

Agenda – Constitutional and Legislative Affairs Committee

Meeting Venue:

Committee Room 1 – Senedd

Meeting date: Monday, 12 June 2017

Meeting time: 14.30

For further information contact:

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- 1 Introduction, apologies, substitutions and declarations of interest
- 2 Instruments that raise no reporting issues under Standing Order 21.2 or 21.3

(Page 1)

CLA(5)–15–17 – Paper 1 – Statutory Instruments with clear reports

Affirmative Resolution Instruments

SL(5)111 – The Allocation of Housing and Homelessness (Eligibility) (Wales)
(Amendment) Regulations 2017

3 Papers to note

Government response: SL(5)098 – Statutory Guidance – Historic Environment
Records in Wales: Compilation and Use

(Page 2)

CLA(5)–15–17 – Paper 2 – Government response



Government response: SL(5)104 – Code of Practice for Species Control Provisions in Wales

(Page 3)

CLA(5)–15–17 – Paper 3 – Government response

The Welsh Government Prosecution Code Consultation

(Pages 4 – 15)

CLA(5)–15–17 – Paper 4 – Welsh Government Prosecution Code

Letter from the Equality Local Government and Communities Committee to External Affairs and Additional Legislation Committee: Great Repeal Bill

(Pages 16 – 19)

CLA(5)–15–17 – Paper 5 – Letter from the Equality Local Government and Communities Committee response to the External Affairs and Additional Legislation Committee: Great Repeal Bill

Correspondence in relation to the Abolition of the Right to Buy and Associated Rights (Wales) Bill

(Pages 20 – 27)

CLA(5)–15–17 – Paper 6 – Letter from the Chair to the Cabinet Secretary for Communities and Culture

CLA(5)–15–17 – Paper 7 – Letter from the Cabinet Secretary for Communities and Culture

Correspondence in relation to the Additional Learning Needs and Education Tribunal (Wales) Bill

(Page 28)

CLA(5)–15–17 – Paper 8 – Letter from the Minister for Lifelong Learning and Welsh Language: Additional Learning Needs and Education Tribunal (Wales) Bill

4 Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:

5 Correspondence on papers to note

(Pages 29 – 31)

CLA(5)–15–17 – Paper 9 – Letter to Business Minister

CLA(5)–15–17 – Paper 10 – Letter to Counsel General

6 Consideration of statutory instruments: implications arising from leaving the EU

(Pages 32 – 33)

CLA(5)–15–17 – Paper 11 – Consideration of statutory instruments

7 Stronger Voice for Wales Inquiry

(Pages 34 – 37)

CLA(5)–15–17 – Paper 12 – Stronger Voice for Wales: Forward look

Consultation responses (sent in supplementary pack)

8 Draft Report: Abolition of the Right to Buy and Associated Rights (Wales) Bill

(Pages 38 – 54)

CLA(5)–15–17 – Paper 13 – Draft Report

Date of the next meeting

19 June 2017

Statutory Instruments with Clear Reports

Agenda Item 2

12 June 2017

SL(5)111 – The Allocation of Housing and Homelessness (Eligibility) (Wales) (Amendment) Regulations 2017

Procedure: Affirmative

These Regulations amend the Allocation of Housing and Homelessness (Eligibility) (Wales) Regulations 2014 (“the 2014 Regulations”) to reflect changes to the Immigration Rules, being the rules defined in those Regulations as the rules laid down as mentioned in section 3(2) of the Immigration Act 1971.

Parent Act: Housing (Wales) Act 2014

Date Made: Not stated

Date Laid: Not stated

Coming into force date: 22 June 2017



Agenda Item 3.1

Statutory Guidance — Historic Environment Records in Wales: Compilation and Use

I'd like to thank the Committee for highlighting the potential for confusion arising from the use of 'must', 'should', and 'may' in the statutory guidance, Historic Environment Records in Wales: Compilation and Use.

During the consultation on this guidance, a number of respondents recommended that its title should clearly identify the public bodies to which it is addressed. Consultees also called for the guidance to recognise that it would not be uniformly applicable to those public bodies, given their diverse functions and information holdings.

