



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

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol **The Constitutional and Legislative Affairs Committee**

Dydd Llun, 11 Mai 2015
Monday, 11 May 2015

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Cofnodir y trafodion yn yr iaith y llefarwyd hwy ynddi yn y pwyllgor. Yn ogystal, cynhwysir trawsgrifad o'r cyfieithu ar y pryd.

The proceedings are reported in the language in which they were spoken in the committee. In addition, a transcription of the simultaneous interpretation is included.

Aelodau'r pwyllgor yn bresennol
Committee members in attendance

| | |
|----------------|--|
| Alun Davies | Llafur Labour |
| Suzy Davies | Ceidwadwyr Cymreig Welsh Conservatives |
| David Melding | Y Dirprwy Lywydd a Chadeirydd y Pwyllgor The Deputy Presiding Officer and Committee Chair |
| William Powell | Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats |
| Simon Thomas | Plaid Cymru The Party of Wales |

Eraill yn bresennol
Others in attendance

| | |
|------------------|--|
| Neil Buffin | Gwasanaethau Cyfreithiol, Llywodraeth Cymru Legal Services, Welsh Government |
| Lesley Griffiths | Aelod Cynulliad, Llafur (y Gweinidog Cymunedau a Threchu Tlodi) Assembly Member, Labour (the Minister for Communities and Tackling Poverty) |
| Simon White | Rheolwr Bil, Llywodraeth Cymru Bill Manager, Welsh Government |

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

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|------------------|---|
| Klara Banaszak | Cyfreithiwr dan Hyfforddiant Trainee Solicitor |
| Stephen Boyce | Y Gwasanaeth Ymchwil Research Service |
| Ruth Hatton | Dirprwy Glerc Deputy Clerk |
| Matthew Richards | Uwch-gynghorydd Cyfreithiol Senior Legal Adviser |
| Naomi Stocks | Clerc Clerk |
| Dr Alys Thomas | Y Gwasanaeth Ymchwil Research Service |

Dechreuodd y cyfarfod am 13:30.
The meeting began at 13:30.

Cyflwyniad, Ymddiheuriadau, Dirprwyon a Datgan Buddiannau
Introduction, Apologies, Substitutions and Declarations of Interest

[1] **David Melding:** Good afternoon, everyone, and welcome to this meeting of the Constitutional and Legislative Affairs Committee. I start with the usual housekeeping announcements. We do not expect a routine fire drill, so, if we hear the alarm, please follow the instructions of the ushers. Please switch all mobile devices to at least silent. These proceedings will be conducted in Welsh and English, and, when Welsh spoken, there is a translation on channel 1. Channel 0 will amplify proceedings, should you require that service.

13:31

**Tystiolaeth yn Ymwneud â'r Bil Rhentu Cartrefi (Cymru)
Evidence in Relation to the Renting Homes (Wales) Bill**

[2] **David Melding:** Item 2, then, is the evidence session in relation to the Renting Homes (Wales) Bill. I'm delighted to welcome the Member in charge, who is Lesley Griffiths, the Minister for Communities and Tackling Poverty. Do you want to introduce your team, Minister?

[3] **The Minister for Communities and Tackling Poverty (Lesley Griffiths):** Yes, thank you, Chair. On my right is Simon White, the Bill manager, and on my left is Neil Buffin, one of the lawyers.

[4] **David Melding:** Welcome to you all. Can I just start with a question that's put to every Member who appears before us? Are you confident that the Bill is within the competence of the Assembly?

[5] **Lesley Griffiths:** Yes, I am, and the Presiding Officer is also.

[6] **David Melding:** How did you decide to strike a balance between what's on the face of the Bill and what's going to be done in subordinate legislation?

[7] **Lesley Griffiths:** That is obviously a judgment call, and I think we have absolutely struck the right balance between the level of detail on the face of the Bill and what should be set out in secondary legislation. So, in broad terms, the Bill contains the principal proposals relating to occupation contracts, which are to be incorporated as terms within each type of contract. So, that includes setting out in detail on the face of the Bill the matters which will comprise key terms of the contracts, such as the address of the property, for instance, and the fundamental provisions which will be incorporated in the fundamental terms of the contracts. So, as it says, it's fundamental, so, absolutely, that should be on the face of the Bill and in primary legislation.

[8] Fundamental provisions address such matters as ensuring contract holders have written statements of contracts that set out both their and their landlords' rights and obligations; prohibited conduct, which includes anti-social behaviour and domestic abuse; protection of deposits by landlords; the ways in which occupation contracts can be transferred; the condition of the dwelling; and the termination of the contract. I think it's really important that they are set out on the face of the Bill for the reasons I stated. But the Bill does allow for further detail to be specified through supplementary provisions, which can be set out in regulations to be made by Welsh Ministers, such as, for example, the requirement to pay council tax or to maintain the garden.

