



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

Y Pwyllgor Iechyd a Gofal Cymdeithasol **The Health and Social Care Committee**

Dydd Mercher, 25 Mawrth 2015
Wednesday, 25 March 2015

Cynnwys
Contents

[Cyflwyniadau, Ymddiheuriadau a Dirprwyon](#)
[Introductions, Apologies and Substitutions](#)

[Bil Rheoleiddio ac Arolygu Gofal Cymdeithasol \(Cymru\): Sesiwn Dystiolaeth 1](#)
[The Regulation and Inspection of Social Care \(Wales\) Bill: Evidence Session 1](#)

[Papurau i'w Nodi](#)
[Papers to Note](#)

[Cynnig o dan Reol Sefydlog 17.42\(vi\) i Benderfynu Gwahardd y Cyhoedd o Weddill y](#)
[Cyfarfod ac o Eitem 1 yn y Cyfarfod ar 23 Ebrill 2015](#)
[Motion under Standing Order 17.42\(vi\) to Resolve to Exclude the Public from the Remainder](#)
[of the Meeting and for Item 1 of the Meeting on 23 April 2015](#)

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

Alun Davies	Llafur Labour
Janet Finch-Saunders	Ceidwadwyr Cymreig Welsh Conservatives
John Griffiths	Llafur Labour
Elin Jones	Plaid Cymru The Party of Wales
Darren Millar	Ceidwadwyr Cymreig Welsh Conservatives
Lynne Neagle	Llafur Labour
Gwyn R. Price	Llafur Labour
David Rees	Llafur (Cadeirydd y Pwyllgor) Labour (Committee Chair)
Lindsay Whittle	Plaid Cymru The Party of Wales
Kirsty Williams	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats

Eraill yn bresennol
Others in attendance

Mark Drakeford	Aelod Cynulliad, Llafur (Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol) Assembly Member, Labour, (Minister for Health and Social Services)
Kate Johnson	Cyfreithiwr, Llywodraeth Cymru Lawyer, Welsh Government
David Pritchard	Pennaeth Rheoleiddio a Datblygu'r Gweithlu, Llywodraeth Cymru Head of Regulation and Workforce Development, Welsh Government
Mari Williams	Cyfreithiwr, Llywodraeth Cymru Lawyer, Welsh Government

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

Amy Clifton	Y Gwasanaeth Ymchwil Research Service
Helen Finlayson	Ail Glerc Second Clerk
Rhys Morgan	Dirprwy Glerc Deputy Clerk
Joanest Varney-Jackson	Uwch-gynghorydd Cyfreithiol Senior Legal Adviser

Dechreuodd y cyfarfod am 10:12.
The meeting began at 10:12.

**Cyflwyniadau, Ymddiheuriadau a Dirprwyon
Introductions, Apologies and Substitutions**

[1] **David Rees:** Good morning. Can I welcome members of the public and members of the committee to this morning's session of the Health and Social Care Committee, where we will be taking evidence? The first session is the Stage 1 inquiry into the Regulation and Inspection of Social Care (Wales) Bill. Can I welcome the Minister to this session? Before we go into the first session, can I remind everyone the meeting is bilingual, and therefore if you need to use translation services, they are available on channel 1, and if you need amplification, that's available on channel 2? There is no scheduled fire alarm this morning, so if one does go off, please follow the directions of the ushers. Can I remind Members to switch off your mobile phones or turn them onto silent—I'll just check mine—and any other equipment which may interfere with the broadcasting equipment? We've received no apologies this morning, so we can now go straight into the session.

10:13

**Bil Rheoleiddio ac Arolygu Gofal Cymdeithasol (Cymru): Sesiwn Dystiolaeth 1
The Regulation and Inspection of Social Care (Wales) Bill: Evidence Session 1**

[2] **David Rees:** Can I welcome the Minister for Health and Social Services, Mark Drakeford, to the session this morning? Minister, would you like to introduce your officials for this morning's session?

[3] **Y Gweinidog Iechyd a The Minister for Health and Social Gwasanaethau Cymdeithasol (Mark Drakeford):** Thank you **Drakeford):** Diolch yn fawr, Gadeirydd. very much, Chair.

[4] So, with me this morning, I have David Pritchard, who is head of regulation and workforce development on the policy side for the Welsh Government, and Kate Johnson and Mari Williams, who are both members of Legal Services.

[5] **David Rees:** Thank you, Minister. Obviously, thank you for the evidence we've received, and clearly, you've laid the Bill. You've indicated you don't want to use any opening remarks so we'll go straight into questioning. In that case, can I ask Gwyn Price to ask the first question?

[6] **Gwyn R. Price:** Thank you, Chair. Good morning to you all. Minister, are you satisfied that this legislation is required, and the intended aims of the Bill could not be met by other mechanisms?

[7] **Mark Drakeford:** Thank you, Gwyn. I think that's an absolutely proper Stage 1 scrutiny question: is the Bill worth having? Is there a case for the Bill? I tried to set some of that out when introducing the Bill on the floor of the Assembly, but my belief is very firmly that this is a Bill that is necessary. In the broadest sense, it's necessary because regulation is the way in which we set the standards for services that are provided, and these services are provided in areas where there are very vulnerable people, quite often depending on them, so regulation is absolutely necessary.

10:15

[8] Once you've got the standards that you want to regulate against, then you inspect against those standards, to give the public the confidence that the services are of a nature and a quality that you would expect. So, there's that broad reason why the Bill is required, but

then there are a set of slightly more detailed reasons why we need this Bill at this particular time, as well.

[9] This committee will have spent a lot of time scrutinising the 2014 Social Services and Well-being (Wales) Act, as it now is, and this is a companion piece of legislation to that Act. That Act sets the landscape for social services and social care in Wales over the coming period, and we need to make sure that our inspection and regulation regime is aligned to it, and that's what this Bill does. It allows us to learn the lessons from some pretty high-profile events that have happened since the current regulatory regime was placed on the statute book, so Winterbourne View and Southern Cross and so on.

[10] The Bill will allow us to implement a series of important recommendations from the Law Commission. So, the Law Commission reported on regulation of the social care workforce last year and produced a draft Bill, which there hasn't been time at Westminster to pursue, but we have drawn heavily on the work of the Law Commission to make sure that our Bill is as consistent with contemporary legal practice as possible.

[11] Finally, in terms of reasons for the Bill, the current regulatory regime relies on statutes that have been overtaken by events. The Care Standards Act of 2000 and the Health and Social Care (Community Health Standards) Act of 2003 both started off as England-and-Wales pieces of legislation. In England, the law has been changed since then and they no longer operate in a way that is clear and consistent for people who have to live within the law and operate the law on the ground. We need this piece of legislation to produce a clear, consistent, coherent legislative framework for Wales.

[12] **Gwyn R. Price:** Thank you for that answer, Minister.

[13] **David Rees:** Just out of curiosity, Minister, what other aspects of legislation might be amended by this particular Bill?

[14] **Mark Drakeford:** There are other pieces. Those two pieces of legislation, the Care Standards Act and the health and social care Act, are the two major ones. I think Schedule 3 to the Bill sets out other pieces of legislation that this Bill impacts upon, but in a more minor way. So, there are others and they're set out in Schedule 3.

[15] **David Rees:** Thank you. John.

[16] **John Griffiths:** In terms of adult day care, the responses to the White Paper demonstrated concerns regarding adult day care, and I just wonder why the Bill doesn't extend the list of regulated services to include day care for adults.