Efforts were made to refine the guidance in light of these comments. However, it is acknowledged that in some instances this may have resulted in a lack of clarity about some of the responsibilities of the public bodies.

We will, therefore, write to the public bodies concerned to clarify how the terms 'must' and 'should' are to be understood. When 'may' appears in the guidance in relation to the responsibilities of the specified bodies, the usage mirrors that in the historic environment provisions of the Act to allow for the variation of requirements according to the nature of the public body and information concerned.

In the longer term, we will review and amend the guidance to take account of the Committee's comments and any feedback that we receive from the public bodies once they start using the guidance following the commencement of the historic environment record provisions of the Historic Environment (Wales) Act 2016 on 31 May 2017.

Agenda Item 3.2

Code of Practice for Species Control Provisions in Wales

I would like to thank the Committee for highlighting the *Code of Practice for Species Control Provisions in Wales* could be drafted in a clearer way to help the Welsh Ministers and Natural Resources Wales understand what “should” means and what “must” means in the Code.

The Code of Practice sets out to explain the circumstances when a species control agreement or order may be offered or made. The use of such provisions is limited to very specific circumstances and as such, the Code is aimed primarily at Natural Resources Wales as one of the two designated environmental authorities, the other being the Welsh Ministers. The Code was produced in close liaison with Natural Resources Wales and presented to their Regulatory Business Board and Biodiversity Board for information prior to publication.

Whilst the majority of uses of ‘must’ in the Code refer to specific statutory requirements it is acknowledged, in some other cases, there are possible inconsistencies between the use of the terms ‘must’ and ‘should’

My officials will therefore write to the Natural Resources Wales to clarify how the terms ‘must’ and ‘should’ are to be understood, explaining where the Code uses ‘must’ it expresses a specific legal requirement or is considered of highest priority to deliver Welsh Government invasive species policy objectives. The term ‘should’ expressing the views of Welsh Government as to how operations should be carried out to comply with the requirements to achieve a satisfactory, proportionate and consistent outcome in the delivery of species control provisions. The Code can be viewed on the on the Welsh Government website. A clarification note on the use of the terms must and should for those parties subject to a species control agreement or order will also be provided on the website.

Welsh Government will consider the application of this Code as part of the annual process of reporting on the number of species control agreements and orders issued each year. In the medium term, we will review and amend the Code to take account of the Committee’s comments and any feedback we receive from any affected parties.



The Welsh Government Prosecution Code

Table of Contents

Preface	2
General Prosecution Principles	3
The Prosecution Test	4
Selection of Offences	7
Simple Cautions	8
Venue for trial	9
Accepting Guilty Pleas	10
Revisiting the Decision to Prosecute	11

Preface

1. The Welsh Government Prosecution Code (the “Code”) gives guidance to Prosecutors on the principles to be applied when making decisions about prosecutions.
2. The decision to prosecute is a serious step. Fair and effective prosecution is essential to the maintenance of law and order. Every prosecution has serious implications for all those involved, including witnesses and defendants. This Code is intended to ensure that fair and consistent decisions about prosecutions are made. This Code is issued by the Counsel General.
3. The Counsel General, by virtue of section 45 of the Government of Wales Act 2006 (the “Act”) is a member of the Welsh Government. Section 67 of the Act enables the Counsel General to commence prosecutions in his or her own right.
4. There may be occasions where the power to commence a prosecution is reserved to the Welsh Ministers. In those instances, prosecutions will be commenced in the name of the Welsh Ministers. Reference in this Code to a “Welsh Government Prosecution” is a reference to a prosecution commenced pursuant to a Counsel General or Welsh Ministers function.
5. In this Code, the term “suspect” is used to describe a person or body of persons corporate or unincorporate which is not yet the subject of formal criminal proceedings; the term “defendant” is used to describe a person or body of persons corporate or unincorporate which is the subject of formal criminal proceedings; and the term “offender” is used to describe a person or body of persons corporate or unincorporate which has admitted their guilt to an investigator or prosecutor, or they have been found guilty in a court of law.
6. Reference in this Code to “prosecutor” or “prosecutors” is a reference to lawyers who provide advice and representation in relation to Welsh Government Prosecutions. The terms “investigator” or “investigators” is used to describe Welsh Government officials or agents who investigate alleged criminal offences in the course of their duties.
7. In certain cases the Director of Public Prosecutions (the “DPP”) may decide to take over the conduct of a Welsh Government Prosecution or the DPP may institute proceedings in relation to offences where the Counsel General or the Welsh Ministers also have prosecution functions. In these instances the Code for Crown Prosecutors will apply. Where the DPP prosecutes under an agency agreement pursuant to section 83 of the Act, the DPP will be required to have due regard to this Code in addition to the Code for Crown Prosecutors.

