



Cynulliad Cenedlaethol Cymru

The National Assembly for Wales

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

The Constitutional and Legislative Affairs Committee

Dydd Llun, 20 Ionawr 2014
Monday, 20 January 2014

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Cofnodir y trafodion yn yr iaith y llefarwyd hwy ynddi yn y pwyllgor. Yn ogystal, cynhwysir
trawsgrifiad 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

| | |
|----------------|---|
| Peter Black | Democratiaid Rhyddfrydol Cymru (yn dirprwyo ar ran Eluned Parrott) Welsh Liberal Democrats (substitute for Eluned Parrott) |
| Jocelyn Davies | Plaid Cymru (yn dirprwyo ar ran Simon Thomas) The Party of Wales (substitute for Simon Thomas) |
| Suzy Davies | Ceidwadwyr Cymreig Welsh Conservatives |
| Julie James | Llafur Labour |
| David Melding | Y Dirprwy Lywydd a Chadeirydd y Pwyllgor The Deputy Presiding Officer and Committee Chair |

Eraill yn bresennol
Others in attendance

| | |
|---------------|---|
| Ceri Breeze | Dirprwy Gyfarwyddwr, Polisi Tai, Llywodraeth Cymru Deputy Director, Housing Policy, Welsh Government |
| Neil Buffin | Uwch-gyfreithiwr, Gwasanaethau Cyfreithiol, Llywodraeth Cymru Senior Lawyer, Legal Services, Welsh Government |
| Carl Sargeant | Aelod Cynulliad, Llafur (y Gweinidog Tai ac Adfywio) Assembly Member, Labour (the Minister for Housing and Regeneration) |

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

| | |
|-----------------|---|
| Gwyn Griffiths | Uwch-gynghorydd Cyfreithiol Senior Legal Adviser |
| Ruth Hatton | Dirprwy Glerc Deputy Clerk |
| Dr Alys Thomas | Y Gwasanaeth Ymchwil Research Service |
| Gareth Williams | Clerc Clerk |

Dechreuodd y cyfarfod am 13:29.
The meeting began at 13:29.

Cyflwyniad, Ymddiheuriadau, Dirprwyon a Datganiadau o Fuddiant
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 have received apologies from Eluned Parrott and Simon Thomas, but they will be substituted by Peter Black, and Jocelyn Davies, who is already here. Welcome, Jocelyn. I will make the usual housekeeping announcements. We do not expect a routine fire drill, so if we hear the fire alarm, please follow the instructions of the ushers, who will help us leave the building safely. Please switch off all

electronic equipment, as, even in silent mode, it will interfere with our broadcasting equipment. These proceedings will be conducted in Welsh and English. When Welsh is spoken, there is a translation on channel 1, and channel 0 will amplify our proceedings if you require it.

13:30

**Tystiolaeth mewn perthynas â Bil Tai (Cymru)
Evidence in relation to the Housing (Wales) Bill**

[2] **David Melding:** I am delighted to welcome the Minister for local government and communities, Carl Sargeant. Minister, do you want to introduce your team?

[3] **The Minister for Housing and Regeneration (Carl Sargeant):** I will let them introduce themselves, Chair. As the the Minister for Housing and Regeneration now—

[4] **David Melding:** Oh, I got that wrong. [*Laughter.*]

[5] **Carl Sargeant:** It is due to the Williams commission, Chair [*Laughter.*] It has been quite a lively day. However, I will ask my team to introduce themselves, if I may.

[6] **Mr Buffin:** I am Neil Buffin, a senior lawyer in the communities, housing and regeneration team within the legal services department of the Welsh Government.

[7] **Mr Breeze:** I am Ceri Breeze, the head of housing policy in the Welsh Government.

[8] **David Melding:** I do apologise; we have the Minister for Housing and Regeneration here, in case there is any confusion.

[9] I would like to put the first couple of questions to you, Minister. The heart of the work of this committee relates to the balance between what is on the face of the Bill and what is in regulations. I would like to ask you how you strike the balance between the detail on the face of the Bill and what you intend to do via regulations.

[10] **Carl Sargeant:** Thank you, Chair. I am very grateful for the opportunity to present evidence and come under scrutiny from your committee today. It is always a challenge to try to strike the right balance, and we have worked very hard. We have endeavoured to put as much detail on the face of the Bill as possible in this process. The detail of the technical matters has been left to the Order and regulation-making powers mainly because they are prescribing the technical elements of that.

[11] In the few cases where there is power to make provisions of a more fundamental nature within the Bill, we require the provisions to be subject to the affirmative resolution procedure. We have worked across the broad scope of the Bill to try to build that balance, and we believe on merit that, as presented, the Bill is well-balanced and able to deal with the challenges that we face in terms of the face element of the Bill and the need to be nimble and have the ability to change as and when required.

[12] **David Melding:** Thank you for that. We will obviously follow up on some specifics, presently. The second question that I want to put to you relates to competence. Obviously, there have been issues about competence in other legislation and there are matters before the Supreme Court. So, I just want to check that, in all issues relating to competence, you have been satisfied that you have the powers necessary.

[13] **Carl Sargeant:** Chair, thank you for asking that very important question. As you are aware, the housing element is a devolved function of the Welsh Government. We are satisfied, as are the Presiding Officer and the UK Government, regarding the competence of this Bill as it goes forward.

[14] **David Melding:** Thank you for that. I will now ask Suzy Davies to take us through some of the detail.

[15] **Suzy Davies:** Thank you for your answer, Minister. I have a few questions, which are confined to Part 1, just to make things a little bit easier for this session. Sections 2(4), 6(4) and 11(6) are subject to the affirmative procedure, for the reasons that you gave. However, I would like to ask you some questions about sections 7 and 10, which include some provisions that are subject to the negative procedure for regulations. In both those sections, there is a reference to decisions being made within a prescribed period, the information to be prescribed and, in one case, a prescribed fee. At the moment, according to the way in which you are looking at it, these prescriptions should come in via the negative procedure, and yet, in other parts of the Bill, there is already a significant amount of detail about prescribed periods of time and prescribed levels of fine. Bearing in mind that the Bill already has a great deal of prescription within it, why have you chosen these two particular bits of procedure to be subject to the negative procedure?

[16] **Carl Sargeant:** Thank you for that question, Suzy. As I have said, the Bill is composite, and there are many elements to it. While we try to look across the whole Bill and build consistency into the approach to the decision-making processes and whether we choose the affirmative or negative procedure, there are elements of that that are specific to this Part, and this section relates to the private rented sector, which is why we specifically apply the negative and affirmative procedures.

[17] I will broaden that out to the discussion around that element of the specific Part of the Bill—sections 2, 6 and 11—which you mentioned in your questioning. For example, the Order-making powers of these are wide-ranging and they have potential to limit or widen the scope of the regime. It is therefore considered that the Order should be subject to the scrutiny approval of the Assembly. The elements you touched on, in our view, do not meet those criteria in terms of the need for that level of scrutiny and, therefore, we have approached it at a slightly different level.

