

Communities, Equality and Local Government Committee

Meeting Venue:
Committee Room 2 – Senedd

Meeting date:
31 January 2013

Meeting time:
09:30

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



For further information please contact:

Bethan Davies
Committee Clerk
02920 898120
CELG.committee@wales.gov.uk

Agenda

1. Introductions, apologies and substitutions

2. Local Government (Democracy) (Wales) Bill (Stage 1): Evidence Session Wales Audit Office (9:30–10:15) (Pages 1 – 7)

- Anthony Barrett, Assistant Auditor General
- Martin Peters, Compliance Manager

3. Local Government (Democracy) (Wales) Bill (Stage 1): Evidence Session Public Services Ombudsman for Wales (10:15–11:00) (Pages 8 – 10)

- Peter Tyndall, Public Services Ombudsman
- Elizabeth Thomas, Director of Investigations and Legal Adviser

4. Motion under Standing Order 17.42 to resolve to exclude the public from the remainder of the meeting (11:00–11:00)

5. Inquiry into the Welsh Government's historic environment policy: Key Issues (11:00–11:30) (Pages 11 – 59)

6. Regulated Mobile Home Sites (Wales) Bill: Further consideration of evidence (11:30–12:00)

7. Papers to note (Pages 60 – 61)

Regulated Mobile Home Sites (Wales) Bill: Letter from Peter Black AM (Pages 62 – 63)

Regulated Mobile Home Sites (Wales) Bill: Convention of Human Rights (Pages 64 – 68)

Regulated Mobile Home Sites (Wales) Bill: Letter from the Minister for Housing, Regeneration and Heritage (Pages 69 – 70)

Annexe 1

Local Government (Democracy) (Wales) Bill

Consultation Response Form



As part of its Stage 1 consideration, the National Assembly for Wales' **Communities, Equality and Local Government Committee** is calling for evidence on the general principles of the ***Local Government (Democracy) (Wales) Bill***.

Please return this form to the National Assembly for Wales, by 31 January 2013. Should you have any queries please contact Bethan Davies, Clerk 02920 89 8120 or Leanne Hatcher, Deputy Clerk 029 2089 8147.

Responses should be sent to:

CELG.committee@wales.gov.uk

Or by post:
Leanne Hatcher
Legislation Office
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Cardiff Bay
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CF99 1NA

Your name: Martin Peters

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Telephone number: 02920 320 526

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The Local Government Boundary Commission

Question 1: Is there a need for a Bill to make changes to the constitution and functions of the Local Government Boundary Commission for Wales (“the Commission”) and to make various provisions relating to local government?

Yes

No

Please expand on your answer

The key need for legislation is that the existing legislation results in the Commission having to complete reviews to an unreasonably demanding timetable and within the unhelpful restriction of being unable to change community boundaries. While this timetable issue could be addressed through Ministerial orders under the 1972 Act, such orders could not address the community boundaries issue. Reliance on Ministerial orders may in any case be undesirable from the point of view of public confidence in the work of the Commission.

We also consider that new legislation is a reasonable way of accelerating the provision of electronic access to community council information to such an extent that it can be ensured within a reasonably short timescale (c. 2 years). This is appropriate as adequate electronic communication with the public is lacking among a significant number of community councils.

Question 2: Do you think the Bill will improve the delivery of the statutory roles and functions of the Commission? (paragraph 3.1 of the explanatory memorandum)

Yes

No

Please expand on your answer

In allowing a continuous cycle of review, the Bill should help the Commission to achieve a more consistent and sustainable approach. The Bill should also help by supporting improved consultation procedures on boundary review proposals.

Question 3: Do you think the changes being made to the Commission are appropriate? (Part 2 of the Bill)

Yes

No

Generally, yes. Raising the quorum to three should help ensure a good standard of decision making. But to help ensure harmonious administration of the Commission it may be preferable for the Chief Executive to be appointed by the Commission rather than the Welsh Ministers.

