Definition of social value

A key output of this research is for the Welsh Government to consider a definition of social value. Participants were asked if and how they were already defining social value within their organisations. We know that there are many different definitions of social value and one participant referred to research that highlighted 18 different definitions.

A small number of organisations have defined social value within their organisations. Where they have, definitions are generally viewed within a procurement context. Some organisations are using the Government Commercial College (2020) definition, as outlined in WPPN 01/20: - 'Social Value' is “a broad term used to describe the social, environmental and economic impacts of actions taken by communities, organisations, governments and individuals”.

Others are using the definition of social value from Social Value UK:

“Social value is a way of thinking about how scarce resources are allocated and used. It involves looking beyond the price of each individual contract and looking at what the collective benefit to a community is when a public body chooses to award a contract.”

However, the majority of organisations we spoke to have not defined social value and are instead looking to Welsh Government to take a lead.

In trying to define social value in a Welsh context, there was agreement that a definition needs to clearly linked to the WBFGA:

“There's a connection between the well-being objectives of the local authority and to how procurement social value can contribute towards these well-being objectives. So, for me, at least,

when we look at the definition, it's being able to demonstrate a consideration for the Act, specifically contributing to well-being objectives".

Social value and community benefits

Many organisations seemed to use the terms 'social value' and 'community benefits' interchangeably. However, overall, it was acknowledged that community benefits is one element of the broader social value concept; as outlined in WPPN 01/20.

"There has been an explosion, almost, of different language relating to procurement. I think 'community benefits' was quite successful, I know it's been around for quite a few years, but it has been quite successful in terms of organisations adopting it, but obviously, it was very limited in terms of just focusing on the employment and training and I think people recognise that the approach needs to be a lot broader".

"Wales was at the forefront with the community benefits model. The criticism around it was that it wasn't resourced. It wasn't developed. It just stood still and nothing happened. And then time moves on, and people lead and say, well, this is a much better shiny thing called social value; Let's jump on this bandwagon".

Participants also felt that social value needs to be approached and embedded at a strategic level:

"We completely avoid using the words 'community benefits' because, that community benefits is used at an operational level, but actually social value is much broader than that. And really, social value is about making strategic decisions. It's about influencing, it's about much more than just delivering on the ground. It's about making it and embedding it into absolutely everything that we do and who we are, and why we're doing it".

Interestingly, one participant questioned the term 'social value' and suggested that in a Welsh context, with the clear links to the WBFGA, the term should be; 'well-being benefits', 'well-being values' or 'well-being outcomes'.

The meaning of social value to organisations

Interviewees were asked about the meaning of social value to their organisations. Again, it was clearly evident that the majority of organisations, particularly those from the public sector, were at very different stages in their implementation of social value. For those that were in the process of embedding or had embedded social value within procurement processes and wider policies, there was an emphasis on the value that could be recognised for local communities, shaped by local priorities and place.

"Social value is about how organisations can actually demonstrate that they're spending public money, but, social value should be a way for them to be able to show what are those wider benefits and wider outcomes that they're actually able to deliver through spending this money... it's about the value, the wider value that procurement could and should be leading to".

"We can spend a lot of time arguing about definitions when really, we just need to get social value achieved. What struck me about social value right at the beginning, is that it's real, it's real value. It's real additional value. We're not just talking about measuring something that's already there, or something we were going to get anyway. We're talking about changing things, to change the way that services are delivered, to change the types of products that we buy, and to change that in a way that is better for the nation of Wales".

Social value and procurement

The majority of participants who took part in this research worked within procurement teams and considered initial perceptions of social value were a procurement function. Organisations now recognise that social value is a broader term with a far wider remit and that it needs to be embedded throughout the organisation. Although this is acknowledged, many organisations are still at an early stage of developing their approach to social value both at an organisational level and within their procurement function.

"I don't think it's any coincidence that when we talk about social value, we tend to do it in a procurement context. The two seem to be very, very tightly interwoven. Which almost makes social value a procurement problem".

In order to utilise social value within procurement, some organisations had developed processes for commissioners and purchasers to start thinking about social value as early as possible within the procurement planning process. Participants highlighted that effort and resource is required to embed social value. This included training and awareness-raising as well as support for staff procuring goods and services. Processes need to be in place to allow staff procuring goods and services to consult and plan the procurement process, as early as possible, with consideration of social value.

"It's about planning the process and what social value we want to achieve from it. As commissioners, we are placed at the heart of that and we really need to understand who our stakeholders are, who our communities are, going deeper into the root of that and create our services that are fit for the future and then involve all suppliers through procurement and thereafter as well".

Engaging with communities

Many of the interviewees emphasised the need to engage with communities to deliver and maximise benefits.

"What we mean by social value, because as contracting authorities, the danger is that we try to pre-empt what social value means and what communities need without actually engaging with them. We might say that in this contract, we're going to create 15 apprenticeships, but actually apprenticeships isn't the priority for a particular community, it's not appropriate".

It was also acknowledged that many public sector bodies would like to see community engagement integrated into procurement processes. One participant also felt that consideration should be given to engaging with communities after the contract had been delivered to gain insight into how those social values measured had impacted on the perceived beneficiaries.

Social value within contracts

Of the organisations we spoke to, which were including social value or community benefits within tenders, nearly all were scoring these elements. The weighting varied between 10% and 15%. The evaluation methods also differed. Some were using software systems, some had developed evaluation matrices and some were using subjective assessments.

Measurement

Some local authorities have developed their own bespoke measurement systems, using open procurement, supported by in-house knowledge, skills and resources. Implementing a new system takes time and effort. For example, one respondent explained that this process had taken over two years. However, the system now in place met their requirements and could be used for both qualitative and quantitative measurement, based on their own social value framework.

Respondents considered there to be a focus on fiscal measures in terms of how they are currently measuring social value. However, they would support the development of qualitative reporting approaches to provide a more rounded picture.

"For me, there's pure quantitative measures. I know why people rely on them in this you've got an objective measure, but it doesn't always actually really tell the story, it doesn't demonstrate outcomes and you can hit quantitative measures without actually making much difference; they can become almost a perverse incentive".

Welsh Themes, Measures and Outcomes (TOMs)

There were clear concerns about the Welsh TOMs, with many respondents feeling that they were too associated with a commercial partner.

"We perceived that everybody would use this approach and phase out the community benefits and focus on the TOMs and that hasn't been happening. There has definitely been a lot of inconsistency because of the implementation of it"

"What's worried me is that people are so desperate to get an answer for social value, to help them with their day-to-day jobs and we've ended up with this commercial model.

"...it's important to differentiate between the Welsh national TOMs and Social Value Portal".

"Social Value Portal's hard sell has been really criticised"

"There was criticism around the Community Benefits Toolkit around being a clunky spreadsheet. And, if the TOMs are utilised as a spreadsheet, it doesn't reduce any of the criticisms, I think around the Community Benefits Toolkit. The there's has been mixed approach to implementing them".

"I don't think that it should ever have got into the situation where we had the relationship that developed to such an extent without any contractual obligations without any sort of conversation around intellectual property rights. The public sector has given its time and effort freely into something that is now a commercially viable product for a commercial provider."

The quote above highlights that a lot of time and effort has gone into formulating the Welsh TOMs, by a variety of public sector organisations, including the WLGA and the Office of the Future Generations Commissioner for Wales.

Some local authorities are trialling the TOMs and this approach seems to be working satisfactorily in a number of procurement areas. One organisation was using the TOMs spreadsheet. One interviewee raised the point about the maintenance of the TOMs:-

"I would be concerned about how do you know that those metrics are maintained and they're monitored and they are accurate? And they are being maintained on a sort of rolling basis, every time the inflation rate changes for something, whatever time that the statistics change ultimate that that should be measured? Who does that? They tell us that they do it for free, and they're doing it as part of this project, but who checks?"

Another participant highlighted:-

"I think it's great to have this national measurement set. But, you can almost see everyone's diluting it. Now everyone's changing it. So, actually, it looks completely different".

There also seems to be a consensus that the TOMs approach does not work in every procurement setting, with social care being the biggest area of concern. Local authority procurement professionals working in this field raised the approaches outlined in the Social Services and Well-being (Wales) Act 2014 (SSWBA) and, in particular, Section 16 which relates to social value models of delivery; with these models having a different meaning and approach to social value in its more general procurement sense.

Holistic approach

A number of local authorities have already embedded social value in their strategies, policies and procurement functions which could see the benefits of this approach.

"Social value gives us more of a drive I suppose, part that, we have to do this across the organisation regardless of the legislation, because of the senior management, buy in and passion for this, it's really been all across the whole organisation in terms of this is just what we do every day. It's been so fantastic to see because actually, cultural change is usually so slow to progress, but actually, it's been it's really quick".

"...procurement is sometimes still referred to as sort of that backroom function but making it really clear the impact that procurement outcomes have on a community. And that perhaps requires sometimes a little bit more innovative thinking or a little bit more sort of thought planning and also having procurement at a strategic level makes a real difference in terms of impact".

"Our corporate objectives are changing. We've come in at the right time, we've consulted with the team that are dealing with the corporate strategy and saying these are what we're thinking need to go in for social value. We've included our sustainability team, too. So, we've got that buy in from everybody, really making sure that social value aligns to our corporate values and objectives".

Of the local authorities that had written social value strategies, the following areas were highlighted:

- Decarbonisation and meeting Net Zero stipulations
- Community benefits, long-term unemployment and apprenticeships
- Ethical employment
- Fair Work
- Local business and national economy
- Social commitment in supply chains
- Community Wealth Building
- Foundational economy
- Circular economy
- Links to the WBFGA priorities and the SSWBA, links to Public Service Board (PSB) priorities and council plans.

It was also acknowledged that to get organisational 'buy in' to social value, wider policies and procedures need to be supported by education and training.

Impact on suppliers

The different approaches to social value within the Welsh public sector has an impact on suppliers, particularly local SME's There is also often a cost implication for suppliers if they have to purchase measurement software.

"The complaints you get back from suppliers is the lack of consistency in the approaches. 'I live in Council A you could get Council A doing one thing and Council B, 10 miles down the road doing something completely different' and you've got a supplier working in both is having to do two separate things. So, there is a lack of joined up thinking".

"One thing I've got against the Social Value Portal really is suppliers are going to have to pay for it. The winning bidder is going to have to pay a fee and we don't want to alienate SMEs more than they already are in terms of having bureaucracy and financial penalties in place. I know

they might have won the contract, but for us, our contracts are fairly low-value in comparison to [the] local authority. So even if they have to pay a few hundred pounds, it would be too much for some local SMEs”.

It was also considered that many SMEs do not have the skills required to complete the social value elements of the tender documentation:

“I think the key factor in all of this, is that there's no point in all local authorities issuing tenders with the TOMs and social value measures in them if the markets can't respond to it”.

“We make social value simple to be able to attract our local companies and local suppliers to engage because we found that a lot of our local suppliers, when they see an over-complicated approach, it actually stops them from bidding”.

In order to procure local suppliers, one public sector organisation working across a number of different counties, was planning to develop individual frameworks per trade specialism, such as electricians, painters etc. The various lots would be tendered at a county level and businesses could only apply for the tender in one county. They considered this could serve as a blueprint for the future.

