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Welsh Affairs Committee

Review of the LCO Process

Fifth Report of Session 2009–10

Report, together with formal minutes

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The Welsh Affairs Committee

The Welsh Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Office of the Secretary of State for Wales (including relations with the National Assembly for Wales).

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Summary

In just over two years, the Legislative Competence Order (LCO) process has proved to be an effective way of responding to requests by the National Assembly for Wales to be given decision-making powers—legislative competence—over new areas of policy. In what is a relatively short time in legislative terms, twelve LCOs have been dealt with by the Welsh Affairs Committee with a further three currently under consideration. The LCO process has been criticised in some quarters as being unduly complex or slow, but this is simply untrue. It is a matter of fact that the normal process of primary legislation from draft Westminster Bill to Royal Assent for fifteen new proposals would have taken considerably longer. We note that the LCO process has been swift and flexible as far as the work of the Welsh Affairs Committee is concerned, and that it now provides a bridge between Parliament and the National Assembly for Wales.

Widespread misapprehensions and misunderstanding about the LCO process which exist in Wales can sometimes lead to a negative view of the procedure as a whole. In this Report we take the opportunity to highlight some of the strengths of the process. LCOs can be brought forward not only by the Welsh Assembly Government but also by backbench Assembly Members or by Assembly committees (an opportunity which does not exist at Westminster). Proposals for LCOs are subject to constructive scrutiny by Assembly committees and the House of Lords Constitution Committee as well as by ourselves. It is a matter of record that on every occasion so far the observations of these committees have been constructive, complementary and consensual, and the Welsh Assembly Government has responded positively. There is no doubt that almost all the LCOs so far passed into law have been improved as a result of the scrutiny process.

Further, as a result of our sustained involvement in the LCO process, we have been able to identify persistent difficulties that were evident in a number of early Orders, for example imprecise legal drafting or drafting that was inadequate or overly complex or sometimes both. The Welsh Assembly Government has then been able to address these issues in a systematic way. There is still a problem with some Explanatory Memoranda, which merely replicate the terms of the draft Order in language that is almost as opaque as the Order itself. That may be inevitable, given the standard advice of lawyers that simple language in such a memorandum can introduce legal doubts, but we believe that it should not be beyond the reach of language to provide in addition a simple statement of what the LCO will enable the National Assembly for Wales to do in practice without causing such complications. We have also identified some procedural problems, most notably long and unaccountable delays in the process of negotiation between the Welsh Assembly Government and the Whitehall department or departments that sometimes occurs before an Order is referred to us. This Report makes recommendations to address those issues and in future, we intend to give full scrutiny to that part of the process.

The LCO procedure is a new process which has no precise parallel elsewhere. That creates a real challenge for all parties—in Parliament and in the Assembly, in Government and in the Welsh Assembly Government—to ensure that all our processes are robust and fit for purpose and that we make the best possible law as a result. We point out that the new system was introduced without adequate planning for the process of learning and

adaptation that would be needed in order to make the new system work. However those problems have been overcome, relatively quickly, with goodwill on all sides. While there has been a need for experienced legislators to adapt to the new system, it has also been a steep learning curve for those without previous experience of draft legislation and pre-legislative scrutiny. This has necessitated a considerable strengthening of the capacity for both drafting and scrutiny in the Assembly. The number of LCOs referred to this Committee in the past year has also placed an enormous burden on our members. In this Report we make proposals to streamline the scrutiny process where feasible and to further adapt our working practices to meet these demands.

Scrutiny carried out both here and in other places is a vital part of ensuring openness, transparency and good governance in the legislative process. It is a responsibility we take extremely seriously. We hope that this Report will make a positive and constructive contribution to that process.

This Report makes the following key recommendations:

Role of the Welsh Affairs Committee

- Every proposed LCO should continue to undergo pre-legislative scrutiny in the House of Commons. The House of Commons must be fully informed about the implications of any decision it is asked to make on extending the legislative competence of the National Assembly for Wales by the LCO mechanism. Having said that there have been a number of instances where there has been clarity of purpose and intention from the start together with simplicity and clarity of drafting. In such cases the call for written evidence may be sufficient to identify any residual concerns on the part of interested parties and allow oral evidence to be kept to a minimum. Good examples are of this are the Red Meat LCO from the Welsh Assembly Government and the Fire Safety LCO from a backbench Assembly Member.
- We have built up expertise in pre-legislative scrutiny of LCOs over the past two years and our familiarity with the procedure is allowing us to work with greater speed and efficiency. Where possible, we will adopt an accelerated process of scrutiny for LCOs which appear to raise no significant legal or policy questions.
- Orders should be referred to the Welsh Grand Committee only when there are matters of general public concern or controversy or specific areas of concern amongst Members of Parliament. In the case of the most complex and wide-ranging Orders, the option of a debate open to all Welsh MPs has proved its worth.
- Holding a debate on the floor of the House enables any MP from anywhere in the country to comment. We therefore consider that this option should be retained, but used sparingly and only when necessary.
- The Welsh Affairs Committee should be given the power to invite any MP who is not a member of the committee to attend and ask questions during evidence sessions in respect of LCOs. This change should allow more members to be involved in the pre-legislative scrutiny process.

- It may not need saying, but for the avoidance of doubt, we wish to put on record our strong conviction about the continuing need for the work of the Welsh Affairs Select Committee and we strongly urge the House to maintain a Welsh Affairs Committee in the next Parliament both to pursue the traditional role of the committee in the context of devolution and to undertake pre-legislative scrutiny of LCOs.

Joint working with the National Assembly for Wales

- Informal meetings with Assembly Committee members are a vital part of the scrutiny of LCOs, helping to join up scrutiny in Parliament and in the Assembly.
- Extensive use of formal joint meetings to take evidence is impractical. The logistical difficulties involved hamper each committee's ability to plan its own programme of evidence in a timely manner.
- Sharing evidence and exchanging perspectives on the issues arising out of the evidence about a particular LCO has proved stimulating and constructive. The complementary roles of Assembly and Parliamentary committees, has proved an additional and constructive bonus in a variety of ways.
- The Standing Order governing formal joint meetings should be revised better to reflect practice as it has developed.

