



Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales

Cofnod y Trafodion The Record of Proceedings

Yr Is-bwyllgor ar y Bil Rheoleiddio Landlordiaid
Cymdeithasol Cofrestredig (Cymru)
Sub-committee on the Regulation of
Registered Social Landlords (Wales) Bill

24/10/2017

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Cofnodir y trafodion yn yr iaith y llefarwyd hwy ynnddi yn y pwyllgor. Yn ogystal, cynhwysir trawsgrifiad o'r cyfieithu ar y pryd. Lle y mae cyfranwyr wedi darparu cywiriadau i'w tystiolaeth, nodir y rheini yn y trawsgrifiad.

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. Where contributors have supplied corrections to their evidence, these are noted in the transcript.

Aelodau'r pwyllgor yn bresennol
Committee members in attendance

Steffan Lewis Bywgraffiad Biography	Plaid Cymru The Party of Wales
David Melding Bywgraffiad Biography	Ceidwadwyr Cymreig (yn dirprwyo ar ran Mark Isherwood) Welsh Conservatives (substitute for Mark Isherwood)
Eluned Morgan Bywgraffiad Biography	Llafur (Cadeirydd yr is-bwyllgor) Labour (sub-committee Chair)

Eraill yn bresennol
Others in attendance

Aaron Hill	Tai Cymunedol Cymru Community Housing Cymru
Stuart Ropke	Tai Cymunedol Cymru Community Housing Cymru
Carl Sargeant Bywgraffiad Biography	Aelod Cynulliad, Llafur (Ysgrifennydd y Cabinet dros Gymunedau a Phlant) Assembly Member, Labour (the Cabinet Secretary for Communities and Children)
Ian Williams	Llywodraeth Cymru Welsh Government
Katie Wilson	Llywodraeth Cymru Welsh Government

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

Jonathan Baxter	Y Gwasanaeth Ymchwil Research Service
Jennifer Cottle	Cynghorydd Cyfreithiol Legal Adviser

Gemma Gifford Dirprwy Clerc
 Deputy Clerk

Rhys Morgan Clerc
 Clerk

*Dechreuodd y cyfarfod am 09:03.
The meeting began at 09:03.*

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

[1] **Eluned Morgan:** Diolch yn fawr. Croeso i'r cyfarfod. Fy enw i yw Eluned Morgan, a fi sy'n cadeirio'r sesiwn yma. **Eluned Morgan:** Thank you very much. Welcome to the meeting. My name is Eluned Morgan, and I'm the Chair of this session.

[2] Just to introduce you, this is the first time we've met as a sub-group of the External Affairs and Additional Legislation Committee, just specifically to look at the Registered Social Landlords (Wales) Bill. We have two other Members with us today. David Melding will be taking the place of Mark Isherwood, I think, for the purpose of this Bill, with his vast experience of housing. So, we're delighted that he's joined us. Also, Steffan Lewis is here from Plaid Cymru.

[3] You can use the translation facilities if you'd like. If you can, switch off your mobile phones. There shouldn't be a fire alarm, but we can all follow you out, if that's okay. You're in charge. Excellent.

[4] Good. I just thought, at the beginning of the session, because it's a new Bill, perhaps if anyone has got any specific declarations of interest on this from our committee point of view. Good.

09:04

**Y Bil Rheoleiddio Landlordiaid Cymdeithasol Cofrestredig (Cymru)—
Sesiwn Dystiolaeth 1
Regulation of Registered Social Landlords (Wales) Bill—Evidence
Session 1**

[5] **Eluned Morgan:** Croeso i chi, **Eluned Morgan:** Welcome to you,
Aaron a Stuart. Aaron and Stuart.

[6] We thought it would be appropriate to ask you, as this Bill will impact on you more than anyone else. I just wondered if you could give us an overview, really, of how important you think this Bill is, whether it will change significantly the way you work, and how your organisation is preparing for it.

[7] **Mr Ropke:** Okay. I think if we go back, actually, through the timeline, even before the decision of the Office for National Statistics to reclassify housing associations in Wales, obviously, we saw the decision first in England to reclassify housing associations there effectively into the public sector for accounting purposes. I think that we were well aware at that point, given the grounds that the ONS had made that decision on in England, that if they chose to look at the devolved nations, and specifically Wales in this case, it was very, very likely that housing associations would be in the same position as our English counterparts and that we would be reclassified into the public sector.

[8] That being the case, we started work in advance, actually, of the ONS even making that decision in terms of getting some legal advice and knowing where we needed to be. So, when the decision was made, it was not a huge surprise to us, I have to say, given that the regulatory framework that was in place in Wales had a lot of common features with that in England, which the ONS had identified as being of concern in terms of putting it into the public sector.

[9] In terms of impact, yes; significant worries that, unless corrected, it could really fundamentally change the way that housing associations operate. I'm sure Members are aware that we borrow substantial sums from the private sector—around £2.5 billion in Wales. That money goes alongside the substantial public investment from Welsh Government to leverage that money further and build affordable homes.

[10] In broad terms, if the legislation wasn't brought forward to correct the

reclassification, it was putting at risk our ability to borrow on the private market, because ultimately Treasury could make a decision that borrowing was capped. For a long, long time, the advantage, actually, of housing associations to UK Government, and Welsh Government absolutely, has been the fact that we've been off the public balance sheet and been able to leverage significant resources in as a result. So, as independent businesses, it has a huge potential, really, to alter the way we're operating and really could have put at risk, in my view, the basic tenets of devolved Welsh housing policy. We have an ambitious housing target in Wales; we've done things differently than in England. But if Treasury, ultimately, were calling the shots on who are the major providers of social housing currently in Wales, I think that puts at threat the whole devolution settlement in terms of housing policy.

[11] **Mr Hill:** I think it's fair to say as well that, when the decision was made by the ONS, there was probably a lack of clarity over exactly how it would impact on borrowing. Obviously, the short-term impact—we haven't seen any impact on that; it's the longer term. And, as Stuart says, it's the ability then of Treasury to essentially interfere in a devolved issue that we were really concerned about. I think if you look now at the issue, all the past borrowing—I think the current situation is that that will go to UK Government, but any future borrowing beyond the end of the agreement with Treasury and the derogation there will be attributed to Welsh Government's borrowing limit. Obviously, that's quite small in the grand scheme of things, and with the 20,000 target and the amount that would need to be borrowed to deliver that, there is genuine concern about how that will be delivered if this legislation isn't passed.

[12] **Eluned Morgan:** Did you have any direct discussions with the ONS?

[13] **Mr Ropke:** We had one meeting with the ONS in Newport with the person at the time who was responsible for collecting the evidence, essentially, to make the decision. It was a useful discussion where they clarified the basis on which the decision would be made in England and how we could feed into the process they were undergoing in Wales at the time. We've worked very, very closely with officials in Welsh Government, I have to say, in the run up to that decision and afterwards. So, it was a useful discussion with the ONS but, to be frank, their discussions generally are at a governmental level and with officials, though we did have one useful meeting and discussion with them.

[14] **Eluned Morgan:** Great. David, would you like to come in?

[15] **David Melding:** The social housing grant is 58 per cent, I think, at the minute. So, that allows you to borrow the other 42 per cent. In effect, your current cap is the social housing grant, isn't it? I'm not quite sure I understand why, if this is formally put on the public sector books, it causes these knock-on effects on your ability to borrow.

[16] **Mr Ropke:** I think the effect comes as a result of Government being put in a position to say to our members and housing associations, 'You cannot borrow any more because this is directly affecting our borrowing.' It gives a read-through to the books.

[17] **David Melding:** So, at the minute, you could actually borrow as much as you're getting in the social housing grant, if there was a market for more—

[18] **Mr Ropke:** Yes, and indeed, I think, more. The limit on our borrowing at the minute is the capacity of individual organisations to leverage their balance sheet. This is secured borrowing. So the capacity lies within the individual organisations and the capacity of their balance sheet. Clearly, if this wasn't reversed, there is a strong possibility the Treasury—and, indeed, the Welsh Government if it's about borrowing—might say, 'Guys, you can go no further.' And that's the real issue here.

[19] **David Melding:** That was the main thing I wanted to ask.

[20] **Eluned Morgan:** Steffan, do you have anything specifically on this?

[21] **Steffan Lewis:** Not just on this—. Well, just going a bit further, I just wonder whether you would have wanted all of these changes, or some of them, regardless of the ONS. Is this a great opportunity to hear you rubbing your hands together for your sector to have new-found liberation?