[17] **Mark Drakeford:** Well, Chair, what the Bill does is it identifies, on the face of the Bill, those services that are already captured as regulated services. It then allows, through regulations, further services to be added to that list in the future. I think we have to be proportionate in the way that we go about that. We can't financially afford a system in which we are taking more and more and more into the regulated net directly, but we can't afford it either just in terms of capacity and the need to be able to build up services to be able to do that. So, we are committed already to bringing advocacy within the regulated service regime. If the Bill goes through and becomes law, I think an undertaking has already been given, but I'm happy to repeat it this morning, that the first tranche of regulations, in 2016, under the Act, as it would be then, will make advocacy a regulated service. There are two others, which I think are then on the shortlist for consideration next. There is extra care, and I know that Elin has often asked questions about the regulation of extra care. The domiciliary care services that are provided to people living in extra care will be regulated through this Bill. But I think that there is certainly a prima facie case for looking to see whether it would be more

coherent to make extra care in the round regulated through this Bill, so I've asked both my officials and Care and Social Services Inspectorate Wales for further advice on that. And then day care services would be, I think, in third place, really. So, I'm not ruling them out, but I think there are some other slightly more pressing priorities that would come in front of day care, as we look to see whether we would wish to add to regulated services, as the Bill provides a very easy, straightforward mechanism for us to do that.

[18] **John Griffiths:** Just one further point, if I might, Chair, on I guess what we might think of as emerging models of service delivery, such as social enterprises, co-ops and user-led services. There is other Welsh Government legislation that looks at that. To what extent will those new emerging models be part of this legislation?

[19] **Mark Drakeford:** Thanks, John, for that, because it leads me back, in a way, to one of the first points I made, which is that this Bill and the Social Services and Well-Being (Wales) Act 2014 are companion pieces of legislation. So, section 16 of the 2014 Act places a new duty on local authorities to promote co-operatives, collectives, and other forms of social enterprise models in the field of social care. But that Act does not become live until 6 April of next year, so what we don't want to do is to anticipate in this Act developments that are yet to come. But we have taken powers in this Act that would allow a future Government, very easily, to respond to that changing landscape, so that, if that section 16 duty on local authorities does lead to a burgeoning new sector of co-operatives in social care, then making them a regulated service in the future would be very straightforward through this Act, and it is designed deliberately to do that.

[20] **David Rees:** Okay, John?

[21] **John Griffiths:** Yes, thanks.

[22] **David Rees:** Lynne, do you want to ask a question on extra care?

[23] **Lynne Neagle:** Just on extra care, Mark, you said in Plenary that you'd ask the regulator for early advice on whether that could be included in the scope of the Bill. Have you had anything back on that?

[24] **Mark Drakeford:** Well, I met CSSIW last week—the chief inspector and the deputy chief inspector—specifically around the Bill. We mentioned it during that meeting, but not in the sense of having detailed advice, but it is definitely on the list of things that they are going to be looking at alongside my officials. So, yes, when I said 'early advice' we are pursuing it pretty actively. David may want to—.

[25] **Mr Pritchard:** Well, just to say that we have committed to working with the sector and those who will be affected before giving that advice. So, there will be a process to go through, but we're committed to have provided the advice well in advance of the drafting of those regulations that might follow if this Bill is passed.

[26] **David Rees:** Just for clarification, Minister, we've had some concern expressed by stakeholders over the definition of 'care' in the Bill, that it's too heavily focused on the physical tasks. Can you just comment upon that?

[27] **Mark Drakeford:** I've also had correspondence from people in the sector about that. I genuinely think it is a misunderstanding of the intention of the Bill, because the Bill does put a whole new emphasis on wellbeing and on improvement, rather than simply simple compliance with a set of standards of care that just emphasise physical things like size of doors and access—not that those are not important. Section 26 of the Bill is where all this comes, I think, together, because section 26 provides a power, through regulation, to set

standards for the provision of care in the sector, and, when you've set the standards, that's what you then inspect against. Section 26(4) is explicit in saying that those standards must be aligned with the wellbeing outcomes identified in the 2014 social services Act, and—I just brought it with me to remind myself, but also in case it was useful—the definition of 'wellbeing' in the 2014 Act is that:

[28] “‘Well-being’, in relation to a person, means well-being in relation to any of the following—

(a) physical and mental health and emotional well-being’.

[29] So, the standards that will be set through the Regulation and Inspection of Social Care (Wales) Bill will be standards that have to take account of not just the physical but the mental health and the wellbeing of users of the services. The standards will reflect that, and the inspection regime will report against it. So, I think people who are anxious that the Bill has a rather narrow sense of what it regards as important actually maybe haven't yet had a chance to see how, in the detail of it, it captures a far wider and broader sense of what's important.

[30] **David Rees:** Kirsty.

[31] **Kirsty Williams:** Sorry, Minister, could you just clarify which section you were referring to?

[32] **Mark Drakeford:** In this Bill, I'm referring to section 26(4). That's the section that explicitly requires the standards set out through this Bill to be consistent with the wellbeing outcomes statement.

[33] **David Rees:** Thank you, Minister. We'll move on now to questions from Lindsay.

[34] **Lindsay Whittle:** Yes. Good morning, Minister. There have been some concerns raised about the definition of social care workers and who's going to be registered. Are you satisfied that the Bill is clear about the regulation arrangements for all elements of the workforce? We've heard from the College of Occupational Therapists that they have their own regulators and are registered, and nurses are, and yet perhaps care assistants in adult care homes are not registered. Do you think there's a need to perhaps acknowledge that certain sectors should be okay, because they are registered, but others can be brought into the Bill? Then I'd like to ask a question about fees later. Thank you.

[35] **Mark Drakeford:** Thank you very much.

[36] **David Rees:** Before you go on to those questions, Lynne wants to come in on this particular topic.

[37] **Lindsay Whittle:** Okay. Thank you.

[38] **Mark Drakeford:** Thanks, Lindsay, for that. I think there are two different aspects to that question. I've seen correspondence come to me from the College of Occupational Therapists, for example, and I think we can give complete clarity both to them and to the committee on this point that they raise. They are worried, it seems to me, about what you might think of as double jeopardy, that, if a fitness-to-practise issue arises, they could be made subject to fitness-to-practise arrangements that arise in this Bill in relation to the social care workforce while at the same time being captured by their own college's fitness-to-practise regime. I just want to be completely clear that the Bill is explicit that, if you are an occupational therapist or a registered nurse, and something to do with your professional practice has to be investigated, that will be done by the organisation with which you are

registered. So, there will be no duplication; there will be no two processes you have to go through. If you are an occupational therapist, working as an occupational therapist, and your professional practice comes under question, it will be the royal college's procedures that will kick in and you will not be subject to the processes of this Bill because the fitness-to-practise provisions of this Bill only affect those people who are registered with Social Care Wales, as it will be in future.¹ So, I understand why they would be anxious, and I understand why they would need to be clear, but I think that we can give them the clarity that they need. I've got no interest at all in duplicating, you know, expensive arrangements when there are proper professional regimes that can already take care of that.

[39] I think the second question, Chair, if I understood it, was slightly different, which is: should we be adding to the range of professional workers who are to be registered in future with Social Care Wales? It's a bit like the answer on services. Any group that is currently required to be registered with the care council will be required to register with Social Care Wales in the future under this Bill, and we identify them on the face of the Bill.² The Bill then provides a regulation-making power that will allow a future Minister to add other groups into that process. I don't intend to do that at this point, because I want Social Care Wales to be able to concentrate on the things that it's already being asked to do through the Bill, but, just as there are services, extra care, day services and advocacy, which we know are towards the top of the list, then I'm very well aware of the case that has been made, for example, for domiciliary care workers to be registered, for care-home workers in adult settings to be registered, for inspectors to be registered. There's a case for a number of different professional groups to be added to the registration process in the future, and the Bill sets out a very straightforward way in which groups can be added in the future, but it's not for the Bill, at this point, to do that.