The LCO process

- There is an unacceptable lack of transparency within the Whitehall clearance process. The Wales Office should provide this Committee with a monthly update on the progress of all proposed Orders together with an explanation of any delays. In the event of this Committee being dissatisfied with progress, we intend to call ministers and officials from Whitehall departments to attend a meeting of the Committee along with a minister or official of the Wales Office in order to identify the issues that remain unresolved, and to provide transparency about the process.
- Some complexity in the law in Wales has been perceived in some quarters from the need to keep track of a range of legislative vehicles through which powers can be devolved either to the Assembly or Welsh Ministers.
- Some work remains to be done to establish a comprehensive and accessible 'Welsh statute book', which should be on-line and include a facility for public comment as well specialist comments and suggestions from professional and academic experts and lawyers. This should be combined with a more straightforward approach to the drafting of proposed Orders and Explanatory Memoranda on the part of the Wales Office and Welsh Assembly Government.
- Each LCO should be as well defined as possible and should reflect the intention that has been stated by ministers, Assembly members and MPs for each LCO to contain 'what it says on the tin'.

1 Introduction

1. It is now just over two years since the Legislative Competence Order in Council (LCO) procedure was introduced as a mechanism for the National Assembly for Wales to bring forward proposals to extend its lawmaking powers.¹ The Welsh Affairs Committee has completed pre-legislative scrutiny of twelve proposed Orders during this time, with three further LCOs currently under consideration. The Legislative Competence Order (LCO) process has proved to be an effective way of responding to requests by the National Assembly for Wales to be given decision-making powers—legislative competence—over new areas of policy. In what is a relatively short time in legislative terms, we have dealt with fifteen LCOs.

2. The LCO process has been criticised in some quarters as being unduly complex or slow, but this is simply untrue. It is a matter of fact that the normal process of primary legislation from draft Westminster Bill to Royal Assent for fifteen new proposals would not only have taken considerably longer, but would have been subject to uncertainty and the likelihood of further unpredictable delays, as well as the potential for changes by either or both chambers of Parliament over which neither the Welsh Assembly Government nor the Assembly as a whole would have had any say whatsoever. In contrast, the LCO process allows the Assembly Minister and the Assembly as a whole to consider the findings and suggestions made by the Welsh Affairs Select Committee before deciding the form of the proposal that comes forward for the making of the substantive Order in Council. This means that Assembly Members and Ministers are engaged in a collaborative process with this Committee, which is made up almost entirely of Welsh MPs, and that elected representatives from Wales in the Assembly and at Westminster have played complementary roles which have been constructive and led to improved legislation, most significantly in respect of the Welsh Language LCO. The evidence is therefore clear that the LCO process has been swift and flexible as far as the work of the Welsh Affairs Committee is concerned and has provided a bridge between Parliament and the National Assembly for Wales.

3. Widespread misapprehensions and misunderstanding about the LCO process which exist in Wales can sometimes lead to a negative view of the process as a whole. In this Report, we take the opportunity to highlight some of the strengths of the process. We set out our experience and make recommendations for adjustments to the system in future, to ensure that it operates smoothly. As with any new process, some initial problems arose due to a lack of familiarity with the system and as more Orders have come forward, some of these difficulties have been resolved without the need for further intervention. However, we also consider that a number of improvements could be made to the process itself.

4. In particular, as a result of our sustained involvement in the LCO process, we have been able to identify persistent difficulties that ran through a number of proposed Orders, which the Welsh Assembly Government has then been able to address in a systematic way. We have also identified some procedural problems, most notably long and unaccountable

¹ The full background to the LCO process in general and a table of the proposed Orders considered by the Committee to date are contained in Annexes to this report.

delays in the process of negotiation between the Welsh Assembly Government and the Whitehall department or departments that sometimes occurs before an Order is referred to us. This Report makes recommendations to address those issues.

5. The LCO procedure is a new process which has no precise parallel elsewhere. That creates a real challenge for all parties—in Parliament and in the Assembly, in Government and in the Welsh Assembly Government—to ensure that all our processes are robust and fit for purpose and that we make the best possible law as a result. We point out that the new system was introduced without adequate planning for the process of learning and adaptation that would be needed in order to make the new system work. However those problems have been overcome, relatively quickly, with goodwill on all sides. While there has been a need for experienced legislators to adapt to the new system, it has also been a steep learning curve for those without previous experience of draft legislation and pre-legislative scrutiny. This has necessitated a considerable strengthening of the capacity for both drafting and scrutiny in the Assembly. The number of LCOs referred to this Committee in the past year has also placed an enormous burden on our members. In this Report we make proposals to streamline the scrutiny process where feasible and to further adapt our working practices to meet these demands.

6. Scrutiny carried out both here and in other places is a vital part of ensuring openness, transparency and good governance in the legislative process. It is a responsibility we take extremely seriously. We hope that this Report will make a positive and constructive contribution to that process.

Previous reviews

7. This is not the first time we have given consideration to the LCO process. In June 2007, when the procedure was first introduced, we published a Report looking ahead at what pre-legislative scrutiny of proposed Orders might entail.² In that Report, we commented on the implementation of arrangements for scrutiny:

We fully support the presumption that draft Orders will be subject to pre-legislative scrutiny. However, we have some concerns for the implications this may have for our own timetable and express our reservations should the annual number of proposed Legislative Competence Orders exceed what we judge to be “manageable”. Should this be the case, we see merit in the appointment by the House of Commons of *ad hoc* committees set up specifically for the purpose of examining a proposed Legislative Competence Order, as is to be the case in the National Assembly. In addition, we believe there is a role for the Welsh Grand Committee in scrutinising particularly complex or contentious draft Legislative Competence Orders.

8. One year after the implementation of the LCO procedure, the then Secretary of State for Wales, Rt Hon Paul Murphy MP, conducted a review of the process, to which we submitted a memorandum based on our experiences over the previous twelve months. We recommended that:

² Welsh Affairs Committee, Second Report of Session 2006-07, *Legislative Competence Orders in Council*, HC (2006-07)

...the select committee is the most effective option for the pre-legislative scrutiny of LCOs. It allows for a thorough evidence-gathering process during which witnesses, including Welsh Assembly Government and UK Ministers, can be questioned regarding the detail and scope of a proposed Order. Recommendations can be made to the UK Government which have been agreed by the Committee. The Committee (and others) can follow up such recommendations more effectively than points raised during the course of a short debate can be.

