



Cynulliad Cenedlaethol Cymru The National Assembly for Wales

Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol The Communities, Equality and Local Government Committee

**Dydd Iau, 6 Chwefror 2014
Thursday, 6 February 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

Leighton Andrews

Llafur
Labour

Peter Black	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
Christine Chapman	Llafur (Cadeirydd y Pwyllgor) Labour (Committee Chair)
Mike Hedges	Llafur Labour
Mark Isherwood	Ceidwadwyr Cymreig Welsh Conservatives
Gwyn R. Price	Llafur Labour
Jenny Rathbone	Llafur Labour

Eraill yn bresennol
Others in attendance

Ceri Breeze	Llywodraeth Cymru Welsh Government
Neil Buffin	Llywodraeth Cymru Welsh Government
John Davies	Llywodraeth Cymru Welsh Government
Maggie Frith	Llywodraeth Cymru Welsh Government
Patricia Gavigan	Llywodraeth Cymru Welsh Government
Geoff Marlow	Llywodraeth Cymru Welsh Government
Kath Palmer	Llywodraeth Cymru Welsh Government
Carl Sargeant	Aelod Cynulliad (Llafur), Y Gweinidog Tai ac Adfywio Assembly Member (Labour), Minister for Housing and Regeneration
Alyn Williams	Llywodraeth Cymru Welsh Government

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

Jonathan Baxter	Y Gwasanaeth Ymchwil Research Service
Sarah Beasley	Clerc Clerk
Leanne Hatcher	Dirprwy Glerc Deputy Clerk

Dechreuodd y cyfarfod am 08:59.
The meeting began at 08:59.

Cyflwyniad, Ymddiheuriadau a Dirprwyon
Introduction, Apologies and Substitutions

[1] **Christine Chapman:** Good morning, and welcome to the Assembly's Communities, Equality and Local Government Committee. I remind Members and witnesses that if they have any mobile phones, they should be switched off because they affect the broadcasting and

transmission. We have had some apologies this morning from Rhodri Glyn Thomas, Janet Finch-Saunders and Jocelyn Davies.

09:00

Bil Tai (Cymru): Cyfnod 1—Sesiwn Dystiolaeth 10: Gweinidog Tai ac Adfywio Housing (Wales) Bill: Stage 1—Evidence Session 10: Minister for Housing and Regeneration

[2] **Christine Chapman:** This is the final evidence session to inform the committee's scrutiny of the Housing (Wales) Bill. I welcome Carl Sargeant AM, the Minister for Housing and Regeneration. Good morning, Minister. Could you introduce your officials for the record, please?

[3] **The Minister for Housing and Regeneration (Carl Sargeant):** Good morning, Chair, and good morning, committee. I will ask Neil to start.

[4] **Mr Buffin:** Good morning, Chair. I am Neil Buffin, senior lawyer in the communities, housing and regeneration team in Legal Services in the Welsh Government.

[5] **Mr Breeze:** I am Ceri Breeze, head of housing policy.

[6] **Mr Williams:** I am Alyn Williams, head of the private sector team within the housing policy division.

[7] **Christine Chapman:** Welcome to you all, and I know that other officials will be coming to the table during the course of this meeting. As this is the final session, there are questions that committee members want to put to you, Minister. We are going to go straight into questions. Mike Hedges wants to start off.

[8] **Mike Hedges:** It is a continuation of something that we have talked about here and outside a couple of times, namely family relationships in the private rented sector, such as people renting to their children or grandchildren. Have you given any thought as to whether there should be any exceptions or allowances for direct family relationships?

[9] **Carl Sargeant:** Thank you, Mike, for your question. I have looked at this carefully, and while I acknowledge and accept that there may be some internal rental market within a family relationship, I think that that is covered already in terms of the local agreement within a family. However, I find it hard to distinguish between an informal rental and a formal rental. If there is a process where an individual pays money to another individual, that is a formal relationship whether they are family members or not, so I believe that that person has landlord status. There are other actions that a family may take, and agreements within a family, for somebody living within a property. We want to be clear in the legislation that you are either a landlord or you are not a landlord, and I think that already presents itself.

[10] **Mike Hedges:** May I take that on to the next stage? On some occasions, there may be two children who inherit a home. One of them is living at home, the other is not, and they reach a rental agreement for part of that house. That does not happen all the time, but it is not something that is unique or unusual. How would that be treated?

[11] **Carl Sargeant:** I refer the Member to my last response. If it is a formal agreement of a landlord position with an individual, whether that is a family member or not, they are a landlord. If another agreement happens, and I know that it does within families, where transactions may take place or other things that may give them the ability to live in that

property, that is a different matter. When you take a payment, there is already legislation around that. When you take payment for the rental of a property, I believe that you create a status of landlord. I think that we have to be definitive in terms of legislation; we cannot have fuzzy areas around it.

[12] **Mike Hedges:** Okay, thank you. How does the Minister expect local authorities to identify landlords who do not register, in particular small-scale and ‘accidental’ landlords, again, people who inherit the house and rent it out to somebody in the neighbourhood for sometimes only a short period of time while they are waiting for probate? You know the sorts of things that I mean, Minister. What resources will be available for this purpose?

[13] **Carl Sargeant:** I share the Member’s concerns around that. It is an educational communication aspect of this. There are people who are accidental landlords for a short period, but there are also those who are for a long time, and are in the process of renting property to another individual, but do not consider themselves to be landlords. What we have to do in the communication process and the legislative process is to ensure that the people who would be involved start to move the sector over to understanding that there is a legal position to being a landlord, and that it is a licensed process. I do not underestimate the challenge in terms of accidental landlords, but we have to pursue the process so that it becomes—to use a strange analogy—the new seat belt law, that is, so that it becomes the norm and people recognise that this is what you do when you become a landlord.

[14] **Mr Buffin:** May I add to that as well? The Bill does make a provision that allows a period of grace after transfer of property prior to the requirements to be registered or licensed. So, it allows some legroom, as it were.

[15] **Mike Hedges:** I have one last question. As the Minister is aware, there is a voluntary scheme working in England—around Leeds, for example. Does the Minister agree that a voluntary scheme would be unlikely to get most of the people we are aiming to get?

[16] **Carl Sargeant:** Yes, I absolutely agree. I went to Leeds on a visit. It was a very helpful visit. Ironically, we were asked to go by the Residential Landlords Association, which runs the scheme for Leeds City Council. When we were there, we were told that we were doing exactly the right thing in making this mandatory and that it would do that if it had the cash to do so.

[17] **Mike Hedges:** I tend to agree with you.

[18] **Christine Chapman:** We will move on to other questions now. Jenny, you wanted to come in.

[19] **Jenny Rathbone:** These licences will be for a period of five years. Could you describe to us what would happen at the end of that licence period were the landlord not to renew the licence? Where does that leave the tenant and what is their status at that point?

[20] **Carl Sargeant:** I would expect, through the process of the licensing and the training to be a licensed landlord, that the landlord would fully understand their duties both from the perspective of the landlord and the tenant, and understand that relationship. If the landlord chooses, at the end of five years, not to renew their licence, then they become a landlord practising unlawfully. I would expect any professional person to have a discussion with the tenant in terms of their understanding, ‘I’m no longer a landlord and you’ll be moving on to other accommodation, or not’. In terms of the legislation, I assume that you may be referring to eviction orders and that type of thing.

[21] **Jenny Rathbone:** Well, what happens to their security of tenure if the registration

runs out?

[22] **Carl Sargeant:** That is not affected in that process, Jenny. The issue is about the licensing element of that; the secure tenure remains with the tenant.

[23] **Jenny Rathbone:** So, the tenant would simply be in a position where they would not be obliged to pay rent until that person re-registered. Is that how it would be?

[24] **Carl Sargeant:** May I ask Neil just to confirm that?

[25] **Mr Buffin:** The fact that a landlord is not licensed or has not appointed a licensed person does not affect the tenancy agreement, but there would be a number of potential sanctions against the landlord, one of which would be to deal with rent, so that it was either not payable or, potentially, repayable. However, it does not affect the validity. So, the tenant still has the ability to occupy the property.

[26] **Christine Chapman:** I would like to bring Leighton Andrews in on this point.

[27] **Leighton Andrews:** Have you had discussions with the Department for Work and Pensions in this context, in relation to housing benefit?

[28] **Carl Sargeant:** We have done some work on benefits and some of the processes involved in that, and that is why we are splitting the rent element in rent and services, because we understand that some benefits are related to the actual costs involved in that and we cannot split that up currently in the rental system for everybody. So, some discussions have taken place in terms of the process, but not directly in terms of Jenny's question, if that is related to what you were asking.

[29] **Leighton Andrews:** No, I was thinking in respect of sanctions. If you are looking to sanction landlords and a lot of money is going into landlords' pockets from the public purse, are there—

[30] **Mr Breeze:** The DWP is aware of the Bill and has read the explanatory memorandum, and it has not raised any issues about rental agreements and the sanctions.

[31] **Leighton Andrews:** However, in future, most housing benefit will go directly to tenants rather than—

[32] **Mr Breeze:** The main discussions that we have had with DWP have been about homelessness, actually, and levels of homelessness.

[33] **Christine Chapman:** I know that Jenny wants to come back in, but I want to ask what happens if the licence is revoked. Jenny asked about the licence expiring, but what happens if the licence is revoked?

[34] **Carl Sargeant:** In terms of the fit-and-proper-person test?

[35] **Peter Black:** In terms of the tenants.

[36] **Christine Chapman:** Yes, the tenants.

[37] **Carl Sargeant:** The same action applies. The tenancy agreement remains the same for the tenant.

[38] **Mr Buffin:** If the licence was revoked, then the alternative would be for the landlord

to appoint a responsible person or agent who is licensed to manage on his or her behalf.

[39] **Christine Chapman:** Okay. I will bring in Peter and then I will bring Jenny back in.

[40] **Peter Black:** In relation to legislation on houses in multiple occupation, where the licence is revoked, the property often ends up being sold and the tenants end up having to be rehoused. Are you anticipating that that will happen here or are there mechanisms in place that will protect the tenancy?

[41] **Carl Sargeant:** We believe that what is in place is a process whereby the tenant is protected in terms of their tenancy agreement. Nevertheless, with regard to the issue of what happens in practice—and Peter is right to raise that—if a landlord has a licence revoked and then decides to sell the property, there is little that we can do in terms of that process to protect the tenancy.

[42] **Christine Chapman:** Ceri, did you want to come in?

[43] **Mr Breeze:** I will just say that there is the homelessness prevention aspect here, and, if there is a risk that the licence will be revoked, then, obviously, the local authority will work towards helping that tenant.

[44] **Christine Chapman:** Jenny, do you want to continue?

[45] **Jenny Rathbone:** I want to move on to the fit-and-proper-person test. I wonder whether you would give us more detail on how this test will prevent rogue or criminal landlords from managing properties, if we do not have a requirement to do a Disclosure and Barring Service check.

[46] **Carl Sargeant:** The fit-and-proper-person test is a self-declaration of the ability to be fit and proper. If there is any element of doubt in that process, the local authority can pursue that by asking for a further certification from the Disclosure and Barring Service. It is very similar to what happens under the Mobile Homes (Wales) Act 2013 in relation to the fit-and-proper-person test. So, this is a standard procedure that we have applied to this piece of legislation.