[9] **David Melding:** The Bill requires extensive repeal or amendment of existing legislation and, rather unusually, this is not on the face of the Bill. You propose to deal with that in subordinate legislation. Can you tell us why that approach has been taken?

[10] **Lesley Griffiths:** When the Bill was developed, careful consideration was given to the scope and the fact that it will substantially transform housing law in Wales. Much thought was given to the need to ensure that there are sufficient powers within the Bill to cater for any changes. I'll ask Neil to expand on that.

[11] **Mr Buffin:** Thank you, Minister. In terms of this Bill, it is a huge Bill, and providing core consequential amendments is seen as part of the implementation project of the Bill, which is why we thought it was appropriate to take an Order-making power in this regard.

[12] **David Melding:** So, you've made a decision. It's not because there was a lack of time or—

[13] **Mr Buffin:** Well, it is an enormous task. I mean, this is a big Bill; there's a lot of consolidation and a lot of changes that will be required, so we see it as part of the wider project in terms of getting the Bill through and then implementing it.

[14] **David Melding:** Okay, but you know what needs to be repealed.

[15] **Mr Buffin:** Yes.

[16] **David Melding:** You could've done a lot of that on the face of the Bill, couldn't you?

[17] **Mr Buffin:** Well, we could've done, I guess, but one of the issues is that we probably would have needed to do more. So, in some terms, it's a bit of a judgment call, and, is it better to have it in the Bill and then have other Orders subsequently making amendments, or is it better to have it in one place? For the sake of clarity, I think that there's a good argument to have it in one Order as part of that implementation.

[18] **David Melding:** But, it means it doesn't get the level of scrutiny that it would, and a comparison of the new and old scheme is obviously blurred by the time delay that will now attach to it. Did you think of that?

[19] **Mr Buffin:** Yes, albeit, it will be subject to scrutiny, because any Order of such nature will be subject to affirmative resolution.

[20] **David Melding:** Yes. It's not quite the same, though, as a line-by-line examination of primary legislation. However, I will move on and ask Simon Thomas to take us through the next set of questions.

[21] **Simon Thomas:** Diolch, Gadeirydd, a, jest er eglurder, hoffwn i ddatgan buddiant hefyd, achos rwyf yn denant, fel mae'n digwydd, ac felly mae'r Bil yn mynd i effeithio arnaf i, fel tenantiaid eraill.

Simon Thomas: Thank you, Chair, and just for the sake of clarity, I would like to declare an interest, because I am a tenant, as it happens, and therefore the Bill will impact upon me, as it will on other tenants.

[22] Rydym ni newydd glywed bod elfen cyd-grynhoi yn digwydd yn y Bil yma. Yn ôl beth rwy'n deall, mae'r Bil yn deillio'n uniongyrchol o argymhellion Comisiwn y Gyfraith ynglŷn ag adolygu'r gyfraith yn yr ardal yma. A fedrwch chi esbonio ym mha ffordd y gwnaethoch chi weithio'r Bil yma ar sail yr hyn yr oedd Comisiwn y Gyfraith wedi'i wneud i Lywodraeth Cymru, ac ym mha ffordd, efallai, y mae'r Bil yn wahanol neu'n seiliedig ar hynny?

We've just heard that there is a consolidation element to this Bill. From what I understand, it emerges directly from the recommendations of the Law Commission on amending the law in this particular area. Can you explain how you worked on this Bill on the basis of what the Law Commission had provided to the Welsh Government, and how is the Bill different from the Law Commission's proposals or similar to them?

[23] **Lesley Griffiths:** Diolch. Perhaps I should've declared an interest too, Chair, because I'm a tenant.

[24] **Simon Thomas:** I think we all are. Just to be clear.

[25] **Lesley Griffiths:** I think, probably, we all are down here, yes.

[26] I don't think it would be accurate to describe it as a consolidation Bill. Obviously, it is bringing several housing Bills that are currently there into one place. However, it's doing something very new as well, and I would say most consolidation Bills don't do that. So, as you said, it absolutely draws on the work of the Law Commission, so it's got a very solid and very firm evidence base. So, it does draw upon some existing provisions, and, where appropriate, it broadly replicates those, but if you take termination into account, for instance, that's something very new and that does actually remove a number of existing grounds. So, the Bill will also put the vast majority of primary legislation relating to arrangements for occupying homes into one Act, and I think that's much more preferable than having all the variety of housing Acts and, indeed, the landlord and tenants Acts. So, this Bill will then form the absolute principal legislation when it comes to renting homes.