We recommend that pre-legislative scrutiny of LCOs at Westminster continues to follow the rigorous, evidence-gathering process of the select committee. We strongly recommend that all proposed Orders continue to be referred to the Welsh Affairs Committee for pre-legislative scrutiny. Making this the standard process will help with the orderly and adequate allocation of time and resources. [...] In the light of experience to date, the Committee has made a case to the House authorities for the necessary staff resources to properly support the Committee's work on LCOs without draining resources from the traditional roles of the Committee.³

9. In his response, the Secretary of State concurred that no change to current arrangements was necessary:

I agree with your Committee's conclusion that it should continue to conduct PLS [pre-legislative scrutiny]. I am mindful of comments people had made about the burdens on your Committee and potential distractions from other core tasks. I considered options such as creating *ad hoc* committees or a new permanent committee, but conclude, as did your Committee, that the merits of the Welsh Affairs Select Committee continuing with scrutiny of Orders outweigh those of any alternative options. Your Committee has done a very effective job of scrutinising Orders in Council to date, building up a considerable degree of experience and expertise. To end the Welsh Affairs Select Committee's involvement and create *ad hoc* committees each time an Order was referred to Parliament would deny the process that expertise.⁴

10. Our memorandum to the Secretary of State also recommended that there should be a further review of LCOs after two years of operation. Whilst it was appropriate for the Minister to conduct the first of these reviews, we have now accumulated significant experience in the pre-legislative scrutiny of proposed Orders. In the light of two years' experience, it is easier to distinguish between problems that were largely due to unfamiliarity with a new system, and improvements we believe could be made to the process itself. We have the expertise necessary to conduct our own review on this occasion and it is undoubtedly better for this to be independent of Government. We are pleased to note that the Secretary of State has welcomed our review.⁵

³ *Review by the Secretary of State of the procedure for Legislative Competence Orders in Council*, Memorandum by the Welsh Affairs Select Committee, paragraphs 6-8.

⁴ Letter to the Chairman from Paul Murphy, July 2008 [not printed].

⁵ *Wales Office Annual Report 2009*, Oral Evidence given by Rt Hon Peter Hain MP, Secretary of State, Wales Office on 27 October 2009, HC (2008-09) 1075-I, Q 16.

2 Role of the Welsh Affairs Committee

Pre-legislative scrutiny role

11. The Welsh Affairs Committee is responsible for undertaking pre-legislative scrutiny of each LCO laid before the House of Commons. The process we have followed in dealing with proposed Orders is to issue a call for written evidence and to hold one or more oral evidence sessions, leading to a Report and recommendations. Our Reports advise the House of the implications of any decision it is asked to make on extending the legislative competence of the National Assembly for Wales. Pre-legislative scrutiny also takes place in the Assembly (where it is now undertaken by one of five permanent Legislation Committees) and in the House of Lords by the Constitution Committee.

12. In a recent memorandum to the All Wales Convention, the Chairman of the Committee described our role as follows:

Our role within the pre-legislative scrutiny process is to test the provisions of the proposed Order against the evidence that is given to us.

Our reports are grounded in the evidence we receive, from Ministers of the Welsh Assembly Government and Wales Office, charities, academics, business and other interested parties. Often, the proposal to extend competence results from the Welsh Assembly Government's wish to implement a particular policy initiative. In these cases, we have on occasions been able to highlight cases of defective drafting which might prevent Ministers from achieving their aims. Our objective is to ensure that the proposed Order is fit for the purpose for which it is designed. The quality of evidence provided by the Assembly Ministers to our inquiries has been particularly high and we look forward to continuing to work productively with members of the Welsh Assembly Government in the coming months, as well as with Ministers in the Wales Office, whose contribution has been similarly constructive.⁶

13. LCOs are now a regular part of our programme, but our pre-existing task of scrutinising Government policy as it affects Wales continues alongside this role. We are committed to continuing this important work. In the past two years we have been engaged in an investigation of cross-border public services looking at the provision of further and higher education, healthcare and transport links for those living near or travelling across the border between Wales and England. We have also completed a number of other inquiries, including those on digital inclusion, ports, broadcasting, the 2012 Olympics and Paralympics, globalisation, and the proposed closure of the Legal Services Commission's Cardiff office, publishing a total of eleven reports⁷ on policy matters in the 2008-09 and 2007-08 sessions, compared to nine on LCOs. **We therefore estimate that the additional task of conducting pre-legislative scrutiny of LCOs has almost doubled the workload of the Committee for its members.**

⁶ <http://wales.gov.uk/docs/awc/publications/090730wacen.doc>

⁷ Including one interim report on cross-border healthcare.

14. Pre-legislative scrutiny by this Committee is only one part of the process through which a proposed Order must progress before receiving Royal Assent. LCOs are originated in the National Assembly for Wales by the Welsh Assembly Government, an Assembly Committee or an individual backbench AM. The text of an Order is then subject to negotiation with UK government departments (a process which has become known as ‘Whitehall clearance’) before being finalised and laid before Parliament. It is at this point that the proposed Order is referred to us for scrutiny. After all the scrutiny committees have reported, the proposed Order may be modified as a result of their recommendations—a process which may entail further negotiation and agreement between the Wales Office, other Whitehall departments and the Welsh Assembly Government. A final draft Order is then laid before Parliament and the Assembly for debate and approval.

15. There are a number of optional stages through which an Order can pass if it is deemed to be of sufficient significance. Recently, our Report on the Welsh Language LCO was debated in the Welsh Grand Committee. This was the first debate on a proposed Order to be held in the Grand Committee and it provided the opportunity for all Welsh MPs to make contributions on this important step for the people of Wales. It also enhanced the understanding of the LCO process amongst MPs, and of the positive changes that the LCO will bring about in Wales. We therefore consider it a positive addition to the scrutiny process in this case. **We do not believe that all proposed Orders should be referred to the Welsh Grand Committee, but in the case of the most complex and wide-ranging Orders, the option of a debate open to all Welsh MPs has proved its worth.**

16. After the pre-legislative scrutiny phase, a final draft Order is laid before the House for approval. This is normally debated in a Delegated Legislation Committee whose membership is drawn from across the House. Nominations to Delegated Legislation Committees are arranged by the party whips, but our members have often served on committees relating to draft LCOs and have been able to contribute significantly through their familiarity with an Order and their knowledge of issues raised in the course of pre-legislative scrutiny. **There is a clear advantage in nominating members of the Welsh Affairs Committee to serve on Delegated Legislation Committees in relation to draft LCOs.**

17. The Welsh Language LCO is also the only draft Order so far to have been debated on the floor of the House rather than in a Delegated Legislation Committee. Although the controversy surrounding the original proposal for this particular Order was allayed by the pre-legislative scrutiny process, **allowing debate in the Welsh Grand Committee may be necessary if an LCO is particularly controversial or has implications for specific constituencies and localities. Holding a debate on the floor of the House enables any MP from anywhere in the country to comment. We therefore consider that these options should be retained, but used sparingly and only when necessary.**

Timing

18. Since the inception of the LCO process, attention in some quarters has focused on the time a proposed Order takes from its proposal in the Assembly to becoming law through approval in the Privy Council. The system has been subject to criticism for being too lengthy and some have alleged that this Committee has been the cause of additional delay.