[18] **Suzy Davies:** All right. What I was trying to get to with that is that, on the face of the Bill at the moment, I am pleased to see that there is already a level of detail about what is to happen if there is to be an appeal or if a landlord has done something wrong, and the actual penalties against them are laid out quite clearly. However, on the actual initiation of the process, from the local authorities' perspective, it is still pretty unclear. I wonder, if you are so clear on what happens when things go wrong, why we cannot be a little bit clearer on the face of the Bill about how the Bill is to start. You know from the way this committee works that when you bring something in for the first time, even if it is nothing terribly contentious, we have favoured the approach that you introduce something by affirmative process in the first instance so that we can see as an Assembly what is on your mind, and thereafter, perhaps, by the negative procedure if things are to be changed. Have you given any consideration to that for sections 7 and 10 in particular?

[19] **Carl Sargeant:** Yes, we have, and that is what we have been trying to do—to strike the balance with what we believe is the correct approach, and we believe that to be the case. As with many elements within the Bill, there are elements of procedural issues where local authorities will be delivering for the Welsh Government on policy, and there will be Welsh Government policy directing or giving guidance around that. We believe that the negative procedure level is appropriate for this Part of the Bill at this point.

[20] **Suzy Davies:** Yes, it is better than other Bills; I will certainly agree—

[21] **Carl Sargeant:** Could you say that again, please; I am sorry, I did not hear? [*Laughter.*]

[22] **David Melding:** We might say it in the report, depending on the nature of your answers. [*Laughter.*]

[23] **Suzy Davies:** Perhaps I can give you another example of what I mean when I say that some things are certain and some are not, and why there might be a problem for the people who are actually going to have to follow this Bill. Let us go straight to section 3(4) about the offences that the landlord commits if they do not comply with certain things. Subsection 4(a) states that if something goes wrong, this guy or woman gets a fine not exceeding level 3 on the standard scale. Then, under 4(b), when there is a slightly different type of offence, they are just subject to a fine. How would that fine be determined? Are you planning guidelines or regulations to back that up? I have picked this one instance, but there are other similar—

[24] **Mr Buffin:** Yes, there is a specific reason for that. In terms of fines, they are at different levels. If they are set on the standard scale, they are set out in legislation. If it is a fine, then it is at the discretion of a court to set that fine, and that wording was very carefully chosen. That is in relation to the activity of not being licensed while managing a property. That is one of the key elements we wanted to focus on. Breach of that was something we thought was so significant that it should be for the courts to set the level of fine. So, that was deliberately worded and it does have a precise legal effect.

[25] **Suzy Davies:** Okay. So, that bit is actually related to the court's discretion.

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

[27] **Suzy Davies:** May I take you to another section in Part 1, which relates to the local authority's discretion? Bear with me while I find the stickers on my copy; I think it is sections 11 and 14. Again, this is not a policy point at all, but, in section 11(1), you will see that, in deciding whether a person is fit and proper to hold a licence, it must have regard to all matters it considers appropriate. You have set out a list of things that should be included, but you consider that there are other matters they can take into account. Then, in section 14(2), it states that a local housing authority may grant a licence subject to such further conditions as it considers appropriate. I have no issue with the discretion side of this, but are you going to give any guidance to local authorities on the limits within which they must work and, if so, how are you going to introduce those, because I could not find reference to them anywhere in the Bill?

[28] **Carl Sargeant:** First of all, guidance will be issued on that. In terms of the process, do you wish to come in on that, Neil?

[29] **Mr Buffin:** There is a power, under section 29, for the Welsh Ministers to issue guidance to local housing authorities. So, that guidance could encompass issues around the consideration of a fit and proper person.

[30] **Suzy Davies:** Okay. I am sure that someone else will be asking a question on that shortly, so I will not pre-empt their question any further. Thank you.

[31] I wish to take you to section 3(5) momentarily. It is repeated throughout the Bill, actually, that it is a defence for a landlord, in varying situations, to have a reasonable excuse. Is that likely to be included in your guidance as well—what the word 'excuse' might mean?

[32] **Mr Buffin:** I would have thought that that would probably be a matter for the courts to determine in assessing a case—whether a landlord had a reasonable excuse.

[33] **Suzy Davies:** Okay, and that answer is repeated for the other sections—I have found another five—throughout this Part of the Bill. So, that bit is a matter for the courts, is it?

[34] **Mr Buffin:** Yes. Generally, that would be a matter of bringing criminal proceedings, and what the courts would bear in mind. I would have thought that that would be connected with the administration of justice.

[35] **Suzy Davies:** Right. I think that, in some of the sections, they are not talking about court proceedings—they are talking about local authorities deciding what might be a reasonable excuse. Oh, no, some of them are proceedings; I apologise. There is a whole string of them, and I could not remember them all.

[36] **Mr Breeze:** As the scheme is implemented, I think it will give us experience of the reasons why landlords do not comply. I think that that would be important to share between local authorities by way of guidance, to ensure that they are implementing it consistently.

[37] **Suzy Davies:** So, it could be codified into guidance at some point in the future. I am slightly worried that you will have local authorities at the beginning of this thinking, ‘What is a reasonable excuse?’, and not really knowing.

[38] **Carl Sargeant:** That is a fair question, Chair. I think that what we will be seeking to define through the guidance is very clear guidance as to what local authorities will be doing to start the registration process. What we would not want to do is be prescriptive in terms of our guidance, which would be seen to impact, or to deviate from, what would be used in a court of law, in terms of the legal proceedings.

[39] **Suzy Davies:** Similarly, you have the question of how councils choose bodies—this is section 10(3)(c) on approved professional bodies. I am sorry; I am trying not to pre-empt anyone else’s questions.

[40] **Julie James:** May I come in on that point about the failure to comply?

[41] **David Melding:** Yes.

[42] **Julie James:** I have read that slightly differently. I assume that you are not trying to make it a strict liability offence, where it is a case of saying, ‘You have done it, so there is no excuse.’

[43] **Carl Sargeant:** No.

[44] **Julie James:** I think that what the Minister said was that we are going to put guidance out as to in what circumstance we would think that it was reasonable not to have done this. For example, someone has died, and you have had to manage it for your wife, or someone else. Therefore, eventually, there will be a set of circumstances in which this will work, and, at that point, you might consider codification. Is that what I understood you to say?

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

[46] **Suzy Davies:** I am slightly worried about the ‘eventually’ side of the question.

[47] **Julie James:** That is what I was coming on to.

[48] **Suzy Davies:** I am sorry.

[49] **Carl Sargeant:** I think that we recognise that this is a new scheme that is being introduced, and we are trying to have as flexible an approach as possible. We are trying to foresee issues that may crop up, but, if we do not pick that all up, then we can make modifications to the guidance around that, for future reference.

[50] **Suzy Davies:** Okay.

[51] **David Melding:** ‘Reasonableness’ is usually used to give a bit of latitude, is it not?