[22] **Mr Ropke:** No, to be frank. I think regulation in Wales has come a long way in the last couple of years with the introduction of a new regulatory framework, which I think the Public Accounts Committee explored at length in their recent inquiry, and as a trade body, yes, of course, you always want to make things as smooth as possible for our members in terms of bureaucracy, perhaps around the consents regime. But what is a priority? Frankly, no. It wasn't stopping any of our members doing what they need to

do. Our priorities have been around welfare reform, which is a real and present risk to tenants across Wales and to our members' abilities to build, and the supply arguments around investment. So, I wouldn't deny that some of the things that are coming through might well be helpful in terms of reducing bureaucracy, but was it a priority? Absolutely not. I don't think it would ever have gotten to the top of the in tray, if I'm absolutely frank.

[23] **Steffan Lewis:** So is this Bill, in your mind, then, more of a case of being able to continue as normal in that respect, rather than actually being a major turning point where you can do things completely differently? So it's more of the same, really.

[24] **Mr Ropke:** Absolutely. I see this Bill as a very technical Bill that makes the changes that are needed to get us back into the situation we previously were where we can meet our potential across Wales: that's what's required it. We've done a big bit of work with our members over the last 12 months around Housing Horizons. Our members are very clear: in Wales, for them, social housing is the first, last and absolute core business. This is not about making changes for our new-found liberation; this is correcting a technical change that could impact our ability to deliver for communities across Wales.

[25] **Eluned Morgan:** So the implication from what you're saying there is that, actually, this shift from a consent to a notification by the Welsh Government is not that significant—or is it?

[26] **Mr Ropke:** I don't believe it is. The fact there's a notification regime in place—. I am absolutely sure that any regulator, and, indeed, the Welsh Government regulator, if they saw notifications coming through that they had concerns about—I would expect the regulator to be in that housing association the following day asking questions. The reality is that the regulatory consent isn't the only impediment to housing associations doing what they want anyway. For some of our members, they need to seek Charity Commission consent—these are charities—and always they have to seek the consent of their lenders, who are lenders who give good sums of money. So I don't see a notification regime as a big change. I think it changes the way we operate slightly, but I still don't think it would preclude regulatory action being taken if the regulator has seen an issue. And the fact is as well we now have a new regulatory framework in Wales, which I think is much improved from where we were previously, and allows the regulator to take judgments—direct judgments—and say what they are around the standards that housing associations are operating at. So I don't really see it as a big change, to be

frank.

[27] **Mr Hill:** But I think it's important to remember as well that, you know, housing associations are social businesses rooted in their communities, and the new-found freedoms and liberations that might come with this Bill aren't going to change that core business. They're not going to change what we're delivering. Stuart's already touched on the PAC inquiry into regulation of housing associations. That inquiry concluded that the new regulatory framework we've moved towards in the last 12 months has strengthened the regulation of the sector, and I think, alongside this Bill, actually, what you're seeing is an overall strengthening of what the regulator can do in terms of actions for housing associations.

[28] **Eluned Morgan:** Would you accept that, with this change, we'll see from a public sector point of view just an increase in risk in terms of accountability and ability to influence the RSLs?

[29] **Mr Ropke:** There's a possibility, but I think there are other policy levers in place that are very, very strong in terms of exerting influence. We've already referred to the social housing grant regime in Wales, which plays a big, big role in developing homes: that's a very, very strong lever that Welsh Government has, as a funder, over our members. The PAC inquiry, again, talked, I think, at length about transparency and accountability. We have started, I think, what will be a very useful and fruitful bit of work with officials in Welsh Government, which will significantly increase the availability of information and data for tenants and other stakeholders across the sector. So, with the use of that data, I would also argue that accountability will probably increase if interest groups and tenants make use of that data to ask the right questions.

09:15

[30] **Eluned Morgan:** Okay. David, did you want to come in?

[31] **David Melding:** I think your argument is that it's a technical change and culture's not going to shift in any significant way in practice, but it could shift, couldn't it? The Netherlands has had a huge crisis, as you probably know, in their social housing sector as a result of deregulation, and without firm regulatory process and a way of enforcing that—and it's quite a wide sector, potentially—there has to be a greater risk of practices coming in that would not have been prevalent previously.

[32] **Mr Ropke:** There is a risk. There is always a risk. I would acknowledge a risk, but I think we have the policy framework, the regulatory framework, in place. The absolute commitment of housing associations to be responsible social businesses rooted in the communities is a barrier against that. In terms of the regulatory framework, the move to a judgment framework where the regulator is making a direct judgement about the standard of governance and management of the organisation—that is an incredibly strong lever in terms of ensuring that the housing associations remain true to their purpose.

[33] **David Melding:** Nevertheless, the Minister's powers are going to be, or would be, reduced if this Bill becomes an Act, so would you expect a strengthening in guidance as a balance to the lack of direct control? Would you think it would be desirable for guidance in this area to be re-examined and strengthened.

[34] **Mr Hill:** In terms of consents or the Bill or—?

[35] **David Melding:** Yes, I think consents and how—. I'll come to the actual intervention power that will exist in a moment.

[36] **Mr Ropke:** I will be honest and say I'm quite wary of guidance, generally, from Welsh Government, because I think guidance becomes de facto regulation, because people follow a one-size-fits-all process. The strength of the housing association sector has been its diversity—and I take your point about risk—it has been the fact that we are independent businesses, and what is welcome in the way that regulation has gone is that it's not a one-size-fits-all approach about process. It's about outcomes. The important thing is that housing associations get the outcomes right and that when those outcomes don't happen, Welsh Government and others, because there are other stakeholders here involved, have the right levers to exert the influence that they have. There is a requirement that tenants are heavily involved in setting the strategic direction of their organisations and should be more than consulted on that—involved in it. The regulator has strong powers. So, I'm not sure it's around guidance. Actually, a notification regime, I would argue, anyway, is fairly clear: if you dispose of land or another thing that requires consent, you have to notify Welsh Government. That's one step. Actually, you still probably will require consent from your lenders, who've got significant interest here, but also in many cases the Charity Commission. So, I'm not sure guidance is the answer here.

[37] **David Melding:** Okay. And actual regulatory intervention shifts from a fairly general standard of general misconduct or management to unlawful action. That seems to me also to take us down the track of a lot less control over a very important area of public policy, even if it's being delivered in the independent sector.

[38] **Mr Ropke:** Yes, of course. That area and that change is because it's one of the areas that ONS have identified as an element of public control, so a change that's needed to get us back into those things we've talked about. I think I've said it already: I think the ability, now, of the regulator to essentially grade what they might consider to be failing organisations or organisations that have performed outside the envelope you would expect as clearly failing is a strong lever to exert policy influence. The experience in England, where they've moved to, essentially, a judgment framework and have had that for many years—slightly different from the one we have in Wales, but it has its similarities—is that the threat of action by the regulator to downgrade associations has been immensely effective in influencing the behaviour of boards and management.

[39] **David Melding:** And that's been a robust system, compared to—. You know, I gave the earlier example of what's happened in the Netherlands.

[40] **Mr Ropke:** It has been a robust system. I think the Netherlands case in point was about a treasury operation that was operating as a profit centre around derivatives and the rest, so it went very badly wrong. The reality is that I don't think, even with these changes, there is the room to do things like that within Wales or elsewhere.

[41] **Mr Hill:** I think, to be fair to the regulator as well, as Stuart touched on, when the decision in England was made by ONS, it was quite clear that the same would apply to Wales within a fairly short period of time. The regulator moved quickly and took action on the regulatory framework. I think it needs to be considered in the round, as well as the changes in this Bill.

[42] **David Melding:** Thank you.

[43] **Eluned Morgan:** Can I come back on the guidance? You suggest that guidance is de facto regulation. The English Homes and Communities Agency have set out some guidance that seem pretty common sense things to me, like protect social housing from undue risk, adhere to all relevant law and

comply with governing documents—there's a couple of others. Would that be problematic for you?

[44] **Mr Ropke:** No. Guidance at that level is absolutely fine. That is just very clear, top-level guidance about what is expected. My worry about guidance—and it has happened in the past in Wales before, but I'm not saying it will happen this time—is that guidance becomes incredibly prescriptive and talks about process rather than principles. I have no problem with principles-based guidance of that type.