In comparison with the process for taking a Bill through Parliament, we do not believe that the LCO process can be viewed as particularly slow. A table giving details of our scrutiny of proposed Orders appears in an Annex to this Report. In addition, Table 1 below provides an overview of the time taken by pre-legislative scrutiny compared to other phases, for example, the time from the announcement of a proposed LCO by the relevant Welsh Assembly Government Minister (or, for Orders proposed by backbench AMs, when the Assembly grants leave to proceed with the proposal) to its referral to this Committee.

Table 1: Scrutiny of proposed LCOs

Key: + Private member's LCO (date when Assembly grants leave)

Draft Order	Announcement of LCO	Received by Welsh Affairs Committee ⁸	Report published	Time taken by Assembly Committee ⁹
Additional learning needs	6 June 2007	26 July 2007 (7 weeks later)	21 December 2007 (10 sitting weeks)	4 July 2007 to 28 Nov 2007 (12 sitting weeks)
Social welfare (non-residential social care)	6 June 2007	26 November 2007 (25 Weeks later)	5 March 2008 (11 sitting weeks)	5 December 2007 to 14 March 2008 (9 sitting weeks)
Social welfare and other fields (vulnerable children)	6 June 2007	19 March 2008 (41 weeks later)	26 June 2008 (11 sitting weeks)	4 July 2007 to 25 January 2008 (16 sitting weeks) 8 April to 14 May (5 weeks)
Affordable housing	6 June 2007	13 May 2008 (49 weeks later)	14 October 2008 (11 sitting weeks)	12 December 2007 to 18 April 2008 (10 sitting weeks)
Red meat industry	15 July 2008	6 October 2008 (12 weeks later)	23 February 2009 (16 sitting weeks)	22 September to 10 December 2008 (10 sitting weeks)
Carers ¹⁰	20 February 2008+	8 December 2008 (42 weeks later)	28 April 2009 (14 sitting weeks)	8 December 2008 to 2 April 2009 (14 sitting weeks)
Welsh language	6 June 2007	9 February 2009 (88 weeks later)	7 July 2009 (17 sitting weeks)	2 February 2009 to 5 June 2009 (13 sitting weeks)
Environment	6 June 2007	27 April 2009 (99 weeks later)	28 July 2009 (12 sitting weeks)	4 July 2007 to 29 November 2007 (12 sitting weeks) Then 19 May 2009 to 29 June 2009 (5 sitting weeks)

⁸ Time elapsed from announcement of LCO is shown in calendar weeks.

⁹ Measured from referral by Business Committee to laying of report

¹⁰ This proposed Order was later split into two separate LCOs, one on carers and one on exceptions to Matters.

Mental health	17 October 2007+	21 May 2009 (83 weeks later)	30 October 2009 (11 sitting weeks)	26 February 2008 to 20 June 2008 (13 sitting weeks)
Culture and other fields	15 July 2008	1 July 2009 (50 weeks later)	7 December 2009 (11 sitting weeks)	15 June 2009 to 6 November 2009 (11 sitting weeks)
Local government	14 July 2009	14 July 2009	12 January 2010 (15 sitting weeks)	16 July 2009 to 4 December 2009 (10 sitting weeks)
Housing (fire sprinklers)	10 October 2007+	13 October 2009 (104 weeks later)	18 December 2009 (8 sitting weeks)	26 February 2008 to 11 June 2008 (11 sitting weeks)
Education (school governance)	19 October 2009	23 October 2009 (1 week later)	tbc	19 October 2009 to tbc
Transport (learner transport safety and concessionary fares)	14 July 2009	14 December 2009 (22 weeks later)	tbc	10 December 2009 to tbc

19. We have always approached proposed Orders on a case-by-case basis, adjusting the number of evidence sessions we hold in the course of an inquiry to the potential impact, complexity and quality of drafting of the Order in question. For example, the recent proposed Orders on Culture and Carers were dealt with in a single session with Ministers. In contrast, the proposed Welsh Language LCO required much more in-depth scrutiny and we held four sessions with a wide range of bodies whose views had a bearing on the proposed Order.

20. Other factors also affect the programme of evidence for committees both here and in the Assembly, for example, the dates of recesses and the availability of Ministers, who may have many competing priorities, to appear to give evidence before us. Overall, however, we believe that the speed of the parliamentary process is increasing. We have worked hard to examine proposed Orders in a timely manner that is compatible with proper and thorough scrutiny. We expect to continue to increase our pace as all parties become more familiar with the process—this should mean that we receive better drafted Orders in the first place and that fewer problems emerge during the scrutiny process.

21. It remains the case that we can only have limited influence over the speed with which proposed Orders progress through the system. **For those LCOs which have taken the longest time to proceed from their announcement in the Assembly to approval in Parliament, the main factor by a significant margin is the time taken up by negotiations between the UK and Welsh Assembly Governments to agree on a text.** Proposed Orders are not referred to us until this has occurred and the delay represented by Whitehall clearance can be significant (amounting to almost two years in the case of the Environment LCO for example).

Case Study 1: Member-proposed LCOs

22. We have so far considered two LCOs proposed by individual backbench AMs. The proposed National Assembly for Wales (Legislative Competence) (Housing) Order 2009, relating to fire sprinklers and proposed by Ann Jones AM was the second of these, even though Ms Jones was successful in the first ballot permitting Assembly members to bring forward proposed Orders in Council, which took place on 26 June 2007. On 10 October 2007 the National Assembly for Wales granted permission for her to lay a proposed Order and an Explanatory Memorandum. Despite this, Jonathan Morgan AM, the second member to win such a ballot, overtook her in the LCO process. In our oral evidence session, we asked Ann Jones what factors had caused a delay in her case. She explained that there had been a hiatus whilst the possibility of achieving the aims of her proposal through devolution of building regulations was investigated:

I worked with the Government all along the line and if you look back at the timeline you will see there was a gap where I was working with government special advisers, because they were looking at a Transfer of Functions Order on the building regulations. When it became clear that that was not going to come down as soon as we thought I then decided that the LCO process was the way to go. I am happy to go back if building regulations come down and we can make regulations, but my ultimate aim is doing that.¹¹