[47] **Jenny Rathbone:** So, the Bill, as currently written, would enable a local authority to insist on a DBS check if it felt that there were some question marks around the person, would it?

[48] **Carl Sargeant:** Yes, that is correct.

[49] **Jenny Rathbone:** Okay. That is very helpful. The other point that I wanted to clarify is about the prevention of fraud. Housing benefit fraud is quite a significant issue. I wonder whether you would be minded in the legislation to indicate whether there can be sharing of information between local authorities that manage housing benefit applications on the recipients of housing benefit, as to whether they are registered.

[50] **Carl Sargeant:** We are looking at that very closely, Chair. It is not currently drafted within the Bill, but I have asked my department to look at that to see whether data—not just for that issue, as the data-sharing element of this is really important in terms of registration; it can make it much easier if we understand council tax condition and what that means in terms of registration—can be shared within a controlled environment. That will ensure better registration, but also tackle issues around fraud. We are just looking at the legislation and competency around that. We think that it is doable, but we will probably have to drop you a note at some point in terms of what the detail may be in terms of how that would be affected.

[51] **Jenny Rathbone:** Finally, have you had any conversations with the police around the way in which some criminals use the acquisition of property and are apparently renting it out in order to launder ill-gotten gains?

[52] **Carl Sargeant:** Yes, we have.

[53] **Mr Breeze:** I have discussed this with the police. They are very interested in the provisions that we are proposing. There is an issue in terms of laundering money through the use of properties—

[54] **Jenny Rathbone:** There is an issue in terms of what, sorry? I did not catch that.

[55] **Mr Breeze:** There is the prospect that some criminal activity may launder money to buy properties. That is a real issue. On the one hand, one might say that criminals may not be the ones who will come forward and register, on the other hand, in some cases, in order to appear to do the right thing, those may be registered fairly early in the process. They will not be hidden under the radar. The police are interested in the Proceeds of Crime Act 2002 and the using of the register to identify which properties are where and who owns them.

[56] **Jenny Rathbone:** So, you are satisfied that the Bill has gone as far as it can to assist the police in this matter.

[57] **Mr Breeze:** Yes, and there will be a large amount of work with the police and other agencies to ensure that, as the Minister said, there are appropriate data-sharing protocols, and that the data are used practically and sensibly by everybody.

[58] **Carl Sargeant:** May I just add to that, Chair, that, when I brought this Bill to the floor of the Chamber, I said that we have a suite of tools that we are looking at in terms of supporting the police et cetera, and the rented homes Bill will also add value to this, as, if you like, a second part to the housing Bill? Although it has a separate title, it adds value to the work of the police in terms of anti-social behaviour, et cetera, and domestic violence. So, there is a suite of tools and this is just one part of the jigsaw, although, I would add, a large piece of it.

09:15

[59] **Christine Chapman:** Peter has some questions now.

[60] **Peter Black:** Moving on to training, the explanatory memorandum states in paragraph 3.25 that

[61] ‘two-thirds of staff who are directly involved in the lettings and management’

[62] of property will have to undertake training, but section 10(4) of the Bill states that all staff engaged in managing rental properties will have to undertake training. Can you clarify which is correct, please?

[63] **Carl Sargeant:** I would expect that there is some drafting that we need to have a little look at, but I expect all staff to be involved in the training. If there is an action taking place involved in the letting and control of the building, I would expect anybody involved in that to be trained.

[64] **Peter Black:** Okay. When Tai Pawb gave evidence to us, it raised a specific issue around statutory equality obligations and whether that would be included in the training as a compulsory part of that training. Can you confirm whether that is the intention?

[65] **Carl Sargeant:** It would not be a statutory element of that, but it would be part, as it is currently, of the understanding of being a landlord or an agent who is delivering this.

[66] **Peter Black:** Also on training, obviously one would expect that, once a registration comes in, the landlord, agent or whatever will have a training course and they will pay for that training course. Is there provision for continuing professional development? Will the landlord or agent have to continue to pay over a period of time for update training and development training?

[67] **Carl Sargeant:** In terms of being part of the scheme and involved in that process, we envisage that being regularly updated in terms of legislation, et cetera. It is similar to the voluntary scheme that happens now. When new legislation or opportunity comes about, people who are part of the club are involved in that process of update. So that is continuing professional development, but there are other added elements that Neil will want to come in on.

[68] **Mr Buffin:** I just wanted to revert to the training of staff point, if possible, and the question about it being two thirds of staff versus all staff. It is provided for in section 10(4) of the Bill that staff who are engaged in managing rental properties will be required to undertake training. So, it is any relevant staff.

[69] **Peter Black:** So the two thirds is because the admin staff, for example, would not be required?

[70] **Mr Buffin:** Well, no, it is a move away from that to all staff.

[71] **Peter Black:** So, there would be elements of staff in letting management who would not be involved in training, because they are not directly involved in managing a property.

[72] **Mr Buffin:** Yes, but, if they are managing, they are required to undertake training.

[73] **Peter Black:** On the CPD point, in reality, you can only really enforce further training on the renewal of the licence, can you not? Once the landlord has registered and gone for the training and got their licence, how can you then enforce training over that five-year period?

[74] **Carl Sargeant:** That stands for everything, does it not? Once you are at a base level to be accredited or licensed, that applies to all things. What we are saying is that, in terms of continuing professional development, we will be enhancing support for people who are licensed and accredited. Now, it is the horse to water element. We will give the information to individuals, but you are absolutely right that, when you come for relicensing, there would be an expectation that you would understand fully the competency levels required.

[75] **Peter Black:** Will CPD be part of the code of practice, for example? Would that be one way of doing it?

[76] **Mr Breeze:** I think it is fair to say that it would be up to landlords to keep up to date with new legislation and changes, and, for the first time ever, we will know where landlords are in Wales and there will be a way of getting to them. So, as the Minister says, it is enforcing training, but also providing them with the information they need to fulfil their responsibilities.

[77] **Peter Black:** Moving on to licence conditions, could you explain why the path for local authorities to impose additional licensing conditions over and above the compliance of the code of practice is necessary?

[78] **Carl Sargeant:** What we are trying to do is have that base level of understanding of what we and landlords accept as a reasonable level. There may be circumstances where a local authority, for a particular area, may feel it appropriate to increase levels. An example that I have conversations about with the police, actually, is a student area, where they know there are—it is not rocket science—the criminal fraternity knows that there are, generally, three or four laptops in a property, particularly in student areas, et cetera. They are asking whether it is a condition that they may apply to the landlord process in codes and standards about having additional locking mechanisms on the windows, et cetera. So, it is about giving some flexibility to local authorities that have a particular problem in a particular area and may wish to add value to the standard code that is already in place.

[79] **Peter Black:** Can you understand the concerns of landlords that they are, effectively, signing up to a blank cheque, if you like? Having licensed the property and registered with the full set of conditions in front of them and the code of practice, they are then going to have further conditions put on them without having any say so as part of that.

[80] **Carl Sargeant:** I understand that, but I do not accept that that will always be the case. However, I believe that, if there are areas of concern with a local authority in a particular area, it is reasonable to engage with the landlord associations or the licensed landlords of that area, and to have a discussion early on. I will include that in guidance, in terms of the process being a consultation exercise to ensure that the code, if increased, is understood by people who are affected by that. However, what I would say, if I may, Chair, is that this legislation going through has predominantly been landlord-focused. My view is that we should be focusing on tenancy as well. Importantly, I think that we should be ensuring that tenants' rights are supported as well as those of landlords, and that it is not just one-sided through this process.

[81] **Peter Black:** I do not disagree with that; I just think that we need to have cognisance of the landlords' position as well, in terms of affordability.

[82] **Carl Sargeant:** I agree.

[83] **Christine Chapman:** Peter, before you move on, I know that Mike Hedges has a supplementary question.

[84] **Mike Hedges:** I have two supplementary questions. You have just answered the first; I think that we need to think about the tenant who is there as much as we need to think about the landlord. The other thing, of course, is that, if a local authority starts acting unreasonably, there is always judicial review.

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

[86] **Mr Buffin:** That is correct. The other thing, of course, is that, in relation to conditions, if an additional condition is imposed, there is the right of appeal to the tribunal. So, there is another check and balance within the Bill.

[87] **Peter Black:** That is not as expensive as a judicial review, of course.

[88] **Carl Sargeant:** We would hope not.

[89] **Peter Black:** Moving on to enforcement, there have been concerns, I think, about the rent-stopping orders, particularly in terms of the impact on the tenant. A number of people have said that it puts the tenant in a very difficult situation, where the authority has imposed a rent-stopping order and the tenant has effectively been told, 'You cannot pay your rent', and the landlord is saying, 'Well, you have to pay your rent' et cetera. There are elements of possible intimidation arising from that. Is that the most appropriate mechanism to enforce that? Are there no other mechanisms that might be considered, such as a prohibition on eviction, which would support that, or even an order similar to the one in the Mobile Homes (Wales) Act 2013, where you could reclaim the cost over a period of time if the landlord was not licensed?

[90] **Carl Sargeant:** We have listened carefully to the evidence sessions that you have had, Chair. I share your concerns, and their concerns on this. We are considering making some amendments later in the Bill, which may include options for a repayment order as well as a rent-stopping order. That will give flexibility to the people who will be enforcing this for various reasons, whether those are around the concerns that Peter and others have explored in terms of potential eviction risk, or because of overseas investors in property who are currently trading as landlords. It is about ensuring that we have the most effective tools to deliver that.

[91] **Peter Black:** Are you looking at the actual protection for tenants around the rent-stopping order, as well, in terms of eviction?

[92] **Carl Sargeant:** That is correct, Chair.

[93] **Peter Black:** Thank you. In terms of the resources needed to enforce this legislation, I think that the Welsh Local Government Association was quite sceptical about whether it actually has the resources. I understand that in terms of enforcement, once the licence has gone through—. The issue, I think, is enforcement of people who are not licensed or registered. How do local authorities get the resources to do that, given the impact of the *Hemming v. Westminster City Council* case?

[94] **Carl Sargeant:** We accept the issue around *Hemming v. Westminster City Council* in terms of that process, particularly dealing with the licensed and accredited elements of this. We believe that the finances are available for that. I have asked the team to look specifically at a pathway from inception of licensing and costs et cetera right the way through to enforcement. I recognise that there may be some issues that the WLGA has raised around enforcement for unlicensed tenants. We are looking at whether we introduce some opportunity for local authorities to issue fixed-penalty notices in order to deal with this issue.

[95] **Peter Black:** That would be an amendment to the Bill, because that is not currently in there.

[96] **Carl Sargeant:** It will.

[97] **Peter Black:** The last area of questioning from me in this section, anyway, is on the section 28 code of practice. Will the code of practice have issues in it relating to the physical condition of a property? How will that be carried forward? Will we be looking, for example, at a code of practice requiring a housing health and safety rating system as a bare minimum of quality? If that is the case, are you expecting local authorities to inspect the properties to ensure that that is the case, before they are licensed?

[98] **Carl Sargeant:** I will do the last bit first. We are not expecting local authorities to inspect every property. That would be based upon complaint or concern, similar to the licensing regime of the fit-and-proper-person test. We expect people to be open and honest, but, if that is not the case, or if there are issues, the property will be inspected by the local authority.