[45] **Eluned Morgan:** And those principles, as they're set out in guidance—would you object to them being written onto the face of the Bill?

[46] **Mr Ropke:** No, but I will give a proviso that we are absolutely 100 per cent sure that that does not affect the status of the Bill as far as the Office for National Statistics are concerned and it still does the job. My understanding is the Bill as currently drafted satisfies the requirements of the Office for National Statistics to make a decision that brings us back into the independent sector. I don't want anything that puts that at risk. But if it doesn't, I wouldn't have an issue with that.

[47] **Mr Hill:** I think the ONS have said that publicly as well. I think that is in the public domain—the Bill as currently stands, if passed, would lead to another classification review and, in their initial assessment, it would be enough to take us out of the public sector. As Stuart said, we would be nervous of anything that changes that and might lead ONS to come to a different conclusion on this. What we've seen in England is that the principles-based approach to the guidance on notifications, talking about value for money, about protecting social housing, the compliance you talked about previously, I think, has worked well. I think something that's separate from the Bill would be possibly more appropriate.

[48] **Eluned Morgan:** Steffan, do you want—?

[49] **Steffan Lewis:** I wanted to move on to the tenants' role, Chair.

[50] **Eluned Morgan:** Yes, you carry on.

[51] **Steffan Lewis:** I wonder what your views are in terms of the ability of the regulator to act in the interest of tenants and, indeed, the voice of tenants themselves in this sector, if this Bill is enacted.

[52] **Mr Hill:** I think it comes back to overall purpose for regulation. As I say, we've been through the PAC inquiry and we heard regularly throughout that inquiry that tenants were at the heart of regulation in Wales. PAC has come up with some pretty strong recommendations of how we can improve that, and talked about transparency and accountability, and we're working closely with Welsh Government on that. So, it needs to be considered in the round. I don't think there's anything in this Bill that weakens anything that protects tenants' rights or tenants' ability to influence or be involved with their landlord.

[53] **Steffan Lewis:** Is there anything now, given the greater independence to satisfy the classification—are there questions to specific constitutional make-ups of specific housing associations in Wales that could fall foul, or potentially fall foul, of the legislation in terms of the strength of the tenants' rights?

[54] **Mr Ropke:** I think we see, in terms of the make-up of constitutions and of boards, there is a specific issue with stock transfer associations—I think that's absolutely well known—mainly involving the level of local authority representation on those boards. The ONS have been quite clear about the maximum percentage of local authority board members that can be present on a board and the presence of a golden share for local authorities.

[55] Tenants have clearly played a key part in those boards and others. My view is it does not affect the place of tenants on boards. Inevitably, a number of associations are looking at their rules and how they make up their governance so they can comply with any legislation coming forward. I've always been of the strong view that tenants have a place on boards for their skills. It's absolutely right that they're there, but it should be a skills-based approach to boards.

[56] There are plenty of ways that tenants are involved and should be involved in the business, whether that's through scrutiny powers and other things. I think it's imperative, clearly, for the sector, when we move to new governance arrangements, to make sure that we're not weakening that. The PAC inquiry I think rightly pointed that out as a priority, particularly around transparency and accountability, and we're working in the spirit of that to take those recommendations forward.

[57] **Steffan Lewis:** Isn't it inevitable, though, that they would be weakened, given the direction of the Bill? You know, you point out the ONS singling out local authorities' representation and, indeed, powers on stock transfer boards. Well, very often, local authority reps are the ones who have a wider public sector agenda and are familiar with wider obligations that can enhance the rights of tenants. So, isn't there a certain inevitability that tenants' voices might be diminished?

[58] **Mr Ropke:** I absolutely don't accept there's an inevitability about that. It's down to individual organisations to take seriously the role of tenants in the running of an organisation and in influencing an organisation. Many organisations—in fact, the vast majority of organisations, if not everybody—will have tenant presence on the board. A large number will have scrutiny panels in place. So, I don't think it's inevitable by any means that the tenant voice will be reduced.

[59] I think the real damage to tenants, to be quite honest, would be if we don't get this Bill through to enable us to be reclassified. There was a lot of investment going into communities across Wales from housing associations, both rural and urban, post-industrial and elsewhere. Anything that puts that investment at risk—and the private investment going in is a big boon to those areas—is, I would say, detrimental to tenants. So, we have to look at this issue in the round, enabling the investment to continue, but, of course, the sector that I represent needs to ensure the tenants are absolutely involved at the heart of those businesses, influencing them, and that their rights are protected.

[60] **Steffan Lewis:** Just finally, have you had discussions, preliminarily, or your members, with tenants in terms of the changes that are coming with this Bill?

[61] **Mr Ropke:** We have had fairly extensive discussions with a range of our members on what the Bill might mean in terms of changes around rules, governance set-up and the like. And I can say that in all of those conversations, it's been quite clear that there is no intention to reduce the role of tenants, or their influence. Indeed, there is a huge desire to protect it and enhance it.

[62] The transparency and accountability recommendation that PAC made only a couple of months ago is one that we are taking forward and have accepted as a trade body on behalf of our members. And I think that,

actually, that has got the real potential to enhance tenants' understanding and knowledge of the business, and enable them to compare how housing associations are operating. So, I'm confident that the tenants' role in this will not be diminished.

[63] **Eluned Morgan:** David, did you want to—?

[64] **David Melding:** Yes. But, you know, we do face this awkward fact about stock transfer, don't we? You know, part of that process, which required referendums, was that tenants would be protected in their view. I think it's fair to say that that's how it was considered by local authority representation.

[65] I just wonder—I heard you about skill sets and you need effective tenant participation, but has anything been looked at where tenants have a right to nominate a certain number of board members? You know, they could be local solicitors, they could be accountants, they could be councillors. Is that a model that you think could be adopted and would then possibly meet the demands of a skill set as well?

[66] **Mr Ropke:** Potentially, and I think it's important to remember that there's not a one-size-fits-all situation across even the stock transfer organisations at the moment. I would cite the example of Merthyr Valleys Homes, where they've moved to a mutual model, which actually did reduce the influence already of local authorities, but brought a much stronger tenant voice forward there. From all our discussions with our members, there is no intention, where tenants are present on boards, to reduce their presence or their influence. I think the tenant presence on boards is best carried through when the skill sets matches the needs of the organisation.

[67] I think there's always been a tension in housing associations between representation and governance. I think they are two separate things. Of course your governance has to be of the highest quality. It has to ensure that the organisation remains true to its social purpose and delivers on its mission. But the representation bit is equally important, and what behoves the sector, and what we have to get right, is how tenants' voices are represented. I think that, sometimes, it's important that we don't confuse that with governance. I think they're two separate things.

[68] **David Melding:** But that's quite a common thing in all sorts of organisations—that board members have a greater duty for governance, but

they can represent certain interests. That's a fairly standard approach. So, it sounds to me that you don't anticipate a terribly negative reaction from tenants that have been involved in stock transfer, but that they'll go along with this.

[69] **Mr Ropke:** Well, if we're talking about the tenant voice directly on boards of stock transfers, they aren't affected by these proposals per se. It was the local authority representation on stock transfer boards that is directly impacted by the—

[70] **David Melding:** Yes, but, I mean, tenants were reassured that that would be a big part of their protection in the new arrangements.

09:30

[71] **Mr Ropke:** They were, but I'd also point to—I think that stock transfers across Wales have been on a journey. They are evolving as time goes on. I think when stock transfers were initially established, the referendum, and the structure that was put in place, was based on achieving a set of promises, mainly around the standard of stock that was in place, but also around the other things like rent, and all that was part of the promises. But we've already seen a large number of our stock transfer organisations in Wales go through major governance reform. I've pointed to Merthyr Valleys Homes, with their move to a mutual. I'm aware that Newport City Homes are currently going through the process of special general meetings and the like to go to a single-status board. But tenants still have a role to play, but at one board of single status.

[72] So, much of this change has already happened voluntarily, and I think it reflects the different environment once tenant promises are delivered. And inevitably, I think, stock transfers then look at their wider role in terms of developing new stock. And I happen to think that, in terms of the potential in the housing association sector in Wales, our stock transfer organisations have got massive potential to help meet the supply challenge we've got out there, and they are changing to be able to do that. And all that has been done in consultation and in conjunction with the stakeholders around that table, and that absolutely includes tenants, and it absolutely includes local authorities. And where that governance change has happened, it's been with the agreement of those stakeholders.