Local Government arrangements

Question 4: Do you think the provisions relating to procedures for local government reviews are appropriate? (Chapter 4 and 5)

Yes	No
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Please expand on your answer

Generally, yes. It seems appropriate that the provisions for local government reviews include a requirement for the Commission to consult on the intended procedure and method of the review, particularly with regard to determining the appropriate number of members of councils. It should, however, be helpful for transparency and public engagement if the Commission were also to be required to publish its intended procedures and methods electronically (and by other media on request).

It also seems appropriate that reviewing bodies are required to consult on draft proposals for the area under review, including publishing them electronically.

It should be helpful for transparency and public trust and confidence if there were additional provision in the Bill requiring the Welsh Ministers and the Commission on receiving reports (as the case may be) to publish reasons for not implementing recommendations or for implementing them with modifications.

Question 5: Do you think the arrangements for local government in relation to:

- Duties of the Commission
- Duties of a principal council

are appropriate? (Chapter 1)

Yes	No
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Please expand on your answer

On the whole, yes, but as well as seeking to ensure effective and convenient local government, it would be appropriate for the Commission and principal councils to have regard to the need for economy and efficiency in local government. Such additional provision would be a safeguard against the Commission and councils from making proposals that are effective and convenient but unduly expensive. We believe that such consideration is already likely to be in view, but explicit provision may be a helpful additional protection.

Question 6: Do you think the arrangements for local government in relation to:

- Democratic Services Committees (Section 56)
- Audit Committees (Section 57)
- Standards Committees (Section 63)

are appropriate?

Yes

No

Please expand on your answer

The provisions in relation to democratic services committees seem to be beneficial in terms of local determination of working practices to best suit prevailing circumstances.

The clarification of the composition of audit committees should be helpful from the point of view of avoiding protracted debate.

The provision for regional standards committees should be helpful in terms of ensuring the availability of suitable independent members, efficiency and consistency of approach.

Independent Remuneration Panel for Wales

Question 7: Do you think the provisions relating to the Independent Remuneration Panel for Wales are appropriate? (Chapter 5, Sections 58-62)

Yes

No

Please expand on your answer

The provisions appear to provide useful streamlining of the specification of senior salary limits and in considering particular cases.

Access to information (Town and Community Councils)

Question 8: Do you think the provisions relating to improving access to information (Town and Community Councils) are appropriate?			
Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>
Please expand on your answer			
<p>It is clear that significant numbers of community councils do not provide an adequate level of electronic communication regarding their proceedings. Legislation would be a realistic means of accelerating the provision, which would be helpful in promoting public engagement. The scope for sharing website provision should be helpful for enabling an economical approach to communication, though it might be helpful if provisions made this option clearer by mentioning it explicitly. The section title "community council websites" could be inferred by some as requiring individual councils to maintain their own websites. A better title might be "Electronic provision of information by community councils".</p> <p>The timescale envisaged (May 2015) seems realistic, though it might be helpful for clarity to put the commencement date for these provisions on the face of the Bill.</p>			

Chairing of Principal Councils (Chairs and Mayors of Principal Councils)

Question 9: Do you think the provisions relating to the Chairing of Principal Councils (Chairs and Mayors of Principal Councils) are appropriate?			
Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>
Please expand on your answer			
<p>The provisions appear to meet their objective of allowing the separation of ceremonial functions from those of presiding over meetings, which itself seems reasonable.</p>			

General Provisions of the Bill

Question 10: What are the potential barriers to implementing the provisions of the Bill (if any) and does the Bill take account of them?

Please expand on your answer

We consider that the main barrier to implementation will be in respect of community council electronic access. The explanatory notes helpfully indicate that the commencement of these provisions (sections 53 and 54) will be in May 2015, which should allow a realistic amount of time for community councils to make arrangements, but this is not on the face of the Bill.

A significant proportion of council clerks are likely to require some form of training or assistance to ensure that they can provide materials electronically, even if they are to have websites provided by another person. There may also be some cultural inertia to overcome, including councils' fears of being swamped by email enquiries. It may be helpful for Government guidance to address those issues, and particularly to include coverage of means of dealing with vexatious correspondence.