[99] In terms of the code and standards, it will probably be in two parts. The standards of the management and condition will contain recommendations of good practice regarding the housing health and safety rating system. In another forum, you have raised with me the issue of other elements of standards that might be applied to that. We cannot see a route through this Bill, in terms of things such as electrical safety, et cetera, but there is something around the competency issue, because some of it is dealt with by health and safety law, which are non-devolved areas. We are looking at that to see whether—not through this Bill but through other options—there are things that we might wish to introduce, in terms of standards, for which we could legislate. We could put that in guidance and good practice, but, if we want to change the shape of things to make them better, we might need to have the legislative tools, and we are looking at that carefully. I do not think that I will have time to introduce it through this Bill or the processes to do that, but I will offer the committee a note on what we are thinking, in terms of moving that forward, if that would be helpful.

[100] **Peter Black:** That would be helpful. There are issues raised about electrical safety standard checks, gas safety, et cetera, which need to be tackled in some way here. If you are not going down the route of a local authority carrying out proactive inspections, you are obviously relying on tenants bringing it to the attention of the licensing authority. So, in that instance, will you be carrying out an information campaign, in terms of tenants' rights and what they can expect in terms of the quality of the property? For example, will all registered property tenants get that on a regular basis from local authorities so that they are able to make that complaint?

[101] **Carl Sargeant:** We know that information is the key to this. We are trying to learn from good practice. For example, my trip to Leeds—I do not know whether the committee would have time to do that—was really enlightening in terms of how this works on the ground. The tenant-landlord relationship was really important in understanding the rights of each other. That is something that we are working on with the renting homes White Paper in terms of tenancy agreements, so that everybody understands how and what their relationship is. You are absolutely right about ensuring that the tenants have the confidence to disclose to a local authority that there are concerns about an individual item or property. Through the communications process, we will give more information to tenants for them to understand what their rights are, but when the renting homes White Paper comes in with the tenancy agreements, it will be part of that process, where tenants will fully understand, in simple language, what their rights are.

[102] **Christine Chapman:** You have started to talk about this, but there is an issue around vulnerable tenants; not all tenants may feel confident, even with guidance. So, is there a danger that they could slip through the net?

[103] **Carl Sargeant:** Of course, and what we are saying is that this is not just tenant driven. My experience has been that, where landlords are registered and provide a poor service, or when landlords are not registered, they are exposed by their peers. I was talking to a group of landlords who were saying, 'We know that Mr and Mrs X at the end of the road are trading as landlords, but they are giving poor services and giving everybody else a bad name'. They reported them to the local authority for an inspection to take place. So, there is a bit of competition in the field. It is not just about tenant relationships, the whole sector actually drives the standards up. So, there are many options and many routes.

09:30

[104] There are also third parties that would be involved—the fire service, social services, et cetera—that all understand what pathways are available to them to ensure that, should an inspection need to take place, it is not always reliant on the tenant, particularly around vulnerable individuals.

[105] **Peter Black:** It is not just about confidence: it is about knowledge. As part of the code of practice, particularly in terms of the management side of that, would you have a requirement for a certain amount of information to be given to the tenants about what basic standards they can expect?

[106] **Carl Sargeant:** It does not feature heavily in this Bill, Peter, if I am honest.

[107] **Peter Black:** I am talking about the code of practice, which is the secondary legislation.

[108] **Carl Sargeant:** We will give that some more thought in terms of dissemination of information to tenants. I certainly know that that plays a large part in the next Bill, but we will consider it in more detail.

[109] **Mr Williams:** We have been considering with the sector the implementation of a tenancy pack. We have looked at how these tenancy packs have operated across the UK—the latest example being the Scottish one—but it is quite a mammoth document. So, we are trying to look at exactly what information is essential and it will be more of a signpost to information for tenants.

[110] **Mr Breeze:** To add to that, when we monitor the effectiveness of the Bill itself, we will ask for tenants' views on all of the issues relating to landlords and tenancy arrangements and conditions.

[111] **Christine Chapman:** I know that Jenny wants to come in there. Have you finished your set of questions, Peter?

[112] **Peter Black:** Yes, I have finished.

[113] **Jenny Rathbone:** I want to challenge you on the difficulties in making this clear, because it is a complex field. I note that Cardiff University does quite a lot of work with students who are about to move into the second year on what they need to know about their rights, and what they need to do to inspect properties before they take on a tenancy. One third of the people who filled in an evaluation form said that they were more confused at the end of the information session than at the beginning. These are supposed to be the better-educated half of the population. How do we make this quite complex legal field simple enough for people to be able to navigate through?

[114] **Carl Sargeant:** This is a really challenging process. The Member recognises that and we certainly have. However, in practice, we have found that—through the voluntary scheme and people taking part in schemes in other areas—the proactive process of a landlord being involved with this is critical in terms of students in particular. I can give one example; I think that it is always helpful to show how it works in practice. The voluntary code was to have the tenancy agreements and the individual rights of the tenant on display, which it was in the place that I visited. However, the landlord in that circumstance said that he understood that students were coming to use his accommodation, and parents and others may have had concerns about that, so, as a standard practice, a month before a tenancy took place, he used

to send out all of the contracts to the person named as guarantor, so that they understood fully, before they took up a tenancy in the property, what his rights were and what the students' rights were, et cetera. It was about sharing information.

[115] What we are trying to do in the sector with the ones that are unlicensed—and there are some very good ones that are not currently registered, we know that, so it is not the case that everybody is bad—is to have some consistency with regard to sharing information so that everybody understands and it is a level playing field. That is what we intend to do with the licensing process. The training will provide an opportunity for everybody to be part of a standard process, stating what they expect to happen. There will be individuals who will continue to not pay heed to that process. I am at a slight loss as to what I can do about that, but we can provide the information through a simple process that we believe will be fair for everybody.

[116] **Jenny Rathbone:** Chair, I have one supplementary question arising from that. If you have a registered landlord who lives abroad, will there be an expectation that there will be somebody in the UK who will be the nominated person?

[117] **Carl Sargeant:** There is currently legislation that states that you have to have a registered UK address to be a UK landlord—under the Housing Act 2004, I think. However, as part of the process that I alluded to with Peter in terms of the enforcement issue—because we understand that if people live abroad they have less concern about some of the impacts of our legislation—we are looking at the suite of tools of enforcement, one of them being a rent-stopping order. Another might be a repayment order. We are thinking about the tenants in terms of the repayments order, but if a person lives abroad and ignores a repayments order, then a rent-stopping order might be more useful in terms of the money not leaving the country in the first place.

[118] **Mr Buffin:** Just to add, in relation to an UK address, it is the Landlord and Tenant Act 1987 that states that a landlord must give an UK address.

[119] **Carl Sargeant:** Not the Housing Act—[*Inaudible.*] There is loads of legislation.

[120] **Christine Chapman:** Obviously, there are still some issues around that. When will you be able to give us some more information?

[121] **Carl Sargeant:** I am sorry; more issues around what?

[122] **Christine Chapman:** Well, the UK. You said that you would look into it again, or are you okay with that?

[123] **Carl Sargeant:** We are content with the process in terms of the enforcement, both in financial terms now and in terms of activity, but there will always be people trying to avoid the system and there will be new things that will crop up in our way. That is why we are increasing the tools of enforcement, whether they be rent-stopping orders or repayment orders, which are similar to what are used in other legislation, in order to give flexibility to local authorities.

[124] **Christine Chapman:** I think that you have a question, Mark.

[125] **Mark Isherwood:** It is just a quick supplementary question. First, we have received evidence from lots of landlord organisations that indicate that many of the 15% of landlords who did not register in Scotland are the ones who were the biggest problem. Scotland has obviously reverted to selective licensing designed to control criminal and poor-quality landlords already. How will this Bill correlate with or incorporate selective licensing powers,

or will it stand completely aside from those?

[126] Secondly, we heard evidence from the Welsh Local Government Association that when landlords register, the properties will not be inspected, unlike in other cases. We also had a letter from you two weeks ago stating that the standards that you would expect to be complied with in Wales would be the housing health and safety rating system. We know that local authorities have had that power under the 2004 Act now for many years and have almost never used it or taken enforcement action under it. It is about willingness and the capacity in environmental health departments, given that environmental health officers are responsible for that. So, no matter how well intended this legislation is, in practice, given these sorts of practical issues, what difference will it make?

[127] **Carl Sargeant:** I do not share your view as a result of your speculation, or indeed the views expressed in some of the briefings that you have received from the landlords associations in terms of their concerns. There are two stances on this: you either accept that this is a good thing or you think that it is a bad thing. I would think that this is a good opportunity for landlords to increase their professional conduct and provide proper services; this also protects tenants, Chair.

[128] Perhaps I could pick up the questions that Mark raised with me around the selective element of licensing. There is no element of selective licensing. This will be for all tenancies. I accept the issue that the Member recognises about the 15% of landlords that are poor landlords in Scotland—

[129] **Mark Isherwood:** Fifteen per cent failed to register. It is a proportionately large number with—

[130] **Carl Sargeant:** I did put this question to the landlord associations, which also came to see me regarding why we are introducing this terrible legislation. I asked them what they would do about the landlords that failed to register, and how we could enforce the issue of poor landlords. Interestingly, there was no response, which is not good enough for me. It therefore appears to me that we have to tackle the issue of ensuring that good and bad landlords are appropriately licensed in that process, and that is why we are still pursuing that.

[131] Through this process—and we have discussed this this morning—there is a whole suite of tools available to local authorities for enforcement. One is the voluntary process where landlords will come forward, once prompted, with the relevant information to ensure that they are registered. Failure to do so will lead to action being taken, which will be at a soft level at first, by letter, moving on to other levels of enforcement action, as we have talked about, such as rent-stopping orders and so on. So, I believe that we have the suite of tools to support the mechanisms and to promote landlord acceptance of the scheme and the acknowledgement of the process of enforcement, should they fail to join.

[132] I am confident that we will get better take-up and a better service for tenants across Wales. With your support as a committee in terms of some of the issues and concerns that you have raised with me this morning, we will be in a better place than Scotland or England in terms of any voluntary scheme that is in place. I told you earlier on, Chair, that I visited a voluntary scheme that is run by the same organisation that is lobbying you hard for this not to happen in Wales, and it was very confident with me in terms of England in saying that, if it had the money there, it would introduce the very same scheme.

[133] **Christine Chapman:** On this section, Minister, I have a few questions around fees. Obviously, the proposed fee, at present, is £50 per registration, plus £10 per property. However, for example, in evidence, Shelter Cymru suggested that the fees proposed were relatively low when compared with the selective licensing scheme in Newham, which charges

£500 per property. Do you think that the proposed fees are realistic? Do you think that slightly higher fees would provide more resources for the scheme?

[134] **Carl Sargeant:** The latter point is accurate: more fees would produce more for the scheme. However, we have hopefully built the scheme on what we believe is sufficient revenue to ensure and monitor compliance with the scheme. We do not want it to be onerous on the tenant. We recognise that, while only small numbers—. Our calculations are around 33p per week for each property over the five-year period. When you start pushing that up significantly—I am a realist—that would be passed on to the tenant. So, we are conscious of not making it too onerous. Actually, 33p a week, I believe, is a reasonable fee for having a secure quality tenancy and a roof over your head. That is a small price to pay, looking at some of the accommodation that is being used at the moment, which is both dangerous and—well, there are other terms that I may use, but not in committee, about the condition of some accommodation.