[52] **Suzy Davies:** Yes, it was not the reasonableness that I have issues with; it was what constitutes an excuse, as much as anything.

[53] **Mr Buffin:** It is important that it ultimately will be for the courts to determine. Clearly, a licensing authority—if it wanted to bring a prosecution—would have to look at the public-interest test, and the evidential test, which applies to prosecutors. However, this wording leaves that latitude for the courts to determine whether a person does indeed have a reasonable excuse why prosecution should not be successful.

[54] **Suzy Davies:** There is no precedent at the moment, is there?

[55] **Mr Buffin:** No.

[56] **Suzy Davies:** Okay, thank you. I will move on now, if that is okay.

[57] **David Melding:** Did you want to follow something up, Jocelyn?

[58] **Jocelyn Davies:** Yes, for clarification on that. So, you can issue guidance to local authorities, so that they will have an idea of when they should be taking proceedings, but you are content to leave it to the courts to decide—once a local authority has taken action—whether the person who is subject to proceedings has a reasonable excuse as a defence.

13:45

[59] **Carl Sargeant:** It would be unreasonable, I think, for any local authority that has deemed the individual not to have breached a condition to take them to court in the first place. So, I think it is wholly right and proper for the courts to decide the outcome of what is considered to be reasonable, but, as I said, it would be probably unreasonable for a local authority to pursue it if it did not think that it was a reasonable case in the first place.

[60] **Jocelyn Davies:** Local authorities are not allowed to do unreasonable things, apparently. [*Laughter.*]

[61] **Carl Sargeant:** Most. [*Laughter.*]

[62] **Suzy Davies:** Is the condition considered appropriate? I have visions of people being blackballed for reasons—

[63] **David Melding:** If I understand it correctly, if some form of list to illustrate what would be legitimate excuses is produced, you would not want to be put in a straitjacket in that that is the only list that you could use. ‘Reasonableness’ allows you to go further than that in cases that you could not have anticipated, or whatever, does it not? That is how I understand

it.

[64] **Mr Buffin:** Yes, indeed. We would not want to set up a strict liability offence here. This tackles that, effectively.

[65] **Suzy Davies:** It is just that, at the moment, because there is no guidance and we do not anticipate guidance coming in quickly, what a local authority, under section 14, might consider appropriate can be as wide as it likes. So, perhaps we are looking for swift guidance.

[66] **Carl Sargeant:** There will be guidance.

[67] **Mr Breeze:** As we run up to the introduction of the scheme, we will be working very closely with local authorities in terms of the guidance that is being prepared, and they have vast experience of enforcement and implementing other schemes and I think that we can draw on that. So, it will be done.

[68] **Suzy Davies:** So, during that consultation would be an appropriate time to weed out any slightly unusual ideas about what might be considered appropriate.

[69] **Mr Breeze:** Yes.

[70] **Suzy Davies:** That is the reassurance that I was looking for.

[71] **Carl Sargeant:** If I may, Chair, for clarity, we are already working with local authorities on the detail across the whole Bill, and it is a very positive engagement with them. That is just to give reassurance to Members.

[72] **Suzy Davies:** I will ask a short question on section 28(1) if that is okay, regarding the standards of conduct to be followed in relation to regulated rental activity. Again, this is about the process, in particular. I will just turn to section 28. Could you give us some kind of indication of what you have in mind for this code of practice and what it is likely to deal with? It is section 28, on the code of practice.

[73] **Carl Sargeant:** Okay. In terms of the detail, the code is likely to be in two parts. The first part will be on the governing relationship between the landlord and the tenants—so, the landlord's code. The second part will be around the relationship between the agents and the landlord—the agent's code, in effect. The landlord's code will cover issues such as insurance, tenancy agreements, repair protocols, records of payments, et cetera with the landlord, and the agent's code will be around the advertising of properties, letting arrangements, rent collection, property, protection of client's money, et cetera. So, there is quite a raft of detail.

[74] **Suzy Davies:** That will be fairly detailed, then.

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

[76] **Suzy Davies:** Of course, that will have to be brought before the Assembly before it can be introduced. Sections 28(6) and 28(7) indicate that, in order to revoke that, you can just lay a direction before the Assembly. Is there a particular reason why you have chosen that approach for changing or amending a code?

[77] **Carl Sargeant:** The revocation element of that?

[78] **Suzy Davies:** Yes, or changing it.

[79] **Carl Sargeant:** I will ask Neil to respond.

[80] **Suzy Davies:** It seems to be different from the process by which you are introducing the code and I wondered why that was.

[81] **Mr Buffin:** The process requires approval. The reason for the provisions around withdrawing a code may be that, for example, if there were two codes separated out in the future and the Welsh Ministers just wanted to issue one, they could withdraw the element and it was not considered that that would necessarily need to be subject to any procedure. The important thing that we wanted to get across here was the actual code itself and that the wording of the code was subject to appropriate scrutiny, consultation and approval of Welsh Ministers. So, that was the balance that we were trying to strike.

[82] **Suzy Davies:** There is just a question, once it has been introduced, of quite how much influence the Assembly would have after that. It is all down to Welsh Ministers from there on, is it? Is that right?

[83] **Mr Buffin:** It is, save that, if an amended code were to be issued, any amended code would itself be subject to the same degree of consultation, scrutiny and approval.

[84] **Suzy Davies:** You can only envisage a revocation, either by—. Sorry, you would revoke a code only if you wanted to amalgamate it, would you? I cannot think of any reasons why you would revoke a code otherwise.

[85] **Carl Sargeant:** It is an unlikely action, but it would only be on the basis of the re-introduction of something new, I expect.

[86] **Suzy Davies:** Yes, or new legislation.

[87] **Carl Sargeant:** Yes, but that would be in terms of coming to the Assembly for approval.

[88] **David Melding:** Yes, that would attract the process.

[89] **Suzy Davies:** Yes, I understand that.

[90] **Carl Sargeant:** I think that the important process of this is the introduction element to the revocation, while important, and having to replace it with something else—it would come under the scrutiny of the Assembly.

[91] **Suzy Davies:** Which is pleasing. Did you want to come in, Jocelyn?

[92] **Jocelyn Davies:** I just wanted to ask whether the code would include anything about the standards of the properties.

[93] **Carl Sargeant:** We are still considering that.

[94] **Jocelyn Davies:** Okay. So, it is possible that this code could also include something. Did you say that you are working with local authorities now and consulting on it now? So, it is possible that the code could say something about the general standard of the accommodation.

[95] **Carl Sargeant:** I am aware, through the policy end of the committee, of discussions that have been or concerns that have been raised about some of the standards and conditions around the discharge of the homelessness duty into the PRS system. It is something to which I am giving further consideration. It might be within this section that we would look at that.

[96] **Mr Buffin:** We would need to bear in mind that the code, ultimately—why any standards have to relate to the management of properties—would have to be within that context. It would be section 28(1).

[97] **Mr Breeze:** I would just add, if I may, that, in common with the practices in managing the properties, drawing links with the housing health and safety rating system, which links to property condition, would be an important part of that, to draw attention to it.