General Prosecution Principles

8. Prosecutors must ensure that each case is considered on its own facts and that the law is properly applied in all cases and that all relevant evidence is put before the court.
9. Prosecutors should not start or continue a prosecution which would be regarded by the courts as oppressive or unfair and an abuse of the court's process.
10. In considering whether to commence a prosecution, prosecutors must be fair, independent and objective. Prosecutors must not let any personal views about the characteristics of the suspect, victim or any witness influence their decisions. In considering whether to commence a prosecution, prosecutors must not be affected by improper or undue pressure from any source, be it from within or outside the Welsh Government. Prosecutors must comply with current and relevant equalities legislation.
11. Prosecutors must apply the provisions of the European Convention on Human Rights, in accordance with the Human Rights Act 1998, at each stage of a case. Prosecutors must also comply with the Criminal Procedure Rules currently in force and have due regard to the requirements of the United Nations Convention on the Rights of the Child¹.

¹ The Rights of Children and Young Persons (Wales) Measure 2011 makes provision for and in connection with giving further effect in Wales to the rights and obligations set out in the United Nations Convention on the Rights of the Child.

The Prosecution Test

12. A prosecution must not be commenced unless the case has passed both stages of the Prosecution Test. The two stages are: (i) the sufficient evidence stage, followed by (ii) the public interest stage.

The Sufficient Evidence Stage

13. Prosecutors must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each suspect for each offence under consideration. Prosecutors must anticipate defence arguments and how they may affect the prospect of conviction. Any case which does not pass the sufficient evidence stage must not proceed any further, no matter how serious or sensitive it may be.
14. The finding that there is a realistic prospect of conviction is based on the prosecutor's objective assessment of the evidence, taking into account any defence already put forward or which might be put forward by the suspect. It means that a jury or bench of magistrates or judge hearing a case alone, properly directed and acting in accordance with the law, is more likely than not to convict the defendant of the offence alleged.
15. When deciding whether there is sufficient evidence to prosecute, prosecutors should consider the following factors:
 - a) The admissibility of the evidence in court. Prosecutors should consider whether or not all of the evidence is likely to be admissible. If some evidence is likely to be excluded by the court, prosecutors should consider whether enough evidence exists which is admissible for a realistic prospect of conviction.
 - b) Whether the evidence is reliable. Prosecutors should consider whether there are any reasons to question the reliability of the evidence, including its accuracy or integrity.
 - c) Whether the evidence is credible. Prosecutors should consider whether there are any reasons to doubt the credibility of the evidence.

The Public Interest Stage

16. The public interest must be considered in each case where there is sufficient evidence to provide a realistic prospect of conviction. Prosecutors must balance factors for and against prosecution carefully and fairly.
17. A prosecution will usually take place unless the prosecutor is satisfied that there are public interest factors tending against prosecution which outweigh those tending in favour. In some cases the prosecutor may be satisfied that the public interest can be properly served by offering the offender the

opportunity to have the matter dealt with by way of Simple Caution rather than bringing a prosecution.