10:30

[40] **David Rees:** Okay. Lynne.

[41] **Lynne Neagle:** Can I just take that a bit further, particularly in relation to adult care homes, because there is a clear anomaly between the way we treat workers in children's homes and adult care workers in a residential setting? Given the recent Care and Social Services Inspectorate Wales report, which showed much significant—you know, a higher level of concerns about people in residential homes, and also the older persons' commissioner's report, would you consider the registration of care-home workers as a high priority, as you look to take this forward in the same way as you've indicated in relation to extra care?

[42] **Mark Drakeford:** It would certainly be on a short list of priority possibilities. It wouldn't personally be my very top priority, because, if I had the wherewithal, in terms of the money that it would cost and the system in place to do it, my own top priority group would actually be domiciliary care workers, because domiciliary care workers practise their craft completely unsupervised in people's own homes, whereas social care workers in residential care settings, by and large, carry out the duties that they do under the gaze of other people, who see what they are doing all the time. There is, I think, a different distinction to be drawn between children's homes and adult social care homes, because, sadly, we know—and we ~~have a current investigation in~~ Rhyd-y-gors in Carmarthen that is linked to this—the sad

¹ The Government wishes to note: 'The discussion relating to the organisation that regulates Occupational Therapists should refer to the Health and Care Professions Council, not the College of Occupational Therapists (which is also not a Royal College as stated)'.

² The Government wishes to note: 'The Minister suggested that the groups of workers to be regulated are named on the face of the bill. In fact, the bill currently only requires a register for Social Work to be maintained. The requirement for a register of other groups is a matter for regulations'.

history tells us that children's homes tend to attract people to work there whose conduct in the discharge of their duties isn't what we would like it to be. So, you know, there's a vulnerable group of people, and it can attract people who trade on that vulnerability. There's no real evidence that the adult care home sector attracts people who have abuse as part of their purpose in being there. It may attract people who are not good enough at the job and who are careless in the way that they go about things, but it isn't abuse in the sense that we've come to recognise it in children's homes. So, the two things are not quite parallel. If I had to choose a No. 1, it would be domiciliary care, because of its lack of oversight on the spot, but care homes would be on the list, certainly.

[43] **Lynne Neagle:** Thanks for that answer, Mark. Can I just ask, did the Government undertake any financial analysis of the costs of including in the scope of the legislation domiciliary care workers and adult care-home workers?

[44] **Mr Pritchard:** Yes, we have. We've done that analysis. Some of that is reflected in the regulatory impact assessment, which is part of the explanatory memorandum, but I'm happy to go back and see if there is any further information that can be provided to the committee. But we have done that and we worked with the Care Council for Wales in developing an understanding of those costs. I would say to the committee that there are certain assumptions that one has to make in those calculations, because it's not simply a question of looking at the current costs of registration and dividing it by the number of registrants—you have to consider economies of scale, et cetera, but we can share some of the thinking that was done in addition to what is in the RIA at the moment.

[45] **David Rees:** That would be helpful for Members. Okay, thank you. Lindsay, I come back to you—you had a question on fees.

[46] **Lindsay Whittle:** Just on fees, you will know, Minister, that we've had objections to the fees from the homecare groups, in particular. I wonder if you could expand further on the rationale to charge fees in Wales. Do you, like me, fear that, if fees are imposed, then some of the charges will be passed on either to the residents or they will employ lower-paid staff or use zero-hours contract staff?

[47] **Mark Drakeford:** Thank you, Lindsay. Section 38 of the Bill provides powers to Welsh Ministers to introduce a regime of charging for inspection. Wales is the only part of the United Kingdom that doesn't charge fees. There is a case for charging fees because the body being inspected has a benefit from the inspection, particularly when they have a good inspection—and we probably will talk later, I guess, about ratings and things like that. Then they use the product of the inspection as part of their business, to advertise themselves as a good place to be. So, there is a direct benefit to the organisation being inspected. In Wales, at the moment, they make no contribution to that at all. The whole of the cost is picked up by the public purse.

[48] Having said that, I want to be clear that I would have no immediate intention of using this power. I wouldn't use it for two reasons. One is that the nature of the sector in Wales is different to other parts of the United Kingdom, because we have such a very small proportion of self-funders. So, for the vast bulk of people who are in residential care homes in Wales, their fees are being paid for by local authorities and by the public purse. There is a danger, which I'm alert to really, that all this results in is circulation of public money, that it's just one part of the public purse paying another part of the public purse and having to create a bureaucracy around it that makes that money quite expensive. That's the reason why we abolished fees in Wales, getting on for a decade ago. The evidence was very clear that this was simply money in the public domain circulating from one place to another. So, before I, if I were to be the Minister, would use this power, I would need to be convinced that there was an income stream being generated and that it wasn't just local authorities being charged

higher fees in order to pay the fees that we're now charging them for.

[49] **Lindsay Whittle:** I understand. I love and hear what you say, Minister, but you are the Minister at the moment. If we have another Minister who doesn't have the same principles as you do, what happens then? I do agree: we are simply moving pound notes from one table to another, really.

[50] **Mark Drakeford:** I think it is right that Ministers in the future should have this possibility. As I say, every other part of the United Kingdom does charge fees. There's no prospect in Wales of moving to the English model, which is full-cost recovery. In England, the provider will be paying the full cost of inspection. We would never be in that position in Wales, but we might want to adjust the balance and to have a slightly more professional relationship between the two. It's not going to happen in the short term, both because of the circulation of public money argument and also because I want to provide some stability to this sector during this transition process, as we move from the regime that we have now to the regime that this Bill will institute. I think that fees might be a destabilising component were we to move to that early on. I do think that the case for fees is a real one. If circumstances were to change in the future, it's right to take this opportunity to put the power into the Bill.

[51] **Lindsay Whittle:** Thank you, Minister. Thank you, Chair.

[52] **David Rees:** Minister, in your previous answers you talk about fitness to practise situation. Part 7 of the Bill focuses on prohibition orders, which would, effectively, ban someone from carrying out a regulated activity. The policy intent paper appears to indicate that you don't intend to use them.

[53] **Mark Drakeford:** No.

[54] **David Rees:** It seems strange that you put something in that you don't intend to use. Can you just clarify the position for me?

[55] **Mark Drakeford:** I thought carefully about this issue, Chair, when the Bill was in preparation. In the end, what we have done is to act on the advice of the Law Commission. The Law Commission is very clear in its advice that this is a potential way of doing things that Ministers ought to have at their disposal. Now, the Law Commission doesn't advocate prohibition orders or negative registers, necessarily, as a wholesale way of going about registration, but it was very clear in its advice that, because this is a rapidly changing landscape, and there are ways that may emerge in the future, a prohibition/negative registration approach could be useful. Because Bills like this come along once every decade, the Law Commission's advice was clear that the power should be taken. Now, before any Minister would wish to use the power in Wales, I think you would want to make sure that we've got experience from elsewhere. So, there is experience in New South Wales of using negative registration for healthcare workers, and it is said to be a success. The healthcare—the inspectorate in England. Sorry, I've just temporarily forgotten the initials.

[56] **Mr Pritchard:** HCPC.

[57] **Mark Drakeford:** HCPC, standing for Health and Care Professions Council, in England, which I've met, I've met their chair and their chief executive, have done more work in this area than anyone else, but they haven't yet introduced any form of negative registration for social care workers either.³ As I say, because the landscape is one for which we need to remain fleet of foot in being able to respond to changes, I felt it was right to take that advice

³ The Government wishes to note: 'The Minister stated that the HCPC haven't introduced a form of negative registration. For absolute clarity, there is a scheme that relates to social work students currently in operation.'

from the Law Commission and put the power into the Bill. It is not well thought of by many people. The care council, for example, are very clear in their advice that they think this would not be the right way to do things in Wales, but, as a safeguard against the future, it's there in the Bill.