[98] **Jocelyn Davies:** That is already a statutory requirement, however.

[99] **Mr Breeze:** It is, but the code would be an opportunity, really, to make sure that every landlord is fully aware of that. So, that would be a link to property condition.

[100] **David Melding:** Did you want to follow up as well, Peter?

[101] **Peter Black:** Yes. I apologise for being late. In terms of that, are you saying, therefore, that the code will just concentrate on existing statutory requirements, or will you be looking, for example, at introducing new requirements, such as a health check on electrical appliances, for example, every five years?

[102] **Carl Sargeant:** The current element of this is on just current legislation, but it is not prohibitive in terms of the opportunities that it may present in the future.

[103] **Peter Black:** Okay.

[104] **David Melding:** Julie James will take us through the next set of questions.

[105] **Suzy Davies:** I have just one small question.

[106] **David Melding:** I beg your pardon.

[107] **Suzy Davies:** It is only short. With regard to section 28(7), on the introduction of the code, that is just a ministerial Order, with no procedure. I just wondered whether you had an explanation for that. That was all. I can take a short answer on that.

[108] **Carl Sargeant:** It will only be a pretty standard answer. In terms of that, we have measured the processes that are considered for this, and we believe that we have applied the appropriate vehicle for it, Chair.

[109] **Jocelyn Davies:** How very reasonable.

[110] **Suzy Davies:** That will do nicely. Thank you, Chair. Sorry, Julie.

[111] **Julie James:** Minister, turning to the section 29 guidance, which we have been mentioning for a few minutes now, I just wanted you to clarify a little bit more about which sections of this Part would be subject to guidance. That is a very broad power that you have there to issue the guidance. It just states,

[112] ‘In exercising its functions under this Part’.

[113] So, presumably, any Part of the Act could be subject to the guidance. I just wondered whether you could elucidate a little on what your current plans were for that guidance, and whether you had given any thought to whether it was all appropriate to be guidance or whether you might need some of it, particularly some of the things that we were just

discussing, to be regulation.

[114] **Carl Sargeant:** It is an important question. I think that we touched upon some of the issues in responding to Suzy earlier, in terms of the detail around what guidance should be or should not be. We think that we have covered all bases in terms of the detail that we understand the operation of the scheme to be in terms of what we are issuing in terms of guidance. The proposals around the registration and licensing of landlords and letting agents within the Bill, we believe, as mentioned earlier in terms of some of that detail, give the right balance in the Bill. As an example, guidance could cross-reference enforcement powers under the housing health and safety rating system, as Ceri mentioned earlier on. However, the sections of all of this are based in the guidance that we have presented and we believe that is the right balance, Chair.

[115] **Mr Breeze:** If I may just add to that, the guidance is for the operation by local authorities. First of all, with regard to the voluntary landlord scheme that currently operates, there is a vast amount of experience already there. That will form the basis of guidance that will be developed. However, as time goes on, as we review, monitor and evaluate, it will be important to enhance that guidance. We will learn, make continuous improvement and have good practice and best practice, and it is important that we spread that. So, the guidance could cover anything from the process they are adopting to publicity, promotion of the scheme and so on.

[116] **Carl Sargeant:** If I may add to that, Chair, I recently went to Leeds—two weeks ago—to see the scheme in operation that is being run by the council there. The Residential Landlords Association runs the scheme for Leeds City Council. Again, it is an understanding of what works and what does not work and the guidance. So, we are learning from what is already out there in the system to add to what we believe, operationally, is best to give advantage to the scheme actually working.

[117] **David Melding:** Suzy just wants to follow up on that.

[118] **Suzy Davies:** Yes, on this point, does that mean that, in the process of your ongoing observations, if you like, you conclude that some of this practice either needs to be introduced by statutory guidance, as opposed to just general guidance, or even by new regulation? Would you consider doing that?

[119] **Carl Sargeant:** As we move forward, if there are elements where guidance is not strong enough to make sure it actually happens, it is something we would have to reconsider. At the moment, we believe—and the evidence we have and the detail coming forward from other schemes support this—that, in terms of the guidance element, we are not struck by the need for anything more than things being put into regulation at this point.

[120] **Suzy Davies:** Okay, thank you.

[121] **Mr Buffin:** Could I just pick up on one thing in relation to the guidance? It is important to note the duty applying to local authorities. They must have regard to guidance, and, when you read that in conjunction with case law, it is the case that they must follow the guidance unless they have good or cogent reasons not to do so. So, while it is a platform for spreading good practice, it will have a real status.

[122] **Suzy Davies:** That is if it is introduced in the first place, because you only have a ‘may’ version of an obligation, not a ‘must’—but you will, from what you have said. Thank you.

[123] **Julie James:** That leads me nicely on to my next question, actually—

[124] **Suzy Davies:** Oh, I am sorry, Julie.

[125] **David Melding:** I have just been reminded that they can follow up with directions if guidance that is really important is not followed.

[126] **Julie James:** I was just coming on to that, myself, yes. The next section you have got is, in fact, directions, so I was about to ask the Minister how you see those two sections working together and whether that is precisely what you are looking to do. So, if you have guidance, and you have a local authority that is following the guidance reluctantly or in a very minor fashion, is that what the directions are for? Is it a carrot and a stick, and is that the stick, then?

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

[128] **Julie James:** Is that why it is written as widely as it is? What you have is a very wide guidance section followed by a very wide direction section.

[129] **Carl Sargeant:** I think having direction powers throughout the Bill is not unique. It is not unique in terms of other legislation, such as the Local Government (Wales) Measure 2009, which also has direction powers. I think that what we are trying to achieve here is an element of a backstop position, because we are receiving, as I mentioned earlier, great support from local government colleagues in terms of the implementation of this. We are already seeing authorities looking at how this could potentially be rolled out earlier. Therefore, we do not see, currently, the need for this provision in terms of the detail of having to use this. However, subject to it not being implemented, I think it would be foolish not to have a position whereby we could take action, should we need to do so.

[130] **Julie James:** Again, the same question: do you foresee at some point possibly needing to have a scheme of regulation to set it all out or are you happy that this gives you sufficient power?

[131] **Carl Sargeant:** The process we are following currently and the guidance at root that we have in place, we believe, will probably be strong enough. However, we do not know what may or may not happen in the future. Therefore, this gives us protection. A scheme to comply with operation, for it to function properly, would lead to an all-Wales scheme. These powers, within this element of section 30, give us the opportunity to issue direction should we need to do so.

14:00

[132] **Julie James:** Do you not foresee a time when you might want to issue all-Wales regulations, as opposed to direction?

[133] **Carl Sargeant:** Not at this point.

[134] **David Melding:** I think that Jocelyn wants to follow up on that.

[135] **Jocelyn Davies:** From what we have heard from you today, you are basing that assumption on schemes that have been voluntary. By their very nature, the people that those schemes apply to are those who volunteer themselves. Your intention is that this will apply to all landlords, the majority of whom do not currently volunteer for schemes. However, you are still satisfied that this softly, softly approach—to start with—will win the day and that you will not have to resort to directions and regulations.