23. The negotiations concerning building regulations which took place between the Welsh Assembly Government and Whitehall were complex. Mr Francois Samuel, Department for Housing, Sustainability and the Environment, told us that in contrast, the proposed Order was relatively simple: “the drafting itself and the comments and scrutiny did not take long. It was because it was caught up, if you want, in what we saw as the bigger picture of the building regulations and our discussions with government that there were delays to the process”.¹² Jane Davidson AM, Minister for Housing, Sustainability and the Environment in the Welsh Assembly Government, added:

... the building regulations debate has not been a single department debate and it is when you have to go across government departments. At every stage of a process we look at what one government department says before we then test what another says, and in a sense I have also had to work with a range of different ministers in this debate because we might have achieved a resolution and then a minister would change and, in a sense, we would not be right back at the starting block but the legislative competence process has not been sufficiently embedded.¹³

24. There was a delay of at over a year before the LCO relating to domestic fire safety was passed to Westminster for scrutiny. We were told that the delay arose because the Welsh Assembly Government thought it would be tidier to use primary legislation to amend the Assembly’s powers in respect of building regulations. While this approach may have been intended to achieve coherence between primary legislation and devolved powers, and

¹¹ HC (2009-10) 142, Q 44

¹² HC (2009-10) 142, Q 53

¹³ HC (2009-10) 142, Q 56

consistency for the UK as a whole, there are occasions where waiting for primary legislation can cause needless delay. Our view is that the delay in this case was needless and the LCO process should have been used more quickly by the Welsh Assembly Government. Reconciliation of that power with building regulations could have been achieved through legislation in due course, but the power would have been in the hands of the Assembly a year earlier. **We consider that the delay in respect of the Fire Sprinklers LCO was highly unsatisfactory and that it was clear that a Legislative Competence Order would achieve the desired outcome much earlier than any amendment to building regulations, once devolved. The Committee hopes that lessons can be learned from the unnecessary delays caused in bringing this proposed Order forward.**

25. When questioned on this point, Ms Davidson thought that matters had improved over time:

The speed at which things are moving now is a great deal quicker and we are seeing this because we are seeing a number of things come through, we are seeing them come through in the context of the Welsh Affairs Select Committee as well. What I would want to assure you is that government has been behind the delivery of the outcome from the beginning.¹⁴

26. Ann Jones told the Committee that last year 20 deaths and £128 million in damages were caused by fires in Wales and that this could have been avoided by universal installation of sprinkler systems.¹⁵ Despite the delay, she expressed her support for the LCO process in general:

I am a huge supporter of the LCO process; I think it is the way forward, it is the way we have to look at the devolution settlement. I am quite happy with the way in which this has progressed; I hope I have kept Members informed, both of the Assembly, the Government and up here as well at Westminster, about my intention to see this go through [...] The LCO process is fine; yes, I have been frustrated at times and that is notwithstanding the fact that most of my working life, the nearly 30 years I worked in the Fire Service, my job was to answer a fire call within 60 seconds and despatch a fire engine out to help somebody within two minutes, so I have always had to respond quick, quick, quick. It does not happen like that in politics; I thought I was going to come into politics and it was going to happen like that, quick, quick, quick, but it does not and I have had to learn that. Along the way you do get frustration, but I am happy I am here today and I am thankful for the Welsh Affairs Select Committee taking this interest in this LCO and together we will progress it, we will move forward and we will see homes in Wales safer.¹⁶

27. In October 2007, Jonathan Morgan AM was successful in the ballot for the opportunity to introduce a proposal to add to the legislative competence of the National Assembly. Following a debate in plenary session the National Assembly for Wales granted leave to introduce a proposed Order about and in connection with mental health. The proposed

¹⁴ HC (2009-10) 142, Q 56

¹⁵ HC 142 (2009-10) Q 39

¹⁶ HC 142 (2009-10) Q 37

National Assembly for Wales (Legislative Competence) (No. 6) Order 2008 (Relating to Provision of Mental Health Services) was laid before the Assembly on in February 2008 and was subject to pre-legislative scrutiny in the Assembly. The Assembly Committee issued a call for written evidence and subsequently held six evidence sessions and published its report in June 2008, recommending a number of changes to the drafting of the proposed Order.

28. The revised proposed Order was laid before Parliament and referred to the Welsh Affairs Committee for pre-legislative scrutiny almost a year later, in May 2009. It was the first backbench LCO to reach this stage and we asked Jonathan Morgan for his reflections on the process. Mr Morgan spoke of the importance of pre-legislative scrutiny and the principle of accountability:

I think we have to demonstrate to the people of Wales why we think these powers should be conferred. I think we have to explain what it is that is problematic with the current legislative framework and what it is we think could be achieved by ensuring the powers are devolved to the Assembly to allow that framework to be clarified and for services to be improved.¹⁷

29. However, Mr Morgan expressed some frustration about the time the process had taken and the delay in receiving Whitehall clearance, despite having secured all-party support for his proposal:

By October of this year I will have spent two years on this particular project. I won the ballot in October of 2007. Not wishing to pre-empt what you may conclude and any recommendations you may make, if I am lucky enough to see this process to the end, I understand that it might not be concluded, if it is concluded in my favour, until the early part potentially of next year. It is quite a lengthy process from the point of view of a backbench Member's perspective. One of the difficulties is that once the order had been agreed between myself and the Assembly's Health Minister, had received that all party support and had that very active support of the Minister and her officials, the order was referred to Whitehall in December of last year. There have been government legislative competence orders which have been published later and delivered to Whitehall later than mine which have I think almost completed their processes. I think that is probably fair. I can understand where government officials would want to ensure that the government's legislative programme is prioritised. I accept that as one of the realities of government and political life. I suppose from my own perspective it was necessary to wait in the queue until when Whitehall clearance could be afforded and when it could be possibly referred to this Committee by the Secretary of State. I accept as a backbencher that the process is likely to be slower than government legislative competence orders.¹⁸

In our Report on the draft Order, we applauded the level of co-operation between Mr Morgan who sponsored the proposed LCO, the Welsh Assembly Government, and the

¹⁷ HC 778 (2008-09), Q 21

¹⁸ HC 778 (2008-09), Q 21

Wales Office, which had allowed the proposal to be referred to us, but we note with regret the length of time involved in reaching this stage.