18. When deciding the public interest, prosecutors should consider the following factors:
- a) The seriousness of the offence. The more serious the offence the more likely it is that a prosecution is required.
 - b) The circumstances of the offence. The extent to which the offending was premeditated and/ or planned. Whether the commission of the offence has continued despite all efforts made to ensure compliance through, for example, other enforcement tools including regulatory interventions and civil penalties.
 - c) The circumstances of the suspect and whether the suspect has previous criminal convictions.
 - d) The age of the suspect at the time of the offence. The criminal justice system treats a person under the age of 18 differently from adults. Therefore significant weight must be attached to the age of the suspect if they are under 18. The best interests and welfare of a person under the age of 18 are paramount. Prosecutors must have regard to the obligations arising under the United Nations Convention on the Rights of the Child (the “UNCRC”) and the Rights of Children and the Young Persons (Wales) Measure 2011 which gives further effect in Wales to the rights and obligations set out in the UNCRC.
 - e) The circumstances of the victim (in cases where there is an identifiable victim). The greater the vulnerability of the victim, the more likely it is that a prosecution is required.
 - f) The impact of the offending on the environment. The greater the impact of the offending on the environment, the more likely it is that a prosecution is required.
 - g) The impact of the offending on the community. The greater the impact of the offending on the community, the more likely it is that a prosecution is required.
 - h) Prosecutors should consider whether there is an element of danger to the health or safety of the public.
 - i) Prosecutors should also consider whether a prosecution is proportionate to the likely outcome, and in so doing the cost to the Welsh Government and the wider criminal justice system. However, prosecutors should not decide the public interest on this basis of cost alone.
 - j) Prosecutors should consider whether proceeding with a prosecution could harm sources of information, international relations or national security.

19. The factors listed above provide guidance to prosecutors when determining whether or not it is in the public interest to commence or continue with a prosecution. This list is not exhaustive, and not all the public interest factors will be relevant to every case. The weight to be attached to each of the public interest factors will also vary according to the facts and merits of each case.

Selection of Offences

20. Prosecutors should select offences which:
 - a) reflect the seriousness and extent of the offending;
 - b) give the court adequate powers to sentence and impose appropriate post-conviction orders; and
 - c) enable the case to be presented in a clear and simple way.

21. Prosecutors should not proceed with more offences than are necessary just to encourage a defendant to plead guilty to a few. In the same way prosecutors should not proceed with a more serious offence in order to encourage a defendant to plead guilty to a less serious one.

Simple Cautions

22. A Simple Caution is a serious matter. It is an admission by the offender that they have committed an offence. A Simple Caution may be administered in place of a prosecution in court if it is an appropriate response to the seriousness and consequences of the offending. Prosecutors must follow any relevant guidance when asked to advise on or authorise a Simple Caution². Prosecutors must be satisfied that there is a clear admission of guilt which provides a realistic prospect of conviction, and that the public interest would be properly served by such a disposal.

² The Ministry of Justice guidance on Simple Cautions can be found at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/397867/adult-simple-caution-guidance.pdf

Venue for trial

23. Prosecutors must have regard to the allocation guidelines and any relevant and up to date sentencing guidelines when making submissions to the magistrates' court about where the defendant should be tried.
24. Prosecutors must bear in mind that a person under the age of 18 should be tried in the youth court wherever possible. It is the court which is best designed to meet their specific needs. A trial of a person under the age of 18 in the Crown Court should be reserved for the most serious cases or where the interests of justice require that they be jointly tried with an adult.

Accepting Guilty Pleas

25. There may be occasions where defendants want to plead guilty to some, but not all, of the offences. Alternatively, they may want to plead guilty to a different, possibly less serious offence because they are admitting only part of the crime.
26. Prosecutors should only accept the defendant's plea if they think the court is able to pass a sentence that matches the seriousness of the offending, particularly where there are aggravating features. Prosecutors must never accept a guilty plea just because it is convenient to do so.
27. In considering whether the pleas offered are acceptable, prosecutors should ensure that the interests of the victim, or in appropriate cases the victim's family, are taken into account when deciding whether it is in the public interest to accept the plea. However, the decision rests with the prosecutor.
28. It must be made clear to the court on what basis any plea is advanced and accepted. In cases where a defendant pleads guilty to the offences but on the basis of facts that are different from the prosecution case, and where this may significantly affect sentence, the court should be invited to hear evidence to determine what happened, and then sentence on that basis.