[73] **David Melding:** You made a couple of references to ONS, and I realise

that they operate within international accountancy rules, and so there's a certain objectivity to that, though I think that is not an absolute, but in terms of public affairs it's nearer that end than most of the subjective world that us politicians are in. But they're not the legislature, the ONS, and you've come back to us a few times saying, 'Well, you know, our greatest threat would be if the ONS didn't then reclassify.' I'm not convinced all the options have been put before the ONS. With respect, it sounds as if your engagement has been fairly light, and I can understand that, but some of these nuances do need to be examined quite thoroughly it seems to me. Do you think the Welsh Government has been doing that? And is there any evidence that some of these, rather than—you know, it's very frustrating if the legislature is told, 'Well, actually that's probably a good idea but we don't have time now to examine it, and we may sink the Bill.' That's not a very democratic procedure, is it?

[74] **Mr Ropke:** I think we've been through a fairly extensive process here. Clearly, the decision was made in England, and ONS were clear on why they've made that decision in England. It then, of course, was made for the devolved nations, Wales included. And, again, the basis of their decision has been clear in terms of what needs to change. I'm aware there has been significant—significant—discussion amongst all the four nations of the United Kingdom around this Bill. Myself, I've been present in some of those discussions where my counterparts across the UK and our sister federations have been present with officials from across the UK, talking about the Bill. And I'm aware that there was considerable discussion at length about what was required to get the ONS decision reversed. I absolutely agree: ONS are not the legislature. And, ultimately, this is a decision for legislatures to take. And there are always trade-offs in every decision that is taken. Our view is that it would be very, very desirable for the outcomes of Government policy, and to meet some of the challenges we face in Wales, that we are classified back into the independent sector.

[75] **David Melding:** Yes, I mean that's the objective, otherwise it's pointless taking legislative action—

[76] **Mr Ropke:** No, I think—

[77] **David Melding:** —I realise that, but it shouldn't deny us of all options in—

[78] **Mr Ropke:** No, and I think, clearly, as a committee, and as

representatives, you will I'm sure raise those options to discuss. My understanding is that the Bill that is before us is the minimum that is required to get us back to the status we previously had as independent organisations. Clearly, that'll be a view that you guys take, but I think this Bill lays out very clearly what is required to get us back to that status and be able to continue our investment in Welsh communities.

[79] **David Melding:** I wonder, could I jump back to something?

[80] **Eluned Morgan:** Sure.

[81] **David Melding:** This is not about tenants. The disposal proceeds fund—at the minute, that requires a separate accounting mechanism, and any use of it requires ministerial consent. I think this has basically been sales of houses, and possibly land sale as well. And I just wonder, under the new arrangements, where you won't have these obligations—so they'll be in your general accounts, presumably—and there won't be a requirement for ministerial consent to their disposal, is that going to weaken the use, or the current rigour we have in knowing that any income that's generated is still going to be used for social housing or affordable housing?

[82] **Mr Hill:** I think it comes back to the core purpose of housing associations, which we've touched on a couple of times. These are social businesses and the surpluses that they create are reinvested in communities. And that is the important point in this, that this money isn't going back to any shareholders: it is being put back into the communities where that land or that property might have been bought. I think what we said in the consultation response to Welsh Government is that it probably does need some transitional arrangement in the meantime for what might currently exist in disposal proceeds. But I think, in the long term, you can be assured that, because of the core purpose of housing associations, this money is going back into the communities it was—

[83] **David Melding:** Is it still going to be in plain sight? Would that be good accounting practice in your view, even if you're not required to do it?

[84] **Mr Ropke:** I think it's always very helpful when housing associations are clear what they've invested in communities, what it was spent on, how it was spent and how those decisions were taken. I think that feeds, actually, into some of the accountability and transparency we've been talking about at the Public Accounts Committee. I think it's very, very clear from the work we

did with the Public Accounts Committee, and talking wider with stakeholders, that as a sector we do need to get better at how we explain how we do things, and why we do things, and why decisions are taken. I think that fits into this agenda head on.

[85] **David Melding:** Thank you.

[86] **Eluned Morgan:** Can I just follow up on that? So, the suggestion that there could be a separate accounting mechanism, is that something you wouldn't object to?

[87] **Mr Ropke:** I'm more than willing to explore methods by which housing associations could explain how that money is spent and how it is to be invested in communities.

[88] **Eluned Morgan:** And, again, is that something that you'd think would be appropriate to put on the face of the Bill, to insist on that?

[89] **David Melding:** I don't think it could be insisted on because it's there at the minute and it's being removed. But it could be in guidance. It could be indicated as best practice, couldn't it?

[90] **Mr Ropke:** It could. I don't believe it would be appropriate for the face of the Bill, to be absolutely clear. I think it would be a useful strand perhaps for us to explore in the accountability and transparency work we're currently undertaking with Welsh Government. This is all about getting additional information into the public domain. It seems to me that it would fit perfectly into that stream of work, which has arisen as a result of the PAC inquiry.

[91] **Eluned Morgan:** Can I ask you about lenders? Have you had any discussion with the lenders, and what do they feel about this Bill?

[92] **Mr Ropke:** We've had significant discussion with UK Finance, which was the Council of Mortgage Lenders until they recently changed their name. It's absolutely clear that, from their perspective, they are supportive of the legislation and understand the purpose of the Bill and the reason why it needs to be brought forward. So, there's not much more to say really on that, but they are very supportive of our position.

[93] **Eluned Morgan:** Good. Are there any other questions? No. Well, thank you very much for giving your evidence today. I think that's been very useful

to start us off on our inquiry. We will send you the transcript; if you could check that for accuracy and then send it back to us, we'd be really grateful. But thanks.

[94] Diolch yn fawr i chi am ddod Thank you very much for coming heddiw. today.

[95] Can we have just five minutes before the Minister, if that's okay? We'll have a short break.

*Gohiriwyd y cyfarfod rhwng 09:38 ac 09:57.
The meeting adjourned between 09:38 and 09:57.*

**Y Bil Rheoleiddio Landlordiaid Cymdeithasol Cofrestredig (Cymru)—
Sesiwn Dystiolaeth 2
Regulation of Registered Social Landlords (Wales) Bill—Evidence
Session 2**

[96] **Eluned Morgan:** Diolch i chi am ddod i'r cyfarfod, Carl, a'ch criw bach chi. **Eluned Morgan:** Thank you for attending this meeting, Carl, and your group of colleagues.

[97] **Ysgrifennydd y Cabinet dros Gymunedau a Phlant (Carl Sargeant):** Bore da. **The Cabinet Secretary for Communities and Children (Carl Sargeant):** Good morning.

[98] **Eluned Morgan:** Bore da. Nawr, mae grŵp bach ohonom ni. Mae hwn yn *sub-group* o'r *external affairs committee* ac rydym yn *privileged* iawn i gael David Melding gyda ni, sy'n *real expert* ar *housing*. So, byddwch yn barod ar gyfer y cwestiynau. **Eluned Morgan:** Good morning. Now, we are a small group. This is a sub-group of the external affairs committee, and we are very privileged to have David Melding with us, who is a real expert on housing. So, be ready for the questions.

[99] Thanks very much, Carl, for joining us today. We understand that this is an important piece of legislation. I just wondered, perhaps, if you could start by telling us a little bit about the consequences of the ONS classification on the sector, and what would happen if this weren't reversed.

[100] **Carl Sargeant:** Okay. First of all, thank you, Chair, and I'm very glad I can come to this small, but perfectly formed committee this morning. The consequences of the ONS reclassification: so, the bottom line is we have a target of 20,000 homes to build in Wales. This will compromise us in terms of our ability or RSLs' ability to deliver on the contribution to that figure as we move forward. What we're doing here is no different to what's happened in England or what is happening as a consequence in Scotland, too. It's a procedural motion of a technical element to the Bill. ONS are separate to Governments and they have made a decision that is an accounting process, and we have to act in changing or reversing this decision in order for us to continue progressing the opportunity of developing social houses here in Wales. It's as clear as that, really—either we do it or we don't; if we don't, we don't build homes.

[101] **Eluned Morgan:** Can I ask you about Scotland? Obviously, England has done this already. Have you been comparing notes with Scotland?

[102] **Carl Sargeant:** Yes. My team have a monthly discussion with the lead Member in Scotland who is introducing a very similar Bill.

[103] **Eluned Morgan:** Right, and is this Bill almost identical to what they're producing?