[27] **Simon Thomas:** Gan fod y Bil, fel rydych chi newydd ei ddisgrifio fe—. Rwy'n derbyn y pwynt nad yw'n Fil cyd-grynhoi, yn syml, yn yr ystyr yna, ac mae yna elfen o ddiwygio'r gyfraith yn ogystal yn rhan o hwn. Wedi dweud hynny, mae yna nifer o bwerau; rwy'n meddwl bod yna 30 rhan o'r Bil, fel y mae, yn rhoi pwerau i'r Gweinidog newid y Bil drwy reoliadau—a, phob tro y mae hynny'n digwydd, rwy'n meddwl bod y weithdrefn gadarnhaol yn cael ei defnyddio—ac i osod allan mewn rheoliadau beth o gynnwys y gwahanol gytundebau a all fod. Er enghraifft, mae elfen ymddygiad gwrthgymdeithasol, rwy'n meddwl, yn cael ei thrin yn y ffordd yma hefyd. Pam ydych chi'n meddwl, felly, eich bod angen cymaint o bwerau, gan fod y Bil yn seiliedig ar waith annibynnol gan Gomisiwn y Gyfraith? Mae hi fel tasech chi'n dweud, 'Dyma Fil sy'n diwygio'r gyfraith; dyma Fil sy'n seiliedig ar waith annibynnol; dyma'r Bil gorau y gallwn ei gael ar gyfer y sector tai yng Nghymru, ond dyma 30 o bwerau rwyf i'n eu moyn er mwyn newid y Bil rhywbryd yn y dyfodol ac nid wyf cweit yn siŵr sut ychwaith'. Mae'n edrych yn anghyson iawn i fi o safbwynt llunio Bil.

Simon Thomas: As the Bill, as you've just described it—. I do accept that it isn't a simple consolidating Bill, in that sense, and that an element of reforming the law forms part of this. Having said that, there are a number of powers; I believe that there are 30 sections of the Bill, as it currently stands, which give powers to the Minister to change, by regulation, the Bill—and I think every time that happens, the affirmative procedure is used—and to set out in regulations the content of some of the various contracts that could exist. For example, there is the element of anti-social behaviour, which is dealt with in this way. Why do you therefore believe you need so many powers, as the Bill is based on independent work carried out by the Law Commission? You seem to be saying, 'Here's a Bill that amends the law; here's a Bill that is based on independent work, this is the best Bill possible for the housing sector in Wales, but there are 30 powers that I want to change the Bill at some point in the future and I'm not quite sure how I'll do that'. It appears very inconsistent to me, in terms of the way in which a Bill is drawn up.

[28] **Lesley Griffiths:** I think it's about having the flexibility. It's about taking a very progressive approach. I will give you one example where I think we needed a power and that was the ability to change who may or may not be treated as a community landlord. So, I think it's really important that we've got that flexibility.

[29] **Simon Thomas:** You can add to that, or you can take away. Yes, I can see that.

[30] **Lesley Griffiths:** You can add to that; you could capture an organisation that we would want to bring in. So—

[31] **Simon Thomas:** I wasn't thinking so much—. I mean, I accept that you need some of those powers, but there are some fairly fundamental ways that you can change the Bill. I'm not saying that the method in which you're doing it is irregular at all, but you have these fairly

fundamental ways—you can change the nature of the contracts, and other questions may come later on about the nature of different timescales that can be allowed. That question of anti-social behaviour has been challenged elsewhere in Westminster legislation; I mean, what does it really mean, and so forth? So, why do you think you can't pin those down on the face of the Bill? Why do you think you need so many powers at this stage when this is a Bill that's reliant on that independent advice from the Law Commission?

[32] **Mr Buffin:** Well, the Bill covers a multiplicity of areas, and indeed the powers do, so I think just to say there are 30 powers—. Really, what you need to do is look at what the powers are doing. Now, some of them are there because of the nature of this Bill. It's very new, it's unprecedented and, to a large extent, it will be uncharted, and so the powers are there to enable us to respond to changing needs and changing circumstances in the future. So, take for example the end of Schedule 2 and Schedule 3; there are powers there to amend the Schedules, and they give the Welsh Ministers the flexibility to respond to that. Otherwise, we would be back to having to have primary legislation amending the Bill. So, it's there to futureproof, to some degree. But there are then other powers where they're setting out the detail; so, powers, for example, setting out procedures—procedures for making applications, procedures for gaining consent. That sort of level of detail, if that were to go on the face of the Bill, would, we think, break the narrative of the Bill and the way that people can access what the Bill is doing. It would just become overly detailed. So, it's not to say that we haven't considered this; we have, and, to some extent, that was something that was also suggested within the Law Commission draft back in 2006.