Revisiting the Decision to Prosecute

29. There may be cases where a prosecutor believes it is necessary to overturn a decision not to prosecute or to deal with a case by way of a Simple Caution or when it is appropriate to restart a prosecution, particularly if the case is serious.
30. This may occur where a further review of the original decision shows that it was wrong and in order for the public to maintain confidence in the prosecution process, a prosecution should be brought despite the earlier decision.
31. There may be occasions where a case has been stopped, but further evidence has come to light and after a review of the evidence a prosecutor decides that the Prosecution Test has been passed.

David Rees AM
Chair
External Affairs and Additional Legislation Committee

2 June 2017

Dear David

Great Repeal Bill White Paper

Thank you for your letter inviting our Committee to contribute to your inquiry into the Great Repeal Bill White Paper ('the White Paper').

While the Committee has not done any specific work on the White Paper, we currently have an inquiry looking at human rights in Wales and therefore our comments on the White Paper focus on this area. Our comments are clearly made in the context of the forthcoming general election, and are based on the current UK Government's position.

Our inquiry is looking at:

- the impact of the UK's **withdrawal from European Union** on human rights protection in Wales,
- the impact of the UK Government's proposal to repeal the Human Rights Act 1998 and replace it with a **UK Bill of Rights**, and
- **public perceptions** about human rights in Wales, in particular how understandable and relevant they are to Welsh people.

We held a public, written consultation, and had two oral evidence sessions so far. Following the evidence sessions, we wrote to the Cabinet Secretary for Finance and Local Government highlighting some of the issues arising. We have now



received a response to this letter, which I enclose. We welcome the Welsh Government's clear commitment, in this letter, to maintaining human rights protections.

We welcome the commitment in the White Paper that all the protections covered in the Equality Act 2006 and the Equality Act 2010 will continue to apply once the UK has left the EU. We also welcome the UK Government's commitment that the UK's leading role in protecting and advancing human rights will not change.

We have received evidence expressing concerns about the status of the Charter of Fundamental Rights post Brexit. We understand that the Charter will no longer have any legal status in the UK, and the White Paper makes clear that the Charter will not be converted into UK law by the Great Repeal Bill. The White Paper also states that the removal of the Charter will not affect the substantive rights that individuals already benefit from in the UK. However, once the UK has left the EU, law in the UK would not have to be compliant with the Charter, and in light of this respondents emphasised the importance the Charter has in protecting human rights in Wales.

They identified a range of rights that are protected by the Charter but not covered by the Human Rights Act; and highlighted that removal of Charter rights will remove a route for citizens in the UK to challenge UK law which they believe infringes on the protections within the Charter. The EHRC stated that claiming for a breach of human rights under EU law can be easier than claiming against the Human Rights Act. We note that the Welsh Government has 'real concerns about the outgoing UK Government's intentions in respect of the Charter of Fundamental Rights'.

In oral evidence, Professor Thomas Glyn Watkin described to the Committee his concerns that while rights will be protected at the point of exit, there is risk that the UK will fall behind as the EU framework for human rights continues to be developed. This is a concern that the Committee shares, and we believe further



thinking should be given to ensuring that UK remains a world leader in human rights protections.

Professor Simon Hoffman also noted that while the White Paper talks about the importance of the negotiations on the future of children, there is no detail or indication about the priorities of children. He urged the Welsh Government to prioritise ensuring that children have a voice in the negotiations and that children's interests are prioritised. This is a call we would support.

Written respondents also raised concerns that going forward the UK will not benefit from directives and regulations around accessibility and the significant impact this could have on citizens.

We note that in the Welsh Government's response to the White Paper, they highlight the potential impact of loss of EU funding for equality issues. Respondents to our consultation also raised concerns about this in relation to human rights, and we hope that the Welsh Government will prioritise this issue.

As we go forward with our inquiry, we will continue to share with you, any further information which we think may be of use to your committee. I am also copying in the Chair of the Constitutional and Legislative Affairs Committee for information.

Yours sincerely



John Griffiths AM
Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.