[104] **Carl Sargeant:** Yes, it is.

[105] **Eluned Morgan:** Okay. And I just wondered if you could tell us whether you might have introduced some of these provisions anyway, even had the ONS not come up with their reclassification.

[106] **Carl Sargeant:** Probably not. The issue for me here was—in fact, I spoke to the team—I really don't want to legislate unless we need to. The problem we have here is that this is a clear position of ONS changing the way that we measure public borrowing. So, I've no option other than to do this in order to clear ourselves with a pathway for change.

10:00

[107] Are there things that we've done in the preparation of this Bill? Yes, there are. The framework that we've put in place in terms of our assessment of RSLs is something that we've done, actually strengthening our position of challenge in the sector, which I don't think is a bad thing. Even if this Bill

doesn't go forward, what we've done, as a consequence of preparing ourselves for this, is more proactive in terms of our ability to sensitively regulate in the softest terms, but our ability to influence the RSLs in that space.

[108] **Eluned Morgan:** Can you tell us something about your discussions with the ONS?

[109] **Carl Sargeant:** Unusually, we've had several discussions with ONS, and ONS, on the Bill as it's currently drafted, have given us clearance and said it is acceptable for them to move forward. They've also said that they are not prepared to give a running commentary on the Bill. So, as we are moving through the legislative process, they will review the Bill in its final stage and then give us a position on that. So, if I'm honest with committee, I don't want to see any changes in this Bill; it's purely a technical process for us in terms of moving forward. Clearly the views of committees are important ones, but I know that in its current form it's acceptable to ONS; it does what it says on the tin; it delivers for our ability to move forward. So, minimum disruption would be my preferred option, but I'm understanding of Members' concerns as we go through scrutiny.

[110] **Eluned Morgan:** Okay. So, your plea to us is, 'Don't tinker with this', isn't it?

[111] **Carl Sargeant:** You could say that, Chair, and I'd probably agree with you.

[112] **Eluned Morgan:** Can I ask you about the derogation that has been agreed with HM Treasury? When will that come to an end?

[113] **Carl Sargeant:** Ian can give me the date.

[114] **Mr Williams:** Officially, it comes to an end at the end of March 2018. However, we've been given assurances that, as long as we're seen to be progressing the Bill, then they will extend that by at least a further 12 months.

[115] **Carl Sargeant:** But they are very clear that if we do not pursue this, then the derogation will stop.

[116] **Eluned Morgan:** Okay. Any questions on those in particular? So, can I

move on to David, then, if you don't mind?

[117] **David Melding:** Good morning, Cabinet Secretary. I think everyone on this committee would agree with the objective that we need to ensure that the international accountancy practices are observed and not be left in a situation where RSLs are brought on to the public accounts. But, as a long-serving member of the Constitutional and Legislative Affairs Committee, you will know that one of the golden rules of that committee is that nothing is technical, everything—

[118] **Carl Sargeant:** It was foolish of me to say that is was, Chair—I apologise. [*Laughter.*]

[119] **David Melding:** Everything affects someone and something. So, I think we do need to push back a little bit on those grounds and test you, even if, as I said, I think the overall direction and the objective doesn't cause political division. So, how would you say the overall ability of the Welsh Government to regulate RSLs would be affected by this law change?

[120] **Carl Sargeant:** We have a very different position now in terms of moving—. So, where we were in terms of our relationships with RSLs was one of a—. The ultimate sanction was to remove social housing grants—that's where we could be. Actually, through a process now that we've developed in terms of our framework approach to their performance, we are in the same position, but just by a different way. So, we will now—. Actually, it's a more structured approach to measurement. We will have a review of the system. So, it's a form of regulation that ONS are content with. I don't like to use the word 'regulation', because we're deregulating, effectively, but we do have a framework of influence where we can, ultimately, have the same sanctions as we did before.

[121] **David Melding:** Yes, because there's this balance, isn't there, to meet ONS's requirements but also to say that this is not going to be an unregulated field. So, we're all tiptoeing through that.

[122] But would it be fair to say that it's looser regulation, or do you think the culture of co-operation and the influence remains as strong as far as the Welsh Government is concerned?

[123] **Carl Sargeant:** I think our sanction process and our framework measurement is much stronger in terms of our ability to influence not just

our decisions, but also the confidence of lenders, which is very strong indeed in terms of the RSLs' ability to do business. So, a downgrading of an authority would have significant effects on their ability to borrow and/or whether we invested in that organisation. So, the leverage, I would suggest, based on the framework that we've already applied, is stronger.

[124] **David Melding:** So, at the level of principle you think the Government has pretty much the same powers, and it's quite clear what that sector has to respond to if it is going to be successful in this partnership, but, on the closer process of actual decision making and how these bodies govern themselves, that's where it's going to be—

[125] **Carl Sargeant:** Well, there is a sense of autonomy anyway. I think what we've done with the framework, the 10 points of action in terms of the measurement tool of assessment of an organisation, actually strengthens, in some areas, their ability to demonstrate why and what they are doing. So, one of the areas of concern, when we introduced the Bill at Stage 1, by Members was: how are tenants involved in this process? One of the 10 measurements in our framework of measurement is engagement and demonstrating engagement with tenants. So, by virtue of not doing that—and it's not a case of saying, 'Yes, we talk to tenants'. Demonstrate to us how you've done that. It's proportionate to our consideration on how we would grade that organisation. So, actually, I think there is—we're just doing it differently.

[126] **David Melding:** Okay. I'll leave the tenants issue. It is important, but I think my colleagues—

[127] **Eluned Morgan:** Could we have a copy of that framework? I think that would be really useful.

[128] **Carl Sargeant:** We'd be more than happy to do that.

[129] **Mr Williams:** It's on the Welsh Government website, but we'll link it to you.

[130] **Eluned Morgan:** If you could.

[131] **Mr Williams:** Yes, of course.

[132] **Eluned Morgan:** Thank you. Sorry, David.

[133] **David Melding:** But, clearly, moving from a consent regime to a notification requirement, that is not as tight as what happened before. That must create an element of risk, does it, that RSLs will make poor decisions, potentially, sometimes?

[134] **Carl Sargeant:** I think the Member's right to raise that. I don't consider that a significant risk. However, the processes that we have there in terms of what they need to do in order to get to that position, and then the judgment process post that decision, is powerful. Any organisation that acts frivolously or to a point of not taking the public interest at large would be foolish, because of the consequences in that state. It may happen, but it wouldn't happen twice.

[135] **David Melding:** You've made several references to the regulatory framework, which was renewed earlier this year. So, presumably, in the process of that review, you anticipated a likely change here, because obviously it was already—well, you had notice of it, but it was more advanced in England. So, are you confident the regulatory framework is fit for purpose should this Bill become an Act?

[136] **Carl Sargeant:** Yes.

[137] **David Melding:** And how does it address this issue of risk, then, amongst RSLs in this different relationship, going from consent to notification?

[138] **Carl Sargeant:** Well, there's always a proportion of risk pre and post the development of this piece of legislation. As I said earlier, I've exhausted all options in terms of the ability not to legislate here, but we are in a position where we have to, as in the other administrations. That amount of risk there has been based upon our framework, which we pre-introduced here, so it's in operation already, and RSLs are complimentary but cautious about the approach that we take in terms of our regulatory function here. It's a very powerful toolkit, because the grade system of that is as powerful as—if you start to lose grades, your ability to borrow—. In fact, chief execs of organisations and chairs of organisations, if there is a downgrading of an organisation, I would think that their positions would be precarious at best—their long-term positions.

[139] **David Melding:** Is the regulatory framework going to be accompanied,

as a result of this—or should this Bill become an Act—by additional guidance?

[140] **Carl Sargeant:** Yes.

[141] **David Melding:** How are you going to do that? And what will you be aiming to do in that guidance?

[142] **Carl Sargeant:** Well, I think it is about minimising risk in terms of—. So, the 10 parts of the framework will be accompanied by guidance to say what is expected of you. So, the tenants' relationship, of course, will be, 'This is what we would expect you to do as a minimum.' To be fair, most RSLs that I've experienced are very good at tenant participation, but we can always do it better, so there is an element of what is minimum expectation and that will accompany the framework. The guidance will inform us in terms of our regulatory test on that organisation as well.

[143] **Eluned Morgan:** Ian, do you want to come in?