[136] **Carl Sargeant:** I am hopeful of that position. While we are concentrating on the element of direction here, we have to look at PRS as a package, in terms of what we can do to cajole or encourage people to bring them along on that journey for the registration process. We recognise that the communications exercise that we will have to bring alongside this Bill is a really important piece of work in order to make sure that people can register and do not fail to do so because they do not know about the scheme. What we do not want to do is penalise people for not knowing. Early on, we have to make sure that we take people on this journey.

[137] Interestingly, I have already met some landlords who have a voluntary scheme who say that they also believe that this should be a mandatory process. They are already volunteering, but they are saying that the industry that they operate in clearly includes some risky partners that they are operating alongside. They are saying that everyone should be subject to raising the bar. People in the industry—not all of them, but some—are saying that this is the right process. My point is that direction is one end of this process. As important as the directions are for addressing the subject of failure, the communications package, early on, is as important as the direction end.

[138] **David Melding:** We are maintaining a skilful balance between context and what is needed without going too much into policy; I am grateful for that. It cannot be completely divorced, I realise. Julie is next.

[139] **Julie James:** Speaking of which, I will move on to section 31, Minister, which prescribes the way that the fee is to be set. There are two things that I wanted to explore with you. First, why is it the negative procedure? You have the power to just place the fee in the regulations, which, having served long years on a local authority, I would urge you not to do, as it would be out of date almost before you printed the first copy. My second point is on the means to determine it via a subdelegation, effectively, by a person who is named within the regulations. I wanted you to explain why you thought that a subdelegation is appropriate—why it is not held by you, as Minister—and why the negative procedure is appropriate for such a process.

[140] **Carl Sargeant:** You sort of answered part of the question yourself, in terms of the process. The setting of fees is an operational matter, we believe, and any fees are liable to change over a period of time—short or long; we do not know that currently. Therefore, the power to amend these fees is by means of subordinate legislation. Having the initial fee on the face of the Bill would cause confusion in the event of the fee subsequently changing, so that is why we needed the flexibility of not having it on the face of the Bill. It is usual practice for fees to be set in subordinate legislation. This follows common practice within Welsh legislation. In terms of delegating the setting of fees to a third party, a general power is needed; it could potentially relate to the training element of achieving licensing status. Third parties will be involved in that process of training, as long as they are approved training providers. Therefore, we believe that it is important that the delegation to give the flexibility to amend the fees is within the Bill's structure.

[141] **Julie James:** Thank you for that answer, Minister. I understand that entirely. More importantly, though, the point was about whether we, the Assembly, should have some say in some form as to which body is appointed. So, if you choose to appoint the Girl Guides association of Neath, it may be that the negative procedure would not be the appropriate procedure. I have nothing against the Girl Guides association of Neath, but I just think that it would not be appropriate in this circumstance. So, I understand entirely the point you make about the fees and administrative parts of this, but it was just the subdelegation—

[142] **Carl Sargeant:** It is not about the fee element, it is about the delegate—

[143] **Julie James:** Well, the selection of the person to whom you are delegating—

[144] **Carl Sargeant:** Can I give that some further consideration, Chair?

[145] **David Melding:** Yes, and write to us in due course. I see that the committee is happy with that. Peter is next.

[146] **Peter Black:** The current HMO licensing fee regime enables local authorities to have a great deal of discretion up to a maximum that the Minister can set—although no Minister has chosen to set that maximum for local authorities. Why have you decided to go down a different route in this Bill, going down this negative procedure route, instead of putting in the Bill that local authorities should set the fee themselves?

[147] **Carl Sargeant:** This is a new scheme of operation. I think that one of the Members has questioned me on this in the past. Just because we have done it in the past does not mean that it is right for the future. Therefore, we have looked at this as a new scheme and what is right, operationally, for the future. We think that local authorities will be delivering this scheme on the ground and therefore there should be enough flexibility in the system for local authorities to be able to offer an opinion in terms of the way that this may or may not be changed.

[148] **Peter Black:** It does not take account of local circumstances in terms of resources and, say, the scale of the licensing required in each local authority.

[149] **Carl Sargeant:** We have done work in terms of what the scheme may or may not deliver in terms of finance and we have done some modelling around that, but when the scheme is up and running, there may be changes in the way it operates, and I think it is completely reasonable for local authorities to be involved in terms of the opportunities to set the fees. We have not put a maximum fee level on that because things may change in the future.

[150] **David Melding:** This is policy more than process.

[151] **Peter Black:** I will pursue that in the Communities, Equality and Local Government Committee.

[152] **David Melding:** You would have a chance to do that. I am keen to progress, so we will go back to Julie.

[153] **Julie James:** Minister, I will turn to Part 2, the homelessness provisions, if you do not mind. Again, it is just a question on the appropriateness or otherwise of the negative procedure, which is set out in section 36(2) and (3). You are amending timescales by Order, and you have told us that you are going to apply the negative procedure to that, so I just wondered whether you would like to explain what your thought process was in doing so.

[154] **Carl Sargeant:** Chair, through this section on homelessness—a complex section, as Members will recognise—what we have tried to do is look on balance at what current legislation is in place and what new elements of this we have to introduce to bring the raft of homelessness legislation together. We have tried to balance that in terms of the affirmative and negative procedures throughout this section, too. This section prescribes technical matters of detail in this area, which may change from time to time, particularly around time levels, and, again, we are unsighted about what the future may hold in terms of homelessness. Therefore, we may have to review that at a further point in time in order to make the appropriate changes to the Bill.

[155] **Julie James:** I am in danger of straying into the Bill's content here, but at the moment it is a four-year cycle of renewing the homelessness strategy, so if local authorities move to a five-year electoral cycle, that might go out of sync a bit. Is that what you have in mind, or are you thinking that you would want to look at the number and at the amount of difficulty that homelessness is causing in Wales and change the timescale? In which case, actually, might you then consider that the affirmative procedure is more important, if it is such a policy-driven issue?

[156] **Carl Sargeant:** Actually, it is more to do with the latter and less with the electoral cycle side, and, more importantly, it is to do with the issue of being performance related and with the economic circumstances that dictate the effects of homelessness. I do not share the Member's view in terms of the affirmative and negative elements, purely on the basis of giving us the flexibility, should circumstances change significantly, to mend that quite quickly, in terms of the timescale required for the negative procedure.

[157] **David Melding:** On that point, Minister, you are to be greatly commended for putting a cycle on the face of the Bill. Normally, we probably would expect to have to urge that on you, and Ministers sometimes avoid that. So, I think that putting that on the face of the Bill is a clear policy intent to review homelessness and to have effective policies. To then change that cycle—and there could be reasons for that, obviously—you are going to use a negative procedure to change what is on the face of the Bill. Our general principle is that that should be done only by an affirmative procedure, and I think that we would urge that on you. However, we would not want to overlook the best practice of putting the commitment to a cycle on the face of the Bill. That is the bigger point here, as that really is good practice. However, if you just adjusted it so that if it is changed it would require the affirmative procedure, because I am sure that, to change it, you would have very strong reasons for doing so, it would then be a matter of allowing the affirmative procedure to take place. So, you might want to reflect on that.