The potential costs associated with providing online access to documents may also be an issue for smaller councils. Approximately 22% of community councils spend less than £5,000 per year while a further 19% spend between £5,000 and £10,000 per year. The additional ongoing cost of £1,000 per annum may be seen as a significant additional cost for these councils.

Question 11: What are the financial implications of the Bill, if any? In answering this question you may wish to consider Part 2 of the Explanatory Memorandum (the Impact Assessment), which estimates the costs and benefits of implementation of the Bill.

Please expand on your answer

The financial implications of the Bill appear generally to be reasonably assessed in the explanatory memorandum. We do not, however, think it is likely that requiring electronic provision of information by community councils is likely to lead to any significant compensating savings from removing the need for papers and hard copies. Paper based notices and minutes etc will still be required. There are also likely to be some additional costs arising from dealing with increased levels of engagement by the public, such as clerk time in dealing with email enquiries.

We see merit in there being somewhat more extensive post implementation review. For example, in relation to the community council access to information provisions, useful lessons on co-operation and public engagement might be identified by undertaking an evaluation study of community councils' access arrangements, including assessing procurement and impact on the public. We estimate that such an evaluation study would cost in the region of £50,000, but could lead to some savings from procurement lessons and improved service.

Question 12: What are your views on powers in the Bill for Welsh Ministers to make subordinate legislation (i.e statutory instruments including regulations and orders) (section 5 of the Explanatory Memorandum)?

Please expand on your answer

These appear to be appropriate.

Question 13: Are there any other comments you wish to make about specific sections of the Bill?

The finance provisions for the Commission, including for accounts and audit, (clauses 15 to 20) are appropriate.

**Evidence of the Public Services Ombudsman for Wales
to the National Assembly for Wales's Communities, Equality and
Local Government Committee
on the Local Government (Democracy) (Wales) Bill**

1. Introduction

- 1.1 I pleased to have the opportunity to provide evidence in respect of the Communities, Equality and Local Committee's scrutiny of the Local Government (Democracy) (Wales) Bill.
- 1.2 As Public Services Ombudsman for Wales, I have two roles. The first is to investigate complaints made by members of the public who believe they have suffered hardship or injustice through maladministration or service failure on the part of a body in my jurisdiction. The second is to consider complaints alleging that members of local authorities have broken their Code of Conduct. My comments are based on my experience in both of these roles.

2. The Local Government Boundary Commission

- 2.1 The current Local Government Boundary Commission for Wales is outside of the jurisdiction of the Public Services Ombudsman for Wales. This has previously been identified as something of an anomaly. I am pleased therefore that the Bill brings the Commission in its new form of the Local Democracy and Boundary Commission for Wales within the Ombudsman's jurisdiction. This means that the Ombudsman will in future be able to accept for consideration complaints about maladministration or service failure by this public body.

3. Other Changes to Local Government

- 3.1 **Access to Information** – I welcome the elements of the Bill that require community councils to make available electronically information on how to contact the council to the public. Community councils come within the jurisdiction of my office. Finding up to date contact details and information about the 730 or so town and community councils in Wales is not always easy. It also presents difficulties when seeking to signpost members of the public making enquiries about these authorities to the right place. A website presence of some form is important in today's world. Whilst I understand that some town and community councils are small and have limited resource, there are possibilities that other organisations, such as principal authorities, could host these on their behalf. However, they would need to do so in a way that would enable the relevant web pages to be returned prominently in any results from an internet search engine.

3.2 Joint Standards Committees –

3.2.1 In my role of considering complaints alleging that members of local authorities have broken their Code of Conduct I have on a number of occasions expressed my concern about certain aspects of the current local government ethical framework. The proposal in relation to joint standards committees will at least address some of those concerns.