[144] **Mr Williams:** Yes, if I can reinforce that, there is guidance along with the performance standards already in place. If we move to this notification process, then there will be guidance, on which we'll work with the regulatory advisory group, which is a group that includes the sector, tenants, local government. We'll work with them to work through new guidance that will mitigate any risks of poor behaviour or poor decisions in the sector regarding notification as opposed to consent.

[145] **David Melding:** We've talked a lot about ONS and, obviously, we realise there's an objectivity in what they're doing in terms of that they relate to international accountancy practices. But they're not the legislature either and this sense that they won't provide a running commentary in a way perhaps warns us off making any desirable adjustments. Indeed, I think you've outlined that you're rather hoping this Bill will not be amended in any material way. So, are you confident that, in your discussions with ONS, you have covered the main areas of discretion and options?

[146] **Carl Sargeant:** The conversations we had—and, fortunately, Ian used to work for ONS, so we are relatively well connected and well informed about the position of the organisation—. There is a process issue here and a personal view. I don't think that any of this was necessary in the first place. However, the ONS have made a decision and they've made it very clear the

reasons why. I accept that and we have to act accordingly to deliver on that. We've already set a process under way in terms of how do we manage this process. The ONS are an autonomous body, completely independent of Governments, and their views are sacrosanct. We have to play their game, and we are doing that, and the Bill that we've designed ticks their boxes to allow us to continue to build and access finances.

[147] Does it concern me about going through scrutiny about where we end up? Of course it does, absolutely, because I know, at the moment, we've got a pass. There is nothing guaranteed or there's no shape of what will be acceptable to them. So, we are flying in the dark here apart from we've got a pass to go. That gives me some sense of nervousness. So, whatever the scrutiny process delivers could be compromised at the end, and I'm being upfront with you: I don't know what that will look like or whether it'll be acceptable to ONS. At the moment, we're okay.

[148] **David Melding:** Okay. Are there any potential unintended consequences? There are other players out there, like the Charity Commission. Some RSLs are charities, and there's charity law around certain practices like the disposal of land. That's going to be really affected by this in that it won't require any permission from you as the Cabinet Secretary and it won't strictly require separate accounting procedures. So, could that cut across charity laws? Has anyone made an assessment of that?

[149] **Carl Sargeant:** Yes, we have. Two of the 34 have some charitable action within their organisations of any significance. We have already started discussions with those specifically in terms of what this means for them in terms of consequential. Ian, could you just run through the process in terms of organisations that have charitable status and how it will affect them directly?

[150] **Mr Williams:** There are currently two that we know of, of the major RSLs of course, and they will still require to go through the Charity Commission for consent to dispose of their assets. Whether or not they change their status will be up to them as independent organisations going forwards. You have to remember that the biggest hurdle that most RSLs will have to pass isn't consent from the Charity Commission, it'll be consent from their lenders. They will have to cover that hurdle going forwards anyway.

10:15

[151] **David Melding:** Okay. I'm satisfied you are considering that, then. That's reassuring. The final question from me is, really, the intervention threshold changes from, roughly, mismanagement, misconduct, to unlawful action and that sort of severity. How does that leave regulation, do you think? That's a quite shift on the face of it—or not. What's your view?

[152] **Carl Sargeant:** No, we don't see that as compromising the process we have in place. Without regulation, we have got a very strong position, in terms of our ability to influence these organisations.

[153] **David Melding:** So, if RSLs are frequently going against the principles in the framework and accompanying guidance, that constitutes the risk of unlawful action on their part, and you would intervene, if needed.

[154] **Carl Sargeant:** That would be exactly the same as what we would've done in the past, but alongside of that is the framework, which, as I said earlier is—we're not pinning everything on the framework here, but it is a very powerful tool.

[155] **David Melding:** Thank you.

[156] **Mr Williams:** And when we say 'unlawful action', we mean a failure to comply with requirements made under an Act, which isn't fingers in the till sort of thing.

[157] **David Melding:** Yes. It could be unlawful and illegal. There's a slight—

[158] **Mr Williams:** You've got it. And so failure to comply with any of those 10 standards would be included in that.

[159] **David Melding:** I understand.

[160] **Eluned Morgan:** But frameworks and guidance can change in time with—. If you're writing a Bill or an Act and it's slightly more permanent, the English Homes and Communities Agency have published their guidance to English associations and there are some really obvious things that they've written in that, things like protecting social housing from undue risk, adhering to all relevant law and comply with governing documents. Now, these seem to be pretty straightforward things. Would you have a problem, in terms of getting that written onto the face of the Bill?

[161] **Carl Sargeant:** Would I want it on the face of the Bill? No, because of the ability to make those changes in the future. It makes it more difficult to do that.

[162] **Eluned Morgan:** But why would you want to change ‘protecting social housing from undue risk’?

[163] **Carl Sargeant:** Well, that particular right we may not want to change in the future. But what I do know—. There are two elements to this Bill, and I take heed of David Melding’s initial position, in terms of what we are seeking to do here. We believe that this Bill is a vehicle that allows us to make those changes in order for continuation. The guidance runs alongside of this, which is the bit of the non-regulation that we’re managing. I think it’s a sensible approach to this.

[164] So, this is a vehicle of just a matter of fact. This is what we have to do. The detail can be carried along the side and is much more flexible in order for us to do that. And I just go back to my initial position of this is, in terms of ONS’s agreement of taking this out of the public sector, considered an acceptable process to do that, notwithstanding your views.

[165] **Eluned Morgan:** But even you, in the explanatory statement, have expressed the fact that, actually, you are injecting a further degree of risk as a result of this, and, therefore, actually having those high-level principles in terms of security—. Community Housing Cymru seem to think that that, in terms of high-level principles and that top-level guidance—not the technical or the things you’d want to change in future, but those things—might not be a problem in terms of putting it on the face of the Bill.

[166] **Carl Sargeant:** I don’t know the answer to that, other than I don’t disagree with them. What I do know is—. Does it have potential consequences for the consideration of the acceptability of the Bill? Possibly. I don’t know. What I don’t want to do, and notwithstanding the influence of committee, is take a chance here because, when I get to the end of this process, if ONS said, ‘Aha, it’s a great idea, however, you are still regulating these bodies, which is high risk’, we are in two positions: one is, our delegation will be stopped and, secondly, our position over our ability to move forward on building more social houses is highly at risk, and I’m not prepared to take that risk.

[167] **Eluned Morgan:** No, but you accept that an element of risk has now

been injected that wasn't there previously. So, the question for us, I think, as a committee, is: do we need to balance that up in terms of how far we go to restricting the ability of taking those risks by the RSLs themselves?

[168] **Carl Sargeant:** And I accept that. But this isn't about legislating and creating status quo with legislation. We are doing something different here, and that's why we have to find a pathway to get there. I don't disagree with you, Chair—it would be foolish to do so—or with CHC, in terms of their view on the broad principles of what we are seeking to achieve here, but there is, by virtue of the fact that we are changing the system, an element of risk we're injecting into the system. Is it considered an acceptable risk? For me, I think it is.

[169] **Eluned Morgan:** David, do you want to come back on that?

[170] **David Melding:** Chair, I think it would be useful if the Cabinet Secretary just puts on record that, whilst we completely accept the purpose of this Bill is to meet the requirements of the ONS—and there's a public interest in doing that, clearly—but the legislative process itself is flexible enough. After Stage 3, we could have Report Stage, additional stages. At that point, we can go to ONS and say, 'Well, as it currently stands, we're about to make it an Act. Are you okay with it?' And if they say, 'Well, actually, now that's been amended that way, that would cause us problems', and we could then meet those requirements. We can still have a proper legislative process here, can't we? I don't think anyone is talking about materially changing the Bill, but it could be improved, possibly—

[171] **Carl Sargeant:** Well, I can't pre-empt that either, can I?

[172] **David Melding:**—and that's what we're here to examine.

[173] **Carl Sargeant:** Of course, and I accept that principle, but my current position is that we've introduced a Bill, which we think will suffice, and I get the political process of scrutiny, et cetera. I would have to be convinced of the reasons why we'd have to move into a space that carries even more risk for us, not knowing whether we've got a pass or not, but I fully understand the scrutiny process.

[174] **Eluned Morgan:** Ian.