[158] **Carl Sargeant:** I have listened carefully, Chair, and, of course, we have tried to strike that balance and to listen to this committee very carefully in the past in terms of the elements of putting time frames on the face of Bills. I would not say that it is brave, but it is a positive move in moving forward. For us, it is about striking the balance and having the ability to make those amendments, subject to the detail that you wish to have on the face of the Bill.

[159] **David Melding:** Peter, will you take us through the next set of questions.

[160] **Peter Black:** Yes; thank you, Chair. As well as the regulation-making powers in section 36, there are nine other regulation-making powers in Part 2 of the Bill, with eight subject to the affirmative procedure and one subject to the negative procedure. Why do you need so many regulations?

[161] **Carl Sargeant:** As I said in the opening element of this section, technically, this has probably been one of the most challenging areas of the Bill in terms of the way that local authorities currently operate the homelessness system. This will be the only part of the UK that has a prevention element in its homelessness Bill. I think that that is a bold move, even though I say that myself, Chair. On that basis, we must have some control mechanisms built into the suite of legislation. We believe that the regulation parts are appropriate. Interestingly, we have more affirmative than negative procedures in this Part of the Bill, and that would indicate our commitment to trying to get this balance right, thereby allowing us, with the detail in the Bill, to apply the correct procedures as we see appropriate on that journey.

[162] **Peter Black:** Okay. I was going to come on to that particular point, because all the regulations around homelessness prevention in this particular Part of the Bill are subject to the

affirmative procedure, and yet when you come to setting out regulations in relation to the procedures to be followed when undertaking a review of a decision made by a local authority on application for assistance, it is subject to the negative procedure. Why is that different?

[163] **Mr Breeze:** We felt that that was a technical matter of detail.

[164] **Peter Black:** A lot of them are technical matters of detail, are they not?

[165] **Mr Breeze:** In terms of discussions with local authorities and in looking at how this might operate, we came to the conclusion that while, interestingly, most of them are subject to the affirmative procedure, it seemed sensible to have this one under the negative procedure, given the detail that would be involved in the right to review a decision.

[166] **Peter Black:** As a Member who deals with casework in this regard, the most important part sometimes in taking up cases on people's behalf is the way in which they are reviewed. Surely that is the most important matter of detail in the Bill: when a decision has been taken and you want the local authority to review it, you have to make sure that that is right. That is surely the part that will be subject to most consultation and consideration in terms of input from the Assembly and Assembly Members.

14:15

[167] **Carl Sargeant:** Again, I listened carefully to the Member's concern. I will give that some consideration, but what we have done is, as I have said, tried to be overcautious—appropriate, I should say—in terms of the way in which we have dealt with the affirmative and negative procedures through this. I would hope that we could give confidence through the Bill process that, actually, while I recognise the important element that Peter raises in terms of the endpoint of review being an important case, the processes that we have in place through the homeless duty on the local authority would ensure that very few cases got to that place of review in the first place, notwithstanding that it could.

[168] **Mr Buffin:** Might I pick up on one point as well? There is quite a strong element of Part 2 restating what it is in Part 7 of the 1996 Act. This is one such provision, and we did have regard to what is currently there, because, obviously, there are regulations in place at the moment in relation to the review of decisions.

[169] **Julie James:** That is, actually, the very point that I wanted to ask about. Is the assumption that you are just going to more or less duplicate the regulations as they are and, therefore, there is not much for the Assembly to look at, because, otherwise, I would be urging you to give us a copy of the draft regulations in order to see that there is not anything outwith the face of the Bill? Ordinarily, the committee would say that the first time ought to be through the affirmative procedure, even if changes subsequently are through the negative procedure. However, if what you are saying is that they will broadly follow the current set of regulations, and, therefore, it is the negative procedure from the start—I do not want to put words into your mouth, but that seemed to be—. I was trying to ask the question, but you have probably answered it.

[170] **Mr Buffin:** That is a policy question, in effect.

[171] **Carl Sargeant:** It is probably much more articulate than I could have—

[172] **Julie James:** Just in terms of the procedure itself—I am not asking about the content of the regulations—normally, we would say that, if there is not a draft that we can see first, we would like the affirmative procedure. However, if you are saying that such a draft exists because it is like the current regulations—

[173] **Mr Buffin:** Clearly, it is a matter of policy, but, from the legal perspective, I would not see any reason why we would vary or depart very much from the existing subordinate legislation.

[174] **David Melding:** I think that, just because it has happened before, that is not an absolute reason to continue it. Precedent has a power of its own, but, sometimes, doing something through the affirmative procedure in the first instance, even though it may seem fairly technical, and then applying the negative procedure thereafter to changes, is a sort of compromise that we are happy with. So, I think—I am sorry, before I go back to Peter, Jocelyn has a question.

[175] **Jocelyn Davies:** It is just on this point. I know that this an area where the courts are very active indeed, so did that influence your decision to do this by the negative procedure?

[176] **Carl Sargeant:** No, I do not believe that was the case. However, what I would be happy to do, Chair, is just to clarify the issue around the element of negative procedure. If that would be helpful for the committee to consider, I will write to you with the detail of that.

[177] **David Melding:** Back to you, Peter.

[178] **Peter Black:** Your confidence in John Major's 1996 Act is commendable, but, moving on, section 81 contains a general power to issue guidance in relation to local authority homelessness functions under Part 2 of the Bill. What will be the likely subject matter of that guidance?

[179] **Carl Sargeant:** Again, the regulations in—. Was it section 81 that you mentioned there?

[180] **Peter Black:** Section 81, yes.

[181] **Carl Sargeant:** This is an existing power, currently under section 182 of the Housing Act 1996. The code of guidance for homelessness and allocations is designed specifically for local authorities' practitioners in applying the law, and that would be, as we see it, appropriate. The code gives guidance on how local authorities should discharge their functions and apply various statutory instruments in practice. To understand the nature of the guidance, you might want to consider the current code of guidance for local authorities on the allocation of accommodation and homelessness through your deliberations today.

[182] **Peter Black:** May I just ask, where you are reliant on the 1996 Act in terms of guidance, and you are repeating those provisions in the current Bill, are you going to be reissuing that guidance or asking local authorities to depend on the existing guidance unless you issue new guidance?

[183] **Mr Breeze:** The guidance was last updated in 2012, so we are going to have to undertake a major updating of the guidance, because the whole approach is shifting towards more prevention. So, we will work with local authorities to update that guidance.

[184] **Peter Black:** So, all this guidance will have to be reissued before you can commence that Part of the Bill.

[185] **Mr Breeze:** It will be worked up in advance of commencing that Part of the Bill, in line with shifting the whole system towards a greater prevention approach.