3.2.2 By way of background information, outcomes of cases which I have referred to standards committees over recent years are as follows:

Year	No. of referrals	Outcome and Sanction applied by Standards Committee (if any)
2012/13 to date	12	Breach x 3: <ul style="list-style-type: none"> • 3 month suspension x 1 • 28 day suspension x 1 • Censure x 1 (9 cases yet to be heard)
2011/12	15	Breach x 14: <ul style="list-style-type: none"> • 6 month suspension x 1 • 18 week suspension x 1 • Censure x 8 • No action x 4 (1 case yet to be heard)
2010/11	16	Breach x 14: <ul style="list-style-type: none"> • 6 month suspension x 1 • 3 month suspension x 1 • 2 month suspension x 1 • 1 month suspension x 1 • 28 day suspension x 1 • Censure & training x 1 • Censure x 5 • No action x 3 No evidence of breach x 1 No case to answer x 1

3.2.3 Some of the problems that I as Ombudsman have witnessed in relation to the current standards committee arrangements are:

- (a) Standards committees sometimes face problems in forming suitably ‘independent’ committees. For example, sometimes the whole council has been involved in the matter complained about. This occurred in a recent complaint I investigated which concerned remarks which had been made during a council meeting and the members who were present at the meeting were witnesses who had been contacted by my investigator during the investigation. I consider that the rules of natural justice dictate that it would not be appropriate for those members who witnessed the events and who are also members of the council’s standards committee to play any part in any subsequent hearing of the matter. One member who was a witness in the recent case was extremely unhappy about this and whilst he eventually heeded his Monitoring Officer’s advice to play no part in the hearing had he not done so the hearing might have been prejudiced.

- (b) Some local authority standards committees are rarely called to consider code of conduct complaints. This leads to a position where members are insufficiently au fait with procedures and that lack of familiarity can lead for example to lenient sanctions in what I consider to be serious breaches of the Code. A couple of case examples to illustrate this point are:

A member of a community council attended meetings of his council and of the relevant national park authority concerning the draft Local Development Plan (LDP), despite having both a personal and prejudicial interest in the matter because he had submitted land in his ownership to be included in the LDP. He should therefore have declared his interest and taken no part in any discussions concerning the draft LDP. I considered the breaches of the code to be serious and ones that would cause public concern. However, the Standards Committee took the view that no action needed to be taken against the member.

A member of a county borough council disclosed confidential information which had been revealed to her in her role as cabinet member for education relating to a fellow councillor's employment during an exchange she had with him in a council meeting. Although the cabinet member was a very experienced member and the information which was disclosed in the public arena could have affected the fellow councillor's future employment prospects the standards committee censured the member and did not impose any period of suspension.

- (c) Some authorities, such as fire authorities, have called into question the need for them to constitute standards committees so rarely do they have call to meet to discuss complaints about failure by their members to adhere to their Code of Conduct, if ever.

3.2.4 In each of these scenarios above, the proposed arrangement for joint standards committees would help to resolve the issues identified. Joint standards committees could:

- overcome the problems of conflict of interest and constituting appropriately 'independent' committees for standards hearings and issues
- build the necessary expertise so that unduly lenient sanctions of the type that currently happen do not occur in the future
- address the concerns of those authorities who feel that they are unnecessarily required to constitute a standards committee because they rarely if ever have to meet. The proposal contained in the Bill would allow such authorities to access a joint standards committee should they require it.

3.2.5 I also believe that a joint standards committee arrangement would strengthen public confidence in high standards of conduct within local democracy.

Finally, if the National Assembly for Wales's Communities, Equality and Local Government Committee would find it helpful, I would be happy to discuss further the above comments.