[175] **Mr Williams:** Yes, a low-level description on the face of the Bill clearly

would be counterproductive because it would intimate extra control. High-level statements—you just need to work out their value versus the risk to ONS having an unfavourable opinion of it. We've been very grateful to ONS for the amount of co-operation and work they've done with us in the first instance, and, of course, with our sister legislatures in Scotland and in England. But we wouldn't want to, necessarily, expect—well, what we'd want is immaterial. ONS will not get involved in what they consider to be policy making, i.e. giving an iterative process throughout the legislation process. They'll mark our homework at the end, I'm afraid.

[176] **David Melding:** Well, I think they would have to respect the sovereign rights of the legislature, and after Stage 3, if we asked them for an opinion, I'd be astonished if they didn't give it, because we would then be moving to Stage 4 to pass the legislation on to Her Majesty for enactment. So, at that stage, they would have to respond. I don't think there's any question about that. And if there's any doubt about that, this committee should write to ONS for clarification because it would be a very serious constitutional irregularity.

[177] **Eluned Morgan:** Yes.

[178] **Carl Sargeant:** I'm not saying they wouldn't. I think it's worth exploring that, and we could do that, or you as a committee may want to do that also. I think what is unusual is that we've had a passed pre-legislation. I've not known ONS to indicate that, in the drafting of what we have put forward, that is an acceptable position prior to legislation. It just doesn't happen.

[179] Actually, it's helpful and unhelpful at the same time. So, at the moment, I know that, actually, it's good to go, but I've got to get through you guys. But that's the process, isn't it?

[180] **Eluned Morgan:** Just in terms of principles, you're uncomfortable with ONS effectively telling you what to do. I think we're uncomfortable with the Welsh Government telling us as an Assembly what we can do. So, you know, I think there's just a kind of principle.

[181] **Carl Sargeant:** I would hope that I haven't given you, in the process of that—I'm telling you what to do. I'm saying that you've got a process that you will follow, and we also are fully engaged in that. My position is, though, that I am going to be as robust as I can in terms of maintaining the position we have because I know it's a successful Bill, in our opinion, as drafted.

[182] **Eluned Morgan:** Shall we move on? Steffan.

[183] **Steffan Lewis:** Just to go back, you can confirm that this Bill amounts to deregulation of social housing?

[184] **Carl Sargeant:** Yes.

[185] **Steffan Lewis:** Even though this isn't of your own making in that you wouldn't necessarily want to be in this position, the directly elected ONS with its great mandate from the people—[*Laughter.*—has decided that deregulation must—. Even though they don't get involved in policy, they have decided that deregulation must occur.

[186] **Carl Sargeant:** The first half of your question I can absolutely concur with. I'll probably leave the second half.

[187] **Steffan Lewis:** One of the concerns I think I have is that, if the ONS have said, 'It's good to go as it stands'—I can see that, from your point of view in terms of having to go through this process, that that's not a bad place to start from—is there an element of doubt in your mind about whether the legislation has gone too far in terms of deregulation? Wouldn't it have been better if it came back saying, 'Well, actually, you're on the right track, but—', as somebody who probably believes strongly that regulation's important in the sector?

[188] **Carl Sargeant:** Yes, but I think your first question was an important one. Did I want to legislate? Did I want to move into this position? Absolutely not. But, because we are forced into that space, we've considered what's happening across the country—so, in England and Scotland—and we've come to a collective decision here that this is the process we need to do to get to that space. I think we've done the minimal amount of work to get this off the books, which is acceptable to the ONS with still a lever—because we could go further. I mean, the framework that we've got in place is an important one because, without that, deregulation and no framework is high risk, but we have a framework in place and we've got that in operation. We think that it gives us enough tolerance of not regulating but having levers in order to control, and that's why the language I'm using—I'm trying to be more sensitive because I wouldn't want the ONS to think we still have regulation powers despite it being deregulated, because that isn't the place where we are.

[189] **Steffan Lewis:** Thank you for that answer. Of course, the people most affected by this will be tenants themselves. I wonder if you could talk to us a bit about the consultation you've had with tenants directly about these changes.

[190] **Carl Sargeant:** Okay. So, we've done a huge piece of consultation work with local authorities, Community Housing Cymru, the Council of Mortgage Lenders, tenants associations, the tenant participation advisory service, some individual organisations—woodland community—

[191] **Mr Williams:** Woodland residents—

[192] **Carl Sargeant:**—residents association or something. So, we've got a whole host of bodies that have had a conversation with us in terms of consultation. Broadly, all are supportive of the principle of the way that we're taking this forward. I'll caveat that with the fact that tenants association groups are—and have raised concerns that they still want to be—part of this process in terms of the long game. That's why, in terms of the framework, as an important part of that, both for Government around the Well-being of Future Generations (Wales) Act 2015 around the consultation and engagement of individuals, but actually for RSLs who aren't covered by the Act, there is a part of that position of measurement of tenants' engagement. And we still believe that that is one of the 10 points of measurement of a successful organisation. I wouldn't have hesitation in asking the regulatory team to give me advice on downgrading an organisation for any of the 10 actions that they are not complying with, and one of those is tenant relationship.

[193] **Steffan Lewis:** Also, I think what's been important in terms of RSLs that came into being following stock transfer and the referenda that happened in various authorities on stock transfer is where particular promises were made to tenants if they voted particular ways and, whilst I understand from the 10 principles about the tenant voice being there, there's a question about local authority influence, representation and powers when it comes to the areas where housing was transferred. What reassurance can you give that this deregulation in some way isn't going to, by rolling back powers of local authorities and the influence of local authorities, diminish the voice of tenants? Quite often, both go hand in hand, and a lot of tenants who voted particular ways in referenda voted on the assurance that, actually, local authorities would have their back, even if the local authorities don't own the

stock.

10:30

[194] **Carl Sargeant:** Yes. There are two points to the question, I think. First of all, by virtue of deregulation, there is change. So, there is something different going to happen. What I can give assurance on, to tenants and to you as a scrutiny committee, is that the promises made by these organisations are sacrosanct. Nothing changes there; they are still expected to deliver on all of the promises—Welsh housing quality standard and any other actions that they said to tenants. That is still part of this process. They will still be expected to deliver on that, and part of the measurement tool will demonstrate to us that they are complying with them.

[195] There is still a local government voice, albeit the representational numbers on these boards are not as strong as they were before, but there is still a representative body of local authorities. It would be of interest to committee, though, to see, through negotiation and agreement, that some RSLs have already started to exit local authority members. So, I think Merthyr—

[196] **Mr Williams:** Merthyr have become a mutual. Newport City Homes—

[197] **Carl Sargeant:** Newport City Homes. So, it is already starting to move into a different space. However, it doesn't diminish, as I said earlier, the importance of the tenant and organisation relationship, whether that's through local authority or through tenant. I think the important thing for me is the tenant relationship. That's where the contract is: with the tenant and the association, rather than the tenant and the local authority association. It's important to me that the two ends meet and that there is still connection there.

[198] **Mr Williams:** As the Public Accounts Committee earlier on this year heard, tenants are at the heart of regulation in Wales, and this regulatory reform that is being proposed is fairly minor in terms of the tenant's experience. And, as the Public Accounts Committee were very clear, they wanted to see comparative data being published about the things that are truly of concern to tenants. I think that will be very powerful when that happens next year. At the same time, the Regulatory Board for Wales has a committee called 'hearing the tenants voice', which includes the tenant participatory advisory service and many other tenant groups, to ensure that

regulation is playing a proper role in improving the tenants' experience.

[199] Finally, next year, starting in April, at the same time as this Bill progresses, there will also be thematic review by the Regulatory Board for Wales. They've already commissioned it on the lived experience of tenants to ensure that RSLs are performing as we would expect. So, I think you get a sense of the importance that tenants are truly at the heart of regulation, and this is reflected in both the performance standards and the guidance that will be developed as this Bill progresses.

[200] **Steffan Lewis:** I just wonder, though, in terms of—. Local authorities have a broader social economic horizon, and housing is central—. One of the pillars of the welfare state was housing, for a very good reason, because it has such an important impact, and I just wonder whether those local authorities that have transferred their housing stock will be inhibited, or whether policy decisions might become more difficult and problematic, given the deregulation in the sector. So, I suppose, in a way, it'll be your framework that replaces the potential democratic deficit that might arise in those areas where local authorities don't own the housing stock. Would that be a very inelegant way of putting it?