Resources

It was clear that many procurement teams had lost members of staff, particularly at a senior level, and this was affecting the implementation of social value approaches within procurement:

“If we take a 20-year perspective of the professional procurement landscape in Wales, when directors of procurement have moved on or retired, they haven't been [directly] replaced. So, they've been replaced with a lower level in the organisation, and then they've been organisationally subordinated to directors of finance and in the DNA of directors of finance, they are always looking for cost savings. They frame procurement as a cost saving exercise, rather than a value-creating exercise and that goes right into the deep DNA culture of organisations”.

“Many procurement departments are really small, they do have trouble in just keeping their head above water in the sort of repetitive tender and they do it that alone introducing loads of new policies and objectives”.

A small number of public sector bodies have been able to allocate resources to social value, particularly social value officer posts and contract management positions. Where this has happened, it appeared to have significantly benefitted the implementation of social value within procurement, contract management and the wider organisation.

Good practice and sharing

The majority of participants would like the opportunity to share and learn from good practice:

"I think that's what Sophie Howe's review kind of pointed to that by saying we've had this community benefits and no one's been sharing the good practice or talking about nobody knew. It's like a dark hole".

"We don't seem to find people willing to share what they've done. I think some of that stems from the fact that everybody's on a journey at the moment, it seems to be everybody still in the same position as us and nobody actually wants to make commitments".

Welsh Government's Role

Public sector bodies in Wales want the Welsh Government to take ownership of social value. Many feel that the lack of leadership, particularly in the last few years, has resulted in the confused picture that currently exists, and the development of the Welsh TOMs has played a key part in this confusion.

"My message to Welsh Government is that you should have done all of this in-house. You've got all of the expertise, you've got all of the know-how digitally, you should be keeping your own data, you shouldn't be outsourcing it to somebody else, and building up their own business intelligence".

"There is no political leadership in the procurement team to go down the road of social value".

"Worrying, I think, and that's where Welsh Government needs to kind of have a bit of a wakeup call because these are trained, experienced procurement professionals, they're struggling".

Wider Context

When considering how to move forward the wider legislative and policy environment also needs to be considered, including:

- Procurement reform
- Social Partnership and Public Procurement (Wales) Bill; with an emphasis on socially responsible procurement and fair work
- Socio-economic duty
- The Co-operation Agreement 2021 and the updated Programme for Government, which promotes the purchasing of made-in-Wales products and services.
- The Wales Procurement Policy Statement (WPPS)
- WPPS Action Plan; most notably the actions detailed in principles 1,3,7 and 10
- The Foundational Economy and the Well-being Economy approaches.

One participant noted:

"I suppose if you look at some of the, the policy initiatives that we that we've developed over the years, a lot of the work links to the foundational economy, the Well-being of Future Generations Act. All of these policy drivers are aimed at making sure that we thought that the Welsh pound is remaining within Wales, and we're maximising the value for our communities.

“And so, I think a lot of a lot of our policy initiatives, really give support social value, but I just think, because there is no clear definition of what social value is and what it means practically for contracting authorities and for suppliers”.

There have also been a number of other reports highlighting social value in a procurement context, such as:

PROCURING WELL-BEING IN WALES: A Review into how the Well-being of Future Generations Act is informing procurement in Wales

Procurement in the Foundational Economy: Economy, Infrastructure and Skills Committee (February 2020)

Community Wealth Building in Wales (Various regional reports, Spring 2022)

Conclusion

The findings outlined in this report should come as no surprise and this research has confirmed the confused ‘social value landscape’ that exists in Wales. In terms of moving the discussions forward, public sector bodies are looking to Welsh Government to provide clear leadership and direction.

The Welsh Government should keep stakeholders up-to-date with their aims and plans in relation to social value, highlighting timescales and key milestones. As the discussion evolves Welsh Government must also ensure that a diverse group of stakeholders are involved.

The recommendations outlined below were discussed and amended following two workshops with a limited number of key stakeholders. The stakeholders that attended the workshops had all taken part in the interviews phase of this research.

Recommendations

1. From a procurement perspective, Welsh Government should take the lead role for a Wales wide approach to social value and resource this commitment effectively.
2. Social value needs to be clearly defined, in a Welsh context. This definition should contain social (including fair work), economic, environmental and cultural elements.
3. Participants evaluated that in Wales we have the Well-being of Future Generations Act as a legislative driver rather than the Social Value Act, and this is the lens that social value has to be viewed through. Therefore, it is recommended that consideration is given to using the terms well-being value/benefits/outcomes rather than social value, in Wales.
4. The methodology to measure social value, within the Welsh public sector, needs to be consistent. Welsh Government need to take the lead in this area. In practical terms this is likely to mean that support will need to be provided to ensure consistent application and adoption.

5. The format and guidance for reporting social value also needs to be consistent across Wales. Consideration should be given as to how this would compliment or impact on other reporting requirements, such as those required by the WBFGA.

Qualitative and quantitative approaches should be used to measure and report social value and guidance to support reporting should be developed. There is an opportunity to report social value centrally which would allow the sharing of good practice, evaluation and learning.

6. Any new approach to social value should align with the forthcoming Social Partnership and Public Procurement (Wales) Bill and procurement reform. There is an opportunity to align terminology and reporting, too.

7. There is a need for ongoing support for procurers, buyers and suppliers. Generally, procurement teams are under resourced, this needs to be considered as the social value approach develops.

Contract management is key to realising and reporting social value. In many public sector organisations, this is under resourced. This also needs to be thought about as ideas progress.

There needs to be processes in place to allow procurement teams to develop skills and capacity.

Mechanisms also need to be in place to share good practice. This could be through a community of practice or through the adaption of existing networks.

The supplier market and business support agencies need to be kept updated of likely implications, as well as proposed timescales and changes.

Note: no reference has been made to the role of the proposed National Procurement Centre of Excellence, as it was considered that discussions about the Centre were still at an early stage.

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Eich cyf/Your ref
Ein cyf/Our ref

Derek Walker
Chief Executive Cwmpas
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27 June 2022

Dear Derek,

I would like to thank you for your published report on 'Community Ownership of Land Assets'.

Our communities are our greatest assets in Wales and are central to our policies and commitments in the Programme for Government. Land and property assets enable our communities to have more control over services and facilities and are of huge importance to the foundational economy.

At our recent meeting I committed to respond to each of the report's recommendations and these are detailed below.

1. *The Welsh Government should establish a commission to stimulate innovative thinking on community ownership of land and assets in Wales.*

The commission should investigate and make recommendations on the implementation of various tax reforms on land and assets for community uses and determine the most appropriate method of valuing land, considering the social, ecological, cultural value as well as financial value, and should produce guidance on the fair price for land.

Your report on community led-housing together with the recent report from the Institute of Welsh Affairs has stimulated debate on the subject of community ownership of land and buildings. The issues raised by this body of work deserve serious consideration and will be captured in the forthcoming Local Government and Housing Committee's evidence hearings into Community Asset Transfers.

I can confirm I am minded to agree with your proposal to the establishment of a commission. But I also think we should wait for the conclusion of the Senedd committee evidence session, as the remit of the commission will I am sure you agree, need to have regard to the Committee's report and its recommendations.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

2. *The Welsh Government should introduce a Community Ownership and Empowerment Act that gives well-governed, sustainable community organisations the opportunity to have more control over land and assets in their communities.*

Conversations with partners are telling us there is a need for a fresh look at community policy in the light of the pandemic, when local action was so vital. We are now taking the first steps in developing a Communities Policy which will in turn develop new, co-productive, ways of working with our communities. This will help to ensure that the principles of community empowerment already built into our primary legislation are translated consistently into effective local engagement.

3. *The Welsh Government should develop a land ownership registry/database, which provides publicly accessible key data on land ownership/transactions in Wales (including publicising options agreements where future development may occur) bringing together existing databases e.g., HM Land Registry and the Welsh Government Land Division, to create a universal resource containing information on land.*

The current mapping data, property characteristics data, and property transactions data are collected by different government agencies and are not easily accessible for community groups. Richer data should make clear where the land is owned by public bodies, as well as private landowners and where land is unclaimed. This registry should always be kept up-to-date and transparent.

I agree that pulling multiple datasets together will result in a far more powerful information tool. Work is already underway through DataMap Wales and the replacement system to ePIMS (public sector property data base), to help realise this ambition.

4. *The Welsh Government should establish a Revolving Loan fund for community-led housing projects to grow the number of affordable community-led housing projects.*

Whilst delivering the recommendations of the Independent Review of Affordable Housing Supply (May 2019) to streamline funding processes, I am keen to ensure community-led housing groups have access to existing funding streams. Community-led housing groups can access Social Housing Grant funding when they partner with a Registered Social Landlord (RSL). I am keen to explore other funding avenues such as the Land and Buildings Development Fund, where I understand you are planning to submit a funding application. I look forward to receiving your application.

I accepted the recommendations of the Independent Review of Affordable Housing Supply (May 2019) including recommendations around streamlining funding processes.

5. *The Welsh Government should develop a Community Wealth Fund that would support communities to develop social infrastructure.*

The voluntary sector in Wales has been calling for the Welsh Government to use the next tranche of dormant assets funding to establish a Community Wealth Fund for some time. For example a recent report from the Building Communities Trust developed following a wide consultation with communities – [Strong Welsh Communities](#) refers to this.

I accept that a Community Wealth Fund aimed at helping community anchor organisations to continue to support their communities could provide a significant benefit and enable communities to become more empowered.

However, I also recognise that we need to do this through a cross-cutting, whole of government response.

6. *The Welsh Government should publish guidance (e.g., a Technical Advice Note) and should encourage local authorities to develop bespoke policies (e.g., Supplementary Planning Guidance, land disposal policies) on community-led housing and how it can be included in future developments and provide community groups with access to public land at a reduced cost, enabling planning departments to ensure that this commitment in the Programme for Government is readily achieved.*

The planning system in Wales requires community engagement throughout the planning process. Communities are encouraged to actively participate in the preparation of development plans, and support is available to help them through organisations such as Planning Aid Wales, which the Welsh Government sponsors.

Planning Policy Wales encourages community led housing and requires the provision of smaller residential sites to support Ministers' commitments for housing provision, in particular affordable housing. Local Housing Market Assessments (LHMA), produced by local authorities to identify housing need in their area, are available to community groups as well as commercial developers.

Housing policy is an area where community assets are a key element to addressing affordable housing supply, especially in rural and coastal areas where communities are in direct competition with second home owners and holiday lets.

The planning system controls the use and development of land, rather than who owns or develops it. Planning Policy Wales is supportive of the delivery of the Government's target for the delivery of 20000 social homes for rent but it makes no differentiation about who will build them. However, I recognise that a diverse supply of housing providers is a good thing and our planning policy seeks to ensure that sites are identified which are attractive to a wide range of providers e.g. by requiring the identification and provision of small sites

In respect of public land, Welsh Government and Local Authorities already have powers to sell land at less than open market value. But it is worth noting the transfer of land at a reduced cost (reflecting community benefits) has to observe regulations regarding state subsidy and public works contracts. However, authorities would be familiar with the principles and there are emerging legislative proposals to adjust Public Contract regulations to reflect social value.

7. *The Welsh Government should make Place Plans a mandatory part of the development plan process to encourage participation and give local people a chance to influence their area.*

I recognise the role of Place Plans and there are many examples of them in Wales. They are driven and prepared by local communities but not all communities necessarily want them and we must be respectful of this, which is why they are discretionary.