**Public Services Ombudsman for Wales
January 2013**

By virtue of paragraph(s) vi of Standing Order 17.42

Document is Restricted

By virtue of paragraph(s) vi of Standing Order 17.42

Document is Restricted

Agenda Item 7

Communities, Equality and Local Government Committee

Meeting Venue: **Committee Room 3 – Senedd**

Meeting date: **Wednesday, 23 January 2013**

Meeting time: **09:30 – 11:41**

This meeting can be viewed on Senedd TV at:
<http://www.senedd.tv/archiveplayer.jsf>

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Concise Minutes:

Assembly Members:

Ann Jones (Chair)
Peter Black
Janet Finch-Saunders
Mike Hedges
Mark Isherwood
Gwyn R Price
Ken Skates
Rhodri Glyn Thomas
Joyce Watson
Jocelyn Davies

Witnesses:

Lyn Cadwallader, One Voice Wales
Robert Robinson, Town Clerk, Welshpool Town Council
Mariette Roberts, Towyn & Kinmel Bay
Stephen Brooks, Electoral Reform Society Wales
Owain ap-Gareth, Electoral Reform Society Wales
Darren Hughes, Electoral Reform Society Wales

Committee Staff:

Bethan Davies (Clerk)
Leanne Hatcher (Deputy Clerk)
Rhys Iorwerth (Researcher)
Gwyn Griffiths (Legal Advisor)

1. Introductions, apologies and substitutions

- 1.1 The Chair welcomed the Committee Members, witnesses and public to the meeting.
- 1.2 The Chair said that apologies for absence had been received from Lindsay Whittle. The Committee welcomed Jocelyn Davies who was substituting for him in accordance with Standing Order 17.48.

2. Local Government (Democracy) (Wales) Bill (Stage 1): Evidence Session 3

2.1 The Committee received evidence from One Voice Wales and the North Wales Association of Town and Larger Community Councils.

3. Local Government (Democracy) (Wales) Bill (Stage 1): Evidence Session 3

3.1 The Committee received evidence from the Electoral Reform Society Wales.

Agenda Item 7a

Letter from Peter Black AM 17 January 2013

Dear Ann,

Thank you for your letter of 16 January concerning the Minister's evidence to the Constitutional and Legislative Affairs Committee on 14 January.

As you know I have been in discussions with Government officials about amendments to the Bill which would reduce the amount of secondary legislation. At the last meeting it was suggested that they produce amendments that would unify the 1960 licensing system with the one I proposed by importing large chunks of the 1960 Act into my bill. I agreed that this was an acceptable approach provided that key features of my bill remained.

I was therefore, shocked to see this agreement misrepresented in the CLA Committee as one that would be an English and Wales licensing system with just a fit and proper person text added on. I had never agreed to that and believe that such an approach would remove some critical aspects of my bill.

Accordingly I e-mailed the civil servant concerned to outline my concerns. In that e-mail I said:

"I would suggest we need to clarify where we are going with these amendments at another meeting as soon as possible please? To be clear, any amended Bill should still contain the following features:

1. A five year licence subject to a fee which can resource enforcement activity and which is payable again on renewal.
2. Fit and proper Person test applying to the manager of the regulated site
3. Management regulations that set out how the site should be managed and enables the licensing authority to issue management orders on the running of the site
4. Involvement of the RPT in appeals and other determinations as per section 16 and 18(4)
5. Enforcement provisions and the rights for local authorities to serve notices on site owners to carry out work and to act to undertake that work in default if necessary as well as powers of entry
6. The end to the veto on sales alongside provisions to protect the paying over of the commission and to ensure the purchaser receives information about the agreement and the site rules ahead of completion as per Schedule 1 section 4
7. Protection of the anonymity of the residents association members as set out in the current bill as per section 30 of my bill and also Schedule 1 section 9
8. A fixed penalty option for licensing authorities
9. Provisions in relation to operating an unlicensed site, including repayment orders as per sections 25 and 26 of my bill

10. Protection for residents from the passing on to them of any costs incurred as a consequence of the bill as per Schedule 1 section 6
11. That pitch fees will henceforth only be increased in line with CPI rather than RPI Schedule 1 section 7
12. Protection for the home owner in terms of the movement of their home by the site owner as per Schedule 1 section 5
13. Provision on rights of succession as per Schedule 1 section 2
14. Protection for the mobile home owner to carry out internal improvements as per Schedule 1 section 8”

I have had a response to the effect that the official concerned will review the record and get back to me. I understand also that my e-mail has been copied to a government lawyer.