[201] **Carl Sargeant:** I probably wouldn't agree with you on the democratic deficit, because local authorities still have a proportion of members on the board, so there is still an influence there. I think you're right in the way that what we've tried to do is balance the deregulation with a system that still has influence, and that's why we think the framework here, while a non-regulatory format, according to ONS, is one that we think is acceptable, carrying some risk—we accept that as well—but it's a different way of doing business. I think 24 per cent of representation is local authority, to move forward. So, I don't believe—. The fundamental principle is what stock transfer went out on in terms of their promise to tenants, not to the councillors. That was the important bit for me: making sure that we can deliver on what they said they were going to do. And we have in position a framework that should assure tenants. That's what it says on the tin, and that's what will still continue to happen, despite the deregulation process.

[202] **Steffan Lewis:** If I could just ask one other question. One of the things we haven't really discussed is what happens, actually, if, from your perspective, the unthinkable happened and this didn't go ahead. I'm aware that it will have implications in terms of the potential to build new homes and meet the target, but in terms of other legislative measures, have you

explored the option of taking homes from RSLs back under public control, looking at more innovative borrowing levers? I understand, and I think you've been very open, in terms of your modus operandi and the principles you started off with. But I wonder how much have you tested the deregulation versus the ability to influence effectively housing in Wales more generally—whether you thought, 'Well, actually, what does it mean to have an additional £2.5 billion on the books somewhere?' Practically, are there ways that we might be able to do it better in the public sector anyway? I just wondered if you could say something on that.

[203] **Carl Sargeant:** Okay. I am awash with legislation, and this is the last thing that I wanted to do—another piece of legislation, technical in nature. It's a procedural thing that I have to do because of other aspects of what's happened. The consequences are significant. So, that £2.4 billion of money back on the public sector borrowing means that I would—. We have a cap, we would max out, and we would have to take that money from somewhere else. So, it would be a choice of whether—and the significant budget is health, generally, isn't it? So, either health or housing.

[204] Through the process, however, we accept that this is going to happen, and hopefully that will happen. We are already trying to look at alternative provision in housing. So, was I a fan of RSLs 10 years ago? Absolutely not, and I've said that openly to the sector. I wanted housing to remain in the public sector as traditional council stock. Irrespective of the policy, that's my personal view. We are currently making investments into local authorities that are now starting to build council stock again. I encourage that. There's a little bit of rub, to be honest with you, with RSLs and local authorities now: does this signal a change in policy, of not investing in RSLs and only investing in local authorities? I think there's space for both.

[205] So, it would be wrong to say that we're not thinking of other things outside of the scope of this Bill, but not delivering this Bill compromises all of that—the transfer and the ability to build, whoever does that. So, it's about political choice then. If it doesn't go through, we've got a big problem.

[206] **Steffan Lewis:** Thank you for that.

[207] **Eluned Morgan:** Can I just ask you about when the consent requirements are replaced by notification requirements? What's the expectation that tenants will still be consulted on the relevant issues?

[208] **Carl Sargeant:** Don't write it down, Ian, you can say it. [*Laughter.*]

[209] **Eluned Morgan:** You can just say it. It's fine.

[210] **Mr Williams:** As we mentioned earlier, this will be very clear in the guidance—that, should we move to a notification process, we'll be very clear about the way that tenants need to be involved in that process. As I said earlier, we've got quite a few processes and initiatives on the boil at the moment, as I mentioned earlier, that will be involved with the tenant experience through this change.

[211] **Eluned Morgan:** Can I ask you about consultation with the lenders? What discussions have you had with them? How are they responding to this?

[212] **Carl Sargeant:** Yes, we've had discussions, as I said, with the Council of Mortgage Lenders through the consultation process. We have regular updates with them, too. The framework we have in place, which is in operation already, is one that they welcome, because it gives them a secondary—

[213] **Eluned Morgan:** It's a kind of traffic light system, really.

[214] **Carl Sargeant:** Yes. It's a really powerful tool, because any downgrading in the system because they've not performed within these 10 categories of measurements—a downgrading from us would put lenders on notice, and I would say the chief exec as well, because it's highly risky for them to be downgraded. It's a very powerful tool, and we introduced that prior to legislation. That's why your initial question, 'Is there something else you would have done without this?'—that was one of the clever things that we did and made sense to do even if this Bill wasn't coming forward.

[215] **Eluned Morgan:** So, you've got these two really powerful tools that you're going to use anyway: you've got that framework that is the traffic lights system saying, 'These are not behaving', but you've also got this huge wad of cash and you're saying, 'If you don't behave you're not having any of this'. Those are the tools, really, at your disposal to make them behave.

[216] **Carl Sargeant:** And the lenders as well, because if we didn't lend, the risk then would be that their only option would be to go to the lenders, but if we're not lending, the lenders aren't going to do that. So, it is powerful.

[217] **Mr Williams:** Regulation of the sector will be stronger in two years—even if this is passed exactly as it is—than it was two years ago. So, I think the things that the Cabinet Secretary has introduced in terms of this regulatory framework and the power to give these opinions in a very clear way has had an enormous impact.

[218] **Eluned Morgan:** And that's already being enacted now.

[219] **Mr Williams:** It started in January, yes.

[220] **Eluned Morgan:** It has started already.

[221] **Mr Williams:** Yes.

[222] **Eluned Morgan:** Okay. And can you just tell me about this disposal proceeds fund? That's going to be abolished as a result of this.

[223] **Mr Williams:** The disposal proceeds fund is related in general to funds that come from the right to acquire, which is going through—

[224] **David Melding:** [*Inaudible.*]

[225] **Mr Williams:** Pardon?

[226] **David Melding:** And the sale of land?

[227] **Mr Williams:** If it's sale of assets that have grant in them, they go into a separate pot called the recycled capital grants. That is continuing. So, we can ensure and measure any moneys that go into that pot—ensure that it's recycled into more social housing. But the disposal proceeds fund is more related to the right to acquire and a few other small—

[228] **Ms Wilson:** Yes, the voluntary purchase grant and right-to-acquire sales in England, but it is quite limited. It's only disposal to a tenant under certain schemes, such as right to acquire, and then a number of other limited sales. So, payments for grant received under purchase—

[229] **Mr Williams:** We're not expecting very much, if any at all, assets to be sold into that fund, even if it was continuing. The recycled capital grant fund is still very important and still needs to be—. And we can provide some additional information on that specifically for you, if you require.

[230] **Eluned Morgan:** But will you insist that there is some kind of separate accounting mechanism so that that's all transparent?

[231] **Mr Williams:** We certainly will in terms of the recycled capital grant, of course.

[232] **Carl Sargeant:** There are two separate systems. We will provide a note to committee, if that's helpful, on that.

[233] **Eluned Morgan:** Okay.

[234] **David Melding:** Can I just ask, then, in terms of the balance between what's on the face and what's going to be in secondary legislation? Are you content with that balance? Do you think it's right?

[235] **Carl Sargeant:** Yes, we are.

[236] **Eluned Morgan:** Any other questions? Kate, did you want to add anything extra?

[237] **Ms Wilson:** No, only that there aren't very many secondary legislation powers at all; it's all on the face. There's only in respect of the application of the local authority control sections and the ability to disapply those. Otherwise, it's simply there in consequential amendments and the normal regulation-making power. So, we have tried to avoid regulation-making powers where possible.

[238] **Eluned Morgan:** Okay, good.

[239] Diolch yn fawr i chi. Diolch am Thank you very much. Thank you for
roi tystiolaeth i ni y bore yma. giving evidence this morning.

[240] We will send you a report of what you've said, if you can check it for accuracy. And I'm sure we look forward to seeing you again once we've taken evidence from some more witnesses.

[241] **Carl Sargeant:** Very grateful, Chair. Again, if there's anything for clarification, we'd be more than happy to—my officers or myself—come and discuss that with you.

[242] **Eluned Morgan:** Diolch yn fawr.

10:44

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

Cynnig:

Motion:

*bod y pwyllgor yn penderfynu that the committee resolves to
gwahardd y cyhoedd o weddill y exclude the public from the
cyfarfod yn unol â Rheol Sefydlog remainder of the meeting in
17.42(vi).*

*accordance with Standing Order
17.42(vi).*

Cynigiwyd y cynnig.

Motion moved.

[243] **Eluned Morgan:** So, I think we'll go back into private session. Is that okay?

Derbyniwyd y cynnig.

Motion agreed.

Daeth rhan gyhoeddus y cyfarfod i ben am 10:44.

The public part of the meeting ended at 10:44.