[186] **Peter Black:** That is what I meant. That is great; thank you.

[187] **Carl Sargeant:** There will be a working group to look at that process too.

[188] **Peter Black:** So, although you have provisions in the 1996 Act, you will be updating the guidance in accordance with—

[189] **Carl Sargeant:** Yes; it is a starting point for us.

[190] **Peter Black:** I am happy to move on. That is fine.

[191] **David Melding:** Yes.

[192] **Peter Black:** Moving on to Part 3, which is Gypsy and Traveller sites, section 89 contains a general power to issue guidance in relation to local authority functions relating to Gypsies and Travellers under Part 3 of the Bill. Again, can you give an indication of the likely subject matter of that guidance?

[193] **Carl Sargeant:** The most important element of the guidance will be that it is important to consult directly with Gypsies and Travellers in all types of accommodation within a local authority area and organisations that may support them. So, that is a fundamental change to what we are currently seeing. There is often a basis of knowledge based upon a snapshot in time for Gypsy and Traveller communities. The guidance will be about the process of a more holistic view of the needs basis across an authority over a period of time, as opposed to one day in a year.

[194] **Peter Black:** Okay; I am happy with that. Under Part 4, on local authority housing standards, section 94 permits Welsh Ministers to set standards to be met by local housing authorities in connection with the quality of accommodation provided, and the rent and service charges payable. Those standards are going to be enforced by Welsh Ministers by quite extensive powers of direction and intervention, including powers of entry and inspection, and no Assembly procedure will apply to those standards. There is a contrast between that and the approach in section 28, which follows that in section 26 of the Welsh Language (Wales) Measure 2011, which provides for standards to be specified by regulations subject to the affirmative procedure. Given the extensive nature of the standards in section 94, do you not think that an affirmative procedure would be more appropriate?

[195] **Carl Sargeant:** My response initially would be ‘no’; that is the way that we have laid these procedures to move forward. May I try to explain our processes behind that? On the standards for social housing, what we have tried to do is to put them on the same level, in terms of setting the approach, as what is in the standards for RSLs, so they broadly reflect each other. That is why we have linked in very strongly the approach where we would have the legislative programme that would take effect for local authorities and RSLs to be similar, if not the same, in terms of taking this forward. So, recognising your point across other elements of the Bill, we believe that this section is strongly related between RSLs and local authorities and that is why we have tried to mirror the legislation around that.

[196] **Peter Black:** In section 96, there is a duty to consult before setting, revising or withdrawing the standards. Is that really a substitute for proper scrutiny of those proposals?

[197] **Carl Sargeant:** We do not believe that that is the case. In relation to the statutory licensing conditions and failure to give rise to enforcement action, again, these are conditions that would mirror both RSLs and local authorities. So, we are not doing something in addition; we are trying to mirror the processes to get them on a level playing field in terms of legislation moving forward.

[198] **Mr Buffin:** In seeking to draw parity between RSLs and local authorities, we did have regard to section 33C, in this particular instance, of the Housing Act 1996, which puts a similar consultation requirement in relation to RSL standards. That was introduced by the Housing (Wales) Measure 2011.

[199] **David Melding:** It is not necessarily binding, but a precedent exists. Jocelyn Davies will take us through the last set of questions.

[200] **Jocelyn Davies:** If I could take you to section 95 on guidance, it seems a bit odd that it says that you may give guidance but that Welsh Ministers do not have to abide by it. Can you explain that? You may issue guidance, but you may or may not take it into consideration when you are making decisions. If you are not taking yourself seriously, Minister, do you expect other people to? It just looks a bit odd.

[201] **Carl Sargeant:** That is not what it is meant to suggest, Chair. It is perhaps the way that we have read it, in terms of the detail. Let me try to explain: in the guidance issued, in some cases, we believe, there will be a minimum standard and there will be a more gold-plated approach to best practice. We would expect guidance to be applied when we were considering at least minimum standards and, therefore, we could take into consideration the issues where gold-plated standards might or might not apply.

[202] **Jocelyn Davies:** So, would this be the sort of example where, if you said that a kitchen had to be a certain size, but it meant that in some properties where you would have to knock walls down and build an extension, you would disregard your own guidance? Is it that sort of thing?

[203] **Carl Sargeant:** No. We will be specific in the guidance that is issued and we will take notice of that. What I am trying to explain is that there will be elements that we would consider to be a minimum standard within the guidance and some may apply, in some areas, a higher standard, while complying with the guidance that has been issued. We would not consider that to be the level that we would always consider to be appropriate in terms of quality, if we are talking in that guise. Therefore, we would look at the guidance that has been issued and consider the minimum standard within that process. So, while we say that we would have regard to the standard, there is a minimum element within the guidance that we would find appropriate, which is not the higher levels that should be considered—

[204] **Jocelyn Davies:** I am glad that you are clarifying this for me, Minister. *[Laughter.]*

[205] **David Melding:** I get the point. It may be a tautology; I see your problem—

[206] **Carl Sargeant:** I am glad that the Chair gets the point; I have tried.

[207] **David Melding:** I can see why you would want to amplify and improve on a baseline standard, but quite why you need to say in legislation that, in doing that, you have regard to the baseline—

[208] **Jocelyn Davies:** Perhaps you will reconsider this so that it makes more sense for those who are not lawyers, because I think that it is just as well that legislation is understandable for as many people as possible. It just seemed a bit odd. Perhaps you could think about it.

[209] **David Melding:** You may want to reflect on it. It is about the elegance of the legislation.

[210] **Jocelyn Davies:** However, now that you have explained it, I am sure that—

[*Laughter.*]

[211] My next question is on council tax on empty homes, because, obviously, you have been doing a fair bit of balancing, as you have mentioned to us several times already this afternoon. So, within that balancing act, can you explain why you do not want to bring the regulations on the exemptions to the council tax on empty homes to the Assembly for approval? That is section 122, if you are looking for it.

[212] **Carl Sargeant:** Thank you, Jocelyn. The issue around this procedure is that we have tried to mirror the process where the exemptions on the standard rate of council tax apply, which is also a negative procedure, and we have used the same procedure for council tax on empty dwellings.

[213] **Jocelyn Davies:** I see. So, there is no reason other than that this is a procedure that you are using for a similar purpose in other legislation.

[214] **Carl Sargeant:** That is correct.

[215] **Mr Buffin:** To pick that up, it is inserting provision into the Local Government Finance Act 1992, so it sits alongside existing provision that is subject to the negative procedure. You have to view it in the context of the legislation that it is going into.

[216] **Jocelyn Davies:** Schedule 2 paragraph 1 to the Bill enables Welsh Ministers or the Secretary of State to make regulations with regard to persons' eligibility and non-eligibility for assistance under Chapter 2 of Part 2. How are you going to decide when you or the Secretary of State will be carrying out that function?