[33] **Mr White:** That was the point I was going to make, in terms of I don't think we're seeking significantly additional powers to what was being proposed in the Law Commission model. They've been carried forward pretty much as is, I would say.

[34] **Simon Thomas:** Okay.

[35] **David Melding:** Alun.

[36] **Alun Davies:** Thank you. I will state an interest in that I am a private landlord. In terms of where you're going on anti-social behaviour and other prohibited behaviours, I think all of us in our constituency work come across areas where this law does need tightening in this area. But, I thought it might be useful if you would clarify what you mean—the definitions that you use of 'anti-social behaviour' and other prohibited behaviours.

[37] **Lesley Griffiths:** Yes, thank you. I think you're right; certainly, thinking about my own casework, one of the things I was really keen to do in here was to make things much quicker, to be able to react much quicker, because, at the moment, someone has to be found guilty, et cetera. So, I think these matters have been very carefully assessed in terms of human rights—you know, the rights of the person who's alleged to have carried out a prohibited behaviour must be balanced against the rights of other people who live in the dwelling, whether they live with the perpetrator or whether they live next door. So, again, ultimately it will be considered by the court, but I think there will be much more—. Rather than having to wait for somebody to be found guilty, the court will be able to deal with it much quicker.

[38] **Alun Davies:** I'm glad that you're taking the human rights issues into consideration and I hope that the Welsh Government continues to do that, whether there's a Human Rights Act or not. In terms of the definition, what you're saying is that they can move forward to an eviction without a conviction, and I was wondering whether you felt that would be appropriate—if you haven't been found guilty of anything, you haven't done anything wrong, and yet you're still evicted.

[39] **Lesley Griffiths:** Well, it's up to the court to do it. I think there are some

circumstances where the new mandatory ground might not be as effective as some believe, but I think it's really important, again, to get the balance. It's about the balance. The whole purpose of this Bill is to get the balance right between the landlord and the tenant, and, again, it's about getting the balance right for people who have to live in very difficult circumstances. That's why domestic abuse—I mean, there's a criticism that domestic abuse wasn't specific, but, to me, nuisance and annoyance absolutely encompasses domestic abuse. So, it has been thought through very carefully, and I just think it will give—. You know, a court would have to assess all the evidence before it came to a decision. I'm not saying that that won't be the case.

13:45

[40] **Alun Davies:** It's not entirely obvious to me, I have to say, that domestic abuse would be covered by that description, that definition.

[41] **Lesley Griffiths:** Well, that's something that we discussed, obviously, in scrutiny in the Communities, Equality and Local Government Committee, but, for me, absolutely, domestic abuse comes under that annoyance and nuisance term.

[42] **Alun Davies:** So, you're content with these definitions.

[43] **Lesley Griffiths:** Yes.

[44] **David Melding:** Suzy, did you want to follow up?

[45] **Suzy Davies:** Yes, it's on this specific point about the definition that we're talking about at the moment. Bearing in mind that the Bill is very good in one particular respect, inasmuch as there's quite a lot on the face of the Bill, and any changes, then, are done by regulation and the affirmative procedure, which is encouraging. So, there's no danger to the coherence of this Bill by having a definition on the Bill, which could then be changed through those procedures, is there?

[46] **Lesley Griffiths:** I certainly don't think so.

[47] **Mr Buffin:** No. By definition, though, sorry, can you—

[48] **Suzy Davies:** The definition that Alun was talking about, because, at some point, you may want to—. If you do go so far as to say what 'anti-social' means, and what 'prohibited behaviour' means on the face of the Bill, it's not that difficult to change it. You'd just do it by affirmative procedure, as you've envisaged in the rest of the Bill.

[49] **Mr Buffin:** Potentially, yes. I guess my immediate response to that, though, is how you nail the definition, and how you nail a definition that would need to deal with quite a number of circumstances. What if you don't have something in the definition? You know, you then would have to change it, but there would be an issue about the clarity in whether what you have would be fit to encompass every possible circumstance.

[50] **Suzy Davies:** No, no. I can understand that as an argument, but there's rucks of case law out there now about what constitutes an act of anti-social behaviour, and this statute is an opportunity perhaps to add to that, or take away from that. As I say, actually amending it wouldn't be as complicated as perhaps we're always led to believe, because you've already envisaged that by the number of affirmative procedure regulations that you have in the Bill.