[58] **David Rees:** So, you're effectively futureproofing the Bill on the advice of the Law Commission.

[59] **Mark Drakeford:** It is futureproofing. Yes, indeed, and it's futureproofing in the sense that it's an affirmative power in the Bill, so any Minister seeking to use this power in future would have to go back to the floor of the National Assembly to explain and to get agreement to doing so.

[60] **David Rees:** Okay, thank you. Elin: a question on inspections.

[61] **Elin Jones:** Ie, cwestiwn ar arolygon. Y polisi, wrth gwrs, yw i integreiddio gwasanaethau. A ydych chi'n hyderus, yn gyfforddus bod y Bill yn mynd i ganiatáu arolygon ar y cyd rhwng, dywedwn ni, yr *health inspectorate* a'r ochr gofal?

Elin Jones: Yes, a question on inspections. The policy of course is to integrate services. Are you confident, are you comfortable that the Bill will allow joint inspections between, let us say, the health inspectorate and the care side?

[62] **Mark Drakeford:** Diolch yn fawr am y cwestiwn. Dyma un rheswm pam rydym ni wedi defnyddio *definition* digon eang o'r sector yn y Bil, i'n helpu ni ym maes integreiddio yn y dyfodol. Mae dyletswyddau newydd ar CSSIW i gydweithio â'r HIW. Nid ydym ni'n rhoi enwau'r *inspectores* ar wyneb y Bil, ond mae'r dyletswyddau newydd i gydweithio yno.

Mark Drakeford: Thank you very much for that question. That's one reason why we've used a wide enough definition of the sector in the Bill, to help us in this area of integration in future. There are new duties on CSSIW to collaborate with HIW. We're not putting the names of the inspectorates on the face of the Bill, but the new duties to collaborate are there.

[63] Yn y dyfodol, y cwestiwn mwyaf fydd a ydy e'n gwneud synnwyr i ni gael *inspectores* ar wahân yn y maes iechyd a'r maes gofal cymdeithasol. Wel, mae hynny'n rhywbeth rŷm ni'n mynd i ddod ato yn y Papur Gwyrdd. Rwyf wedi siarad o'r blaen am y Papur Gwyrdd. Yn y Papur Gwyrdd, rŷm ni'n mynd i godi'r cwestiwn, fel y mae Ruth Marks wedi codi'r cwestiwn yn ei hadroddiad hi: yn y dyfodol, ydy e'n well inni uno'r ddau *inspectore*, achos pwrpas ein maes polisi ni yw integreiddio pethau yn y dyfodol?

In future, the biggest question will be whether it makes sense for us to have separate inspectorates in the health and social care fields. Well, that's something that we're going to cover in the Green Paper. I've already talked about the Green Paper. We're going to raise that question in the Green Paper, as Ruth Marks has also raised the question in her report: in future, would it be better for us to merge the two inspectorates, because the aim of our policy area is to integrate these things in future?

[64] **Elin Jones:** A gaf i ofyn, felly, pam nad ŷch chi'n cymryd y cyfle o'r ddeddfwriaeth hon i uno yr *inspectores* neu i roi pwerau ichi fedru uno os neu pryd y byddwch chi'n cymryd y penderfyniad hwnnw—drwy *regulations*, er enghraifft?

Elin Jones: May I ask, therefore, why you don't take the opportunity afforded by this legislation to merge the inspectorates, or to take the powers to be able to merge them, if or when you take that decision—through regulations, for example?

[65] **Mark Drakeford:** Nid oes rhaid inni roi hwnnw ar wyneb y Bil achos mae'r

Mark Drakeford: We don't have to put that on the face of the Bill because we already

pwerau gyda ni nawr i'w wneud e. Mae'r pwerau gyda fi nawr, fel Gweinidog. Os ydw i eisiau eu huno nhw, rwy'n gallu ei wneud e nawr gyda'r pwerau sydd gyda ni yn barod. Pam nad ydyn ni'n ei wneud e yn y Bil? Achos mae'r cwestiwn yn un agored i fi. Nid wy'n dweud heddiw fy mod i wedi gwneud y penderfyniad i'w huno nhw, ond mae'n gwestiwn pwysig ac mae Ruth Marks wedi codi'r cwestiwn yn ei hadroddiad hi, ac i fi, ar hyn o bryd, mae'n gwestiwn i'r Papur Gwyrdd, i dynnu'r sylw i mewn o bobl i weld ai dyna'r ffordd orau o'i wneud e. Fel Llywodraeth, ac fel Gweinidog, rwy'n agored i'r ddadl.

10:45

[66] **Elin Jones:** Iawn. Wel, mae hynny'n ddefnyddiol i wybod, nad oes eisiau deddfwriaeth gynradd eto os byddwch chi yn cymryd y penderfyniad yna.

[67] **Mark Drakeford:** Rwyf, fwy neu lai, yn siŵr, ond mae dau berson gyda fi fan hyn sydd—

[68] **Ms Williams:** Mae CSSIW yn gweithredu dan *functions* y Gweinidogion, fel y mae'r *healthcare inspectorate* hefyd. So, o dan y Gweinidogion mae'r ddau, a gallen nhw eu harwain i weithio gyda'i gilydd neu ar wahân.

[69] **Elin Jones:** Nid oes angen darn newydd o ddeddfwriaeth gynradd.

[70] **Ms Williams:** Na.

[71] **Mark Drakeford:** Mae'r pwerau gyda ni nawr.

[72] **Elin Jones:** Diolch am hynny. A gaf fi—

[73] **David Rees:** Can I ask a question? You've talked about the Green Paper. When do you expect the Green Paper?

[74] **Mark Drakeford:** I anticipate that the Green Paper will be published before the end of the summer term. Before we go into the summer recess, the Green Paper will be published. That's my intention.

[75] **David Rees:** Elin: on inspections?

[76] **Elin Jones:** Yes.

have the powers to do that now. I have the powers now, as a Minister. If I want to merge them, I can do it now with the powers that we already have. Why haven't we done that in this Bill? Well, it's an open question for me. I'm not saying today that I've made the decision to merge them, but it's an important question and Ruth Marks has raised the question in her report, and for me, at present, it's a question for the Green Paper, to draw comments in from people to see whether that is the best way of proceeding. As a Government, and as a Minister, I am open to the discussion.

Elin Jones: Okay, Well, that's useful to know, that there's no need for primary legislation yet should you take that decision.

Mark Drakeford: I'm more or less certain about that, but I have two people here who—

Ms Williams: CSSIW operates under the functions of the Welsh Ministers, as does the healthcare inspectorate, too. So, they both come under the remit of the Ministers, and they could be directed to work together or separately.

Elin Jones: So, there's no need for another piece of primary legislation.

Ms Williams: No.

Mark Drakeford: We've got the powers now.

Elin Jones: Thank you for that. May I—

[77] **David Rees:** Because Lynne wants to come in as well.

[78] **Elin Jones:** Jest i ofyn ichi wedyn am rywbeth rydych chi newydd gyfeirio ato fe y bore yma, sef y graddau arolygu, y *ratings*, a'r pwerau fydd yna i chi fod yn medru cyflwyno cyfundrefn o'r math yna yng Nghymru. Nid ych chi wedi cymryd penderfyniad polisi i wneud hynny eto, ydych chi? Neu ai mater o benderfynu pryd fyddwch chi yn cyflwyno hyn ydyw? Os felly, a oes gyda chi rhyw fath o amserlen yn eich meddwl ar hyn o bryd ynglŷn â chyflwyno'r graddau arolygu yma?