The statutory planning hierarchy currently consists of the National Development Framework and Local Development Plans. Work is also commencing on the preparation of Strategic Development Plans across Wales. Mandating yet another tier of plans, particularly in communities who have not expressed a desire for Place Plans could add to complications and be very resource intensive.

Local communities are encouraged to engage effectively in the current plan making process especially in LDPs

8. *Local authorities should work in partnership with local communities wanting to develop community-led housing projects to meet local housing need by leasing land for affordable community-led housing projects where necessary, utilising their CPO (Compulsory Purchase Orders) powers to purchase sites suitable for community led housing.*

Welsh Government and Local Authorities already work closely with locally based housing associations to provide much needed affordable homes for local people. Schemes already utilise community benefit tool kit to support local communities particularly during the procurement and construction phase.

Through our support for Self-Build Wales, local people can find help and financial assistance for new projects to build homes for themselves in their community.

<https://gov.wales/get-help-build-home-self-build-wales>

Ministers believe compulsory purchase powers are an important placemaking in action tool which can help support local authorities and communities. Revisions to paragraph 3.53 of Planning Policy Wales under the 'Strategic Placemaking' section strengthen support for the use of compulsory purchase powers by local planning authorities to help facilitate the development, redevelopment and improvement of land and buildings where there is a compelling case in the public interest. Circular 003/2019 introduced revised guidance and significant further support has been provided by creation (for the first time) of a CPO manual for Wales <https://gov.wales/compulsory-purchase-order-cpo-manual-edition-1>

9. *The Welsh Government should develop a formal process for Community Asset Transfers (CAT) so that there is a standardised approach across all local authorities and public bodies.*

The Welsh Government through Ystadau Cymru has already published a suite of detailed guidance to support the transfer of publicly owned assets to community groups. This includes examples of good practice in Wales and details best practice in processing asset transfers.

Our [Community Asset Transfer Research](#) provides evidence that some local authorities are working closely with local groups, the county voluntary council and others to make the asset transfer process as straightforward as possible. This best practice, offering support during and after the transfer process, leads to much better long-term outcomes.

I am sure your report, its recommendations together with other representations on this matter will be thoroughly reviewed by the Committee and reflected in their final recommendations to Welsh Government. I can assure you these will be given detailed consideration and will give us an opportunity to develop a more strategic response on this important matter, implement improvements where necessary alongside key stakeholders such as yourselves.

Yours sincerely



Julie James AS/MS
Y Gweinidog Newid Hinsawdd
Minister for Climate Change

Self-Build Wales is a Welsh Government funded scheme to support self-build and custom-build homes for owner-occupation.

It is designed to remove the barriers and uncertainty that prevents people in Wales from building their own homes by providing loan finance for the purchase of the plot and build costs. The loan is repaid on completion of the home when the beneficiary is expected to take a conventional mortgage before they occupy the home.

The scheme is delivered by The Development Bank of Wales on behalf of Welsh Government, which manages the £40m fund providing development loans to cover 75% of the cost of the land plus the full building costs. Plots are available with pre-approved designs and planning permission in place.

Plots are made available by Registered Social Landlords (RSLs), Local Authorities (LAs) and private land owners. The scheme uses pre-agreed energy efficient designs, ranging from 2 to 5 bedroom homes. The standard designs can be adapted to suit individual requirements and sites.

The benefits of the scheme are:

- No developer's profits are paid, potentially releasing finance for a deposit.

- The scheme encourages more construction by SME builders.

- The scheme is open to everyone in Wales, enabling first time buyers and those needing bigger homes to achieve their housing aspirations.

- The scheme enables RSLs and LAs to meet local housing priorities , such as housing for those with a local connection.

- High levels of energy efficiency are required.

- Homes built under this scheme cannot be sold or let for 5 years and must be the applicant's only property.

The scheme is in its infancy with sites currently at planning or consideration stage.. Officials are actively seeking suitable sites including recently opening the scheme to private land owners and are exploring how Community-led housing groups might access the scheme.

[A scheme to support self builds in Wales | Self Build Wales](#)

Technical Note for the Minister for Climate Change:

Local Government and Housing Committee (13/07/2022)

Inquiry into community assets—evidence session 4: Minister for Climate Change and the Minister for Finance and Local Government

Demolition of Community Assets – Town and Country Planning Considerations

Planning permission for demolition

1. Planning permission is required to undertake “development” and demolition is specifically included within that definition. There are two exceptions to this: the demolition of walls, fences and other means of enclosure (which are not in conservation areas); and small buildings up to 50 cubic metres in volume.
2. Other than in relation to community assets, most other demolition is acceptable in principle and key planning objectives are to ensure disused buildings do not become visually intrusive and unsafe, and the land is restored to a tidy state. This is achieved through planning legislation by the grant of a national planning permission subject to conditions. The conditions are intended to ensure the method of demolition does not cause unacceptable planning impacts, such as to adversely affect amenity or cause pollution.
3. Class A of Part 31 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (“the GPDO”) grants planning permission (“a permitted development right”) for all demolition other than where the building has been rendered unsafe or uninhabitable by the actions or inactions by the owners or occupiers (and it can practically be repaired or temporarily supported). The permission is subject to a prior approval procedure which enables the local planning authority to decide whether the method of demolition and any proposed restoration of the site is acceptable in planning terms.
4. Where planning permission has been granted for the redevelopment of land, demolition can take place without the need for prior approval.

Article 4 directions

5. It is accepted that a national planning permission is not necessarily appropriate everywhere, so in exceptional circumstances, the general permission which the GPDO grants for a particular development or class of development may be withdrawn in a particular area by a Direction made by the local planning authority or by Welsh Ministers under Article 4 of that Order (“an article 4 direction”). Such action will rarely be justified unless there is a real and specific threat, i.e. there is reliable evidence to suggest that permitted development is likely to take place which could damage an interest of acknowledged importance and which should, therefore, be brought within full planning control in the public interest.

Use of article 4 directions to protect historic buildings

6. One class of development which is likely to constitute exceptional circumstances and justify the use of article 4 directions are buildings which are locally listed.

Demolition of listed buildings and conservation areas

7. Listed building consent is required to demolish a listed building. Conservation area consent is required to demolish a whole building or substantially whole building within a conservation area.
8. National planning policy, set out in Planning Policy Wales (PPW), states that the demolition of any listed building should be considered as exceptional and require the strongest justification. When considering an application for conservation area consent, account should be taken of the wider effects of demolition on the building's surroundings and on the architectural, archaeological or historic interest of the conservation area as a whole. Proposals should be tested against conservation area appraisals, where they are available.

Local lists of historic buildings

9. Buildings that are of special architectural or historic interest at the national level are protected by Cadw through listing under the Planning (Listed Buildings and Conservation Areas) Act 1990. However, there are many other historic buildings that do not meet this national threshold, but which are nevertheless significant locally. These buildings are often held in high regard by local communities for their contribution to local character and memory.
10. As a national body, Cadw has responsibility for identifying buildings of special interest at a national level, but it is appropriate for the identification and protection of locally important buildings to be provided at the local level by local authorities. PPW sets out the Welsh Government's national planning policy for the protection of the historic environment and provides local planning authorities with the ability to identify historic assets of special local historic interest through local lists.
11. PPW outlines how local planning authorities can identify and give greater protection to assets through the planning system by developing local lists and appropriate policies for their conservation and enhancement in Local Development Plans (LDPs), which can be a powerful tool for the protection of local character. Importantly, local listing also provides an opportunity for a community to have a voice in the identification of historic assets of special local interest. Cadw has provided guidance at the following web link regarding [Historic assets of special local interest | Cadw \(gov.wales\)](#).

Use of article 4 directions to protect other community land and buildings

12. In the same way article 4 directions can be used to protect locally listed buildings, the process can be applied to other buildings of community importance by local planning authorities.
13. Preparing a strategy to protect land and buildings important to communities should be integrated with the preparation of the local development plan so key issues are addressed:
 - The identification of what land and buildings require protection – for example what level of community need is appropriate to justify protection from demolition. What

- type of land uses warrant protection? Are there community facilities which are no longer needed or have little prospect of being brought back into beneficial use?
- Requirement for participation and consultation – Public consultation can help understanding of community needs in terms of land and buildings. Consultation is also important to help reconcile community need with the human rights of land owners and occupiers whose property rights may be affected.
 - Co-ordination with other land use proposals – Securing land and buildings should be considered in the context of the local development plan strategy and objectives, including analysis of wider infrastructure needs, population changes and environmental pressures, with the overall aim of securing sustainable development.

Limitations of protection through land use planning and article 4 directions

14. An article 4 direction removes the permitted development right granted by the GDPO and instead requires the demolition proposal to be the subject of a planning application. Planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise. Unless protection of the community land and buildings is provided for in an LDP policy, then it might be difficult to justify refusal of planning permission for demolition.
15. Preventing demolition does not guarantee the use will continue. In seeking to prevent demolition, consideration would have to be given to future management of empty properties, such as addressing the visual impact of a deteriorating building fabric. There are, however, enforcement tools within the Town and Country Planning Act 1990 and related legislation (for example housing and environmental legislation) that can be used to mitigate this.

Changes to making Article 4 Directions

16. Consultation was undertaken between November 2021 and February 2022 on proposals to amend how article 4 directions are made. It was proposed to remove the requirement for the Welsh Ministers to confirm article 4 directions made by local planning authorities before they come into force, thereby simplifying the process. The Welsh Ministers are currently considering the consultation responses in association with proposed amendments to the GDPO relating to second homes and short term lets, with a view to bringing forward legislation in the autumn.

PLANNING DIRECTORATE 05/08/22

Agenda Item 4.7

Legislating to Empower Communities: Comparing Community Asset Acquisition Law in the UK

Dr Sarah Nason, Bangor University, School of History, Law and Social Sciences

ABSTRACT:

Across the UK legislation plays a variable role in facilitating the acquisition of land and other assets by communities, including legal rights to register assets as being of community value, rights for communities to pre-emptively bid for and buy such assets, and rights to force transfer of an asset, sometimes from an unwilling owner. The law has developed in different contexts, though there is a trend of conferring additional rights on community organisations linked to community empowerment and sustainable development, as well as to austerity cuts to public services. Whilst the case for expanding legal rights to community asset acquisition is actively argued, in practice most transfers occur through negotiation outside recent legislative frameworks. Research into factors supporting community asset acquisition, and challenges, reaches similar conclusions largely regardless of legal regimes. This speaks to broader questions about the variable roles of legislation in articulating procedures, providing concrete rights to communities, and catalysing cultural change within communities and public bodies in the context of sustainable development, wellbeing, and human rights. I conclude that community empowerment legislation does matter, but that such must be coupled with practical and financial resources for implementation and longer-term support.

Across the UK legislation plays a variable role in facilitating the acquisition of land and other assets by communities, including legal rights to register assets as being of community value, rights for communities to pre-emptively bid for and buy such assets, and rights to force transfer of an asset, sometimes from an unwilling owner. The law has developed in different contexts, though there is a trend of conferring additional rights on community organisations linked to

community empowerment and sustainable development, as well as to austerity cuts to public services. In this article I set out the main legal regimes for community asset acquisition in the UK nations, identifying their policy contexts, key legislative requirements, impacts, and reform proposals. Whilst the case for expanding legal rights to community asset acquisition is actively argued, in practice most transfers occur through negotiation outside recent legislative frameworks.