[51] **Mr Buffin:** Well, that's correct.

[52] **Suzy Davies:** It's a starting point.

[53] **Mr Buffin:** Yes. I suppose we would say, 'Well, this is what happens now' and it goes through the filter of the courts, and they then decide how they wish to approach this and the law develops from that. I do think it would be one of those areas of law that would be subject to considerable change and, potentially, a considerable number of amendments, because the definition could be changed on numerous occasions. So, it's a case of do we keep responding to that in making new regulations, or do we allow case law to develop, and case law is effectively the means of approaching the definition of what anti-social behaviour is.

[54] **Suzy Davies:** Okay, thank you. You're not planning to introduce any draft guidance or draft regulations at the same time as the Bill at any point during its passage?

[55] **Mr White:** There will be guidance around the—. One of the benefits of having the single definition of anti-social behaviour and prohibited conduct that will apply across all contracts is that we will be able to produce a lot of guidance—working with stakeholders, clearly—to expand on what the definition means in practice. So, one of the aims is having nuisance or annoyance as a fairly broad test, but we can then expand on that and say, 'Well, these types of behaviours, in practice, would be a breach of your tenancy' so you would be able to, say, work—. One of the suggestions at an early stage was that you could produce a CD-ROM for example, on an all-Wales basis, which could be given out by landlords to tenants saying, 'This is the type of thing that would be a breach of this term'. So, yes, we do envisage substantial guidance around the legislation, to aid understanding.

[56] **Suzy Davies:** But alongside it? You know, we've talked in this committee before about draft regulations and draft codes and things being published while the Bill is going through the Assembly. It's a timing question, that. Are we likely to see something like that?

[57] **Mr White:** We haven't got anything on the stocks, as it were, on that. This would be guidance that we would produce. We're looking at a fairly long timescale for implementation, so, during the preparatory work, before we actually implement on the ground, that's when we'd be working with stakeholders to produce that guidance.

[58] **Suzy Davies:** Okay. Thank you, Chair.

[59] **David Melding:** William.

[60] **William Powell:** Diolch, Gadeirydd. Good afternoon, Minister. In the light of this committee's previous recommendations regarding commencement Orders, it would be really helpful if you could explain to us why there's no procedure for commencement Orders in this case that contain transitory, transitional or, indeed, savings provisions.

[61] **Lesley Griffiths:** The Assembly will have approved the policy areas to be commenced by the passing of this Bill. So, approval of commencement Orders would, in effect, mean approval of matters that have already been approved. I think, again, we've probably touched on this before in previous Bills, but it's about striking a balance, and I think what the Government's done is to seek to strike a balance in doing this.

[62] **William Powell:** Thank you.

[63] **David Melding:** There was a time when commencement Orders just commenced, and we seem to be creeping away from that.

[64] **Lesley Griffiths:** I thought there was a consequential Order-making power.

[65] **Mr Buffin:** Yes, that's one thing. There's no consequential Order-making power allied to the commencement Order itself, so that is decoupled to the extent that we will need to make amendments to primary legislation. That would be subject to affirmative procedure. So, the commencement really is just dealing with the commencement and just those elements to get from A to B connected specifically with the commencement of the Bill.

[66] **William Powell:** Also, Minister, you may well be aware that this committee previously took evidence for our inquiry on making laws from the Learned Society of Wales, in which they spoke of their perspective on the introduction of letters to demarcate the subjects of different provisions within a Bill. In that context, could you explain why letters have been used in Part 9, chapter 14—I'm thinking in particular of Schedule 1 and other places within the Bill—and whether, in your view, this employment of letters makes the legislation actually easier to understand for the user?

[67] **Lesley Griffiths:** Yes, I do think it does make it easier. I think the use of letters for summary purposes is primarily a drafting practice, and it's absolutely intended to make provisions much more acceptable. Certainly with this Bill, it will be explained what the letters are at the beginning. So, if somebody needed to look what 'l' for 'landlord' meant, for instance, at the most, they would probably just have to go back a couple of pages, I think, rather than putting 'landlord', 'contract holder' in time after time after time in full. I think that would make it actually more difficult. So, yes, it is absolutely to make it far more accessible for the reader.

[68] **William Powell:** Is that something that you'd look to draw on in future legislation, also?

[69] **Lesley Griffiths:** Yes. As I say, I think it's accepted drafting practice.