[135] **Christine Chapman:** Do you think even the smaller fee will be passed on to the tenant?

[136] **Carl Sargeant:** I think that that could be absorbed within the profit margins of the tenancy agreement relationship that is already in place, but, as I said, I am a realist. Albeit, it is 33p, but I do not quite know how that would play out into new rental agreements. However, undoubtedly, we have been mindful in terms of creating the legislation that we do not create something that is too onerous in price terms, because it would be a significant rise for tenants in that process.

[137] **Christine Chapman:** Is there anything you can do to address this in advance or in the course of the Bill?

[138] **Carl Sargeant:** I am not minded to, actually, Chair, because of the whole process. We are talking about 33p. If you do not have 33p, then it is a lot of money, but, in the scheme of things, I do not think that that is too onerous either for tenants or for landlords, if I am honest.

[139] **Christine Chapman:** Before we move on to Part 2 on homelessness, may I just ask Members whether there are any other questions on Part 1 on the private rented sector? I see not. We will move on now then to Part 2 on homelessness. I would like to bring in Leighton Andrews. Sorry, Minister I will wait for your officials to come to the table and for them to say who they are. Would you like to introduce your officials, Minister?

[140] **Ms Frith:** I am Maggie Frith. I am the lawyer dealing with the homelessness side.

[141] **Mr Marlow:** I am Geoff Marlow. I am a homelessness policy officer working in the housing policy division.

[142] **Christine Chapman:** Okay. Thanks. Leighton.

[143] **Leighton Andrews:** Is it your objective that local authorities should take a more strategic role in preventing homelessness?

[144] **Carl Sargeant:** Yes. The whole structure of the Bill is moving from a reactive approach to dealing with homelessness to a prevention stage. We are seeing very positive action already taking place on that.

[145] **Leighton Andrews:** Why then do you not place a duty on local authorities to incorporate prevention of homelessness in their single integrated plan?

[146] **Carl Sargeant:** We are looking at whether we can integrate it in that process. We are already considering that.

[147] **Leighton Andrews:** Okay.

[148] **Carl Sargeant:** I share your view.

[149] **Leighton Andrews:** Do you think that local authorities should be required to undertake a full assessment of anyone who presents as homeless when they first approach the local authority?

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

[151] **Leighton Andrews:** Sorry?

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

[153] **Leighton Andrews:** Okay. Why not?

09:45

[154] **Carl Sargeant:** As the Member is aware, there are two stages to the homeless provision that we have in place. I think, if I am right in saying so, Chair, that the WLGA has interpreted some of the drafting that we have in the legislation as meaning that a full assessment needs to take place at the beginning of the process, which would be cost-onerous. That is not the intention, but there is an intention to have an initial assessment at stage 1, before you move to the stage 2 proposals in terms of the full homeless duty. That was not our intention, if that is what the question relates to. We are looking at how that is drafted and interpreted. We know what we mean, and we thought that the WLGA knew what we meant, but we might need to tidy that up through a modification to the drafting.

[155] **Leighton Andrews:** Do you think that there should be a duty on local authorities to provide training to staff working in the area of homelessness prevention?

[156] **Carl Sargeant:** Yes, we have allocated—

[157] **Leighton Andrews:** Why is it not in the Bill, then?

[158] **Carl Sargeant:** Well, we have allocated some funding for training provision for local authorities. In terms of the Bill element of that, we have not included it, but I do not see why we could not include it in some guidance attached to the Bill.

[159] **Christine Chapman:** May I just ask, going back to Leighton's question about the training: what about the consistency across local authorities on training, because it could be very good in one and very poor in another? This is going to be quite a critical part. How are you going to address that?

[160] **Mr Breeze:** Training is going to be a fundamental part of the implementation of the Bill. Using our networks and our programme of support for local authorities, training across local authority areas will be just as important as training by local authorities for their staff. They have responsibilities for training their staff to carry out the functions now. It is our role to help to ensure that that is consistently applied across Wales, and that is what we do.

[161] **Carl Sargeant:** There is no formal qualification on homelessness, Chair, but I do

accept that there has to be this consistency and understanding there. It is a bit similar to the planning Bill; this is a change in the way that we deliver services, so there will be new things that people will have to deliver. We are seeing some authorities that have already been proactive in turning their system around to a preventative process, which is reaping huge dividends, both in effectiveness and in cost-benefit. So, we think that it is doable; we just need to get that consistency. That is why we have applied around £20,000 or thereabouts in terms of a training fund for workshops to take place both in north Wales and in south Wales.

[162] **Mr Marlow:** Just to add to that, in terms of consistency, the statutory guidance will play a very important role and we have already got a cross-sector working group currently engaged in developing that detailed statutory guidance. In addition, we recognise the role of the voluntary sector, particularly Shelter Cymru, in keeping a check on local authorities to ensure that they are abiding by the law and ensuring that individuals have recourse to their rights. We are encouraging, at the moment, local authorities and Shelter Cymru on the ground to develop open and transparent partnerships to work out how to respect each other's roles and understand how they are going to support each other to ensure that the legislation is properly implemented.

[163] **Christine Chapman:** May I just ask—you mentioned Shelter, but there is sometimes an element of inequality between third sector organisations and local authorities—how that is going to be managed? You talk about a partnership, but it will not always work, will it, if Shelter is going to be monitoring local authorities? Is that what you said?

[164] **Mr Marlow:** In a sense, it has that role already, and we provide substantial funding to enable it to do that. At the moment, there is a dialogue going on across Wales, which we have very much supported. There are five pilot areas where they are developing working protocols. It is not about stifling Shelter's criticism, in any way, because there is no way that it would do that. It is about having a very clear understanding about how the new legislation should be delivered, with Shelter Cymru playing its role in reinforcing that.

[165] **Carl Sargeant:** That works very well in Rhondda Cynon Taf, Chair. Shelter is involved in that process already, prior to this legislation.

[166] **Leighton Andrews:** You have mentioned statutory guidance. So, you will have provisions within the statutory guidance on training.

[167] **Mr Marlow:** Yes, certainly.

[168] **Leighton Andrews:** When will the statutory guidance be ready?

[169] **Mr Marlow:** The statutory guidance is a substantial document. There is already existing guidance, and we have got to change that; there is a lot of work. We are aiming to have a draft ready for full consultation in the autumn of this year.

[170] **Leighton Andrews:** After the passage of this Bill.

[171] **Mr Marlow:** Yes. I think that that is inevitable. Obviously, the guidance would have to reflect the final state of the Bill, if you like.

[172] **Mike Hedges:** Is it not true that there is a substantial amount of training already taking place for staff dealing with homelessness? I would like to commend Housing Options in Swansea as an excellent example of how it is done.

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

[174] **Christine Chapman:** Gwyn, I think that you had some questions.

[175] **Gwyn R. Price:** Good morning. How will you ensure that ‘help to secure’ will not be interpreted in different ways, and lead to inconsistencies between local authorities? Could allowing local authorities to have regard to their resources in providing help to secure accommodation lead, in some instances, to the legal rights of some applicants being denied?

[176] **Carl Sargeant:** As my colleague mentioned, we will be issuing statutory guidance, and I have instructed cross-sector working on this, so that we get this right. I must say that all local authorities that have engaged with the WLGA on this process are enthusiastic about it, because not only does it help with the homelessness prevention aspect of this, by actually stopping people becoming homeless, but there is a huge cost benefit to doing this, too. It is the transitional period of moving from the old way of dealing with homelessness to prevention. That is why we have put significant funds in the budget to enable transition. I do not expect that the financial aspect of this will compromise the ‘help to secure’ element, because that will be in statutory guidance. By doing this, it will help the process in the first place.

[177] **Gwyn R. Price:** So, you do not think that their legal rights will be affected.

[178] **Carl Sargeant:** Absolutely not.

[179] **Gwyn R. Price:** What are the Minister’s views on the WLGA’s concern that not restricting the duty to prevent homelessness to applicants with local connections could encourage cross-border applications?

[180] **Carl Sargeant:** With respect to some of the evidence that has been provided by organisations, we have a part to play in this in terms of dissemination of information and what we mean by our legislation. I refer the Member back to the principle of this legislation being in two parts. There are two elements: the initial assessment that Leighton Andrews questioned me on, in terms of an assessment that takes place, and then, moving on, a secondary duty around the homelessness element and the full duty to comply. On the removal of the local connection element, it has not gone away, in terms of the second part of dealing with the element of the full homelessness duty. It is still one of the tests that are applied to dealing with the homeless individual. In fact, I think that it is the fifth test that is applied—local connection. So, it is still applicable within local government through the process on homelessness. We have removed it at the front end because we are trying to give local authorities flexibility in how they deal with an individual who is potentially becoming homeless. One of the options may be around, when a person presents from another authority, giving the authority flexibility to say, ‘Actually, the local connection isn’t here; your local connection is London’, or wherever that may be. So, it is still within the Bill’s structure, in the second phase of the homelessness prevention element—stage 2, if you like. It is not defined at the front end. I am very relaxed about this in terms of the ability of local authorities to still determine and consider the element of local connection at some part of the process.

[181] **Gwyn R. Price:** Why was your original proposal to provide temporary accommodation for all homeless households with nowhere safe to stay not included in the Bill?

[182] **Carl Sargeant:** There is a financial implication of this process. If you included this at the front end, it would be about providing everybody who presents as homeless with accommodation. So, one, there is a financial cost to that, and two, we do not think that that is the right mechanism to understand this fully—if you present as homeless, you automatically get accommodation when, actually, I think that there are other routes that we should explore. You will all have experienced, as Members, situations where it has been perceived in the past

by some, not all, that, in order to get social housing, all you have to do is present as being homeless. We do not believe that that is a constructive route into the housing and secure market of getting somebody accommodation. That is why we have not included it in the upfront element of the Bill.

[183] **Gwyn R. Price:** So, since the original proposal, you have had a look at it further and that is the decision that you have made.

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

[185] **Christine Chapman:** Peter has a supplementary question.

[186] **Peter Black:** Section 54(9) says that

[187] ‘the authority may secure that suitable accommodation is available for the applicant’s occupation pending a decision on a review.’

[188] The Law Society, in its written evidence, pointed out that the only remedy in terms of that review is through judicial review, which it said is quite expensive and onerous. It suggested that there was no reason why the county court could not be given jurisdiction under a section 204A appeal under the Housing Act 1996. Would it be appropriate to better define in the Bill the nature of that review and possibly fall back on that less costly way of seeking a review, rather than having to go to judicial review?

[189] **Carl Sargeant:** I will give that some consideration, Chair.

[190] **Christine Chapman:** The next questions are from Leighton.

[191] **Leighton Andrews:** I want to move on to priority need and vulnerability issues. When we questioned you before, I do not think that you persuaded me that the removal of mental illness from the categories of priority need was a good idea. Do you have any further thoughts on that?

[192] **Carl Sargeant:** I have agonised over this process with my team in terms of what it may or may not mean, my interpretation of that and how we can give you the confidence that what we meant was that there would be better services for vulnerable individuals. I do not believe that we have been able to convince you well enough in terms of that process, despite my good intentions. Therefore, I intend to introduce the term ‘vulnerability’—the current position that we already use—to the face of the Bill. However, in terms of mental illness, I will also include that once again in the list of individuals affected by this. It will include mental and physical health.