Research into factors supporting community asset acquisition, and challenges, reaches similar conclusions largely regardless of legal regimes.¹ Financial support and capacity building have significant impacts on the number of asset transfers and their success, perhaps more so than do legal rights for communities to bid and buy. This speaks to broader questions about the variable roles of legislation in articulating procedures, providing concrete rights to communities, and catalysing cultural change within communities and public bodies in the context of sustainable development, wellbeing, and human rights. I conclude that communities do benefit from legal rights to acquisition, but that such must be coupled with practical and financial resources for implementation and longer-term support.

Community asset acquisition law and policy contexts

The development of community asset acquisition in Scotland is most advanced and connected to the land question: ‘who owns Scotland?’² This has been influenced by rural experiences including the Highland clearances (evictions of tenants from the Highlands and Islands in the 18th and 19th Centuries) and the persistent concentration of land in the hands of private estates.

¹ See e.g., Development Trusts Northern Ireland, *Shaping Community Asset Transfer* (2021); Carolyn McMillan, Artur Steiner and Clementine Hill O’Connor, *Asset Transfer Requests: Evaluation of Part 5 of the Community Empowerment (Scotland) Act 2015* (Scottish Government 2020); and House of Commons, Communities and Local Government Committee, *Community Rights: Sixth Report of Session 2014-15* (2015).

² See e.g., Andy Wightman, *The Poor Had No Lawyers: Who Owns Scotland (And How They Got It)* (Birlinn Ltd 2015) and <http://www.whoownsscotland.org.uk/geo/index.htm>

Despite legislative intervention, patterns of land ownership in Scotland remain among the most concentrated in the world.³ Whilst the contemporary case for land reform did not start with devolution, reconvening the Scottish Parliament enabled proposals developed by a Land Reform Policy Group (LRPG) to be progressed.⁴ The LRPG concluded that the existing system of landownership inhibited development in rural communities, causing natural heritage degradation resulting from poor land management.⁵ Land reform in Scotland proceeded in stages, in turn informing the development of wider community asset acquisition law. In addition to new legislative rights for communities to buy land and other assets (under the Land Reform (Scotland) Act 2003 (as amended) and the Land Reform (Scotland) Act 2016), local authorities in Scotland can dispose of land and other real assets at below market value for community benefit following Regulations made by Scottish Ministers.⁶ Given this general power, many local authorities in Scotland had developed policies and procedures on community asset transfer prior to recent legislation. This is also the case in England,⁷ Wales,⁸ and Northern Ireland,⁹ where local authorities, and some other public bodies, are empowered to dispose of assets at below market value if such is likely to promote or achieve community benefits including economic wellbeing and/or regeneration, social wellbeing, or environmental wellbeing.

³ Rob McMorran et al, *Review of the effectiveness of current community ownership mechanisms and of options for supporting the expansion of community ownership in Scotland* (Scottish Land Commission 2018) p.6.

⁴ McMorran et al (n 3); Malcolm Combe, "Legislating for community land rights" in Malcolm Combe, Jayne Glass, and Annie Tindley (eds) *Land Reform in Scotland: History, Law and Policy* (Edinburgh University Press 2020).

⁵ Land Reform Policy Group, *Identifying the Problems* (The Scottish Office 1998); *Identifying Solutions* (The Scottish Office 1998) and *Recommendations for Action* (The Scotland Office 1999), see also McMorran et al (n 5) and MW Danson, and MG Lloyd, "The Land Reform Policy Group in Scotland: Institutional sponsorship for land reform?" (2000) 15(3) *Local Economy: The Journal of the Local Economy Policy Unit* 214.

⁶ Section 74 of the Local Government (Scotland) Act 1973 as amended by section 11 of the Local Government in Scotland Act 2003, and The Disposal of Land by Local Authorities (Scotland) Regulations 2010.

⁷ The Local Government Act 1972: General Disposal Consent (England) 2003.

⁸ Local Government Act 1972: General Disposal Consent (Wales) 2003

⁹ Section 79 of the Local Government (Northern Ireland) Act 2014, Local Government (Northern Ireland) Act 1972 and Department for Communities (Northern Ireland) Guidance for District Councils on Local Government Disposal of Land at Less Than Best Value (January 2021).

In England, community asset transfer has been a central government policy directed at local authorities' use of their redundant assets, operating on a discretionary basis. In 2006, the then Labour Government established a review of asset transfer powers and policies,¹⁰ finding that sufficient legal powers existed for local authorities to transfer assets to community management or full ownership, but that a culture of using these powers regularly and effectively had not been established. The review's *Vision for the Future* was "recognition that optimising the use of public assets is not the primary objective: the over-riding goal is community empowerment".¹¹ Under the Coalition Conservative and Liberal Democrat Government, the Localism Act 2011 introduced provisions giving communities a right to identify a building or other land believed to be of importance to their social wellbeing; if the asset comes up for sale, the community is given a fair chance to bid to buy it on the open market.¹² The term 'asset' is not defined in the 2011 Act but includes land and other real assets.

Northern Ireland has no specific legislation providing communities with rights to acquire assets, but transfers occur under the general powers of public bodies. Policy frameworks seek to encourage and facilitate transfers, assisted by Development Trusts Northern Ireland (DTNI),¹³ which has a formal role in the asset transfer process, along with the Northern Ireland Executive. A framework issued by the Northern Ireland Department for Social Development sets out how government can support community ownership and management of public sector assets and empower communities.¹⁴ The framework is orientated towards facilitating community ownership or management of surplus public sector assets and encouraging such to become a mainstream option within normal disposal processes. When

¹⁰ Barry Quirk, *Making Assets Work: The Quirk Review of community management and ownership of public assets* (HMSO 2007) (Quirk Review).

¹¹ Quirk Review p.3.

¹² Localism Act 2011, Part 5, Chapter 3 "Assets of community value".

¹³ DTNI is a member-led organisation working with community and voluntary organisations to facilitate transfers.

¹⁴ Urban Regeneration and Community Development Group, Department for Social Development, *Community Asset Transfer in Northern Ireland: Enabling and Supporting Community Ownership and Management of Public Assets* (Department for Social Development 2014) (Community Asset Transfer Framework NI).

published, the framework was said to support the Northern Ireland Executive’s commitment to “invest in social enterprise growth to increase sustainability in the broad community sector”,¹⁵ and to contribute to delivery of its Economic Strategy. The Ministerial Foreword also states: “Community Asset Transfer can be a real catalyst to stimulate regeneration and greater community cohesion across Northern Ireland”, as well as “empowering communities”.¹⁶

Wales also has no express legislation giving communities pre-emptive rights to buy land or other assets. Welsh Government has developed a “best practice guide” through Ystadau Cymru,¹⁷ established to enable, support, and encourage excellence in public sector collaborative asset management. The Ystadau guide situates asset acquisition in the context of an austerity driven disposal of assets by public bodies; stating: “Asset Transfers mean that the community can own and manage facilities that might otherwise be closed down if the Local Authority or other Public Authorities are unable to fund them any longer”.¹⁸ In 2014 a Welsh Co-operative and Mutuals Commission recommended: “Welsh Government considers legislation to enable communities to list their community assets and have right of first refusal to bring assets into community ownership. In any such legislation, consideration should be given to include sports clubs as community assets”.¹⁹ In response, the then Minister for Communities and Tackling Poverty concluded that English provisions fell short by not enabling communities to force sale of an asset,²⁰ yet no legislative action was taken. In early 2022 the Institute of Welsh Affairs (IWA) concluded that communities in Wales have fewer statutory rights to acquire land and other assets than those in Scotland or England, despite

¹⁵ Community Asset Transfer Framework NI (n 14) p1.

¹⁶ Ibid.

¹⁷ Ystadau was formerly known as the National Assets Working Group: <https://gov.wales/ystadau-cymru>

¹⁸ Ystadau Cymru, *Community Asset Transfer Guide* (Welsh Government 2019) p.3.

¹⁹ Welsh Co-operative and Mutuals Commission, *Report of the Welsh Co-operative and Mutuals Commission* (2014) recommendation 11, online at: <https://gov.wales/sites/default/files/publications/2019-05/report-of-the-welsh-co-operative-and-mutuals-commission.pdf>

²⁰ Lesley Griffiths, Minister for Communities and Tackling Poverty, *Written Statement - Assets of Community Value measures contained in the Localism Act 2011* (14 October 2014), online at: <https://gov.wales/written-statement-assets-community-value-measures-contained-localism-act-2011>

widespread support for at least the same level of community empowerment measures as in England, and with potential to go further.²¹ In May 2022, the Senedd Cymru/Welsh Parliament Local Government and Housing Committee launched an inquiry into Community Assets.²²

Community rights to register, bid and buy

Key Scottish legislation is the Land Reform (Scotland) Act 2003 (the 2003 Act), the Community Empowerment (Scotland) Act 2015 (the 2015 Act) and the Land Reform (Scotland) Act 2016 (the 2016 Act). The net effect, as Malcolm Combe states, is:

four methods for a community to acquire land from a private owner, in a manner that...either forces that owner to deal only with the community as and when the owner decides to sell or forces that owner to sell to the community as and when the community wishes to acquire.²³

For most procedures to asset acquisition under Scottish legislation, the status of the landowner is not especially important, however, the 2015 Act also introduced a new asset transfer procedure applying only to acquisition from public bodies.

The 2003 Act introduced a Community Right to Buy (CRtB), providing communities the opportunity to register an interest in land and to buy it at market value when offered for sale.²⁴ Initially the CRtB related to rural settlements of less than 10,000 people, later extended

²¹ Institute of Welsh Affairs, *Our Land: Communities and Land Use* (February 2022), online at: https://www.iwa.wales/wp-content/media/IWA_Our-Land-Communities-and-land-use_v5.pdf

²² Information online at: <https://business.senedd.wales/mgIssueHistoryHome.aspx?IID=39259>

²³ Combe (n 4) p.126.

²⁴ Land Reform (Scotland) Act 2003, Part 2: The community right to buy.

to the whole of Scotland.²⁵ The right covers land in which the community can demonstrate an interest, including land sufficiently near to land with which the community has a connection.²⁶ Legislation covers: registration of a community interest; exercise of a community right to buy; and appeals and compensation. Part 2 of the 2003 Act provides a general CRtB, whereas Part 3 covers crofting communities. Crofting is a specialised form of land tenure that exists only in the Highlands and Islands of Scotland. Under the latter provisions crofting communities creating a properly constituted crofting community body can have ownership of their croft land transferred on fair financial terms. The aim is to remove barriers to sustainable rural development by empowering crofting communities, enabling them to buy land at any time.

Whereas the Crofting CRtB can lead to an enforced sale, the Part 2 CRtB gives a relevant community body a right of first refusal once the land is put up for sale.²⁷ To acquire this right, a community must first publicly register an interest in the land it seeks to acquire.²⁸ If an owner decides to sell that land they should notify the Scottish Ministers, who then have seven days to notify the community body which has a registered interest, the community body then has 30 days to decide to exercise its right to buy.²⁹

Additionally, Part 3A of the 2003 Act, introduced by the 2015 Act, gives community bodies a right to acquire “eligible land” if in the opinion of Scottish Ministers, it is wholly or mainly abandoned or neglected, or the use or management of the land is such that it results in or causes harm, directly or indirectly, to the environmental wellbeing of a relevant community. Scottish Ministers should assess for eligible status based on certain factors; “Abandoned or

²⁵ On the first urban land transfer, which took place in Edinburgh see, John Lovett and Malcolm Combe, “The Parable of Portobello: Lessons and Questions from the First Urban Acquisition Under the Scottish Community Right-to-Buy Regime” (2019) 80 *Montana Law Review* 211.