Elin Jones: I just wanted to ask you then about something you've just referred to this morning, namely the ratings for inspections, and the powers that will be available for you to be able to introduce a regime of that kind in Wales. You have not yet taken a policy decision to do that, have you? Or is it just a matter of deciding when you will be introducing this? If so, do you have any kind of timetable in mind at the moment regarding introducing these inspection ratings?

[79] **Mark Drakeford:** Diolch, Elin. Well, my view is that this is more likely to be a question of when than whether. I think the system is moving towards quality ratings, and the Bill provides the power to develop a quality ratings regime in relation to providers and in relation to local authorities as well, in section 56. CSSIW is, I think you could say, as a regulator, keen on quality ratings, and will talk to you about why they think the case for them is strong and about the work they've already done in the field of childcare—daycare and childminding—to move to a quality ratings regime. So, they've already done some work there. In Scotland and in England, quality ratings are used. They're not used in the way that we've used them in the food hygiene ratings—you know, a numerical rating—but it is a single word descriptor: 'adequate', 'inadequate', 'outstanding', you know, that sort of—

[80] **Elin Jones:** Like Estyn.

[81] **Mark Drakeford:** Yes, an Estyn-type approach.

[82] It's important to remember that, when the White Paper was published, there was strong support from parts of the sector for quality ratings, and it's probably not surprising to think that it's the better-quality providers who think that ratings would both advertise their achievements but would act, as I think the food hygiene ratings have done, to lever up quality in the system overall. Having said all of that, I think there would be nothing more damaging than introducing a quality ratings system that then turns out not to be reliable and consistent in the judgments that it makes. We're very aware in this committee of exactly those discussions about food hygiene ratings and the appeals regime, and everything like that. So, when I say I think it's a question of when rather than whether, I still think the when may take us—. I'm not going to give you a number of years. That would be just foolish, really. But if you think of short, medium and long, I think it's in the medium term that we would actually get to a position where we all felt confident that a quality rating applied to a setting in Ceredigion would be the same if it were applied in Caerphilly to an organisation with the same standards. We've got to get to that, but I think that's where we will be heading.

[83] **David Rees:** Darren, do you want to come in on this?

[84] **Darren Millar:** Yes. Can I just ask you about the potential unintended consequences that could arise from a quality system? I'm not against the introduction of a quality rating system; I think it could well have significant benefits in driving up standards of care, as you've suggested. But what if a person is in a hospital bed and they need to go into a care home, they've assessed the individual's care needs, and that is the option that is being pursued, and the only available beds in the locality to which they want to return are in care homes that are deemed to be only adequate, or poor but still operating, and there are none in

those higher categories, could this lead to, potentially, more bedblocking in our national health service, and have a direct consequence then for healthcare across the nation?

[85] **Mark Drakeford:** Chair, I think that's a very proper question to ask and a proper anxiety that you would need to feed into the design of any system. So, I'm not at all saying that I don't think it is a serious point, because I think it is, but I think I might put the question in a slightly different way. Even if that were the case, is the answer not to let the person in the hospital bed know that that is the quality of care that is available? I don't think that is the answer. So, even though we will have to manage the system carefully to mitigate unintended consequences and be alert to them in the way that Darren put them, I don't think the way to deal with the consequence is to say, 'Well, in that case, we won't tell you'.

[86] So, I think the answer still is that we have to make sure that the people who are making those really important decisions about their futures have the best information available to them. We'd have to proceed on the basis, wouldn't we, that a home that had a rating of 'adequate', that its ambition will be to make sure that it could put itself in a position where its rating was 'good', so that it wouldn't be in a position of people not wanting to go there, so that the system would act to lever up standards in the way we've described.

[87] **Darren Millar:** In terms of the ability to re-inspect, one of the things that was very helpful in the food hygiene rating system, for example, was the ability of a food retailer to be able to request a re-inspection and to pay for the privilege of being able to have that. But then, of course, that potentially shifting their quality rating, if you like, upwards. In terms of the provisions within the Bill—it does allow for re-inspection—is that the sort of approach you would envisage?

[88] **Mark Drakeford:** David will maybe make sure I've got this right, but part of the reason why I think we had to make sure we'd got it right, and the detail will be, that I would want a re-inspection possibility to be available. And, when Lindsay asked me the question about fees, for example, I think that might be a point where you would think that a fee would be appropriate: if the care home owner, for their own reasons, wanted a re-inspection, you wouldn't think that the public purse would have to bear the cost of that. So, getting some of this detail right is important, but I think re-inspection would be a very important part of levering up standards.

[89] **Mr Pritchard:** That level of detail about how that process might work would not be on the face of this Bill; it would be in secondary legislation, and one of the key processes is about to get under way. The inspectorate has already opened discussions with providers about how this might look and how these processes might work, and I think that kind of debate will inform that. I don't think the Welsh Government has expressed any particular view of how that process might work up to this point, but it is clearly one that would have to go through discussion with the providers who've been affected by the rating system.

[90] **Mark Drakeford:** Chair, this is just to say, as well, that this is another area—and fees are another area—where the regulation-making powers that this Bill seeks would be subject to the affirmative procedure. So, because they are significant in the changes that they bring about, it is right that the detail would come back to the National Assembly itself for scrutiny.

[91] **Darren Millar:** Would it not be better to make the superaffirmative procedure apply to require some dialogue, proper consultation and consideration by Assembly committees, et cetera? Would you be averse to that?

[92] **Mark Drakeford:** Well, I'm certainly willing to listen to what the committee will have to say on that.

[93] **Darren Millar:** Because, obviously, it is quite thin in terms of the inspection ratings that might be applied. I think it's just two sentences on the face of the Bill. I can appreciate that you want to leave a significant amount—. The flexibility of regulation powers are in the background, but I do think that to give some security about the opportunities for re-inspection and the ability to sort out a poor rating, to drive the standards up more quickly, that might be more helpful. But, you're willing to consider that by the looks of it.

[94] **Mark Drakeford:** I'm sure it's an issue, Chair, that you will get evidence on—you'll probably hear oral evidence—and we would be very keen to learn from the conclusions the committee will reach.

[95] **Lynne Neagle:** Just on the ratings issue, the advantage that I can see is that, I think, a lot of people don't look at inspection reports before placing somebody in a care setting. Did you have any feedback on the advantages of a rating scheme for the actual users of services, and people who will be making those kinds of decisions?

[96] **Mark Drakeford:** Yes. I think we do know, certainly, from experience elsewhere that, as well as them being useful to good services in the sector, they are very useful as a signal to people who are making these decisions. We've rehearsed, I know, some of this, Chair, on the floor of the Assembly, that making a choice of a care home, for example, is something that you do relatively in isolation. You cannot rely on just chatting to somebody else who's gone through the same experience, to learn from them. You're often making decisions under very difficult circumstances—lots of pressure in them—and getting easy access to information that you can readily understand, that's what ratings are intended to be.

[97] **Mr Pritchard:** If I may just add that, through the consultation processes, there was an over-two-thirds majority of those who responded to the consultation, and answered that question about ratings, who expressed a preference for them.

[98] **Lynne Neagle:** Interesting. Thank you.

[99] **David Rees:** Minister, if I move on the creation of Social Care Wales. Obviously, there were some views expressed that, was there a need to create Social Care Wales, and rebrand, rather than giving just additional powers to an already recognised Care Council for Wales. I'm just wondering what your thinking was as to why there was a need to do that.