[193] **Leighton Andrews:** So, there will be a definition embracing health that will include physical and mental health.

[194] **Carl Sargeant:** Yes, physical and mental health. If I may broaden that point, Chair, I would like to say that I have done that because I have listened carefully to the committee’s concerns, and other individuals’ concerns. I believe that our original draft encompassed that, but if it gives you confidence now that it includes that and you are more comfortable, then I am more than happy to do that.

[195] **Leighton Andrews:** That is very encouraging. Our concern, really, was about how that might be interpreted by local authorities as diminishing the emphasis on mental health, and I very much welcome what you have said.

[196] **Christine Chapman:** Are you moving on to another section, because Peter wants to come in with a supplementary question on this point?

[197] **Leighton Andrews:** I am staying on vulnerability.

[198] **Christine Chapman:** Okay, I will bring Leighton in, then Peter.

[199] **Leighton Andrews:** I suppose, in a sense, what I want to ask next derives also from what you have said in that you are now going to define vulnerability in legislation as a result of the points that we have put to you previously.

[200] **Carl Sargeant:** That is correct, but it will not change from the conditionality that we already apply to vulnerability; it is the Pereira test that we will be applying to the Bill. I would like to say that that is not without risk. By putting it on the face of the Bill, the ability to change the issue regarding what Pereira may or may not be in the future becomes more restricted. Therefore, it is challenging. I am comfortable with the current position of the Pereira test and vulnerability, but should that be changed in the future by whoever—the view of the third sector or otherwise—it is more difficult to change. So, it does not come without risk and, as long as you are comfortable as a committee for us to include it, then I will include the current definition of vulnerability on the face of the Bill, if that gives you confidence.

[201] **Leighton Andrews:** Okay. There is then an issue of how local authorities assess that vulnerability against what you put in the Bill. Will you, therefore, include, in order to ensure consistency, practical examples of that within the statutory guidance?

[202] **Carl Sargeant:** Alongside this, we have been listening to the committee but we have also set up a working group on the issue of prison leavers and the vulnerability testing—

10:00

[203] **Leighton Andrews:** I am coming on to that.

[204] **Carl Sargeant:** Maybe I will leave it there, then.

[205] **Christine Chapman:** We will come on to the issue of prisoners.

[206] **Peter Black:** On vulnerability, I am very pleased that you are revisiting this definition. I am not so comfortable with the Pereira test as it is being applied. I have come across a case in the Courts of Appeal, *Johnson v. Solihull MBC* in June 2013, in which the authority decided that someone did not have a priority need because he was not vulnerable, and that was upheld on appeal. Basically, they decided that, because the homeless person was no more vulnerable than any other homeless person, that is how they applied the vulnerability test. So, it is not about whether or not someone is vulnerable, but whether they are vulnerable in comparison with other vulnerable people, which I think is a very difficult interpretation in terms of dealing with this particular issue.

[207] The Law Society's evidence said that this part of the Bill is an opportunity to define 'vulnerability' in legislation so that the test is applied more consistently and to avoid blanket policies being adopted. So, although I am happy that you are going back to that definition, which effectively says 'Here are some examples of what vulnerability might be', is there an opportunity here to put in legislation a full definition of what 'vulnerability' is? It would give us some consistency so that cases like this, currently being applied in terms of the English definition—the one that you have used in terms of ex-prisoners—will effectively leave Wales standing apart as somewhere that has a genuine regard for vulnerability when it comes to rehousing homeless people.

[208] **Carl Sargeant:** We are between a rock and a hard place, if you like. I have tried to give confidence to the committee that we were not moving away from the test of vulnerability. We have applied the current testing positions, and I am happy to put that into legislation to give confidence to committee members and to the general public at large.

[209] In terms of the definition, I am reluctant to open what ‘vulnerability’ is. There is a standard procedure that we currently work on, but I share Members’ concerns about consistency. It is not for me to determine through the courts what test is applied to how vulnerability is assessed. There is a condition around ‘vulnerability’ that is fully understood by many. The application of that is important, and I will do what I can through the guidance to ensure that local authorities apply that appropriately. However, I am reluctant to apply additionality to the current position on ‘vulnerability’ to give Wales less of a supportive vulnerable-person-centred approach than any other part of the UK. The Member raised a question earlier regarding the ‘If you’re homeless come to Wales’ scenario, because the vulnerability test is less rigorous. This is a common approach to the vulnerability test, and I am happy to put that in legislation.

[210] **Peter Black:** My concern is that the definition of ‘vulnerability’ has effectively been redefined by the courts, and you are not moving away from that as part of this particular legislation.

[211] **Carl Sargeant:** I cannot give an opinion on how the courts may interpret it, but I can apply what the law can be in terms of testing procedures. This is a standard test that we currently use. I am trying to give confidence to Members that that is not being diminished, in my view, but if it is thought to be so, we will redefine that in legislation.

[212] **Christine Chapman:** Before Leighton comes back in, Mike wants to come in.

[213] **Mike Hedges:** I think that you have partially answered this, but would guidance not be a more suitable way of doing it, because you could keep altering guidance as things change? I assume that you hope that this legislation is going to stay there for some time, and that you do not particularly want to bring amendments fairly regularly. So, would guidance not be an easier way of doing some of it?

[214] **Carl Sargeant:** It would, but I have given my commitment to committee to put it on the face of the Bill. There are other ways in which we could potentially amend the definition of ‘vulnerability’, subject to legislation stages of the Assembly through superaffirmative procedures. However, as I said, as long as you are aware of the risk involved in that, of changes—not that I am expecting any, but you never know—at some stage, that will be more difficult to change in primary legislation than in other routes. However, I am happy to take guidance from the committee. My commitment to you is that I will do belt and braces and put it on the face of the Bill, should you so wish.

[215] **Mike Hedges:** If you do put it on the face of the Bill, would it be helpful if you put in another clause that gave you the power to add, et cetera, to it in future, rather than to have to come back and forth?

[216] **Ms Frith:** I think that you will find that is already in section 55(3). There is a complete power to add further descriptions of people who have a priority need or to revoke or amend any part of the priority need definition.

[217] **Leighton Andrews:** I think that I would prefer it on the face of the Bill because, at the end of the day, elected politicians should make these judgments not unelected judges, but there we are. You were about to start to talking about your prisoner accommodation

resettlement work group. Is Tai Pawb represented within that?

[218] **Mr Breeze:** It is not in the group at the moment, but the group has a core membership. As the group continues its work, we have identified the need for many different organisations to be brought into the group to tackle specific issues. We work very closely with Tai Pawb on a whole range of issues, so it will be involved in all relevant issues.

[219] **Leighton Andrews:** Tai Pawb raised a series of issues with us in relation to prisoners, which I do think need to be considered, but—

[220] **Mr Breeze:** There is a large number of third sector organisations that have a huge amount of experience and views to be drawn on for the work that we do.

[221] **Christine Chapman:** I think that it was particularly on the quality impact side, which was very strong evidence.

[222] **Carl Sargeant:** Chair, in terms of membership, you will be aware that we could have a committee of thousands who would always want to be on these groups. I am more than happy to accept evidence from Tai Pawb and I will ask my team to contact it to make sure that we have its views involved in that process.

[223] **Leighton Andrews:** It is not necessarily that it had to be in the group, but I thought that it brought evidence that was relevant.

[224] **Mr Breeze:** It will certainly be drawn into this work.

[225] **Leighton Andrews:** May I specifically ask you about prisoners accessing prevention services while they are in prison? How is that operating in practice and should prisoners be able to access those services earlier than 56 days from release?

[226] **Carl Sargeant:** I think that there has to be a threshold at some point, whether that is 56 days or otherwise. It is arbitrary in terms of what that may mean for the individual because everybody is different. What we have exposed during the working group is that this system does not work very well at all. The discussion prompted—rightly or wrongly—by me, in terms of prisoners' rights and whether they should be considered vulnerable or otherwise, has helped us and other organisations to understand exactly the process in dealing with an individual. The working group highlighted where this works well and where it does not work so well and how third party organisations beyond Welsh Government and local government operate where there are gaps in the service. So, we think that while there will be vulnerable ex-offenders, there will be also be non-vulnerable ex-offenders—just ex-offenders—who should get a better service from the highlighting of what is not currently working that should be.

[227] In addition to that, we are looking at how the 56-day rule is applied, but we have not been presented with any evidence as to why that should be increased at any stage because, again, we think that the 56 days, if applied appropriately, is probably the right number.

[228] **Leighton Andrews:** When will the work of your prisoner accommodation resettlement workgroup conclude?

[229] **Mr Breeze:** At the moment, the group is set up with a timescale to April 2015 when it is anticipated that, subject to the Bill being passed, the homelessness elements will be implemented. It has a series of tasks to be done by then. That includes pilot development work, which is already in the work programme to address the very issue that you are raising. If, when we come towards April 2015, there is more work for the group to do to further

improve this work, it will continue, but it is important to have a deadline and a task and finish approach in order to deliver what is needed.

[230] **Leighton Andrews:** Sure, but it does not help us in legislative terms, does it? Will it not produce anything, say, before we get on to amendments to the Bill?

[231] **Mr Breeze:** The pilot projects will not conclude before we get on to elements of the Bill, but what it will do in its meetings so far, and forthcoming meetings, is furnish you with further information on the problems that need to be tackled in order to ensure that prisoners get the help that they need. I think that one other issue is that the group is not only looking at the 56-day period, which is absolutely essential to ensure that people get the help that they need, but it is actually looking at accommodation issues as people go into prison as well. In some cases, what we are finding is very practical steps, where a landlord does not know that someone is on remand or in prison and is, actually, at risk of homelessness because of losing their tenancy. So, it is coming at it from all directions.

[232] **Christine Chapman:** Before Leighton comes back in, I know that Mark has a supplementary question. I share Leighton's approach, because we understand that this group will be meeting for a while. However, obviously, we need assurance about this issue around prisoners, so I think that we are looking for some sort of early answers, so that we are satisfied, really.

[233] **Carl Sargeant:** If I may, Chair, I would like to take us back to where the group started. My announcement to amend current legislation, in terms of suggesting that prisoners, by virtue of being ex-offenders, would not automatically gain access to homeless provision because they are ex-offenders, prompted lots of discussion. On that basis, I decided to set up this working group. The group was set up on the basis of concerns around the test of vulnerability and mental health issues. I acknowledged that and set up the group to do that.

[234] I believe that, today, I have clarified some of those concerns that Members had. While acknowledging that the working group has not reported to you, there is still an awful lot more positive work that the group has identified that was not, I believe, directly attributed to the issues that the working group was initially set up for. I think that I have all but addressed those issues initially. However, the working group still has some positive interventions to make, which, I hope, will not be prohibitive in the longer term in terms of the legislation moving forward, and also the ability to contribute to—subject to the legislation being in place—further amendments that we would have to consider to the Bill at a later stage.

[235] **Christine Chapman:** Okay; Leighton and then Mark.

[236] **Leighton Andrews:** I suppose that my only brief response to that is: I absolutely accept what you say, but if there is advice coming out of that group, I think that the helpful stage, in a sense, to have it is before we get into the stage of amendments, whether they be Government amendments or opposition amendments.