[70] **David Melding:** It's a wonderful affirmation that algebra helps in these situations. [*Laughter.*] I have to say, it was never my experience, but your answer is noted. Suzy.

[71] **Suzy Davies:** I just wanted to come back to the human rights questions, but I've got a couple of smaller questions to ask you first. One is very specific about—where are we? It's paragraph 15 of Schedule 3—apologies, I know this is very specific. It's in connection with the definition of 'key workers'. Welsh Ministers have the power reserved to them to define 'key workers' in regulations that are introduced by the negative procedure. It may seem very small, but I can say, from personal experience, that I was once identified as a key worker when I was a theatre marketing assistant, and my friend, who was a care worker, was not identified as a key worker because she worked in the private sector, and I was in the public sector at that time. So, there are kind of crazy things that can go on when you try to make identifications or define in these ways that it might be worth bringing to the attention of the Assembly. It might be slightly less simply procedural than it looks.

[72] **Lesley Griffiths:** Okay. Certainly I'll have a look at that. Would you like us to send a note on that?

[73] **Suzy Davies:** By all means, yes.

[74] **Mr White:** I can actually add a brief comment on that. I think the particular reason on Schedule 3 is where accommodation is being offered by a social landlord, and they're not required to issue a secure contract. Actually, just taking that particular example you gave, if you were employed by a local authority, which would be a social landlord or a community landlord under the Bill, they would be required to issue you with a secure contract, normally, but because you would've been defined as a key worker, that wouldn't apply here. Your colleague, who was working in the private rented sector, would've been defined as a private

landlord; therefore, it wouldn't actually come under the scope of that Schedule.

[75] **Suzy Davies:** But you can see that aberrations can occur.

[76] **Mr White:** Yes, I see. It's important.

[77] **Suzy Davies:** My second question, then, was about paragraphs 59 to 61—sorry, it's not about paragraphs 59 to 61 at all, but it's to do with Crown consent, and whether this Bill might need Crown consent. Can you give us a little bit of an explanation about what work you've done in the past—

[78] **Lesley Griffiths:** Yes, I would assume it would need Queen's consent, and work will have been undertaken, as is the usual way with our legislation, to ensure that happens.

[79] **Suzy Davies:** Okay, so, it's definitely happening, anyway.

[80] **Lesley Griffiths:** Yes.

[81] **Suzy Davies:** That's great. So, I can go back to the human rights questions, then. Obviously, a little bit of that's been raised by Alun already, but are you able to share with us the procedures by which you consider the Human Rights Act 1998 and protocols in how you develop legislation? It's a general question, really. We'd like to know how you take it into account, I think.

[82] **Lesley Griffiths:** We carry out a very thorough assessment of provisions. We have to be very mindful that any incompatibility with the convention rights would render provision within a Bill outside legislative competence, for instance, so a great deal of work will have been undertaken in the drafting of the Bill.

[83] **Suzy Davies:** Have you relied at all on any of the judgment that came in under the—I think it was the Recovery of Medical Costs for Asbestos Diseases (Wales) Bill, was it? There were five criteria that should be taken into account when drawing up legislation, which would assist drafters who wanted to include the implications of the Human Rights Act 1998.

[84] **Lesley Griffiths:** I would certainly hope so.

[85] **Mr Buffin:** Yes, we look at all case law—the asbestos Bill and the Agricultural Sector (Wales) Act 2014—in approaching from a perspective of legislative competence, but there is, as you raised, the wider issue of European convention on human rights compliance, which, of course, is connected to legislative competence. Obviously, the provisions are all thoroughly analysed.

[86] **Suzy Davies:** It was just that it was very clear from the explanatory memorandum how you'd looked at the United Nations Convention on the Rights of the Child, for example, but there didn't seem to be much that helped me understand how you'd looked at human rights legislation, really. I just wondered why one was clear and one wasn't.

[87] **Mr Buffin:** Inevitably, it's a large part of Bill development: consideration of the Bill from an ECHR perspective.

[88] **Suzy Davies:** Okay. Well, I'm happy with that, but it'd be quite helpful, perhaps, to put that in EMs in the future, just as a piece of best practice. Just a suggestion.

[89] **Lesley Griffiths:** Thank you.

[90] **David Melding:** Just to add to that, we have, in section 55, a key definition:

[91] ‘conduct capable of causing nuisance or annoyance’,

[92] which is a fairly vague term. I can see why you use it and then you want to give specifics as to what might fall within that, but then, in the explanatory memorandum, for instance, there is no reference to the principle of proportionality. If you use a vague term, if you want to be in line with human rights law, you’ve got to, then, state some sort of principle of proportionality; otherwise, trivial or de minimis matters could be captured in such a vague definition. I have to say, in the explanatory memorandum, there is no indication that you’ve worked through this. You kind of say, ‘We’ve looked at it, and it’s okay’. Well, don’t we need a bit more than that?