²⁶ Land reform (Scotland) Act 2003, section 38.

²⁷ See especially Land Reform (Scotland) Act 2003, section 40(1): For so long as a community interest in land is registered the owner of the land, and any creditor in a standard security having a right to sell the land, is prohibited from— (a) transferring that land (or any land of which that land forms part); or (b) taking any action with a view to the transfer of that land (or any land of which that land forms part), except in accordance with this Part of this Act. (2) A transfer in breach of subsection (1)(a) above is of no effect.

²⁸ Land Reform (Scotland) Act 2003, sections 37 and 38.

²⁹ Land Reform (Scotland) Act 2003, section 49.

neglected land” forms one category, “detrimental land” another. Ministers must consider the land’s physical condition (which might include whether it is a risk to public safety or the wider environment); designation or classification; or use or management. For “detrimental” land, Ministers must consider use or management of land, and look at whether harm to environmental wellbeing in a technical sense has in fact occurred.³⁰ The community must have already tried to purchase the land before a forced sale can occur. Where the land acquisition turns on environmentally detrimental status, the community scheme must be capable of fixing the problem, and the community must have invited the relevant regulator to act. Assuming Scottish Ministers give consent, they will appoint an independent valuer to determine the market price, to be paid by the community body within six months. This is unlikely to be used as a first option for communities, but as a backstop where other methods of acquisition have failed.³¹

The 2016 Act introduced an additional right for communities to acquire land from private owners for sustainable development.³² Assuming statutory tests are satisfied, and subject to payment of an independently valued price within six months of consent being granted by Scottish Ministers, transfer is compelled. Communities must meet substantial hurdles to exercise this right, including satisfying Ministers of sustainable development potential and significant community benefit.

In addition to the above rights to buy from private owners, Part 5 of the 2015 Act gives communities a right to request asset transfers from “relevant authorities”.³³ These are public bodies listed in Schedule 3, including the Scottish Ministers and local authorities, and other

³⁰ The Community Right to Buy (Abandoned, Neglected or Detrimental Land) (Eligible Land, Regulators and Restrictions on Transfers and Dealing) (Scotland) Regulations 2018.

³¹ Jill Robbie, “Babes in the woods: the decision of the Scottish Ministers on the application of Helensburgh Community Woodlands Group to exercise the right to buy abandoned, neglected or detrimental land” (2021) 25 *Edinburgh Law Review* 347.

³² Land Reform (Scotland) Act 2016, Part 5 Right to buy land to further sustainable development.

³³ Community Empowerment (Scotland) Act 2015, section 77.

entities e.g., National Parks, Scottish Enterprise, and Scottish Water. Communities can use this legislation to seek ownership of land or another real asset, or a right short of ownership such as a lease or right to manage. The right to request an asset transfer is subject to certain restrictions, but the relevant public authority must agree to a properly framed request unless there are reasonable grounds for refusing.³⁴ The request must state the asset to which it relates, the reasons for making the request, the benefits which the community transfer body considers will arise, and the price that the community would be prepared to pay.³⁵ The relevant authority is prohibited from selling the asset until it considers the request³⁶ based on the legislative scheme including economic, social and environmental factors.³⁷ These provisions do not specify how relevant authorities should facilitate transfers, although Scottish Government guidance makes good practice recommendations.³⁸

For England, Part 5 of the Localism Act 2011 enables a suitably constituted community interest group to nominate local assets to be listed as assets of community value.³⁹ For such listed assets, should they come up for sale, there is a moratorium period during which community interest groups with a legal identity can submit an intention to bid.⁴⁰ Local authorities in England are required to maintain a list of assets of community value.⁴¹ For the purposes of Chapter 3 of Part 5, whether a particular building or other land in the local authority's area is of community value depends on the local authority's opinion as to whether it furthers the social wellbeing or social interests of the community and could be realistically expected to continue to do so.⁴² The owner is prevented from disposing of the asset unless

³⁴ Community Empowerment (Scotland) Act, section 82(5).

³⁵ Community Empowerment (Scotland) Act 2015, section 79.

³⁶ Community Empowerment (Scotland) Act 2015, section 84.

³⁷ Community Empowerment (Scotland) Act, section 82.

³⁸ *Community Empowerment (Scotland) Act 2015: asset transfer guidance for authorities*, online at: <https://www.gov.scot/publications/asset-transfer-under-community-empowerment-scotland-act-2015-guidance-relevant-9781786527493/>

³⁹ Localism Act 2011, Part 5 Community empowerment, Chapter 3 Assets of community value.

⁴⁰ Localism Act 2011, section 95.

⁴¹ Localism Act 2011, section 87.

⁴² Localism Act 2011, section 88.

certain conditions are satisfied, including that the owner must notify the local authority in writing of their wish to dispose, and that a relevant moratorium period has ended. Specifically, that an interim moratorium period (of six weeks) has ended without the local authority receiving a written request from a community interest group for the group to be treated as a potential bidder, or that a full moratorium period (of six months) has ended.⁴³ The moratorium on sale under the Localism Act 2011 gives communities a right to bid for an asset before the owner can transfer to anyone else, whereas the Scottish CRtB requires that a transferring landowner sell land to the community at an agreed or set price if that community has registered its interest in land appropriately. The Scottish CRtB land requires the owner to decide to sell, and research suggests that a barrier to achieving community empowerment through the legislation continues to be where owners are unwilling to sell to community bodies.⁴⁴

Defining community

The first step under Parts 2 (CRtB) and 3 (Crofting CRtB) of the Scottish 2003 Act is incorporation of a suitable entity, a “community body”⁴⁵ or “crofting community body”.⁴⁶ For the general CRtB, a community body may be a company limited by guarantee whose articles of association must be tailored to have no fewer than ten members, provide that at least three quarters of the members of the company are also members of the local community (and that those members have control of the company), and provide that any surplus funds or assets of the company are to be applied for the benefit of the community.⁴⁷ As originally enacted, the

⁴³ Localism Act 2011, section 95(6) specifies the moratorium periods.

⁴⁴ Ciaran Mulholland et al, *Impact Evaluation of the Community Right to Buy* (Scottish Government Social Research 2015), and McMorran et al (n 3).

⁴⁵ Land Reform (Scotland) Act 2003, section 34.

⁴⁶ Land Reform (Scotland) Act 2003, section 71.

⁴⁷ Land Reform (Scotland) Act 2003, section 34(1).

2003 Act obliged communities to incorporate as a company limited by guarantee, following the 2015 Act they may form a Scottish charitable incorporated organisation⁴⁸ or a community benefit society.⁴⁹ Similar rules then apply as regards such an entity's constitution, membership, and application of any surplus generated. In all cases, the body must have been recognised by Scottish Ministers as having a main purpose consistent with furthering the achievement of sustainable development.⁵⁰ A "crofting community body" is similarly defined with respect to legal status, membership and so on, but with idiosyncrasies due to the specific nature of crofting communities and their tenancies. Aside from crofting communities, for all other rights to buy, a community is defined by reference to either one or more postcode units or a "prescribed type of area" (specified by Scottish Ministers).⁵¹ A community comprises persons from time-to-time resident in that postcode unit, or in one of those postcode units, or in the prescribed type of area, and entitled to vote at a local government election in a polling district which includes the unit(s) or area.⁵² Whilst the geographical condition has been extended from postcode units only, to prescribed types of areas, it still risks not having full regard to diverse factors demonstrating community, such as culture and language. Malcolm Combe refers to the postcode condition as defining "a people united by proximity as opposed to common cause".⁵³ In contrast, community asset transfers from public bodies under Part 5 of the 2015 Act can be made to communities of interest. An eligible "community transfer body",⁵⁴ is defined as either a "community-controlled body" or a body designated as such by Scottish Ministers. A "community-controlled body" is a body (whether corporate or unincorporated) with a written constitution defining: the community to which it relates; that the majority of members must be

⁴⁸ Land Reform (Scotland) Act 2003, section 34(1A)

⁴⁹ Land Reform (Scotland) Act 2003, section 34(1B).

⁵⁰ Land Reform (Scotland) Act, section 34(4).

⁵¹ Land Reform (Scotland) Act, section 34(5)(a)

⁵² Land Reform (Scotland) Act, section 34(5)(b).

⁵³ Combe (n 4) p.132.

⁵⁴ Community Empowerment (Scotland) Act, section 77.

members of the community and that community members must control the body; that membership is open to any member of the relevant community; a statement of the aims and purposes of the body including promotion of community benefit; and that any surplus is to be applied for community benefit. A community could be any group feeling they have something in common, which could be living in the same area, but also shared interests or characteristics. Such ‘communities of interest’ can include faith groups, ethnic or cultural groups, people affected by a particular disability, sports clubs, conservation groups and heritage associations. This could range from local groups to national or international bodies with thousands of members.⁵⁵

Under Part 5 of the 2015 Act, where a community body seeks to acquire ownership, it is required to be embodied as a suitable legal personality. Acceptable personalities again include a company limited by guarantee, a Scottish charitable incorporated organisation, and a community benefit society, although here the legislation requires a minimum of 20 as opposed to 10 members. Some bodies with fewer than 20 members are enabled to acquire assets where a community body approved for another right of acquisition later seeks an asset transfer.

For England, under the Localism Act 2011, assets may only be included in the list of assets of community value in response to a community nomination or where otherwise permitted. Community nominations are defined as nominations made by a Parish Council or a voluntary or community body with a local connection.⁵⁶ A body other than a Parish Council has a local connection with land or assets in a local authority’s area if the body’s activities are wholly or partly concerned with the local authority’s area, or with a neighbouring local authority’s area. Voluntary community bodies that can nominate assets for listing include neighbourhood forums under the Town and Country Planning Act 1990, Parish Councils,

⁵⁵ See e.g., Scottish Government, *A step-by-step guide for community bodies on asset transfer as part of the Community Empowerment (Scotland) Act 2015*, online at: <https://www.gov.scot/publications/asset-transfer-under-community-empowerment-scotland-act-2015-guidance-community-9781786527509/pages/5/>

⁵⁶ Localism Act 2011, section 89(2)(b).

unincorporated bodies with at least 21 individual members which do not distribute a surplus to members, charities, companies limited by guarantee and industrial and provident societies that do not distribute a surplus to members, and community interest companies.⁵⁷ Unincorporated bodies, companies limited by guarantee, and industrial and provident societies will be considered to have a “local connection” if any surplus made is wholly or partly applied for the benefit of the relevant local authority’s area, or for the benefit of a neighbouring local authority’s area.

These provisions can be summarised; for community rights to register/list an asset as being of community value, and to exercise a pre-emptive right to buy or bid for that asset, communities in both Scotland and England are referable to geographical location (postcode, other type of area, local authority area), whereas to request a community asset transfer (under Scots law) a community is determined by shared interests. In order to bid for, and to potentially take ownership of assets, community organisations must have a more formal legal status than is required to nominate an asset as being of community value, or than is required for a lesser interest in the asset such as a lease.