[237] **Carl Sargeant:** The only thing that I am concerned about, Chair, and I am just being honest with you here, is that I can close the group down next month and say, 'We've come to conclusions; these are the conclusions and that is it'. I actually think that the value of this group is much more than that, because we have uncovered the fact that the support for ex-offenders, vulnerable or otherwise, does not function very well. Actually, while my intervention was considered to be a retrograde step, about removing the rights of prisoners who were not vulnerable to homeless accommodation priority, the work that we are doing is giving more support to individuals who were in a worse place because the system just was not working. So, respectfully, as I said, regarding the tasks that we had clashed on, in terms of

what my view was and what the committee's view was, I think that we have addressed those. I am easy; I do not think that it is a positive step, but I could close the group very quickly to give you a report, or I can continue with the group to give a better outcome for prison and ex-offender leavers.

[238] **Leighton Andrews:** Perhaps I was not expressing myself very well. I certainly was not trying to suggest that you close the group down. What I was reflecting on was whether, given that it has, for good reasons, a lifespan into 2015, there might be material during the course of that that was relevant to this Bill. It might be useful to have that earlier in the process, because once we get into the stage of amendments, irrespective of whether they are Government amendments, amendments moved by members of the committee or whatever, the process becomes messier, I think, and more polarising than at this stage.

[239] **Mr Breeze:** One of the points on which the group is very firmly agreed is the sheer difficulty in defining vulnerability. However, at the same time, there is a commitment that, vulnerable or not, all prisoners have needs. There is a genuine commitment to try to help everybody in terms of their needs as well.

[240] **Leighton Andrews:** Okay. Just moving on quickly, then, to the specific needs of women prisoners, particularly those imprisoned outside Wales, obviously, and how those needs are going to be addressed through the Bill.

10:15

[241] **Carl Sargeant:** This has been a really difficult area, and there are duties already in place. We know that the two of the women's prisons are outside of Wales, and that causes an issue in itself. The working group has identified that this does not work well in practice, and that is why the policy agenda is one thing, but practicality of operation is another. That is what I have asked the working group to take a look at: how we can better support the transfer of services from what is defined in legislation in Wales to ex-offenders and offenders that are based in English prisons. There are some good practices already in place, and that does happen, but some local authorities are better than others and we have to have some consistency around that. The working group will look at it.

[242] On a personal note, I have tried to look at how we can give more support. I believe that there is something very different between women prisoners and male prisoners and the family relationship. I may be challenged on that, but that is a personal view. I have tried to look to see if we can do something in legislation. It is really tricky. So, my commitment is not to shy away from this, and I hope that the committee recognises that, but we are trying to work within the realms of the law in that we are trying to strengthen what the duty already is, but I am struggling. I can assure the committee that what we are doing should be better, and will be better, for women and ex-offenders.

[243] **Leighton Andrews:** Okay, but there is an issue around the location of women prisoners from Wales in prisons in England, and how they are then able to access services back in Wales.

[244] **Mr Breeze:** One of the pilot projects that we discussed is with Eastwood Park Prison in Bristol, to look at how we can reach out with help to people in there.

[245] **Mr Marlow:** We are also working with officials in the criminal justice department and in the national offender management service, and, next month, we expect the launch of a revised reducing re-offending strategy for Wales, and that will include a specific pathway for women prisoners. We will need to make sure that those particular arrangements for women prisoners are connected to the local authorities, which will have prevention and relief duties.

[246] **Carl Sargeant:** I actually think, Chair, that the fact that women are only secured in premises in England, outside Wales, is a disadvantage to women. I recognise that, and it is something that I am trying to combat, in terms of what our duties should be and making sure that that is effective. So, I hope that I can give confidence about my commitment to make sure that that works better.

[247] **Christine Chapman:** I have a number of Members who wish to come in. Leighton, have you finished? I see that you have. I have Mark, Peter and then Jenny.

[248] **Mark Isherwood:** In a different context, we know, for example, in the statementing process, that a key factor is diagnosis. We know from evidence taken during inquiries carried out by a predecessor to this committee that there are high instances of learning difficulties, speech and language problems, autistic-spectrum conditions, et cetera, in the prison population, and it is disproportionately large. To what extent, in terms of this definition of ‘vulnerability’, is this being considered? Are you talking to the relevant colleges, occupational therapists and speech and language practitioners and so on who have been very keen in the past to emphasise these points? When local authorities come down to determining this, how will they be expected to factor that in? Will it be another battle over diagnosis in order to access provision, and us being called in, as politicians, to support claimants and so on?

[249] On a related matter, there is the issue that I have raised with you previously of the reciprocal arrangements—which predecessor committees have taken evidence on—that allegedly exist between different local authorities within Wales and between Wales and England; they resettle each other’s former prisoners for the benefit of tackling re-offending rates.

[250] Finally, by definition of ‘vulnerability’ in the groups that I have mentioned and others, is it not the case that many of these people need intermediate supported housing before full resettlement? How is that being considered by the working group?

[251] **Carl Sargeant:** Thank you for your questions. I will come back to your first point around vulnerability. I am not presenting the opportunity to redefine what vulnerability is. The version that I have agreed to put on the face of the Bill is the current version that we use in terms of the determination of vulnerability. If we want to open up what the test of vulnerability is or is not, that is a whole different discussion. My view is that it is already defined and I am happy to comply with the current procedures and put that in place in the new legislation, on the face of the Bill. The issue around reciprocal arrangements between local authorities still stands in that process: the homeless provision that we are applying here does not change that agreement between authorities. We were very careful that we were not putting people at a disadvantage either way, whether they are ex-offenders or otherwise, in terms of what that meant in relation to our legislation.

[252] Your final point on—. Sorry, what was it, Mark?

[253] **Mark Isherwood:** It was intermediate support.

[254] **Carl Sargeant:** Those are two separate issues. Whether a person is vulnerable and homeless, or whether a person needs support through a mechanism, are two separate issues. That is around support that is provided within the secure setting. What is the pathway for the individual? We found through the working group and other information that a lot of ex-offenders who present as homeless on leaving prison are homeless because they have not been supported in the period up to their leaving. It is about understanding what their exit strategy is. That is the whole process that we are finding now: how are we supporting an

individual on exit and prior to exit to understand whether they have accommodation or not and whether are they considered to be homeless or otherwise? In many cases, this just is not working. That is what we have identified with the working group, which has been a positive step, I think.

[255] **Peter Black:** Further to that point, in Shelter Cymru's written evidence to the committee, on the 56-day issue, it states:

[256] 'While the general population will have the right to seek help within 56 days of homelessness, for prison leavers there is often the need for intervention at the start of sentences in order to address any Housing Benefit issues and make an informed decision about retaining accommodation or giving it up.'

[257] It goes on to say,

[258] 'If homeless prisoners do not have the opportunity to engage with prevention services then, unless they can prove vulnerability, the removal of priority status will mean that many will end up spending their first night post-release as a rough sleeper.'

[259] That obviously leads to reoffending. That is also an issue that was identified in the 2008 research, which you alluded to in correspondence with me, and which I think the Government actually commissioned. So, in terms of ex-prisoners, is it not right that we should be looking at making that 56-day issue more flexible and putting on the face of the Bill a right to engage with prevention services earlier so that we can start to tackle those particular issues?

[260] **Carl Sargeant:** I do not know whether we should be amending the 56-day rule in terms of the homeless provision, but I accept the comments by Peter that there should be an intervention programme. That is what probation services are discussing with us: how do we support an individual? Many of the people who are in prisons—whether they are in England or Wales—should not be in there in the first place, whether that is due to a mental health condition or otherwise. The fact of the matter is that they are, and that really does concern me. However, my duty as Minister for housing is to make sure that the people that we protect are the ones who are considered to be vulnerable. Peter, you mentioned that people who are not supported and who fall out of the system on day one present as vulnerable. They become a vulnerable person when they should not be. They should have been given support early on in interventions made upfront by another organisation. I do not believe that we should be amending the 56-day rule, because we think that that works if it applied properly. On support mechanisms beyond 56 days, I wholeheartedly support what that could mean, and I think that the working group will help us to define not only our actions but also their actions with regard to what should be happening and how that is applied. We may even come back with some recommendations for other Ministers who are involved—both UK and Welsh Ministers—on how we think that this could be applied in a better way. I do not think that it is a legislative issue; I think that it is a process issue.

[261] **Peter Black:** I agree with you that it is a process issue but the problem is that that process is not being addressed. The research underlines that. The issue is that, if a prisoner is not engaging with services earlier and comes out of prison, given the way that the courts, in particular, are interpreting the vulnerability test, many of those ex-prisoners will not be considered vulnerable and will reoffend. If you are going to take away the priority need status, which up to now has been a sort of safety net, if you like, we may see a further increase in reoffending, which is already going up in Wales. Shelter and a

number of other organisations feel that being able to engage with services statutorily prior to the 56 days would be a major advantage in terms of how you take forward that particular change in the law.

[262] **Carl Sargeant:** I would not accept that the reoffending rate going up is due to anything to do with the housing provision in Wales. I think that may be something to do—

[263] **Peter Black:** I did not say that—

[264] **Carl Sargeant:** —with the economic climate created by the UK Government. However, in terms of the Bill provision, section 46 creates a duty to provide information, advice and assistance in accessing help. I think that we could strengthen that in terms of process. That is why we need to understand who is supposed to be doing what. I do accept Peter's point that this does not work properly. We acknowledge that, but that is not local government on its own. There are other third party organisations that could do this better, including the probation service and others. We all have a part to play in making sure that the pathway on exiting—. The default position should not be that a person exiting prison just becomes vulnerable. The default position should be that the person knows a pathway out of prison, whatever that may be. There will be people leaving who are in a vulnerable position because of their condition, but that should not be the default position because we have not done something upfront.

[265] **Peter Black:** Well, if that is an undertaking to strengthen section 46 in this regard, I would very much welcome that, and I think that that would be a step forward.

[266] **Carl Sargeant:** Well, I will give that consideration, but I do not think that we need to strengthen section 46. I think that, actually, what we need to do is to make sure that things that should be happening currently happen. That is what the working group has defined for us. I will ask for a note from the working group. That might help to inform your decisions in terms of—. It will not be a report, but I will ask it to give you some information about that process and about what actually happens, just to give you confidence that I am telling you some facts here.

[267] **Christine Chapman:** Jenny is next.

[268] **Jenny Rathbone:** I think that a note on what is supposed to happen and how the working group is working towards making it happen would be very helpful simply because the prison service, which is not devolved, is notorious for being incapable of forward planning. We are housing loads of people who are due to be deported who have completed their sentence but who are detained long after their sentence simply because the prison service is incapable of liaising appropriately with the immigration service. I have had some experience of this, and my concern is that there is a lack of historic memory in the prison service. You get very good governors who you do lots of interesting work with and then they move on and the whole thing collapses and the good intentions are not futureproofed. So, that is why a note, including something that gives an indication of the prison service corporately making commitments would be very helpful—

[269] **Carl Sargeant:** I am happy to do that, Chair.

[270] **Jenny Rathbone:** —to concentrate their minds, so that this fifty-sixth day will suddenly ping—'Fifty-six? Right, this person's from Cardiff; we've got to get on to the housing department'. This is not wired into the way the prison service operates at the moment.

[271] **Carl Sargeant:** I think that the evidence we have discovered is that your description

of that is accurate. You are much more direct than I was.

[272] **Peter Black:** Some will be in an English prison, of course. How does the 56-day rule apply when someone is in an English prison?