My view is that whereas we can unify the two licensing regimes it is vital that the 14 provisions outlined above remain in the bill. I believe that is in line with the outcome of the consultation and also with representations made to me since I won the ballot for this bill. I also believe that these provisions will transform the Mobile Home Industry within Wales for the better and will benefit residents and site owners alike.

I hope that this is helpful. I have copied this e-mail to my team and also to the Minister and his official for information.

Yours

A handwritten signature in black ink, appearing to read 'Peter Black', written in a cursive style.

Peter Black AM

Agenda Item 7b

Paratowyd y ddogfen hon gan gyfreithwyr Cynulliad Cenedlaethol Cymru a'r Gwasanaethau Ymchwil er mwyn rhoi gwybodaeth a chyngor i Aelodau'r Cynulliad a'u cynorthwyr ynghylch materion dan ystyriaeth gan y Cynulliad a'i bwyllgorau ac nid at unrhyw ddiben arall. Gwnaed pob ymdrech i sicrhau bod y wybodaeth a'r cyngor a gynhwysir ynddi yn gywir, ond ni dderbynnir cyfrifoldeb am unrhyw ddibyniaeth a roddir arnynt gan drydydd partïon.

This document has been prepared by National Assembly for Wales lawyers and Research Services in order to provide information and advice to Assembly Members and their staff in relation to matters under consideration by the Assembly and its committees and for no other purpose. Every effort has been made to ensure that the information and advice contained in it are accurate, but no responsibility is accepted for any reliance placed on them by third parties

Regulated Mobile Home Sites (Wales) Bill

Background

- 1) The Communities, Equality, and Local Government Committee (the Committee) is considering the Regulated Mobile Home Sites (Wales) Bill (the Bill) at Stage 1 of the Assembly's Legislative Process.
- 2) The Bill is the subject of on-going consideration and discussions between Peter Black AM and his Team, and Huw Lewis the Minister for Housing, Regeneration, and Heritage and Welsh Government Officials.
- 3) The Committee's scrutiny of the Bill and all the oral and written evidence provided to the Committee thus far, has been carefully followed and noted by the Member in Charge and his Team.
- 4) In taking forward the Bill, all the recommendations the Committee will make in its forthcoming published Report will also be carefully considered.

Context

- 5) At the evidence session on 9th January 2013, the Committee raised a specific issue about whether or not section 7(3)(b) of the Bill as currently drafted breaches Article 1 of Protocol 1 of the European Convention on Human Rights (ECHR). In particular it requested a note from the Member in Charge's legal advisers in relation to this issue. This note is provided in response to that request.
- 6) Section 7(3)(b) of the Bill as currently drafted sets out the matters that a site licensing authority must take into account when deciding whether or not to grant or refuse a site licence.

The relevant matters include:-

- 7) *“(b) that the licence holder is a fit and proper person to be the owner of a regulated site”.*
- 8) Section 9 of the Bill sets out criteria that the licensing authority will have to apply in deciding whether the applicant is a “fit and proper person”. As the Bill is currently drafted, both the owner and the manager of the site will have to meet the fit and proper person test.
- 9) This test is based on the test applicable to licence holders and managers of Houses in Multiple Occupation (HMOs) as set out in section 66 of the *Housing Act 2004*. However, it is broader, in that it will also take into account discrimination on the grounds of any of the protected characteristics under section 4 of the *Equality Act 2010* (rather than the narrower list in the 2004 Act), i.e. discrimination on the grounds of: age; gender reassignment; marriage and civil partnership; pregnancy and maternity; religion or belief; and sexual orientation.

The European Convention on Human Rights (ECHR)

- 10) As stated above, the relevant right is Article 1 of Protocol 1 to the Convention, which states:-

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a state to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

- 11) So Article 1 of Protocol 1 protects citizens against:
- a) being deprived of their possessions – except lawfully, and in the public interest and subject to internationally accepted principles (such as the principle that there should normally be compensation where the State seizes property of individuals);
 - b) controls on the use of property that are not in the general interest (and, again, lawful) – i.e. that are oppressive or arbitrary.