Future scrutiny of proposed Orders

30. The LCO process has become more efficient and focused as all parties have acquired familiarity with the procedure over the past two years. It is important that scrutiny committees, both in the Assembly in Parliament, give adequate time to each LCO and should not be under pressure to rush through the process. Nevertheless, we do not believe that every LCO needs the same level of scrutiny. We have already found that our experience with the process has allowed us to deal quickly with the most straightforward LCOs, such as the LCO relating to domestic fire safety. In contrast, other LCOs have benefited from greater scrutiny and wider discussion which has in every case been constructive across all four parties. This section of our review sets out our plans to adopt an accelerated process with those LCOs that appear to raise no significant legal or policy questions, while ensuring that there is an opportunity for those who would be affected by such an LCO to alert us to any potential issues or possible unintended consequences.

Referral

31. At present, the Secretary of State for Wales writes to the Chairman of the Welsh Affairs Committee when he lays a proposed Order before the House, inviting us to undertake pre-legislative scrutiny. Over the past two years, there has never been an occasion when a proposed LCO has not been referred to the Committee or when the Committee has declined to undertake scrutiny. We find it highly doubtful that such a situation would arise. **We therefore consider that there should be a standing assumption that proposed Orders will be scrutinised by the Welsh Affairs Committee once they have been laid before the House, without the need for the Secretary of State to specifically refer each Order to us. For clarity, and depending on any other changes which may be made, this could be specified in a Standing Order. In addition, the Secretary of State should be required to provide notification in writing to this committee as soon as an LCO is submitted to the Wales Office, in order to enable us to undertake scrutiny of the process in Whitehall and prepare the ground for our own scrutiny to follow quickly when that is complete.**

Evidence taking

32. To date, we have announced an inquiry for each proposed Order that has been referred to us. Each inquiry has begun with a public call for written evidence, followed by at least one oral evidence session and a report. This practice is similar to that followed by Assembly scrutiny committees, although in general we have held fewer evidence sessions and have been able to draw on evidence taken in the Assembly to avoid duplication.

33. **We believe that every proposed LCO should continue to undergo pre-legislative scrutiny in the House of Commons.** The value of such scrutiny has been proved in the case of successive LCOs, where we have been able to highlight problems at an early stage and ensure that they are resolved before the proposal becomes law. We believe that the inquiry structure outlined above provides an appropriate default model for pre-legislative

scrutiny of LCOs. However, in the light of experience, we feel that alterations could be made to established practice, for example in the case of very narrow and non-controversial LCOs, without risking the integrity of the process.

34. We consider it important that we continue to issue a public call for written submissions when we receive a proposed Order and that we allow interested parties a reasonable time to respond. This enables campaign and interest groups, as well as members of the public, to express their views on a proposal and helps to ensure that any potential problems with an Order are brought to our attention swiftly.

35. We will normally wish to take oral evidence in connection with a proposed Order. The number of evidence sessions needed for each Order will vary and we will continue to make decisions on a case-by-case basis. However, **we would normally expect to hear from Welsh Assembly Government and Wales Office Ministers, as well as the sponsoring Assembly Member, in the case of private members' LCOs.** It is important that Ministers should be accountable for the legislation they propose to introduce. The evidence we have received from Ministers both in the Wales Office and Welsh Assembly Government over the past two years has in almost all cases been excellent and has ensured that any confusion arising from technical drafting points can be eliminated.

36. We consider that an accelerated process of scrutiny could be implemented for LCOs which appear to raise no significant legal or policy questions. For example, if a public call for evidence supported by our own research identified no significant matters of concern, an inquiry could exceptionally be completed via an exchange of letters with Ministers, rather than an evidence session. We consider that this accelerated procedure would be appropriate for proposed Orders similar in scope to the LCO on the red meat industry, which we considered earlier this year. **We intend to adopt this approach and would recommend it to our successor committee in the next Parliament.**

37. We agree that we must give prompt consideration to LCOs which are referred to us for scrutiny to avoid needless delay. By implementing the measures outlined above, we hope that we may be able to process less complex LCOs more efficiently. **It remains the case, however, that some LCOs will raise issues of broad importance to the people of Wales or may be of some legal complexity** (the recent Welsh Language LCO is an example in both categories). **Proposed Orders should receive proper scrutiny via a sustained inquiry and the House of Commons should be fully informed about the implications of any decision it is asked to make on extending the legislative competence of the National Assembly for Wales.** We would also note that any increase in the speed in which we deal with LCOs will not necessarily have a direct impact on the overall timetable for an LCO—this is dependent on many other factors outside our control, such as the timetables of scrutiny committees in the Assembly and the House of Lords and the need for re-drafting and further negotiation between the UK and Welsh Assembly Governments after the pre-legislative scrutiny process is complete.

Evidence taken by Assembly committees

38. Proposed Orders are now scrutinised in the Assembly by one of five permanent legislation committees, which have established a pattern of holding several evidence sessions with key stakeholders in the relevant policy area. These evidence sessions often

resolve many of the outstanding issues with a particular LCO. **To avoid duplication of effort, we can draw on evidence taken in the Assembly rather than holding similar evidence sessions with the same witnesses. This might mean that the number of oral evidence sessions at Westminster could generally be reduced to a single session with Welsh Assembly Government and Wales Office Ministers** (indeed, this has been the case for the recent Culture LCO and Local Government LCO). **We intend to adopt this approach where possible and would recommend it to our successor committee in the next Parliament.**

39. **We can feel confident in drawing on the evidence taken in the Assembly due to the strong links we have established with our counterparts in Cardiff Bay.** For all recent LCOs, we have taken part in informal joint meetings with the relevant Assembly committee and we have found that the sharing of information and perspectives an invaluable addition to the scrutiny process. We place great importance on the continuation of this excellent relationship in future, which should allow both sides to work in an increasingly complementary way.

Workload

40. It was originally envisaged that proposed Orders coming forward for scrutiny would be evenly spaced throughout the year.¹⁹ This ambition has not been realised. In practice, the number of LCOs proposed by the Assembly is heavily influenced by its electoral cycle. Clearly, the Welsh Assembly Government wishes to make Measures under the competence granted by LCOs and in order to do this, it needs to allow time towards the end of a cycle for the Assembly to pass this legislation. Most of the Assembly Government proposed Orders this year have been brought forward with the intention that Measures will be made next year before the end of the current Assembly in May 2011. Shortly before going to press, we were dealing with four LCOs simultaneously. Although we had originally planned to complete work on each LCO we received before starting on the next, this has not proved possible. In contrast, as we approach Assembly elections, it is likely that fewer LCOs will come forward, since there will not be time to make Measures flowing from them in the present Assembly term.