[93] **Mr Buffin:** It’s something that we can consider.

[94] **Lesley Griffiths:** I’m certainly happy to look at that.

[95] **David Melding:** Well, have you looked at the issue of proportionality with a vague definition? What sort of issues do you think—

[96] **Lesley Griffiths:** That term has been used in similar aspects in previous housing Acts.

[97] **Mr Buffin:** The nuisance and annoyance test is there in post-Human Rights Act legislation; indeed, the wording is captured in a number of the housing Acts.

[98] **David Melding:** You’re just telling me that it’s in existing legislation; you’re not telling me how you’ve checked on the proportionality principle, which is embedded in human rights legislation, and that that’s compatible.

[99] **Mr Buffin:** The tests are there. The balancing of various people’s rights is there. Consideration of proportionality, and consideration of the role of the courts—that’s all there. It’s all part of the legal work and, indeed, the legal advice that goes internally within the Welsh Government.

[100] **David Melding:** So, you need to be a lawyer, rather than an intelligent lay person reading the explanatory memorandum, to be able to extract that.

[101] **Mr Buffin:** That’s something we can certainly consider.

[102] **David Melding:** Do we have any other—? Simon?

[103] **Simon Thomas:** Yes, just one small point on that: I think, on the previous point, what the committee’s saying is we’d like to see your workings. [*Laughter.*]

[104] **Mr Buffin:** Our workings, but not necessarily our legal advice.

[105] **Simon Thomas:** Not your legal advice—I understand you don’t share that. I regularly ask the Counsel General every five weeks for his legal advice and they’ve never shared with me. I understand that. But, a little bit of the workings is, I think, useful for the committee and for other people to understand.

14:00

[106] Just to go back on—because, we’re not going through every single power, negative,

affirmative and so forth—but, one did stand out to my mind, which is the one about defining fitness for human habitation. Again, that's on the face of the Bill, but how it's going to be defined is decided through regulation, and that's a negative procedure. That may well be because of current housing, and you do reference the Housing Act 2004 there, so it may be that that's there in the current—. But, I would have thought that there would be a great deal of interest in fitness for human habitation amongst Assembly Members as well, because it's the other end of the human rights coin from anti-social behaviour. It's the responsibility of the landlord to maintain a property, and it could have quite an impact on the market, on regulatory assessment, on economic impact assessment as well. It depends on how you set the bar and we've seen in social housing—and you'll be even more aware than I am of that—how that has impacted on social housing. So, can you just explain why that is a negative procedure and why there isn't a more obvious affirmative and open process going on there?

[107] **Lesley Griffiths:** I'm going to consult in regulations on the hazards, for want of a better word, in relation to fitness for human habitation. I've got the list in the Bill—you will have seen the list of 29 hazards that is within the existing guidance. We are going to consult on this in regulations. I think you're right; there is going to be a great deal of interest. We've actually gone further than what the Law Commission recommended. They recommended category 1 hazard, and we have gone further on that.

[108] **Simon Thomas:** So, we can expect more from the Government on this.

[109] **Lesley Griffiths:** Yes. We'll be definitely consulting.

[110] **Mr White:** But, certainly, as you say, things like gas safety are currently handled on a regulations negative-procedure-type basis, and the housing health and safety rating system regulations are done on the same negative procedure basis, so we're following the same approach in that sense.

[111] **Simon Thomas:** I accept that, but it's as much about how the public get to know about this, because I think a lot of tenants don't know anything about the implications of gas safety regulations, for example—a landlord may, but a lot of tenants are not aware that that is, in fact, something they should be looking for.

[112] **Mr White:** We certainly envisage, for example, having a website where you would have all of the terms of the contract—because we know what they're going to be, pretty much—and then you'd be able to click and say, 'What does this mean for a tenant?', 'What does this mean for me as a landlord?' You'd be able to unpack quite a lot of information then to spread the word, if you like, on what it means in practice.

[113] **Simon Thomas:** Okay. Diolch.

[114] **David Melding:** Do we have any further questions? Are we satisfied? In that case, thank you very much, Minister.