[100] **Mark Drakeford:** Well, my starting point is to say that I think that the Care Council for Wales has been a successful organisation, that it's discharged the responsibilities that it had, in a way that has given confidence to the workforce itself, and to those people who rely on its oversight. But, it has always had an improvement strand in its work, as well as a regulatory strand. My ambition for Social Care Wales is that it will be a powerful way of helping us to do what I know I've heard committee members here in the past say: we have a social care workforce, which does an incredibly important job, it's not well paid, and, in the current climate, it is difficult to see where large sums of money will be found to radically improve the pay levels of people who work in that sector. So, how do we try and make sure that we have a workforce that feels valued, recognised, that someone coming in to that workforce can see a future for themselves, which allows them to progress up a ladder of qualifications and experience, and so on? I want Social Care Wales to be focused on that improvement agenda. In order to signal that up, although we are not creating a new body, and going to all the expense that there would be with that, we are translating the Care Council for Wales into Social Care Wales, but it will have twice the budget that the care council has, and it will have this very important improvement agenda, which I hope will be one way in which we can make sure that the people who work in the sector are recognised by the public for the job that they do, and can see that coming into this work is a job that has a future for them.

[101] **David Rees:** Are you confident that the separation of regulation and representation of individuals, or of the sector, actually can be achieved without any conflict?

[102] **Mark Drakeford:** Well, I'm alert to the arguments that you've got to make sure that there is proper separation between those functions. The care council has successfully done that during its history. The oversight group that Gwenda Thomas set up to advise on exactly this issue—the creation of Social Care Wales—chaired by Sally Ellis, the former director in Denbighshire, looked at this issue very directly, and were very clear in their advice to me that it is both possible and necessary, they said. It was interesting that I met the chief executive and the deputy chief executive of the care council this week, and they made exactly that point to me, that provided you structure things in a way that has proper separation where necessary, actually, if you want to regulate the workforce successfully for improvement, then you need that improvement capacity as well. The report from the group that Sally Ellis chaired is with me and I intend to publish it. So, committee members will be able to see the advice that we got on exactly the point that the Chair has raised.

11:00

[103] **Mr Pritchard:** Forgive me, Chair, may I just clarify, particularly for those who work in the Care Council for Wales, that the current organisation will not end in being if this Bill is passed? It will simply be renamed and have an extension of its powers. Therefore, constitutionally it doesn't change as a corporation or organisation.

[104] **David Rees:** Okay. Thank you. We now move on to questions from Kirsty on commissioning and then from Alun on market oversight.

[105] **Kirsty Williams:** Minister, you have established in this potential legislation an important principle that it's not just the person in charge of the particular setting who can be held responsible for the nature of the care, but, actually, it's those people further up the food chain who, equally, should be held responsible. But, the Bill, as currently drafted, does not include any mention of the way in which social care services are commissioned, and, of course, your ability to deliver a service is incumbent upon the nature of the service that has been commissioned in the first place by a local authority. There have been concerns expressed to the committee via consultation that this is a missed opportunity to look at quality commissioning in this new regime. We've had concerns expressed by Care Forum Wales and, indeed, the older persons' commissioner's report paid a lot of attention to failures in commissioning to take account of wellbeing, quality service and the impact of that service.

[106] So, do you agree with me that reforms to the current commissioning practices are needed and, given the reports that focus is often very much on cost rather than on the quality of those services, should quality commissioning standards be included in part of the Bill? How would you envisage this Bill interacting with guidance that was issued in 2010 by Welsh Government on commissioning?

[107] **Mark Drakeford:** I may well need to ask David to help me with the second part of that question. But, the first part of it was: how does the Bill impact on commissioning and how does it impact on commissioning for quality? Well, I think it does do it. I think it does do it through section 26, which is the part of the Bill that will require standards to be set. If standards are set, then local authorities will have to commission to those standards and against those standards. They will then have to report annually against the discharge of those responsibilities and they will report in future against an annual report, which is a standardised report, across Wales. We already do have an annual reporting regime, but it is one that is very variable, varying from one part of Wales to another. So, I think that the Bill will put a considerable amount of extra grit in the commissioning process and it will require

commissioners not simply to focus on the cost, but it will require them to focus on the achievement of the quality standards that the Bill will create.

[108] So, I feel, you know, that the Bill does address those things. I'm very aware of Care Forum Wales's views on it and the position that I tend to take is that the counterpoising of cost and quality, as though they were in competition, or the opposite of two things, turns out not to be true, once you get a look at it, because if you have poor quality, you end up with high costs, and if you have better quality, then your costs become containable as well. We want to put those two things together in this Bill, if we can.

[109] On the consistency with the guidance, I'm going to ask—

[110] **Mr Pritchard:** The functions of local authorities, in terms of their social services responsibilities, are set out in the Social Services and Well-being (Wales) Act 2014, and in the guidance and codes that sit underneath that. That's how the Welsh Government can, or National Assembly, can set out what is expected in terms of commissioning et cetera. What this Bill allows is Welsh Ministers, through the Care and Social Services Inspectorate Wales, to go and inspect local authorities against the delivery of those statutory functions, and commissioning can and should be part of that process. So, this Bill gives the inspectorate the power to look at commissioning and how local authorities carry it out.

[111] **Kirsty Williams:** Thank you. Minister, in November 2013, whilst considering the Social Services and Well-being (Wales) Act 2014, the then Deputy Minister kicked the can of 15-minute care slots down the road and, as it turned out, kicked it down your road, because she said, whilst it wasn't appropriate to deal with 15-minute care slots under that legislation, it could well be the case that 15-minute care slots could be dealt with in the forthcoming inspection and regulation legislation. Well, we're here now, and I'm just wondering whether it is your intention to use this opportunity to deal with the issue of 15-minute care slots. It seems to me that section 26(4) on quality standards might just well be the place in which you could achieve it.

[112] **Mark Drakeford:** Well, I share that view. In one particular aspect, it will do so very directly indeed, because there was a late amendment to the 2014 Bill—it was moved by Elin, in fact—that put an obligation on local authorities to ensure that the length of time that someone has to discharge their duties is sufficient for those duties to be discharged. It doesn't mention 15-minute visits, and I'm not keen to get into the specifics of the number on the clock, but the basic principle is that, if a local authority is commissioning a service, it has to make sure that the person carrying out that duty has enough time to do what is being asked of them. So, that's in the 2014 Act, and one of the standards that we will require through section 26(4) is exactly that. We will now require local authorities, through a standard, to achieve what the 2014 Act requires of them, and the inspector will then inspect against their success in that. One of the things I will think about during the passage of the Bill is whether a similar obligation ought to be put on private providers of domiciliary support services, because I think that might tighten the relationship between what we ask providers to do and how they will be inspected and held to account for it through this Bill.

[113] **Kirsty Williams:** Thank you.

[114] **David Rees:** We'll move on to Alun.

[115] **Alun Davies:** Thank you very much. The explanatory memorandum to the Bill describes very broadly the nature of the economy of this market sector and describes how it differs to that in England. In terms of what it says about the impact of regulation, it seems to say that there will be transitional costs—I think around £700,000—for moving from the current system to the new system but that there wouldn't be any other significant additional

costs on service providers. Given what we've been discussing this morning and given the nature of the older people's commissioner's report on social care, is this not an opportunity to actually fundamentally change the way we do regulation, and should the regulatory burden on providers possibly be increased?