Carl Sargeant AM
Cabinet Secretary for Communities and Children

12 May 2017

Dear Carl,

Abolition of the Right to Buy and Associated Rights (Wales) Bill

Thank you for your recent letters providing additional information in relation to the Abolition of the Right to Buy and Associated Rights (Wales) Bill ('the Bill').

At yesterday's meeting, the Committee agreed that I should write to you seeking clarification on a number of issues ahead of your evidence session on 25 May.

- In developing the Bill's proposals:
 - what work did the Welsh Government undertake to consult with tenants and how did you ensure that a broad spectrum of views were captured;
 - whether you sought views of tenants in areas where the right to buy and the right to acquire has already been suspended, and whether their views were sought on lifting the suspension to enable them a final opportunity to purchase their homes ahead of the proposed abolition;



- We have received evidence from stakeholders noting that tenants residing in local authority areas, where the right to buy (and associated rights) have already been suspended under the Housing Measure 2011, will not be given a further opportunity to exercise those rights. (Under the Bill, other tenants will be given a period of at least one year to exercise their rights.) Could you provide details of what legal consideration has been given by you in terms of:
 - the legitimate expectations of the affected tenants in the suspended areas, if they were only consulted in terms of suspending their rights and not abolishing them ;
 - the tenant’s human rights in terms of Article 1 Protocol 1 of the European Convention on Human Rights. Paragraph 3.33 of the Explanatory Memorandum entitled Human Rights states that the Welsh Government considers twelve months for tenants to exercise their rights as being a period that “strikes the necessary fair balance between the rights of the tenant and the wider public interest in safeguarding the stock of social housing.” How do you justify tenants in those suspended areas having no time to exercise their rights;
 - the tenant’s human rights in terms of discrimination under Article 14 of the European Convention of Human Rights where tenants living in different local authority areas will be treated differently; and
 - the risk of possible Judicial Review litigation being initiated by affected tenants in those areas currently suspended, as highlighted in evidence we have received.

- In your letter dated 30 April, you helpfully clarified the purpose and intended effect of sections 2 and 4 of the Bill. Following on from this, we would like you to outline why these sections have been drafted to refer to restricting the Right to Buy and associated rights unless it’s a dwelling house from ‘previously-let stock’. For clarity could these sections instead



refer to the Right to Buy and associated rights in respect of “dwelling houses that are new to the social housing stock”?

It would be helpful if you could respond ahead of the 25 May meeting and preferably by Thursday 18 May.

Yours sincerely



John Griffiths AM
Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.



Carl Sargeant AC/AM
Ysgrifennydd y Cabinet dros Gymunedau a Phlant
Cabinet Secretary for Communities and Children



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA-L-CS-0361-17

John Griffiths AM
Chair Equalities, Local Government and Communities Committee
National Assembly for Wales

22nd May 2017

Dear John

ABOLITION OF THE RIGHT TO BUY AND ASSOCIATED RIGHTS (WALES) BILL

Thank you for your letter of 12 May following my recent letters about the Abolition of the Right to Buy and Associated Rights (Wales) Bill.

In your letter, you asked for clarification on a number of matters ahead of my evidence session on 25 May. I have set out the additional details below.

Consultation

Consultation on the proposal to abolish the right to buy was undertaken across Wales, including in all areas in which the right to buy has been suspended.

The Welsh Government's substantive consultation on the proposals for the Right to Buy and associated rights was conducted through the Housing White Paper 'The Future of the Right to Buy and Right to Acquire', between January and April 2015. The White Paper was published on the Welsh Government's website and sent to a wide range of stakeholders, including organisations representing landlords, tenants and the third sector. As mentioned in Part 1 (4) of the Explanatory Memorandum for the Bill, 94 responses were received from a wide range of respondents, including 30 from tenants of social landlords.