In England (outside the 2011 Act), and in Wales, the individual policies of local authorities determine what kinds of bodies the local authority will entertain an asset transfer request from. The Ystadau guide notes that community asset transferees could be town and community councils, third sector organisations, or community groups (whether well-established or recently formed).⁵⁸ In Northern Ireland, the Community Asset Transfer Framework indicates that voluntary and community sector groups, faith-based organisations, community enterprises and social enterprises can all seek asset transfers provided they are

⁵⁷ Localism Act 2011, section 89(2)(b)(iii) and The Assets of Community Value (England) Regulations 2012, regulation 5.

⁵⁸ Ystadau (n 17) para 2.1 Potential Applicants.

incorporated, constituted for social benefit, and demonstrate an ‘asset lock’ such that the asset is retained for community benefit.⁵⁹

Democratic procedures

In Scotland, rights to register an interest in, and to buy land, require local support. For the general CRtB Scottish Ministers must be satisfied that the proportion of members of the community who have voted in a ballot on the question of whether the community body should buy the land is, in the circumstances, sufficient to justify the community body’s proceeding to buy the land; and that the majority of those voting have voted in favour of the proposition that the community body buy the land.⁶⁰ Here the community is determined by postcode unit(s), or other prescribed type of area, and entitlement to vote in local government elections.

The right to buy abandoned (etc) land also requires community approval, which can be achieved where at least half of the members of the community have voted, or where fewer than half have voted but the proportion is sufficient to justify the community body’s proceeding to buy the land, and the majority of those voting have voted in favour.⁶¹ The same criteria apply to the community right to buy land for sustainable development under the 2016 Act.⁶² These recent rights to buy have some parallels to compulsory state acquisition for development, albeit that the community body is the catalyst for expropriation consent given by the state then followed by transfer to the community body.⁶³ Here the ballot procedures might constitute a safeguard against potential exploitation. John Lovett also considers the ballot provides “a

⁵⁹ Department for Social Development (n 14) p.13.

⁶⁰ Land Reform (Scotland) Act 2003, section 51(2). Specific provisions in relation to democratic procedures for crofting communities are under Land Reform (Scotland) Act 2003, section 75.

⁶¹ Land Reform (Scotland) Act 2003, section 97J(1).

⁶² Land Reform (Scotland) Act 2016, section 57(1).

⁶³ John Lovett, “Towards Sustainable Community Ownership: A Comparative Assessment of Scotland’s New Compulsory Community Right to Buy” in Malcolm M. Combe, Jayne Glass and Annie Tindley (eds), *Land Reform in Scotland: History, Law and Policy* (Edinburgh University Press 2020).

meaningful opportunity for local democratic decision-making in a political system that tends to favour centralised authority”.⁶⁴ The existence of ballot procedures in legislation relating to the right to buy land from private owners, but not in other community asset transfer legislation and/or guidance, introduces a democratic element that is perhaps already ‘baked in’ to other law and guidance relating to transfer from public bodies, and could also be seen as indicative of the value (both financially and symbolically) of land.

Wellbeing and social interests

The right to buy abandoned (etc) land requires Scottish Ministers to agree that eligible land is either mainly abandoned or neglected or that “the use or management of the land is such that it results in or causes harm, directly or indirectly, to the environmental wellbeing of a relevant community”.⁶⁵ In this context “harm” includes adverse effects on the lives of persons comprising the relevant community.⁶⁶

For Ministers to consent to the right to buy land for sustainable development, in addition to the request furthering sustainable development and being in the public interest, Ministers must be satisfied that the transfer is likely to result in significant benefit to the community, that it is the only, or the most practicable, way of achieving that benefit, and that withholding consent is likely to result in harm to that community.⁶⁷ Ministers must consider the likely effect of granting or withholding consent with reference to economic development, regeneration, public health, social wellbeing, and environmental wellbeing.⁶⁸ These matters must also be taken into account by a relevant authority deciding whether to agree to a

⁶⁴ Lovett (n 63) p.158.

⁶⁵ Land Reform (Scotland) Act 2003, section 97C(2)(b).

⁶⁶ Land Reform (Scotland) Act 2003, section 97C(3)(i).

⁶⁷ Land Reform (Scotland) Act 2016, section 56(2)(c) and (d).

⁶⁸ Land Reform (Scotland) Act 2016, section 56(12).

community asset transfer request under the 2015 Act.⁶⁹ These factors can be seen as “at once multifaceted and yet open-textured”⁷⁰ allowing significant ministerial discretion in decision-making. Various accounts of the nature of property could be engaged here, with an economic conception of community ownership, including for regeneration and sustainable development purposes, being raised alongside a ‘human flourishing’ conception accounting for wider social benefits.⁷¹ Jill Robbie notes that Scottish Ministerial decisions provide insight into these approaches: “one which considers the land as purely a financial investment and the other which has a more holistic appreciation of the value of the land to the local community”.⁷² Robbie concludes that whilst the hurdles for community bodies under the newer rights to acquire are substantial in terms of indicating financial viability, nevertheless, increased momentum towards a more holistic vision of ownership is evident in Ministerial decision-making.⁷³

Outside specific land and community empowerment legislation, local authorities in Scotland may dispose of their assets for less than best consideration if the disposal is likely to contribute to the promotion or improvement of economic development or regeneration, health, social wellbeing, or environmental wellbeing of the whole or any part of the local authority area or any persons resident or present there.⁷⁴

In England, for assets to be listed as being of community value under the Localism Act 2011, the relevant authority must be of the opinion that use of the asset furthers social wellbeing or social interests, or did so in the recent past, and will realistically continue to do so, or could

⁶⁹ Community Empowerment (Scotland) Act 2015, section 82(3).

⁷⁰ Lovett (n 63) p.155.

⁷¹ Lovett (n 63) p.145-151.

⁷² Robbie (n 31) p.348.

⁷³ Robbie (n 31) p.352-353.

⁷⁴ The Disposal of Land by Local Authorities (Scotland) Regulations 2010, regulation 4(1), references to wellbeing are to be construed as for the purposes of section 20 of the Local Government in Scotland Act 2003, which provides a power for local authorities to do anything considered likely to promote or improve the wellbeing of the area and/or persons in that area, including power to incur expenditure, enter into agreements, and so on. This section does not, however, define “wellbeing”.

do so within the next five years.⁷⁵ “Social wellbeing” is not defined in the 2011 Act, whereas “social interests” is defined as including cultural, recreational, and sporting interests.⁷⁶ Upper Tribunal decisions interpret some of these provisions, although what constitutes “social wellbeing” and the “local community” is, as the Tribunal has put it, a “highly contextual question, depending upon all the circumstances of the particular case”.⁷⁷ For asset transfers outside the 2011 Act express Ministerial consent is not required for the disposal of any interest in land (or other assets) which the authority considers will help it to secure the promotion or improvement of the economic, social, or environmental wellbeing of its area.⁷⁸ The General Disposal Consent (Wales) 2003 provides the same for Welsh local authorities.

In Northern Ireland, a council cannot dispose of assets other than at the best price without Ministerial approval. A Northern Ireland Executive framework document assists council staff dealing with the disposal of assets at less than best price.⁷⁹ The Department for Communities has also published Guidance stating that section 96(5) of the Local Government (Northern Ireland) Act 1972, requiring Ministerial approval for disposal, provides the basis for district councils to justify the disposal as being for the wellbeing of the district.⁸⁰

⁷⁵ Localism Act 2011, section 88(1) an actual current use of the building or other land that is not an ancillary use furthers the social wellbeing or social interests of the local community, and (b) it is realistic to think that there can continue to be non-ancillary use of the building or other land which will further (whether or not in the same way) the social wellbeing or social interests of the local community.

If the asset does not meet these requirements, it might still be of community value if, in the opinion of the authority: Section 88(2) (a) there is a time in the recent past when an actual use of the building or other land that was not an ancillary use furthered the social wellbeing or interests of the local community, and (b) it is realistic to think that there is a time in the next five years when there could be non-ancillary use of the building or other land that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community.

⁷⁶ Section 88(6) “social interests” includes (in particular) each of the following – (a) cultural interests; (b) recreational interests; (c) sporting interests.

⁷⁷ *Crostone Ltd v Amber Valley Borough Council* [2015] UKFTT CR/2014/0010 (GRC) at [17].

⁷⁸ The Local Government Act 1972 General Disposal Consent (England) 2003

⁷⁹ Department of Finance, Land & Property Services, *Disposal of Surplus Public Sector Property in Northern Ireland* (2018), online at: https://www.finance-ni.gov.uk/sites/default/files/publications/dfp/Disposal%20of%20surplus%20public%20sector%20property%20in%20Northern%20Ireland%20-%20guidance%20-%20Nov%2018_0_0.pdf

⁸⁰ Department for Communities, Local Government & Housing Regulation Division, *Guidance for District Councils: Local Government Disposal of Land at Less Than Best Price* (2021), online at: <https://www.dtni.org.uk/wp-content/uploads/2021/01/DfC-Guidance-on-Less-than-Best-for-District-Councils.pdf>

Sustainable development and human rights

The Scottish community rights to buy require Scottish Ministers to be satisfied of the community body's commitment to sustainable development, and, where relevant, that the transfer is either compatible with furthering the achievement of sustainable development, or likely to achieve such development in relation to relevant land. The term sustainable development is not defined in the legislation. Douglas Maxwell considers there to be "almost no guidance on the weight to be allocated to differing factors that might constitute sustainable development".⁸¹ Andrea Ross, on the other hand, argues that legislative techniques have begun to "set out a more bespoke interpretation or approach to sustainable development which acknowledges and perhaps prioritises certain factors and recognises how the tensions inherent in sustainable development are likely to play out in any given context".⁸² For example, she notes that the right to buy land that has been abandoned (etc) limits the scope of sustainable development to the sustainable development of land, and that the right to buy land for sustainable development requires ministerial satisfaction that the community's proposal *will* further sustainable development, rather than be *compatible with* furthering sustainable development. Other means to nuance the framework, through which an ultimately political interpretation of sustainable development can be reached, include the types of information that must be provided to Ministers, and whose interests Ministers must consider.

In Wales "sustainable development" in public body decision-making is defined by law. Under the Wellbeing of Future Generations (Wales) Act 2015 (WFGA) "sustainable

⁸¹ Douglas Maxwell, "Disputed property rights: Article 1 Protocol No.1 of the European Convention on Human Rights and the Land Reform (Scotland) Act 2016" (2016) *European Law Review* 900, 915.

⁸² Andrea Ross, "The Evolution of Sustainable Development in Scotland: A Case Study of Community Right to Buy Law and Policy" in Malcolm M. Combe, Jayne Glass and Annie Tindley (eds), *Land Reform in Scotland: History, Law and Policy* (Edinburgh University Press 2020) 170,196.

development” means the process of improving the economic, social, environmental, and cultural wellbeing of Wales by taking action, in accordance with the sustainable development principle, aimed at achieving the wellbeing goals. The sustainable development principle “means that the [public] body must act in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs”. This principle originated with the 1987 Bruntland Report⁸³ and has also been referenced by bodies seeking to interpret sustainable development under Scots law. The WFGA places public bodies in Wales under a duty to carry out sustainable development, which must include setting and publishing wellbeing objectives that are designed to maximise a public body’s contribution to achieving wellbeing goals, and by taking all reasonable steps (in exercising its functions) to meet those objectives. The goals are: (1) a more prosperous Wales; (2) a resilient Wales; (3) a healthier Wales; (4) a more equal Wales; (5) a Wales of cohesive communities; (6) a Wales of vibrant culture and thriving Welsh language; and (7) a globally responsible Wales. Crucially, the Future Generations Commissioner for Wales does not see the goals as potentially conflicting matters to be balanced, but rather as forms of flourishing each to be achieved to the highest degree possible in any given context.