- 12) Companies, as well as individuals, may rely on Article 1 of Protocol 1.
- 13) It must be stressed that the case-law of the European Court of Human Rights (ECtHR) allows the State has a wide “margin of appreciation” – i.e. a wide discretion – to implement social and economic policies that have the effect of controlling the use of property.
- 14) The concept of “property” or “possessions” in Article 1 has been very broadly interpreted by the ECtHR and the definition is not fixed. It has been held by the ECtHR to include intangible property that could be said to be similar to the right to run a mobile home site. In particular, the Article has been held to include a landlord’s entitlement to rent, the economic interests connected with the running of a business and the right to exercise a profession.
- 15) As the scope of Article 1 Protocol 1 is not fixed, it is impossible to advise categorically that the right to own and run a mobile home site is outside its scope, in the absence of clear case-law to that effect. Therefore, the Member in Charge is proceeding on the basis that the Article applies to this aspect of the Bill. That does not, however, mean that the Article is breached by section 7(3)(b) or section 9 of the Bill. This will be considered in the next section.

Do sections 7(3)b) and /or 9 of the Bill as drafted breach Article 1 of Protocol 1?

- 16) A control of the use of property will not breach Article 1 of Protocol 1 if it is:
 - (a) lawful (this means lawful in Welsh law, and also lawful in the sense of complying with the rule of law – so the legislation in question must be clear, must be publicly available, and normally, it must not have retrospective effect);
 - (b) pursuing a legitimate aim that is in the general interest;
 - (c) proportionate to this aim (i.e. strikes a fair balance between the protection of the individual’s right to property and the requirement of the general interest. A fair balance will not be struck where the individual property owner is made to bear “an individual and excessive burden”).

17) These criteria come partly from the wording of the Article itself, set out above, and partly from a long line of case-law in the ECtHR.

18) In one leading case ECtHR concluded that there is no deprivation of property if the owner remains able to use, let or sell it. If the owner has been deprived of part of his/her income from their property, that was a control on the use of the property, not a deprivation. Therefore, the control of use would be compatible with the Convention if it was done lawfully, was in the general interest, and was proportionate to the general interest pursued.

19) The ECtHR's judgment in this case is very relevant to the subject-matter of the Regulated Mobile Home Sites (Wales) Bill. The Court stated that, in order to implement social and economic policies, and especially in the field of housing, the legislature must have a wide discretion - both to determine that there is a problem of public concern warranting measures of control, and to choose the detailed rules for the implementing such measures of control.

20) The Court went on to consider whether the interference was justified under the criteria set out above – were they lawful, were they in the general interest and were they proportionate. Importantly for the Committee's consideration of the present Bill, the Court decided that the legislation in that case was compatible with Article 1 Protocol 1. It found that, although the control on property in question (rent reductions) was striking, it did not follow that it constituted a disproportionate burden, or that the legislature could not reasonably decide to impose them. This is of particular interest because the control imposed in this case changed contractual rents – i.e. it affected an existing legal regime.

21) Applying the ECtHR's criteria to section 7(3) (b) and 9 of the Bill, the Member in charge considers that they do not breach the Convention. The reason for introducing the fit and proper person test is to protect residents of mobile home sites in Wales from unacceptable treatment. The Explanatory Memorandum accompanying the Bill sets out more detail of the problems that the Bill, and the test in particular, seeks to achieve. In the Member's view, this is clearly a legitimate aim in the general interest, as interpreted in the relevant case-law. The fit and proper person test will be imposed by a clear and publicly available law – the Bill itself. And the fit and proper person test is a proportionate way of protecting mobile home residents: i.e. it is not excessively restrictive, and it does not impose an "individual or excessive burden" on site owners as opposed to other categories of person. This is evidenced by the fact that an equivalent test is imposed on licence-holders for houses in multiple occupation.