[116] **Mark Drakeford:** Well, Chair, I think the Bill does change the regulatory regime very significantly. It does so in a way that meets a series of the recommendations of the older people's commissioner. It does so in a way that I hope will be consistent with the recommendations coming out of the Operation Jasmine review being conducted by Dr Margaret Flynn. So, I think the basic starting point of Alun is one we share very much, and I think that the Bill will drive that. The cost of inspection and regulation in the sector is £34 million a year now. In hard times, and with the next Assembly, depending on outcomes of elections and so on, but facing a potential further 10% reduction in real terms in the budget available to us, any question of spending more money on one thing can only be answered by spending less on something else. So, we have very carefully crafted the regime in the Bill not to be one that costs vast amounts of extra money, but allows regulators to work more closely together, to share information more easily together and to drive some of the costs that are currently in the system out of the system to release some money to do more of the things that we think are effective in helping to improve quality, and are effective in providing information to the public. But, myself, I cannot see how the answer to doing some of the things we would like to do in this field will be to find lots of extra money for this in the future.

[117] **Alun Davies:** Well, the regulatory burden is usually met by those who are regulated rather than by Government. But, in terms of where we are today, the market, at the moment, is dominated by very small providers and quite small nursing homes, largely. Do you anticipate that this new regime will fundamentally change the shape of that market?

[118] **Mark Drakeford:** Well, one of the things that the Bill quite certainly aims to do is to strengthen the capacity of public authorities to shape the market in the future, rather than simply to be dealing always with the consequences of the way that markets operate, and to actually be more active participants in shaping the markets. So, it puts new obligations on local authorities to provide annual market stability reports and it puts an obligation on Welsh Ministers to produce a national market stability report. I think those reports will be very important, because they will provide commissioners with the intelligence they need to make the decisions that they will need to make to be effective commissioners in that marketplace.

[119] So, it mirrors some of the changes that have been made in England, already, in response to the Southern Cross collapse, because while the system still has a large number of small-scale providers, the big picture in both residential and domiciliary care has been consolidation—the emergence of a much smaller number of much larger providers. The Southern Cross experience is that, when a private provider goes bad, it's the public sector that ends up picking up the pieces. The purpose of these parts of this Bill is to put the public, through its regulators and inspectors, in a much more powerful position. We do that with the market stability aspects of the Bill, but we do it, as well, through the new pattern of accountability that the Bill sets up and this new position of the responsible individual, which will be someone at board level who will have significant legal responsibilities through this Bill, which we think will properly distribute accountability amongst those people who, in the end, are making money out of the services that they provide to very vulnerable people.

[120] **Alun Davies:** It was whether you regard that level of consolidation as a consequence, and whether you foresee that as a consequence of this legislation; that was part of the question.

[121] **Mark Drakeford:** No. I don't see it as a consequence of the legislation; I see the

legislation as an important way of responding to the way the market—and not just in residential care, but increasingly, in domiciliary care services—is tending in that direction.

[122] **Alun Davies:** Okay. Thank you for that. In terms of the delivery—you mentioned the local stability reports—is it your view that local government has the capacity to provide a report of that nature? The section, as I understand it, asks local government to deliver two reports—one, an annual report on what appears to be service delivery, and the second a local stability report. Now, I think you say in the legislation that the frequency and the nature of this report will be determined by regulation. I'd be interested as to why you believe that's best done by regulation and why that's not on the face of the Bill, because that would actually create a structure for the regulation in the way that you've just described, and my view is that it probably would be better on the face of the Bill, in fact. But, because the local stability reports are defined by regulation and don't appear on the face of the Bill, it's difficult for us to actually understand how you anticipate a local stability report will look, and whether you believe that local government has the capacity and the expertise to actually deliver that level of market analysis.

11:15

[123] **Mark Drakeford:** Well, part of the purpose of the Bill is to produce some improvement in local authorities' capacity in this area. I would anticipate that they will want to discharge some of these responsibilities on a regional footprint, rather than on an individual local authority footprint. You'll not be surprised, I guess, Alun, to hear that, already, we have some local authorities that are quite good, quite active in shaping the market in their areas, and we have others that are very passive observers of what goes on, and simply deal with the consequences. So, part of this is about improving local authorities' own performance in this area.

[124] Why is it in regulation—the timing of it all? Well, I think the problem is that you need to calibrate the reporting cycle against changes in the marketplace, so during periods when the market is changing very rapidly, you may want reporting to be more frequent. If you're in a period of market stability, you would not want to require local authorities to put a lot of effort into producing a report that really isn't telling you anything very much you need to know. Because we know that, in the last 15 years, there have been periods of very rapid change in the residential care market, followed by periods when nothing very much seems to change for a while, we thought it was more sensible to allow some flexibility in setting reporting cycles. You're reporting against something that isn't in your own hands, so you need that flexibility, rather than, if you put it on the face of the Bill, and you say 'once every five years', what happens if the market suddenly goes through a period of intense turmoil over two years? You'd have no market stability report at all. So, I think it's the flexibility to respond. You need to be responsive in this area rather than reporting on things that are entirely in your own hands.

[125] **Ms Johnson:** I think it's also worth mentioning that the preparation of the local market sector stability report links to the duty that local authorities and local health boards were already under under the Social Services and Well-being (Wales) Act 2014 to assess the needs for care and support in their area: what's out there, who's out there, and who needs the care and support? All of that is to be done by regulation, so until those regulations are drafted and we know the cycle in terms of that reporting requirement, that will obviously feed into the regulations that are drafted in relation to the local market sector stability report.

[126] **Alun Davies:** From our point of view, that's an entirely opaque process, and it's difficult to hold Ministers to account on regulations that are not written, because they're dependent on other regulations that are not written. From the point of democratic accountability, that's a very, very difficult process for us to accept.

[127] **Mark Drakeford:** That's a very fair point, Chair, but just to say that I think we can be helpful to a certain extent: the regulations on the social services Act are in tranche 1, so they will be known to this committee before the end of Stage 1 proceedings.

[128] **Alun Davies:** That's very useful to know.

[129] **David Rees:** Kirsty, unless you want to ask a specific question on this issue, Lynne wants to ask a question.

[130] **Kirsty Williams:** Minister, I can see the role that you anticipate for these reporting mechanisms, both at a local level and by Welsh Ministers, to try and anticipate a Southern Cross-type scenario of a massive market failure. You also said that this is part of strengthening commissioning processes, but I'm just trying to ascertain why this will tell us something that we don't already know. I mean, the chief inspector was quite clear in her annual report on the fact that we will not have enough residential care beds by 2025, so there's information already out there. If you look at your delayed transfers of care, it will probably give you a pretty good idea of where you've got a lack of capacity in service provision within your own local area, so I'm just trying to test why these are necessary. Why are these going to tell us something that we don't already know when it comes to planning for service capacity?

[131] **Mark Drakeford:** My view would be that the market stability reports that will be published will be drawing on that information, so they're not starting from a position of there being no knowledge of what is needed in the future, but they will much more focus on how the supply that is required to meet that demand is likely to emerge, and how you can influence that supply. What do we know about the way in which the 10 to 15 really big players in Wales—? What do we know about their financial and corporate health? Because the Bill provides new powers for the inspectorate to require, following a due diligence exercise, information to be supplied by those companies in a way that we simply don't have access to at the moment.⁴ So, the aim of the market stability reports is not just to have a better sense of what is needed, but it really is about a much better sense of how we are going to supply the need that we know is there. Will the current players be able to do more? Will we need to do more to use the section 16 powers in the 2014 Act to stimulate other forms of supply? And it's to position the commissioners as active participants in that whole process—people who try and shape the nature of supply in the future, rather than people who spend their time saying, 'We're hearing that that particular home may be closing', or 'We've had an application in from somebody else to open a new home', so, in very responsive mode, whereas the Bill I think positions them much more, as I say, as active shapers of the supply that will be needed for their local populations.

[132] **David Rees:** We've got very little time left, and a lot of questions we want to ask, so Lynne, Alun and then Darren.