[273] **Mr Breeze:** In the future, there is going to be an arrangement where a prisoner will come back to Wales to a Welsh prison for the last three months of their sentence before their release. That is not to say that we do not still need to look at these issues anyway, and I must say—

[274] **Peter Black:** Apart from women, of course—

[275] **Mr Breeze:** The commitment—.

[276] **Christine Chapman:** Yes, what would happen then? Is that realistic?

[277] **Carl Sargeant:** I do not think that, given the practicalities, that will work, actually, but that is what is supposed to happen. We recognise that, while it is not happening, there is still an issue of how we ensure that the 56-day rule is interpreted in an English prison for a Welsh—

[278] **Leighton Andrews:** It is an inherently discriminatory policy then, because it can only be applied to men.

[279] **Christine Chapman:** Yes.

[280] **Carl Sargeant:** Well, the Member will also recognise that prisons and prison sentences are not devolved to Wales.

[281] **Leighton Andrews:** Absolutely. I thought that that was the point I was making. *[Laughter.]*

[282] **Mr Breeze:** What I should say is that the commitment from all the organisations involved, devolved or not, is first class in terms of actually trying to make a difference to this and addressing the issues, aside from the 56 days, actually looking at how accommodation and housing issues can be looked at and considered when someone goes into prison as well, and not just through the 56 days.

[283] **Christine Chapman:** I know that Mark wants to come in and we only have half an hour for the rest of this. We have had a good discussion but we need to make sure we keep to time now. So, Mark, you wanted to come in with a supplementary question.

10:30

[284] **Mark Isherwood:** It has been partly answered—it is about other organisations. When we did an inquiry into the youth justice estate, members of the committee visited a large number of institutions, not just for children, but for youth and adults as well. One of the recurring themes was the very patchy provision of outward services from Wales prepared to visit the places of incarceration, whether it is 56 days, or less or more. So, how is this proposal engaging with those organisations more broadly than just expecting the prison service to do it on its own?

[285] **Mr Breeze:** It will be in the note that we will send. We will explain what is proposed.

[286] **Christine Chapman:** Okay, thank you. Mike, you have some questions.

[287] **Mike Hedges:** Will the Minister promote using an introductory or probationary tenancy where people are rehoused after being deemed intentionally homeless and could this be reflected in the guidance?

[288] **Carl Sargeant:** Certainly, I can look at how we strengthen that in the guidance. There is already a provision in place around probationary tenancies, but I acknowledge that the Member has raised with me in the past how others perceive how probationary tenancies could work or operate.

[289] **Mike Hedges:** I think that the point that I am trying to make is that, if people see somebody who has acted in an anti-social manner, or who has refused to pay the rent because they did not want to, being rehoused, there will be a feeling that they got away with it and that will lead to people feeling that somebody has had an unfair advantage. A probationary tenancy would put them on notice that their previous behaviour was not acceptable, and I would hope that you would give serious consideration to putting that in the guidance.

[290] **Carl Sargeant:** As I mentioned, Chair, there is already a provision for that, but I will look at how that looks in terms of guidance and how the wording looks to see whether there is something that the Member would be more comfortable with.

[291] **Mike Hedges:** May I move on to accommodating vulnerable homeless people and whether private rented properties and landlords should be required to meet additional standards? Really, this leads on from what Mark Isherwood was saying earlier: there are standards that are applicable to anybody, but there will be some people who are highly vulnerable who will need, if not supported tenancies, then tenancies run in such a way that they can garner support. Should the Bill or guidance address this issue?

[292] **Carl Sargeant:** I think that what will help is not just the homeless element of this and the discharge of duty element, but the PRS element. That will be really helpful to understanding landlords and who you will be discharging your duty to. Within that process, there may be something within the PRS that we would be able to consider so that the local authority would understand what standards were available with that accommodation through the PRS licensing system, so there would be a better understanding of the pathway, rather than just a discharge to any property. The licensing scheme may give the ability to understand better what the accommodation quality is like. It might be only for a certain amount of accommodation that the local authority might have an understanding with individual landlords through that process.

[293] **Mike Hedges:** Thank you very much.

[294] **Christine Chapman:** Peter, did you want to come in?

[295] **Peter Black:** Yes. Just going back to the test of intentionality for homeless households in terms of family homelessness, which is, basically, the section that Mike has just been referring to, Dr Simon Hoffman, who is a lecturer at Swansea University and a lawyer specialising in human rights issues, in his written evidence, questioned whether the intentionality test disregard is effective in terms of eliminating family homelessness and meeting children's rights. He says that the fact that it

[296] 'will only be disregarded once in any five year period...is unrealistic and contrary to children's rights. It is unrealistic as households that have difficulty maintaining accommodation may become homeless several times in a short period.'

[297] He illustrates that by saying that:

[298] ‘Those aged 16 or 17 years who live independently may require several attempts at independent living before being able to maintain themselves in accommodation.’

[299] So, I think that the question is, in terms of this particular disregard, whether it fully meets the requirements in terms of children’s rights under the United Nations convention and whether you need to allow that disregard to take place more than once in that five-year period.

[300] **Carl Sargeant:** We believe that we comply with the UN Convention on the Rights of Child in the general commitments in that process. It may be helpful if I just explain very briefly the reasoning behind the process that we have put in place. You will all be familiar with the issues around chaotic families and chaotic individuals, and there are points where I believe there should be some break points in understanding what our social relationship is with an individual or individual families. There are major concerns—and this is the bit that we struggled with as a group—about how we protect the rights of the child in this aspect. You will always find an individual, no matter how much you wish to try to support them, where it becomes a revolving door system. You support them with a home, because they are in the homeless process of vulnerability. Then, because of anti-social behaviour or otherwise, they are evicted, and then they come back through the door, and you rehouse them, et cetera. There is a point in time where you have to say, ‘We’ve tried to support that individual enough now’. Particularly with the children—and this is the aspect that we have done here—I believe that protection of the child ultimately will be supported by the duty of social services, subject to a child becoming vulnerable in that condition of homelessness, should the process get to stage 2—the second strike, if you like.

[301] What I have said to the team is that it is really important for us that, if there is a chaotic family that is on the verge of becoming homeless because of its actions, then we should be offering, through support mechanisms, as much support as we can, whether that be alcohol-related, or whether that be family-support mechanisms to wrap around family provision, in order for them to support tenancy. I have seen this happen in Torfaen, actually, where we have had some young families who have found it difficult to hold a tenancy, but when supported, it has been a really useful exercise to maintain their tenancy agreement and become part of the social fabric. I believe that I am acting reasonably in terms of giving an additional chance to somebody to re-present at a second point with children. Subject to that failing at that point—and it is pretty severe if you get to this point—and if the family is so dysfunctional at this point, then social services should be stepping in in terms of support mechanisms for the family, and for the children in particular. So, I do not think that we have in any case breached our statutory code around the United Nations Convention on the Rights of the Child. We are fully supportive of that, but there must be a point at which a responsible authority takes charge of a process that is chaotic and is having an effect on society at large. We think we have struck the right balance here, even though there are many views, I expect, on what the threshold should or should not be. The important bit for me is that there is a support mechanism in between the decision making on homelessness or not. That is the key to this process.

[302] **Peter Black:** I understand fully the practical issues you are outlining. If that is what you are trying to do, then that is fine. The issue for me is that you cannot then say that that is eliminating family homelessness, because clearly it will not be. There are instances where chaos within a family, or people’s own actions, will make them homeless, which you cannot do much about. Similarly, there is a point of view that this does not fully meet the requirements under the human rights of the child, but you are moving towards it.

[303] **Carl Sargeant:** We believe so, yes.

[304] **Christine Chapman:** Have you had any discussions with people like Simon

Hoffman on this issue? Obviously, he is coming—

[305] **Carl Sargeant:** No, I have not had any directly with him, but my team has had discussions with the social services Bill team and the Deputy Minister for Social Services on the basis that this is a cross-cutting theme. This is not just a housing element. This is actually about a family social-support element, because, as I have said, if we can support the family mechanism to function properly, you can secure the tenancy down, but if the person or the individuals are not engaged in being socially reasonable, then it is really difficult to secure tenancy. The problem is that you just get a revolving door. You just keep re-presenting. Then there is no incentive for the individual or the chaotic family to start realising that they have a function in society. I am saying that there is a break point here: you either start responding to support and services, or there is a consequence. However, the children will still be protected by the social services aspect of that.

[306] **Christine Chapman:** Mark, do you have some questions?

[307] **Mark Isherwood:** Yes. Again, this is on intentionality. Local authorities have a discretionary power to disregard, but, I believe, only in respect of categories prescribed by Welsh Ministers. When do you anticipate, and in what format, will those categories be prescribed?

[308] **Mr Marlow:** We anticipate bringing forward a secondary Order and we are working with lawyers on that. It will certainly be before the introduction of the full legislation in April 2015. That would come under secondary powers and we envisage that that would specify the discretion in relation to each priority need group.

[309] **Mark Isherwood:** Okay. Given—now and, obviously, we are talking about the longer term as well—the financial and building resource constraints faced by local authorities, to what extent do you imagine they will use the discretionary powers to disregard intentionality?

[310] **Carl Sargeant:** I do not see the process—. I believe that Simon Hoffman gave evidence on this aspect. The process of what lists are applied with regard to discretion does not really change the way in which this operates. I cannot see local authorities adding to the discretionary list to dip out of a process that the law says they must comply with in terms of homelessness. So, I do not think that the discretion to disregard element of this conflicts with that; it is just more definitive within the listing system. I do not know whether one of my officials have a view.

[311] **Ms Frith:** I am going back some years, but I have worked in the homelessness sector and it is quite resource-intensive to investigate intentionality. So, in some cases, a local authority might find it easier just not to make those investigations and to have the option not to make them.

[312] **Mark Isherwood:** Is there a risk where the reverse could lead to a rationing process, where there is a lack of capacity?

[313] **Carl Sargeant:** I do not believe that is the case, but we will monitor this legislation as we move forward. So, it will be something that we are keen to keep an eye on.

[314] **Mark Isherwood:** Okay, thank you. Moving on to section 78, which provides for registered social landlords to co-operate with local authorities in dealing with homelessness, how would you respond to the concern expressed by Community Housing Cymru in its evidence to the committee? It said that

[315] 'If there are concerns, and I think that there are, that the current duty does not work, I really do not see how legislating for another duty will make that any better.'

[316] **Carl Sargeant:** I take it from that that CHC considers there to be a duplication of duty. I do not see that at all; it is about there being a duty to work with local authorities. Overall, there is some really good co-operation taking place, but, as always, there are a few that do not wish to be proactive in their approach. The legislation will tighten that up to ensure that all people involved in the registered social landlord organisations will take note and take action on that. Generally, the principle of co-operation is already in place and works well, but not for all.

[317] **Mark Isherwood:** You say that this will tighten things up, but how will it tackle the instances that you identified where the working relationships are not as good as they could be?

[318] **Carl Sargeant:** There is now a duty in the legislation.

[319] **Ms Frith:** The duty in the old legislation, as far as I recall, was for the registered social landlord to co-operate if it thought it reasonable to do so. It has been specified in a little more detail: they have now to co-operate unless it is incompatible with their own duties or would otherwise have an adverse effect on their functions. If they decide that they do not want to co-operate, they have to give written reasons, which focuses the mind a little bit. That is the change, really.