14:30

[217] **Carl Sargeant:** This element is not unique to the detail of this Bill; this is considered across many Bills in terms of the relationship between the Secretary of State and Welsh Ministers. Devolution guidance note 11 gives us the guidance in terms of concurrent functions. In accordance with the memorandum of understanding, respective Governments co-operate at official and ministerial level, and generally the UK Minister would not act where a function relates to a devolved topic.

[218] **Jocelyn Davies:** I see, so the operation of this Part of the Bill is clearly identified in other documents—did you say the memorandum of understanding?

[219] **Carl Sargeant:** Yes, and devolution guidance note 11.

[220] **Mr Breeze:** It is very practical in terms of efficiency. Could I just go back to a point that you mentioned earlier in terms of the use of the word 'may' in the power that you were talking about?

[221] **Jocelyn Davies:** Was that on section 95?

[222] **Mr Breeze:** With regard to the previous discussion that we had on section 95, we simply replicated the wording from section 33 for the RSLs, where it actually says 'may'. So, we have taken that wording across.

[223] **Jocelyn Davies:** I understand what you are saying that it is perhaps taken from other pieces of legislation, but we are considering this one, and on reading it, we see that it says that you may issue guidance, and you may or may not take any notice of it.

[224] **Carl Sargeant:** I have noted the Member's comments. We will have a little look at that to see whether the wording could be much clearer.

[225] **Jocelyn Davies:** Fine.

[226] **David Melding:** Finally, just to point out that the commencement provisions go beyond a simple commencement Order, and would allow inclusion of transitory, transitional and saving provision. I think that you might want to take this opportunity to reassure the committee that nothing more substantive is going to be done in a commencement Order, or indeed why you need to do anything in a commencement Order other than commence.

[227] **Carl Sargeant:** Chair, the powers that you are talking about relating to section 127(4)(b) do not allow Ministers to make consequential, incidental or supplementary provisions in connection with the coming into force of the particular provisions.

[228] **Mr Buffin:** Just to add, if I may, the powers of transitory, transitional or saving provisions must be in connection with the commencement insofar as they are exercised under section 127. There are separate powers in section 126.

[229] **David Melding:** I think that that concludes our questions session. Thank you very much, Minister. That was very useful. We started from a good place, I think, with the general tone of our discussions in terms of the way that the Bill has been drafted. However, in our report we will want to test out some of the issues that we have discussed with you this afternoon. We are very grateful for your attendance and that of your team.

14:33

Offerynnau nad ydynt yn Cynnwys Materion i Gyflwyno Adroddiad arnynt o dan Reol Sefydlog 21.2 neu 21.3

Instruments that Raise no Reporting Issues under Standing Order 21.2 or 21.3

[230] **David Melding:** The instruments are listed should Members have any queries. Are Members content? I see that you are.

14:33

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

[231] **David Melding:** There is only one instrument, namely the Single Common Market Organisation (Consequential Amendments) (Wales) Regulations 2013. There is a report and we have had some clarification also from the Government. Gwyn can fill us in on the details, but I think that it is fair to say that it is relatively technical.

[232] **Mr Griffiths:** Diolch, Gadeirydd. Fel mae'r adroddiad yn nodi, dylai cyfeiriad fod wedi bod at baragraff 1 o Atodlen 2 Deddf Cymunedau Ewropeaidd 1972 yn y rhagymadrodd. Mae'r Llywodraeth yn cydnabod hynny, ac mae'r adroddiad drafft yn cadarnhau bod cyfeiriad ato mewn troednodyn. Mae hynny'n wir. Mae'n **Mr Griffiths:** Thank you, Chair. As the report notes, there should have been a reference to paragraph 1 of Schedule 2 to the European Communities Act 1972 in the preamble. The Government has acknowledged that, and the draft report confirms that there is reference to this in a footnote. That is the case. It is an example of

enghraifft o ddrafftio llac, ond nid yw'n effeithio ar ddilysrwydd y rheoliadau. Fel y gwelwch o'r adroddiad drafft, rwy'n awgrymu eu bod yn rhoi'r manylion llawn yn y troednodiau, nid yn unig ynghylch hynny ond hefyd ynghylch y mater sydd wedi codi o ran y ffordd y mae'r rheoliadau Ewropeaidd yn cael eu disgrifio. Felly, rwy'n credu, bellach, bod y sefyllfa yn dderbyniol.

loose drafting, but it does not affect the validity of the regulations. As you will see from the draft report, I have suggested that it puts the full details in the footnotes, not only in relation to that but also in relation to the issue raised in terms of the way that the European regulations are described. Therefore, I think that the situation is now acceptable.

[233] **David Melding:** Are there any further issues on that? Are we content? I see that we are. We will approve that report.

14:35

Papurau i'w Nodi Papers to Note

[234] **David Melding:** There is correspondence from the Secretary of State to us and a letter from him to the First Minister. Have I got that the right way round? Yes, I have. Obviously, the correspondence is following up on our inquiry—it is not quite giving us the answer but that is the response.

[235] **Suzy Davies:** I would like to ask how the committee thinks that fits in with what the Counsel General has just been doing on the asbestos Bill, because, in that instance, we have gone for what was effectively a declaration before Royal Assent, have we not?

[236] **David Melding:** I think that that is a matter for the Secretary of State to reflect on. I am not quite sure—I suppose his view is that it should not be anything like a routine power. I do not know. You would have to ask him. That is probably what he is getting at in saying that.

[237] **Peter Black:** The Counsel General is not seeking a preliminary ruling is he? He is seeking a ruling.

[238] **David Melding:** Yes, sorry, that is quite true because, obviously, if the legislation has gone through our process—

[239] **Suzy Davies:** It has not got to the full stop yet.

[240] **David Melding:** Indeed.

[241] **Mr Griffiths:** Mae pwynt ychwanegol, wrth gwrs. Mae'r holl gyfeiriadau hyd yn hyn ynghylch deddfwriaeth y Cynulliad wedi bod yn uniongyrchol i'r Goruchaf Lys gan y Twrnai Cyffredinol a'r Cwnsler Cyffredinol. Mae darpariaethau yn Neddf Llywodraeth Cymru 2006 yn caniatáu i bobl herio deddfwriaeth drwy brosesau eraill, rhywbeth a fyddai'n golygu cychwyn yn y llys gweinyddol a symud ymlaen i'r Llys Apêl. Petai hynny'n dechrau digwydd, efallai byddent am

Mr Griffiths: There is an additional point, of course. All references to date to Assembly legislation have always been directly to the Supreme Court by the Attorney-General and the Counsel General. There are provisions in the Government of Wales Act 2006 allow people to challenge legislation through other procedures, which would mean starting in the administrative court and then moving on to the Court of Appeal. If that were to happen, perhaps they would wish to reconsider this.

ailystyried hyn.

[242] **David Melding:** Okay. We will just take note now and, at some point in the future, we may want to return to these themes and we will have the context to do so.

14:37

**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**

[243] **David Melding:** I move that

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

[244] Does everyone agree? I do not see any Member objecting.

*Derbyniwyd y cynnig.
Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 14:37.
The public part of the meeting ended at 14:37.*