Whilst recognising its proven record in catalysing cultural change, WFGA has been criticised as lacking sufficient clarity to provide much in the way of legally enforceable rights for individuals and communities. Trends in Welsh legislation disclose an emphasis on imposing strategic duties on public bodies without creating specific legally enforceable rights for individuals and communities.⁸⁴ In relation to asset acquisition, the IWA found that communities in Wales have fewer statutory rights than communities in Scotland and England,

⁸³ *Report of the World Commission on Environment and Development: Our Common Future* (1987), online at: <https://sustainabledevelopment.un.org/content/documents/5987our-common-future.pdf>

⁸⁴ Sarah Nason, “The ‘new administrative law’ of Wales” [2019] *Public Law* 703; Lord Thomas of Cwmgiedd, “Thinking policy through before legislating – aspirational legislation” Statute Law Society, The Lord Renton Lecture, Institute of Advanced Legal Studies, 21 November 2019, online at: <http://www.statutelawsociety.co.uk/home/lord-thomas-text-aspirational-legislation-21-11-19/>

seemingly at odds with “conceptions in Welsh political circles of Wales as a ‘communitarian’ nation”.⁸⁵

A specific commitment to sustainable development is not part of the legislative conditions for communities requesting an asset transfer from Scottish public authorities under Part 5 of the 2015 Act, nor for English communities exercising the right to list and to bid under the Localism Act 2011. The term “sustainable development” is not expressly used in the context of UK local authorities’ general powers to dispose of assets at less than best consideration. However, in all these contexts, matters that legislation and related guidance require decision-makers to account for are facets of sustainable development. For example, promotion or improvement of economic development or regeneration (prosperity and resilience), health, social wellbeing, or environmental wellbeing, and social interests including cultural, recreational, and sporting interests. Sustainable development, through the prism of wellbeing, is then relevant to all legal bases for transferring land or other assets to communities discussed in this article. With respect to Scottish community rights to buy legislation, Ross argues that sustainable development might “most usefully be viewed as a framework or forum for sometimes complementary but often conflicting, factors to be raised”,⁸⁶ and that how such factors are articulated within legislation and guidance can be purposefully nuanced and context specific. This might already be evident within existing legislation and guidance, perhaps across all UK nations, though it isn’t clear that such articulation has always kept pace with broader government policies in relation to sustainable development across land and asset use.

The notion of land ownership as an asset to be used to serve the common good is embedded in international human rights law, which places relevant state parties under obligations to ensure progressive realisation of social and economic rights such as rights to

⁸⁵ IWA (n 22) p.7.

⁸⁶ Ross (n 82) p.188.

adequate housing and food. Reflective of this, the first principle of the Scottish Land Rights and Responsibilities Statement is:

The overall framework of land rights, responsibilities and public policies should promote, fulfil and respect relevant human rights in relation to land, contribute to public interest and wellbeing, and balance public and private interests. The framework should support sustainable economic development, protect and enhance the environment, help achieve social justice and build a fairer society.

The ECHR Article 1 Protocol 1 right to property, incorporated into domestic law by the Human Rights Act 1998 (also underpinning the devolution Acts), has been seen as limiting the progress of reforms seeking more diversified land ownership in Scotland.⁸⁷ In relation to the Crofting CRtB, the Scottish Government justified expropriation of privately owned land based on the need to support communities located in the most fragile areas where the potential for a bad landlord to do real harm is greatest.⁸⁸ Also, crofting land is inherently blighted by strict tenure conditions such that the owner cannot act in a way which undermines strong crofting use rights. In *Paicr Crofters v The Scottish Ministers*,⁸⁹ the Court of Session held that legislative procedures for Ministers to balance competing interests when making decisions about crofting community rights were compatible with article 6 ECHR (right to a fair hearing); that weight given to the landowner's interests is pre-eminently a matter for Ministers; compensation is a material consideration; and the court will only require that ministerial assessment of the public interest is not "manifestly unreasonable". Maxwell describes this approach as "highly

⁸⁷ Debates discussed in Maxwell (n 81) and Frankie McCarthy, "Property Rights and Human Rights in Scottish Land Reform" in in Malcolm M. Combe, Jayne Glass and Annie Tindley (eds), *Land Reform in Scotland: History, Law and Policy* (Edinburgh University Press 2020) 170.

⁸⁸ Scottish Executive, Land Reform (Scotland) Bill, Policy Memorandum (2001) para 25, online at: [https://archive2021.parliament.scot/S1_Bills/Land%20Reform%20\(Scotland\)%20Bill/b44s1pm.pdf](https://archive2021.parliament.scot/S1_Bills/Land%20Reform%20(Scotland)%20Bill/b44s1pm.pdf)

⁸⁹ [2012] CSIH 96.

deferential”. He is also concerned that absent any legislative definition of sustainable development, the provisions might not satisfy the criterion for an interference with rights to be prescribed by law.⁹⁰

Exercises of the right to list an asset as being of community value in England under the Localism Act 2011 have also been challenged under ECHR A1P1, in cases given “short shrift” by the First-tier Tribunal.⁹¹ The statutory right to compensation for relevant losses experienced by an owner has been seen as a significant factor in assessing whether any person affected bears a disproportionate and excessive burden, albeit that the right to compensation is not itself determinative.⁹²

As concerns social, economic, and cultural rights, both Scotland and Wales are exploring legislative devices to respect, protect and fulfil such rights (under devolved competence in relation to compliance with the UK’s international obligations).⁹³ For example, through imposing obligations on public bodies to have “due regard” or to “take into account” international obligations in their decision-making. This can be seen in the Scottish 2016 Act, which requires Ministers to “have regard” to the United Nations International Covenant on Economic, Social and Cultural Rights (ICESCR) when making certain decisions.⁹⁴ Scotland and Wales have also brought into force section 1 of the Equality Act 2010, which requires public authorities to have due regard to the desirability of exercising their strategic functions

⁹⁰ Maxwell (n 81).

⁹¹ Simon Adamyk, *Assets of Community Value* (Wildy, Simmonds and Hill Publishing 2017) p.157.

⁹² Ibid p.158.

⁹³ See e.g., for Scotland, <https://www.gov.scot/policies/human-rights> and for Wales, Simon Hoffman, Sarah Nason, Ele Hicks and Rosie Beacock, *Strengthening and Advancing Equality and Human Rights in Wales* (Welsh Government Social Research 54/2021) and Welsh Government response (May 2022), online at: <https://gov.wales/strengthening-and-advancing-equality-and-human-rights-wales-research-report-welsh-government#description-block>

⁹⁴ Under section 56 of the Land Reform (Scotland) Act 2016, when deciding whether to consent to an exercise of the right to buy land for sustainable development, Scottish Ministers must have regard to “relevant non-Convention human rights” which means rights other than those within the meaning of section 1 of the Human Rights Act 1998 (in effect rights not incorporated into UK law by the 1998 Act). Such non-Convention rights are those considered by Scottish Ministers to be relevant, as well as those contained in any international convention, treaty or other international instrument ratified by the UK including the United Nations International Covenant on Economic, Social and Cultural Rights. The 2016 Act also requires Ministers to have regard to the desirability of encouraging equal opportunities.

in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage.

It can be argued that, rather than acting as a barrier to land reform, the engagement of ECHR A1P1 opens space for broader analysis. If one adopts a ‘citizenship’ conception of property as including obligations inherent in property ownership, as opposed to a ‘castle’ conception focusing only on the owner’s rights, there is scope for those examining whether the burdens of ownership are unjustified in any given context to consider wider values underpinning relevant systems of property law.⁹⁵ This account is supported by Scottish legislation expressly referencing rights beyond the ECHR such as those under ICESCR. Ross concludes that this approach is operationalised through “statutory guidance incorporated into the wider sustainable development equations for all land use decisions including the community rights to buy regimes”.⁹⁶ Statute and guidance, then, deploy various mechanisms to infuse Ministerial decision-making with the flavour of social, economic, and cultural rights, and various facets of sustainability (including the compartments of wellbeing) but without formally defining sustainable development or rendering any further rights, beyond ECHR A1P1 itself, directly justiciable. For some this is a positive development, others are concerned that it embeds over-emphasis on socio-political considerations to the detriment of economic and environmental factors and “to the detriment of building any coherence in the law”.⁹⁷

Impact of legislation

Since 1990 the total area of community owned land in Scotland has increased more than fivefold.⁹⁸ However, most acquisitions occur through negotiated transfers outside new

⁹⁵ McCarthy (n 87).

⁹⁶ Ross (n 82) p.202.

⁹⁷ Maxwell (n 87) p.915.

⁹⁸ McMorran et al (n 3) p.5.

legislative procedures.⁹⁹ Research for the Scottish Land Commission (SLC) found that legislation provides a backdrop facilitating transfers, with communities using part of the legislative routes to establish a clear pathway and negotiating mechanism, later switching to negotiated sale.¹⁰⁰ However, the SLC also highlighted communities and/or landowners having attempted negotiated transfer with the express aim of avoiding the legislative routes, which were seen as drawn-out, costly, and adversarial. Conversely, other respondents considered the legislation “created an environment for negotiation through a repositioning of communities and the dynamic between landowners and communities, with power now existing ‘on both sides’”.¹⁰¹ Despite limited use, the Crofting CRtB as a right of compulsory purchase withstanding legal challenge, was viewed as having important indirect effects relating to wider legislation. The right to acquire abandoned (etc) land and the right to acquire land for sustainable development “were seen as representing an important indicative shift towards forced sale/compulsory purchase”.¹⁰² Overall, it can be maintained, as Lovett puts it, that “land reform legislation does matter”.¹⁰³

The community asset transfer process under Part 5 of the 2015 Act was widely welcomed by respondents to the SLC research, though implementation was seen as falling short of the original vision for a transparent and robust process.¹⁰⁴ Some perceived the 2015 Act as having hardened attitudes, prompting local authorities to abandon simpler routes or to try to limit asset transfer. Local authorities were viewed as inconsistent in applying asset transfer legislation,¹⁰⁵ and as “less strategic, adaptive and flexible as a result of legislation”, with procedures becoming more bureaucratic, and leases which used to be nominal (or

⁹⁹ Report of the Land Reform Review Group, *The Land of Scotland the Common Good* (Scottish Government 2014) and McMorran et al (n 3).

¹⁰⁰ McMorran et al (n 3). Yet there was still a minority view that the legislation actually had a negative impact on negotiated transfer by having “altered the tone of discussions for the worse” (p.19).

¹⁰¹ McMorran et al (n 3) p.23-24.

¹⁰² Ibid p.9.

¹⁰³ Lovett (n 63) p.143.

¹⁰⁴ McMorran et al (n 3) p.iv.

¹⁰⁵ Ibid p.50.