41. In our memorandum to the previous Secretary of State's review, we noted the impact of pre-legislative scrutiny of LCOs on our programme and reported that we had "made a case to the House authorities for the necessary staff resources to properly support the Committee's work on LCOs without draining resources from the traditional roles of the Committee".²⁰ Since that time, our workload has increased still further, but this has not yet been matched in staff resources. Given the current difficulty in predicting when proposed Orders will come to us and the variation in numbers according to the Assembly's electoral cycle, it may be more efficient to employ these additional resources on a flexible staffing model.

¹⁹ See Welsh Affairs Committee, Second Report of 2006-07, *Legislative Competence Orders in Council*, HC (2006-07) 175.

²⁰ *Review by the Secretary of State of the procedure for Legislative Competence Orders in Council*, Memorandum by the Welsh Affairs Select Committee, paragraph 8.

Arrangements after the next General Election

42. Whichever party is returned to government, the General Election forms a natural break in the parliamentary calendar and is often used as an opportunity to revise Committee structures. We therefore consider in this review whether a Welsh Affairs Committee established in the next Parliament should retain the pre-legislative scrutiny role we have carried out over the past two years.

43. Depending on the date of the election, some proposed Orders may complete the pre-legislative scrutiny process but may not be finally approved by Parliament before dissolution. Those Orders will be a matter for the new Parliament to consider, but we would not expect our successor Committee to feel it necessary to repeat the pre-legislative scrutiny process in cases where we have already reported on a proposal. This would be a needless duplication of effort.

The status quo

44. There are a number of advantages in retaining the current arrangements for pre-legislative scrutiny. The Welsh Affairs Committee is a representative body of the democratically elected representatives of Wales in Parliament, and as such is appropriate to this task. We can apply relevant knowledge and expertise from other inquiries, which form part of our wider scrutiny role, to our work on LCOs. This enables us to deploy a wider perspective and to identify potential problems which might be overlooked by a committee with a narrower focus. We have built up expertise in pre-legislative scrutiny of LCOs over the past two years and our familiarity with the procedure is allowing us to work increasingly efficiently. Although there is normally some turnover in committee membership after a general election, transferring responsibility to an entirely different body might result in a significant efficiency loss.

45. In contrast, we have identified some disadvantages in continuing in our current role. Scrutiny of LCOs is taking up an increasing proportion of the Committee's programme of work. There has been a strain on the resources of members and staff at the expense of other inquiries which we consider to be just as important to the people of Wales. Finally, by limiting participation in pre-legislative scrutiny to members of the Welsh Affairs Committee, Welsh MPs who are not members of the Committee are excluded from the pre-legislative scrutiny process. Indeed, English Members of Parliament representing constituencies bordering Wales may also have a valuable contribution to make where issues of cross-border co-ordination are raised.

Options for change

Ad hoc committees

46. In the new Parliament, scrutiny of LCOs could be given to a series of *ad hoc* committees nominated as and when each separate proposed Order is referred to the House. However, a decision would need to be taken as to whether membership of the committees was restricted to Members of Parliament representing Welsh constituencies. If membership of any new committee(s) were restricted either exclusively or overwhelmingly to Welsh Members of Parliament, this might in practice duplicate the membership of the

Welsh Affairs Select Committee. The objective of including more Members in the pre-legislative scrutiny process might not therefore be realised. It might be difficult for *ad hoc* committees set up to consider individual LCOs to develop consistent working practices and, with a changing membership, such committees would not be able to build up technical expertise. They might also find it difficult to maintain the close working relationship we have developed with our counterparts in the National Assembly, which has itself moved away from *ad hoc* committees on LCOs and now refers proposed Orders to one of five permanent legislation committees. For these reasons, **we do not recommend that pre-legislative scrutiny of LCOs should be undertaken by *ad hoc* committees, established only to consider a single proposed Order.**

A permanent LCO committee

47. An entirely new select committee could be created at the beginning of the new Parliament specifically for the purpose of conducting pre-legislative scrutiny of LCOs. In practice, however, the House may not be persuaded that the creation of an entirely new select committee is a proportionate response to the irregular need for scrutiny of proposed Orders. Whilst a relatively high number of LCOs has been laid before the House this year, that number is likely to decrease sharply next year and, in Assembly election years, a permanent LCO committee might find itself with very little business indeed. Many current Members of Parliament have already stated, in regard to proposals for the creation of other new select committees, that further expansion of the select committee system risks placing unreasonable demands on the resources of the House in terms of members' time, staff, accommodation and budgets.²¹

Sub-committees

48. As an alternative to *ad hoc* committees, or a new permanent committee, we considered the option of establishing a permanent Welsh Affairs Committee Sub-committee on LCOs. At present our Committee, in common with all departmental sub-committees, has the ability under Standing Order No. 152 to create one sub-committee on a subject of its choosing.²²

49. Our committee has 11 members and any permanent sub-committee to deal with LCOs might comprise 5 or 6 of these. In practice, not all members are able to attend all meetings. It may be that a smaller number of core members would continue to take on most of the work in both pre-legislative and policy inquiries, meaning that the creation of a sub-committee would have little practical effect. Some departmental select committees have 14 members. While in theory this might allow more members to take part in proceedings, committees with a larger membership have not generally been found by members of the Liaison Committee to be more effective than smaller committees.

50. We have already experimented with informal sub-committees in our scrutiny of the Environment and Mental Health LCOs. These two proposed Orders were referred to us

²¹ For example in the debate on the creation of regional committees. Further discussion of these options can be found in our Report *Review by the Secretary of State of the procedure for Legislative Competence Orders in Council*, Memorandum by the Welsh Affairs Select Committee.

²² SO No. 152 (3)

simultaneously. In order to work more efficiently, some of us decided to focus our attention on one or other of these LCOs, although it was open to all members to attend all sessions if they so chose. We also resolved that a member of the Committee other than the regular Chairman would chair the evidence sessions relating to each of these inquiries, whilst our Chairman continued to chair sessions not related to LCOs. The final Reports relating to these inquiries were considered by the whole Committee. We found the informal division of labour we employed in regard to the Environment and Mental Health LCOs an effective way of dealing with a heavy programme of evidence.