Additionally, stakeholder sessions were held between September 2015 and February 2016. These sessions included organisations representing tenants and Shelter Cymru. Welsh Tenants emphasised the need for an adequate supply of social rented housing to meet the needs of those who cannot afford to acquire a home through the housing market. It was with the support of the tenants' representative organisations (Welsh Tenants and TPAS Cymru) that the duty for information to be issued to all tenants was added to the face of the Bill.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Shelter Cymru favoured a window of opportunity for eligible tenants in areas where suspension is in place. Conversely they, along with the tenants' representative organisations, were also supportive of the use of the 2011 Measure.

The Measure requires local authorities to consult stakeholders as part of the process of applying for suspension, including bodies representing the interests of tenants within the authority's area and such other persons as the authority considers appropriate.

In order for the right to buy to be suspended, a local authority needs to have evidenced that the demand for social housing substantially exceeds its supply or is likely to do so, and that imbalance between supply and demand is likely to increase as a result of the exercise of the right to buy.

European Convention on Human Rights – Suspended Areas

The Government does not consider that tenants in areas where the right to buy is suspended, have a possession for the purposes of Article 1 of the First Protocol (A1P1).

However, we are satisfied that even if A1P1 were to apply, that the provisions of the Bill, insofar as they work in the context of suspended areas would be compliant with A1P1 and tenants' Convention rights.

The provisions contained in the Bill were designed to give effect to the policy of ending the right to buy, and in doing so we are satisfied that the proposals are Convention rights compliant. This is not the same as saying that the proposals in the Bill, in particular in respect of the one year period before abolition, are necessary for the Bill to be Convention rights compliant.

Article 1 of the First Protocol

A1P1 provides that every natural or legal person is entitled to peaceful enjoyment of their possessions. No one shall be deprived of their possessions except in the public interest and subject to the conditions provided for by law and the general principles of international law. This does not prevent a state enforcing such laws as it deems necessary to control the use of property in accordance with the general interest. In considering whether an interference with a person's possession is compliant with A1P1 the general test is whether:

- the measures taken are in pursuit of a legitimate aim in the public interest;
- the measures taken are reasonable and proportionate and in pursuit of that aim; and
- they strike the "necessary fair balance" between affected parties (see *Mellacher v Austria* (1989) ECHR 10522/83).

In establishing a legitimate aim, States have a wide margin of appreciation in the field of social justice, including social housing (see *James v UK* [1986] ECHR 8793/79).

The legitimate public aim being sought is the protection of social housing stock. Whilst the proposals in the Bill may affect existing tenants directly, the policy is intended to benefit existing tenants, tenants currently on waiting lists, homeless people and any individuals who may find themselves in a position of needing to rely on social housing stock in the future. Whilst there are tenants in areas in which the right to buy has been suspended, and tenants in areas that can still exercise the right to buy, as stated above, where suspension already exists, local authorities will have needed to demonstrate acute levels of housing pressure and a substantial imbalance in supply and demand.

Tenants will also have been consulted upon suspension and have had the opportunity to buy the bricks and mortar in their homes, prior to suspension taking effect.

Local authorities and RSLs in areas where suspension has arisen will have developed business plans on that basis, and have taken action to implement those plans and ensure the delivery of social housing for those most in need of it. To reverse suspension would have the effect of acting in a manner which, albeit temporarily, ignores the fact high pressure for homes exists.

The proposals in the Bill also need to be considered in a wider context. The ending of the right to buy will not affect tenants' rights to occupy their homes; tenants will still have security of tenure and affordable rents, and will benefit from the investment by landlords to bring all social housing up to the WHQS. There are also a range of other measures being taken by the Government to assist access to housing in a variety of tenures, for example Help to Buy – Wales and Homebuy. The Government and social landlords are also investing in new social housing stock which will be safeguarded for future generations by removing the obligation on a landlord to sell their assets at a discount.

The equality and children's rights impact assessments (published on the Welsh Government's website) also show a positive impact as a result of the Bill, and the proposals in the Bill are fully aligned with the principles of the Well-being of Future Generations (Wales) Act 2016.

To summarise, the Government is content that all of the proposals contained in the Bill, including their impact on tenants in both suspended and other areas, are in pursuit of a legitimate aim in the public interest, are reasonable and proportionate in pursuit of that aim, and strike the necessary fair balance. Therefore, the Government considers the provisions in the Bill are compatible with Convention rights and are within the Assembly's competence.