‘peppercorn’) more likely to be set at commercial rates.¹⁰⁶ Some relevant authorities were failing to comply, others were doing so against the spirit of legislation and guidance. Legislative and funding processes were seen as having created challenging timeframes for submission of bids and valuation, and groups whose asset transfer requests had been rejected reported confusion around the process for reviews and appeals. Research respondents also felt the range of legislative pathways to community asset acquisition were misaligned, for example, in relation to constitution and membership eligibility requirements for CRtB land on the one hand, and community asset transfers on the other.¹⁰⁷ The addition of new routes to ownership in the 2015 and 2016 Acts was seen as adding to an already confusing landscape.¹⁰⁸

Despite these challenges, the researchers found “a clear and continuing need for robust legal mechanisms to support community ownership”.¹⁰⁹ The tenor of the legislation continues to be significant. As Combe puts it:

The real innovation, and the real shift in the power balance for community ownership, is that the public sector body *must* agree to a properly made [asset transfer] request unless there are reasonable grounds for refusing it...In this regard, a certain resonance with the new right to buy to further sustainable development found in the 2016 Act is evident: if an application is for a strong purpose, it *must* be granted.¹¹⁰

Other research, specifically evaluating Part 5 of the 2015 Act, found an increase in asset transfer activity between 2017/18 and 2018/19.¹¹¹ All authorities sampled were employing guidance documents and legislation to support the design of processes. Some had processes

¹⁰⁶ Ibid p.55.

¹⁰⁷ Ibid p.70-71.

¹⁰⁸ Ibid p.39 and p.70.

¹⁰⁹ Ibid p.72.

¹¹⁰ Combe (n 4) p.137.

¹¹¹ McMillan et al (n 1).

pre-dating the 2015 Act and were incorporating new legislation to ensure compliance. Others did not have pre-existing procedures and were working to introduce them.¹¹² Concerns were reported around a lack of resources to support and raise awareness of the 2015 Act, linked to authorities being overstretched.

In England, Co-operative Group Limited and Locality research, based on local authorities responding to FOI requests, found the volume of CATs to be approximately 1/12th the volume of sales on the open market, representing less than 1% of the total asset portfolio of local authorities.¹¹³ The FOI also revealed that 45% of councils responding had a CAT policy in place, either as a standalone policy or embedded in another strategy. However, one third had not been updated within the last five years (2014 to 2019) and 28% of CATs had been completed by councils without a policy. Councils without a CAT policy were more likely to transfer assets on shorter leases and most were not currently identifying assets available for CAT in the future.

In Northern Ireland, DTNI research found that: “Many of the weaknesses and challenges of the current CAT process would remain even if new legislation was enacted”.¹¹⁴ These challenges can be classified as concerning economic viability, division and conflict in the community, limited social capital, limited resources and assets, and that CATs are often under-capitalised and reliant on external funding.¹¹⁵

Transfer processes are still seen as bureaucratic, with specific concerns around whether timescales are sufficient for communities to secure funding and obtain professional advice to develop their proposals. Managing perceptions and expectations can also be difficult, with communities naïve to processes and success rates; good relations and communication with the

¹¹² Ibid p.29.

¹¹³ Co-operative Group Limited and Locality, In community hands: lessons from the past five years of Community Asset Transfer (2020), online at: https://locality.org.uk/wp-content/uploads/2020/03/COP33979_In-Community-Hands_2020.03.18.pdf

¹¹⁴ DTNI (n 1) p.24.

¹¹⁵ McMorran et al (n 3).

asset owner are also crucial. Lack of communication between departments and actors within public bodies is also problematic. There are unique challenges in urban contexts where property sales complete more quickly, and CATs are more common in areas where average residential property prices are lower. The future sustainability of the community body and the asset itself are also important, and there can sometimes be little merit in taking on an asset transfer without also securing development rights. The experience and capacity of communities varies widely, with frequent reliance on a core group of older volunteers. Training and support post-acquisition can be patchy especially in terms of financial and asset management, and less advantaged communities are not well-supported to undertake asset transfers or to exercise rights to buy, with potential to re-entrench inequality.

Funding and practical support is available in all four nations, from Development Trusts¹¹⁶ as well as from government¹¹⁷ and charitable sources, though research suggests additional resources are required, with funding seen as a more important driver of community acquisition than legislative pathways.¹¹⁸

Further reforms

The Scottish Government aims to introduce a new Land Reform Bill by the end of 2023. Proposed measures include strengthening the Land Rights and Responsibilities Statement, introducing compulsory management plans, and ensuring the public interest is considered on

¹¹⁶ In England (through Locality), and the Development Trusts of Scotland, Northern Ireland and Wales.

¹¹⁷ E.g., the Scottish Land Fund, funded by the Scottish Government and delivered in partnership by The National Lottery Community Fund and Highlands and Islands Enterprise; the Northern Ireland Social Investment Fund; the Welsh Community Asset Loan Fund; and the £150 million Community Ownership Fund established by the UK Government in 2021 as part of its 'levelling up' agenda.

¹¹⁸ McMorran et al (n 5); Co-op and Locality (n 112); DTNI (n 1); McMillan et al (n 1).

transfers of large-scale.¹¹⁹ The consultation includes various proposals for further ancillary measures around community acquisition and the transparency of land ownership and use.

For England, the Locality Report proposed extending assets of community value legislation to cover other local assets such as amenities and services (similar to the 2014 Welsh Co-operatives and Mutuals Commission recommendation to include sports clubs).¹²⁰ Locality also recommends a “Community Right to Own” that would give first refusal to communities who seek to buy assets of community value on the open market, with a one-year moratorium for communities to mobilise and fundraise, expanding and strengthening the right for communities to “bid” for such assets. It also recommends new powers for communities to force the sale of neglected high street assets that are derelict and leading to local decline, and legislative protections to safeguard existing assets in community ownership from private sale.

In Northern Ireland, research for the DTNI acknowledged that legislation elsewhere “provides a source of learning”,¹²¹ and stakeholders supported calls to establish a legislative basis for community asset acquisition, particularly to facilitate a cultural shift. However, the research also found that creating further legislative rights could encourage community organisations to submit non financially viable proposals and confer a sense of entitlement to acquire assets regardless of the strength of their case, and that unevenness in the take up of rights could amplify religious and political divisions.¹²² The DTNI scoping paper nevertheless favoured additional community rights legislation, to be drafted such that it “balances the opportunity for community ownership with shared government and community objectives”.¹²³ In practice this would include community empowerment and investment provisions so that

¹¹⁹ Scottish Government, Land Reform in a Net Zero Nation: Consultation paper (Scottish Government 2022), online at: <https://www.gov.scot/binaries/content/documents/govscot/publications/consultation-paper/2022/07/land-reform-net-zero-nation-consultation-paper/documents/land-reform-net-zero-nation-consultation-paper/land-reform-net-zero-nation-consultation-paper/govscot%3Adocument/land-reform-net-zero-nation-consultation-paper.pdf>

¹²⁰ Welsh Co-operatives and Mutuals Commission (n 19).

¹²¹ DTNI (n 1) p.27.

¹²² Ibid p.24.

¹²³ Ibid p.28.

community organisations can acquire assets to address their needs (based on geographical area or community of interest); a community right to register an interest to buy public and privately owned assets of community value (similar to, but potentially stronger than, the Localism Act 2011); related appeal rights if registration is refused; and rights to acquire registered assets once they come to market.

In Wales, IWA research roundtables universally supported legislating for community rights, up to and including a community right to buy land from private owners.¹²⁴ A 2022 report of Cwmpas (formerly the Wales Co-operative Centre) also recommended Welsh Government should introduce a Community Ownership and Empowerment Act, giving community organisations more statutory powers to acquire, or otherwise control, land and other assets.¹²⁵ The Future Generations Commissioner for Wales recommends Wales learn from how community anchor organisations and Development Trusts in Scotland use relevant community rights legislation as a force for change, and that Wales moves to a position where “community ownership of assets should be the normal and realistic option for communities to acquire land and assets”.¹²⁶

The background to the legislation is important to consider here. The stronger Scottish community rights to buy relate largely to land (as opposed to other assets) and have developed as part of a package of land reform. It remains questionable whether these stronger rights to buy, sometimes from an unwilling owner, are appropriately transferrable to other assets, and to other UK nations, where land, planning, housing, and local government systems will be differently calibrated.

¹²⁴ IWA (n 22) p.13-14.

¹²⁵ Casey Edwards, *Community ownership of land and assets: enabling the delivery of community-led housing in Wales* (Cwmpas 2022).

¹²⁶ In her document *A Journey to A Wales of Cohesive Communities*, <https://www.futuregenerations.wales/wp-content/uploads/2019/09/Cohesive-Wales-Topic-4.pdf>

Whilst Scottish legislation developed as part of wider reforms to ownership of private and public assets, now anchored in sustainable development and human rights policies, approaches in Northern Ireland and Wales have been reactionary in the context of public body disposals of surplus assets and austerity impacts. More recently, community empowerment across the UK is part of a ‘levelling up’ moral, social, and economic programme based on tackling geographical inequality. In May 2022, the UK Government introduced a Levelling-up and Regeneration Bill. This includes provisions for setting levelling-up missions and reporting on progress in delivering them, provisions about local democracy and a Community Infrastructure Levy, as well as various planning and regeneration aspects. It does not directly address community asset acquisition rights, but it could lead to additional funding and support for communities, and further community engagement in planning processes.

Legislation giving strong rights to communities can catalyse cultural change, including shifting the balance from a situation where owners must at least consider community asset transfer, to one where they must sell to community bodies unless doing so would be unreasonable.¹²⁷ Asset acquisition legislation has had an impact on community bargaining power including in negotiated sales taking place outside new procedures. However, various phases of legislative development have not always been well-aligned, leading to multiple pathways to acquisition variously of land and other assets, and arguably to excessive bureaucracy, which owners reluctant to transfer to communities can use to their advantage.

The clarity of legislative drafting has also been subject to scrutiny, particularly when the law relating community acquisition of land and other assets is used to express frameworks through which policy goals of sustainable development, wellbeing, and promoting human rights can be achieved, but where these concepts are not explicitly defined in the legislation. More formal, but contextually nuanced, legislative definitions of these concepts and/or more

¹²⁷ See e.g., McMorran et al (n 3) and Combe (n 4).

detailed guidance could be beneficial. Whilst in Wales there is promotive legislation and policy concerning community empowerment, sustainability, and human rights, the lack of specific rights for communities (and indeed for individuals in some contexts) is a factor contributing to an identified ‘implementation gap’.¹²⁸

Legislation giving stronger rights to communities, especially that which invites expropriation of property from private owners, requires more extensive judicial supervision, including scrutinising political balancing of various facets of wellbeing, sustainable development, human rights, and public interest. Those seeking to enact or reform community empowerment legislation must grapple with these matters, as well as the most appropriate definition of community (including for urban and rural acquisitions), what ‘democratic procedures’ are required, and how should land and other assets be valued. Currently, however, most community asset transfers occur through negotiated sale outside legislative procedures. Extra funding and longer-term post acquisition support for communities is needed, and local authorities across the UK have considerable scope to learn from each other to improve their policies and practices. For the time being this is likely to be more impactful than legislative reform.

¹²⁸ See e.g., Hoffman et al (n 93).

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Agenda Item 9

By virtue of paragraph(s) ix of Standing Order 17.42

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