14:03

**Offerynnau sy'n Cynnwys Materion i Gyflwyno Adroddiad arnynt i'r Cynulliad
o dan Reol Sefydlog 21.2 neu 21.3
Instruments that Raise Issues to be Reported to the Assembly under Standing
Order 21.2 or 21.3**

[115] **David Melding:** Item 3 is instruments that raise reporting issues. There are two of them. One is on the Common Agricultural Policy Basic Payment and Support Schemes

(Wales) Regulations 2015, and I think there's a supplementary paper on that, which you should have in hard copy. The other one is the Eastern High School (Change to School Session Times) Order 2015. Are you content?

[116] **Simon Thomas:** A gaf i jest ofyn cwestiwn ynglŷn â'r Gorchymyn ar yr ysgol? Rwy'n deall o ble mae hwn wedi dod, ac yn ôl beth rwy'n ei ddeall hefyd, dyma'r tro cyntaf i ni weld hwn. Rwy'n meddwl ei bod hi'n rhyfedd bod yn rhaid i ni basio Gorchymyn i newid amserlen ysgol, ond mater i rywun arall yw hwnnw; rwyf jest yn nodi hynny wrth basio. Beth oedd yn fy nharo i o'r peth oedd nad oedd y Gorchymyn ond yn ddilys tan fis Medi eleni, ond mai'r bwriad oedd bod yr ysgol yn newid i'r amserlen ar gyfer mis Medi, i bob pwrpas. Pa ffordd rownd y mae hwn? A ydw i'n iawn i ddeall felly bod y Gorchymyn yn ddilys ar gyfer y penderfyniad, ond mae'r penderfyniad yn gallu estyn am ba bynnag gyfnod, neu a ydy'r Gorchymyn yn gorfod bod yn ddilys ar gyfer cyfnod y penderfyniad hefyd? Gobeithio bod hynny'n glir.

Simon Thomas: Could I just ask a question about the Order on the school? I understand where this has come from. According to what I understand, this is the first time for us to see this. I think it's strange that we have to pass an Order to change the school timetable, but that's a matter for someone else; I just note that in passing. What struck me from this was that the Order is only valid until September this year, but that the intention was that the school changed its timetable for September, to all intents and purposes. So, which way round is that? Am I right to understand that the Order is valid for the decision, but the decision can extend for which ever period of time, or does the Order have to be valid for the entire time of a decision? I hope that's clear.

[117] **Mr Richards:** I have to apologise. I wonder if the committee would be content for us to follow up with a note on this, because I think we've run slightly ahead of time and I haven't actually got the briefing on this. I'm very sorry about that. Would that be okay?

[118] **David Melding:** We have a bit of time to report on this, don't we? We'll defer it to next week.

[119] **Simon Thomas:** Okay. I know it's a very minor thing, but because this is something that the Government says it wants to do, we could see more of these coming forward, so we need to understand how they're going to be working, really.

[120] **David Melding:** Okay.

[121] **William Powell:** Chairman, may I just check whether it would be appropriate for me to declare an interest, as a precaution, on the CAP basic payments agenda item, as somebody who's a partner in a business that is an applicant to the scheme, just for the record?

[122] **David Melding:** So noted. Okay, are we content? Yes. Thank you.

14:05

Papurau i'w Nodi Papers to Note

[123] **David Melding:** Item 4 is papers to note. You'll see the exchange of correspondence between this committee and the Minister for Natural Resources relating to environmental permitting regulations. I think that has run its course now. Then, there's a letter from the Chair of the Finance Committee that refers to some issues, Alun, that you've raised about the need to examine Standing Orders and other matters relating to the scrutiny of finance and

budgetary matters. It also refers to this issue of capacity, which is kind of coming into some of our work, as well. Was that all?

[124] **Ms Stocks:** Yes.

[125] **David Melding:** So, those are the papers to note.

14:06

**Cynnig o dan Reol Sefydlog 17.42 i Benderfynu Gwahardd y Cyhoedd o'r
Cyfarfod
Motion under Standing Order 17.42 to Resolve to Exclude the Public from the
Meeting**

Cynnig:

Motion

bod y pwyllgor yn penderfynu gwahardd y cyhoedd o weddill y cyfarfod yn unol â Rheol Sefydlog 17.42(vi).

that the committee resolves to exclude the public from the remainder of the meeting in accordance with Standing Order 17.42(vi).

*Cynigiwyd y cynnig.
Motion moved.*

[126] **David Melding:** If we're content with those, can I move the relevant Standing Order that we conduct the rest of the meeting in private unless anyone objects? I don't see a Member objecting, so please clear the public gallery and switch off the broadcasting equipment.

*Daeth rhan gyhoeddus y cyfarfod i ben am 14:06.
The public part of the meeting ended at 14:06.*