Article 14

Article 14 provides "*the enjoyment of the rights and freedoms set forth in this European Convention on Human Rights shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status*". Article 14 does not provide for a free-standing right to non-discrimination but requires that all other Convention rights are secured without discrimination. As stated, the Government considers that A1P1 does not apply in respect to tenants in suspended areas, on which basis neither does Article 14. However, even if it did, the Government does not believe that there would be discrimination on any of the grounds listed, and in any event the circumstances of tenants in the different areas are not analogous.

Scotland also had areas in which the right to buy was suspended prior to abolition, which took place in 2016. Those suspensions were not lifted prior to abolition. I understand there has not been any formal complaint on Human Rights grounds in Scotland.

Tenants of Suspended Areas - Legitimate Expectation

There has been wide consultation in respect of abolition of the right buy, and the policy was included in Labour and Plaid Cymru's manifesto prior to the election in May 2016. We do not consider that tenants could reasonably expect that the suspensions would come to an end prior to abolition.

A direction suspending the right to buy in an area under the Housing (Wales) Measure 2011 can last initially for five years, extendable to ten. All applications for suspension so far have been for five years.

The abolition of the right to buy was included in the manifestos of both Welsh Labour and Plaid Cymru prior to the Assembly election in 2016. At no point has the Government made any promise or representation that suspensions would be lifted before abolition. Therefore, given the wide publicity of, and consultation on, the Government's proposals to abolish the right to buy, we do not think that any tenants could reasonably say that they have an expectation that the suspension will be lifted prior to abolition (whether after five years, or ten years, if extended) and that an opportunity to exercise the right to buy would be available at that point.

Judicial Review

We cannot comment on the action individuals may take in bringing any action for judicial review. That is a matter for those individuals. However, we can reiterate that we consider the Bill to be within the Assembly's legislative competence and compliant with Convention rights to the extent that they arise.

"Previously let stock"

Thank you for your comments in respect of sections 2 and 4 of the Bill. We appreciate that these provisions are complex and the Government has endeavoured to draft them as simply as possible. However, there are some constraints due to the need to deal with the intricacies of existing legislation, with complexities arising in particular in relation to the preserved right to buy, and due to the need to carve out some exceptions from the general rule restricting the right to buy.

We did consider phrasing these sections with reference to "newly let stock", and in fact an earlier draft of the Bill was produced on this basis. The definition of "newly let stock" was necessarily still framed in reference to stock that was not 'existing stock', though, ie previously let stock. So it was not possible to avoid this concept altogether. In addition, we found that dealing with the complexities of the exception and the preserved right to buy was conceptually complicated by this approach. So, for drafting reasons, the alternative approach in the Bill was adopted.

I hope this information is helpful and look forward to attending the Committee's meeting on 25 May.

Yours sincerely



Carl Sargeant AC/AM

Ysgrifennydd y Cabinet dros Gymunedau a Phlant
Cabinet Secretary for Communities and Children

Agenda Item 3.6

Alun Davies AC/AM
Gweinidog y Gymraeg a Dysgu Gydol Oes
Minister for Lifelong Learning and Welsh Language



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA-L/ARD/0378/17

Huw Irranca-Davies AM
Chair of the Constitutional and Legislative Affairs Committee
Ty Hywel
National Assembly for Wales
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CF99 1NA

7 June 2017

Dear Huw,

Thank you for the Constitutional and Legislative Affairs Committee's report on the Additional Learning Needs and Education Tribunal (Wales) Bill.

I am grateful to the Committee for the time they have taken in producing this report, which I hope we can use to strengthen the Bill and the system of support for children and young people with additional learning needs that it sets out.

The Committee's recommendations will now require careful deliberation and discussion. Once I have considered the report in detail, I will write to you again outlining my response to each of its recommendations.

Yours sincerely

Alun Davies AC/AM
Gweinidog y Gymraeg a Dysgu Gydol Oes
Minister for Lifelong Learning and Welsh Language

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

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Agenda Item 6

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