Conclusion

22) In the Member in Charge's view, the Bill as currently drafted is compatible with Article 1 of Protocol 1 of the Convention.

23) However, the Bill is subject to on-going discussions and consideration of relevant issues between the Member in Charge and the Minister for Housing, Regeneration, and Heritage. Amendments to the Bill are of course possible at Stage 2 or Stage 3 of the Assembly's legislative process. A copy of this note is being made available to the Minister's legal advisers, but the time available has precluded a discussion of its contents before its submission to the Committee.

24) The Member in Charge has already indicated that he is minded to lay an amendment which would mean that the fit and proper person test does not apply to the owner of the site, only to the manager. Although the Member in Charge considers that the Bill as drafted is compatible with the Convention, he recognises that such an amendment would be a further guarantee of the proportionality of the new fit and proper person test.

25) In considering any future amendments to the Bill, including any changes made to section 7(3)(b), Article 1 of Protocol 1 issues will be carefully considered.

Legal Services

National Assembly for Wales

18 January 2013

Huw Lewis AC / AM
Y Gweinidog Tai, Adfywio a Threftadaeth
Minister for Housing, Regeneration and Heritage



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref LF/HL/0040/13

Ann Jones AM
Chair
Communities, Equality and Local
Government Committee
Cardiff Bay
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CF99 1NA

23rd January 2012

Dear Ann,

Thank you for your letter dated 16 January 2013. I am responding to your request for further information on the suggestion I made at the Constitutional and Legislative Affairs Committee on 14 January 2013 that the Welsh Government proposes to table amendments to the Regulated Mobile Home Sites Bill (Wales).

First, let me emphasise that I remain fully supportive of the key features of the Bill. Any amendments tabled by the Welsh Government will be aimed at making the new regime simpler and more effective in operation, which I know will be important to Members of the Committee.

Since I appeared before the Communities, Equality and Local Government Committee in December, my officials have considered further how the Bill would work in practice, and listened to the evidence taken by the Committee. As a consequence I have concluded that, as currently drafted, the Bill would introduce an extra tier of licensing. This could make the licensing arrangements more complicated, overly bureaucratic and possibly confusing. Our intention is, therefore, to table amendments. The amendments we are considering would preserve the features of the existing, single tier licensing system as currently set out in the Caravan Sites and Control of Development Act 1960 but would create new provisions which would sit alongside the current arrangements. It is possible that we may also need to make similar changes to the other legislation governing park home sites including, amongst others, the Mobile Homes Act 1983.

My officials met recently with Peter Black to discuss, in broad terms, the amendments we propose. He agreed that the broad approach is acceptable. We are now working with our lawyers to find the most appropriate mechanisms for delivering these changes to existing legislation and to ensure that any changes we make do not have any unintended consequences. At the present time, we are unable to provide specific details on the precise changes that will be required but we have agreed to discuss these in great detail with Peter when they are finalised. In the meantime, I can confirm that it remains our intention to

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ensure that the Bill will include a "fit and proper person test" for site managers, collaborative working arrangements for local authorities, and further, the introduction of time limited licences will be considered. We will also include a requirement for Management Regulations setting out how sites should be managed and enforcement provisions in order to allow local authorities to act where sites are not being properly managed etc. In fact, I can envisage a situation where the vast majority of the existing Bill will be accommodated in government amendments wherever possible, the only difference being the Welsh Government's proposals will build on the existing licensing system.

I should also make it clear that whilst the Mobile Homes Bill is currently proceeding through Parliament, these Bills are entirely separate. There is no suggestion the measures in the Regulated Mobile Homes Sites (Wales) Bill will be made on a joint England and Wales basis. Whilst there are benefits in ensuring that legislation covering mobile homes sites share similarities, the provisions in this Bill only apply in relation to Wales. I know that Peter Black has already raised concerns about this issue with my officials.

I am copying this reply to Peter Black.

Yours sincerely,



Huw Lewis AC / AM

Y Gweinidog Tai, Adfywio a Threftadaeth
Minister for Housing, Regeneration and Heritage