[133] **Lynne Neagle:** I really welcome this aspect of the Bill, but my interest really is in how well-equipped local authorities are going to be to actually deliver on addressing any shortcomings, because, as you said, there is a variability already in Wales. I just wondered if we could have some more detail on that, because you mentioned the interface with the social services Act as well.

[134] **Kirsty Williams:** Can I ask why legislation is needed for that? Shouldn't they be

⁴ The Government wishes to note: 'The Minister stated that the Inspectorate would have the power to require information following a due diligence exercise. To be precise, the powers to require information are not reliant on such an exercise and would be used to facilitate such a due diligence exercise.'

doing that anyway? Isn't that part of their job?

[135] **David Rees:** We'll ask the Minister to answer the first question.

[136] **Lynne Neagle:** I was asking how they were going to do it, Kirsty, not about the legislation. But this is in the legislation.

[137] **Mr Pritchard:** In terms of the local authorities, their capacity and abilities to do it, the committee may be interested in a pilot piece of work that's already been undertaken by the Association of Directors for Social Services Cymru, supported by the Welsh Government and with other members, with academics from the Institute of Public Care of Oxford Brookes University, to develop an approach to market stability, to look at what such a statement could look like. So, this very much is something that local authorities have worked on as a group across Wales, and have come up with some ideas that can inform how we take it forward. So, I think there is an appetite and a willingness to take on those additional capacities.

[138] **Mark Drakeford:** Just in answer Kirsty's question, I think what the Bill does is that it puts more tools in the hands of the people who we're asking to do these things. So, in its creation of the responsible individual, in the powers that it will have to require information from these very large providers, the people who we are asking to help to manage the market will have information and lines of accountability that they won't have had before.

[139] **David Rees:** Alun, we've got two minutes, so one question, and then Darren.

[140] **Alun Davies:** Okay. In terms of where we were in terms of the local stability report, it would be useful, I think, for the committee to understand how you'd anticipate that would look and if you were able to provide some sort of outline of what you'd expect it to look like. It doesn't need to be too detailed, but just an illustration would be useful for us. My assumption is that those local stability reports are the building blocks of the national report, which section 60 requires Welsh Ministers to deliver. If that is to provide the sort of information and the sort of intelligence, if you like, and market-led analysis that would actually be useful in delivering the objectives set out for it, that requires a great deal of financial information, analysis of that financial information, and access to very sensitive and private information from what I think are mainly private providers, not publicly listed companies. So, I presume that you have those powers in corporate law to be able to require companies to provide that information, and I also assume that those demands are within competence.

[141] **Mark Drakeford:** Well, we take powers in the Bill to require companies to disclose things where there is a public interest in those disclosures being made. We are confident the powers we are taking are proportionate and within the competence of the National Assembly to do so, that they are consistent with Human Rights Act 1998 obligations—all these things you've got to think through now, when you're requiring things of people. You've got to be confident that you've got the basis to do so, and we think that we do. We're partly going to be drawing on the experience that already exists within the Welsh Government, because, in the housing field, we already require financial viability judgments to be provided for housing associations. So, we have experience, already, of the sort of things that you can require in order to be able to make those judgments, and how you arrive at a judgment that you're needing to make. And we will use that experience to assist us in the way that we go about the new duties and obligations that this Bill sets out.

[142] **David Rees:** Darren, the last question.

[143] **Darren Millar:** Yes, it sort of ties into that, actually. I notice that in section 60, in terms of the Welsh Ministers' ability to look at individual organisations, it simply says that, if

you

[144] ‘think that there is a significant risk to the financial sustainability of the service provider’s business’

[145] you may require certain things. Isn’t just to ‘think’ that there might be a significant risk a bit of a weak position? Particularly given that, if that information got into the public domain, it could have a massive undermining impact on the financial viability, just because of your own opinion.

[146] **Mark Drakeford:** Well, that’s a very important point to make, which we’re very alert to. So, any action that flows from the powers that the Bill provides in that context could only be exercised following a proper due diligence exercise. It will not be enough for someone just to think, ‘They look a bit dodgy’—

[147] **Darren Millar:** Finger in the air.

[148] **Mark Drakeford:** No, not at all. Because I think we are very alert to the point that Darren makes that, if word gets around that a provider may not be financially viable, and so on, that can itself create conditions in which financial viability becomes more difficult. So, we are confident that we will be able to provide a system that properly safeguards the public. Because, in the end, that’s what this is really about, isn’t it? It’s about not having providers who are going on providing in a state of finance or governance that would not meet proper tests—because the costs of that failure will fall on the public providers and the public purse—while being properly careful about not doing things that would have an unfair and unintended consequence for the future of those firms themselves. So, the powers we take are pretty carefully described in the Bill; the processes by which you would be able to exercise them will be laid down for everyone to see. I don’t expect they will be used very often, but, where they are needed, they’re an important public safeguard.

[149] **Darren Millar:** And you—

[150] **David Rees:** We are short of time.

[151] **Darren Millar:** I know, but this is an important point. But you do intend to bring forward the regulations on this specific aspect before the end of Stage 1.

[152] **David Rees:** Yes or no.

[153] **Mark Drakeford:** No.

[154] **Darren Millar:** And—

[155] **David Rees:** Darren, our time has come to an end. We’ve had the Minister here for longer than we were actually scheduled, and I know he has other appointments to go to. So, I’ll come to the end.

[156] **Mark Drakeford:** I’ll write to you.

[157] **David Rees:** Thank you, Minister, for your evidence—and the officials. Obviously, you’re aware you’ll receive a copy of the transcript for any factual inaccuracies you may identify; please let us know if there are. Obviously, we will be seeing you again at the end of the process after we’ve taken all our other evidence.

[158] **Mark Drakeford:** Good. Thank you very much indeed.

11:29

Papurau i'w Nodi
Papers to Note

[159] **David Rees:** Item 4 for Members: we have some papers to note. If I go through them for Members, as the ministerial team leaves: the minutes of the meeting on 11 March 2015. Okay? The correspondence from the Minister for Health and Social Services regarding the Regulation and Inspection of Social Care (Wales) Bill, which we have been discussing this morning. The correspondence from the Chair of the Children, Young People and Education Committee regarding the Regulation and Inspection of Social Care (Wales) Bill. Okay? And the Minister for Health and Social Services' response to the letter about the GP workforce—and I'll make the point that we will discuss this in detail in the next term, but I want to note it at this point in time. Is that okay? Thank you for that.

**Cynnig o dan Reol Sefydlog 17.42(vi) i Benderfynu Gwahardd y Cyhoedd o
Weddill y Cyfarfod ac o Eitem 1 yn y Cyfarfod ar 23 Ebrill 2015**
**Motion under Standing Order 17.42(vi) to Resolve to Exclude the Public from
the Remainder of the Meeting and for Item 1 of the Meeting on 23 April 2015**

Cynnig:

bod y pwyllgor yn penderfynu gwahardd y cyhoedd o weddill y cyfarfod ac ar gyfer eitem 1 y cyfarfod ar 23 Ebrill 2015 yn unol â Rheol Sefydlog 17.42(vi).

Motion:

that the committee resolves to exclude the public from the remainder of the meeting and for item 1 of the meeting on 23 April 2015 in accordance with Standing Order 17.42(vi).

*Cynigiwyd y cynnig.
Motion moved.*

[160] **David Rees:** We now need to move into private session. I propose, in accordance with Standing Order 17.42(vi), that the committee resolves to meet in private for the remainder of this meeting and for item 1 of the meeting on 23 April 2015. Is everyone content with that? Then we'll go into private.

*Derbyniwyd y cynnig.
Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 11:30.
The public part of the meeting ended at 11:30.*