[320] **Carl Sargeant:** As I said, Chair, most are very good, but some are not. As my colleague said, this may just focus the mind now that this is a legal duty.

[321] **Ms Frith:** It probably will not produce much difference in practice to those who are doing what they should be doing.

[322] **Christine Chapman:** We have come to the end of Part 2, but we still have a few more sections to do. Do any other Members want to come in on the homelessness section before we move on?

[323] **Peter Black:** I would like to ask a question on section 78(5). There is a list of bodies there, but arm's-length management companies are not included there. Would they be covered by one of those particular things?

[324] **Mr Breeze:** We do not have any.

[325] **Peter Black:** I know that we do not have any now.

[326] **Mr Breeze:** We do not anticipate having any; that is why they are not on the list. However, am I right, Maggie, to say that we can make amendments to the list?

[327] **Peter Black:** You can make amendments to this list, can you, if need be? I was concerned that it was exhaustive.

[328] **Mr Breeze:** It is a fair point with regard to futureproofing.

10:45

[329] **Carl Sargeant:** If we are not able to make amendments currently, which I think we are, we will insert a provision where we are able to do that, if that is okay.

[330] **Peter Black:** I think it is sensible.

[331] **Christine Chapman:** Mark, you had a very brief question.

[332] **Mark Isherwood:** When this committee's predecessor carried out an inquiry into the private rented sector, we took evidence on Cefni Lettings, which specialised in, among other things, rehousing ex-offenders—it was often the most vulnerable people. At that stage, it had a very high success rate. Landlords could join only if they were accredited, so they had to provide standards including a housing health-and-safety rating system. It was working with a social letting agency that had the appropriate mechanisms in place and accreditation attached that was helping to tackling the problem. What consideration has been given to that model in terms of housing ex-offenders?

[333] **Carl Sargeant:** We would expect landlords who are housing anybody, including ex-offenders, to be licensed under the PRS system, which will have standards in the code of practice that is in place. In terms of your specific question about ex-offenders and an organisation like that, this is about discharge of duty, whether that be through RSLs or other organisations. We have not put anyone else into the legislation in terms of the social groups that might support ex-offenders; it is only these organisations. However, we might be able to broaden out the scope of that in terms of discharge of duty for the prison sector. Let me give that some more consideration.

[334] **Mr Breeze:** I think that it is a social lettings agency as well, and social lettings agencies will be covered by the private rented sector legislation. It is recognised as a very good example of success in private rented discharge.

[335] **Mark Isherwood:** We have taken evidence in this inquiry, and previously, as to the general needs of social lettings agencies, or private rented sector access agencies, as some people prefer to call them. In the previous inquiry, this focused on a particular model that specialised in the most vulnerable category.

[336] **Mr Breeze:** Absolutely, and it had a huge amount of success in doing so as well. That is exactly the type of practice that we want to see replicated.

[337] **Christine Chapman:** Thank you. We will move on now to Part 3 of the Bill. We are running rather short of time. Jenny, you have some questions on this, but we will just wait for the officials to come in.

[338] **Jenny Rathbone:** The Bill proposes a requirement on local authorities to carry out an assessment of the needs of Gypsies and Travellers every five years. How do you think that this is going to change the current situation where no new site has been developed since 1999, unless there are some financial sanctions attached to the Bill?

[339] **Carl Sargeant:** Thank you, Jenny, for your question. The Gypsy/Traveller debate has been longstanding and particularly difficult, politically and professionally, for organisations to deal with. What we have tried to do within the Bill structure is to give a process that is about evidencing and is outcome focused, so that you understand what the evidence is and what your needs basis is, which has not been done before properly. From that, you determine what your actions will be, and there is a consequence to doing that.

[340] We believe that we have the tools in the legislation to meet all aspects of that with regard to the interpretation of need. If that is not successful, we have an intervention process. If we move to the application of the output of what you are supposed to be doing, following the information, subject to you not complying and not doing that, we have direction powers also. The fact is that a financial penalty will have the wrong consequences, because the

direction by the Minister, whoever that might be, has an input, to say, 'You must do this anyway, and you must pay for it'. So, I am not sure that a fine mechanism would help the situation. I think that we have all the powers in place to ensure that this will happen in procedure.

[341] **Jenny Rathbone:** So, you are arguing that this Bill would give sufficient political cover to those who have been timid in addressing this issue in the past?

[342] **Carl Sargeant:** It certainly is not my intention to give political cover to anybody. The fact of the matter is that individuals should be brave enough to make a statement about the moral grounds on which Gypsy and Traveller families should be supported. I think that what it does provide, where political or professional will fails, is the intervention powers to make sure that the duty is carried out. It is something that I have thought about, namely whether an authority, if it fails to comply with its duty, should be making those decisions then or in the future on anything around that issue. In terms of planning, if an authority cannot decide whether something is the right thing to do or not, and if it cannot decide on a contentious issue such as Gypsy and Traveller sites, then should it be making decisions on any planning applications? That is another Bill and another decision to be made, but I expect local authorities to have the conviction and make decisions, in the first place, on Gypsy/Traveller sites for the right reasons and not the wrong ones. So, this is not about political cover; there will be action as a result of failing to deliver on what you are supposed to deliver.

[343] **Jenny Rathbone:** So, the statutory guidance that you will be issuing will make it clear to local authorities that no action is not an option.

[344] **Carl Sargeant:** The legislation makes that very clear. I am more than happy to strengthen the guidance so that local authorities fully understand what their duty is. It is a political challenge and I know that some authorities that have been, for the right reasons, on the right journey have failed at the end through the actions of other third parties. That is unfortunate and I would hope to give them confidence in the ability to take forward applications, but there is very specifically a duty within the legislation that they must comply with. There is no leeway in this.

[345] **Jenny Rathbone:** Hopefully, the Bill will address the issue of lack of sites so that people who are currently living in bricks-and-mortar properties who do not wish to be living there can have alternative accommodation that suits their cultural needs. The other issue raised by Gypsy and Traveller communities to the Assembly outreach team was the condition of existing sites. Can you say how you think this Bill will address the condition of existing sites so that they meet the standards?

[346] **Carl Sargeant:** There is already a financial stream available for new sites and for reconditioning old sites and that is accessed by local authorities. This puts a whole new meaning to what Gypsy and Traveller communities are and how they interact within our communities. We have not before done needs assessments properly on the whole picture of Gypsy and Traveller families in Wales per local authority. So, the reporting and analysis of data is a really important start to this process and that is why the checks and balances that I referred to earlier are about making sure that the local authority does that properly. If it does not, then we will have the ability to say, 'Do this again', and if they still do not, there is a process by which we can intervene at that stage. That goes right the way through the process, so any reluctance or a feeling that, 'Well, we can do this, but it doesn't have to be meaningful' in terms of Gypsy and Traveller communities will be tested at all stages by us and Jeff Cuthbert's division.

[347] We believe that we have a pathway for the delivery of this. The refurbishment of sites

and new sites are an important process, but the data that are presented might indicate that some areas do not need new sites or do not need refurbishment, but they will give us confidence in Government to know that we have fully monitored and understood the situation. At the moment, there are authorities that are shunning their responsibility on providing services for Gypsies and Travellers.

[348] **Mr Davies:** If I can just come in on a couple of points there. In terms of refurbishment of existing sites, in addition to the sites capital grant, which the Minister was referring to, that came under the Mobile Homes Act 1983 last summer, which gives residents of those sites much more opportunity to influence the management of those sites. So, provisions were brought in last year to support that, too.

[349] In terms of your point about those living in bricks-and-mortar properties who do not wish to reside in those properties and would rather be in mobile homes, there is a question about needs versus preferences. When we are looking at the statutory guidance around undertaking Gypsy and Traveller accommodation assessments, we will need to consult on how we achieve the balance between the needs of those who are living in bricks-and-mortar properties, when it is not culturally appropriate for them to do so, and those who are able, quite comfortably, to live in bricks-and-mortar properties, but would just rather live in a mobile home site. There are further discussions that will need to be had in that consultation process on the guidance in due course.

[350] **Jenny Rathbone:** Okay, but it is important to bear in mind that there is a shortage of bricks-and-mortar homes for families who are desperate for them. So, if we can shift people who want to live in them—

[351] **Mr Davies:** Exactly. That is up to the local authorities. If they are aware of those who simply have a preference rather than a need, and they want to free up some bricks and mortar, then that would be an opportunity for them to do that.

[352] **Christine Chapman:** Mark has a very brief question.

[353] **Mark Isherwood:** How would you address concerns that I have heard raised in a recent meeting with a Traveller family about assessing need and provision, where a local authority may include unauthorised sites, sites where there is enforcement action ongoing, where there are pitch restrictions, and so on? On the one hand, they are fighting against them being there, and on the other they are including them in their assessment of provision.

[354] **Carl Sargeant:** Part of the reason we have unlawful encampments is because, in most circumstances, there is not enough provision for Gypsy/Traveller communities to access lawful provision. In order for us to get a full picture we need to assess unlawful and lawful encampments, so that we are not just doing a snapshot in time, one day in a year, of where Gypsy/Traveller families are, whether their encampments are unlawful or lawful. We are looking at unlawful encampments and lawful encampments, families based in bricks and mortar, schools, et cetera—the whole conversation about what the Gypsy/Traveller community is and what it is involved in. so, the needs-based assessments will be the basis of the report that will be submitted to Ministers. This will be a more comprehensive guide about what the needs are. It might just be a cultural issue as to why people have unlawful sites—because they do not get on with the families on the lawful encampments. That often happens, but there is still an issue there, and therefore it needs to be addressed.

[355] We need to have a fuller picture about how this operates in Wales. We have not had that in the past, so this is a positive step in making sure that there are supporting mechanisms for the Gypsy/Traveller community, which is in fact one of the most under-pressure groups in terms of cultural identity—more so than many other groups across the country. It is one of the

most vulnerable communities that we have in the UK.

[356] **Christine Chapman:** The final question is from me and moves on to Part 4. It is a very small question. Could you provide more detail, Minister, on the new social housing rent policy, and how it links in with exiting the housing revenue account subsidy system?

[357] **Carl Sargeant:** I am more than happy to provide a note, Chair. With anything that you have not been able to cover this morning because of time restrictions, if you would like to drop me a line, I would be more than happy to write back to you with the detail.

[358] **Christine Chapman:** Okay, thanks. Peter, did you want to add to that?

[359] **Peter Black:** In that note, could you say whether the guidance under this new rent system will be statutory, and how you will enforce that? Clearly, in the current system it is enforced by saying, 'If you put the rent up, you will lose subsidy'. I am just wondering how that is going to be enforced in the new system.

[360] **Carl Sargeant:** I am more than happy to do that. If you could clarify those questions, Chair, I am more than happy to write back to you with a full response.

[361] **Christine Chapman:** Okay. Are there any final questions before we let the Minister go? No. On that note, then, Minister, I thank you and your officials for coming today. There will be a transcript that you can check for factual accuracy.

10:58

**Cynnig o dan Reol Sefydlog 17.42 i Benderfynu Gwahardd y Cyhoedd
Motion Under Standing Order 17.42 to Resolve to Exclude the Public**

[362] **Christine Chapman:** I move that

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

[363] I see that Members are in agreement.

*Derbyniwyd y cynnig.
Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 10:58.
The public part of the meeting ended at 10:58.*