51. We note that the option of creating two formal sub-committees to deal with the two proposed Orders was not available to us as under Standing Order No. 152 we are only able to establish one sub-committee at a time. The informal division of labour we employed has the advantage of flexibility over sub-committees with a fixed membership, however, it may be that a future committee would wish to take a different approach. **We would therefore support a change to Standing Order 152 to allow departmental select committees to establish more than one sub-committee simultaneously. This may also benefit other select committees and we suggest that the Procedure Committee might wish to consider this matter more widely.**

Invitation of other MPs

52. We have commented above on the potential benefits of including more Members of Parliament in pre-legislative scrutiny of LCOs (including Welsh Members who are not members of the Committee; English members representing bordering constituencies; or Members from any part of the UK with an interest in the relevant policy area). The Regulatory Reform Committee of the House of Commons has the power to invite other Members of Parliament to attend evidence sessions and question witnesses, but not to vote or count towards the quorum and this power has recently been extended to committees considering proposed National Policy Statements laid before the House under the Planning Act 2008 (a new procedure with some similarities to the LCO process). It would be possible to give a future Welsh Affairs Committee, or an LCO scrutiny committee, powers similar to the Regulatory Reform Committee under Standing Order No. 141 (13):

The committee and the sub-committee shall have power to invite Members of the House who are not members of the committee to attend meetings at which witnesses are being examined in relation to matters within paragraphs (1)(i) to (iii) and such Members may, at the discretion of the chairman, ask questions of those witnesses; but no Member not being a member of the committee shall otherwise take part in the proceedings of the committee or sub-committee, or be counted in the quorum.

Welsh Grand Committee

53. Another way in which more Welsh Members of Parliament can be involved in scrutiny of proposed Orders is through debates in the Welsh Grand Committee. As we commented earlier in this review, we believe that the Welsh Grand Committee is a useful addition to pre-legislative scrutiny of the most complex and wide-ranging Orders. We do not consider that it would be appropriate for every proposed Order, however, and as such its potential as a way of increasing involvement in the pre-legislative scrutiny process for Welsh Members of Parliament who are not members of the Committee is limited.

Recommendations

54. It may not need saying, but for the avoidance of doubt, we wish to put on record our strong conviction about the continuing need for the work of the Welsh Affairs Select Committee and we strongly urge the House to maintain a Welsh Affairs Committee in the next Parliament both to pursue the traditional role of the committee in the context of devolution and to undertake pre-legislative scrutiny of LCOs.

55. The Welsh Affairs Committee should retain responsibility for pre-legislative scrutiny of proposed Orders. There are procedural changes which would enable the process to operate more smoothly in future. Some of these require changes to Standing Orders and the new Parliament might provide the opportunity for these to be made and for other committees to revise their working practices at the same time should they so wish.

56. We recommend that, from the new Parliament, the Welsh Affairs Committee be given the power to invite any MP who is not a member of the Committee to attend and ask questions during evidence sessions in respect of LCOs. This change should allow more Members to be involved in the pre-legislative scrutiny process. The attendance of other Members would be at the invitation of the Committee, which is best placed to decide whether their participation would be of value in the context of any given inquiry. As a consequence, we do not recommend any change to the current size of the Committee.

57. We recommend that consideration be given to revising Standing Order 152 to allow departmental select committees to establish more than one sub-committee simultaneously. We suggest that the Procedure Committee might wish to consider this matter in the first instance.

3 Joint working with the National Assembly for Wales

Formal joint meetings

58. Under Standing Order No. 137A(3), we have the power to conduct formal ‘joint’ meetings with Assembly committees for the purposes of taking evidence, and under Standing Order No. 137A(1), to share evidence submitted to us with the Assembly. These powers are not limited to the pre-legislative scrutiny of LCOs. When the LCO process was initiated, it was envisaged that proposed Orders would be published and referred simultaneously to Parliament and the National Assembly for Wales. This would have allowed our inquiries to run alongside those of Assembly scrutiny committees and given us the option of holding formal joint evidence sessions. In practice, the presentation of proposed Orders to Parliament and the Assembly has not always been synchronised, and particularly in the first year of the LCO process, Orders were sometimes referred to Assembly committees for scrutiny months before they arrived in Parliament, precluding the possibility of such joint working. In fact, we were able to take evidence jointly on only one occasion, with the Domiciliary Care LCO Committee in January 2008. Our Chairman

also attended a meeting of the Assembly's Proposed Additional Learning Needs LCO Committee in an observer capacity later in the year.

59. More recently, proposed Orders have been referred to Assembly permanent legislation committees at the same time or only shortly before coming to us. However, we have so far chosen not to take formal joint evidence. This is because our experience of sequential scrutiny, which was a product of the timings involved with earlier LCOs, has demonstrated that there is an advantage in considering proposals shortly after the Assembly committee. This allows us to draw from the evidence taken in Cardiff Bay and avoid duplication of effort, which would otherwise place a needless burden on those giving evidence and waste valuable resources for all parties.

60. In addition, our experience has been that extensive use of formal joint meetings to take evidence is impractical. Given the sitting times of the Assembly and the House, it is extremely difficult to bring Members of Parliament and Assembly Members together in the same place at the same time. The logistical difficulties involved hamper each committee's ability to plan its own programme of evidence in a timely manner. The value of formal joint meetings is seriously diminished if the attendance is not representative of both committees across all four parties. This is difficult to achieve in practice, although we have held some highly successful meetings such as the recent hearing in Cardiff Bay with the Assembly Enterprise and Learning Committee, when we questioned rail companies as part of our inquiry on cross-border transport. We continue to approach proposed LCOs on a case-by-case basis and there may be occasions in the future where formal joint scrutiny would be appropriate.

61. As we noted earlier in this review, we can benefit significantly from sharing evidence with Assembly committees and reading their transcripts. Most of the evidence gathered by committees both here and in the Assembly is now published on the internet relatively quickly. This allows us to take the Assembly's work into consideration when reaching our own conclusions and recommendations even where formal joint scrutiny has not proved possible.

62. At present, joint meetings with Assembly Committees are treated under Standing Order No. 137A(3) as meetings of the Welsh Affairs Committee to which the Assembly Members are invited. In contrast, Standing Order 10.48 of the National Assembly for Wales provides that "Committees may meet concurrently with any committee of either House of Parliament or any joint committee of both Houses". **Whilst there is little practical effect on the conduct of meetings, we do not believe that the current wording of Standing Order No. 137A(3), which allows us to "invite members of any specified committee of the National Assembly for Wales to attend and participate" in our meetings reflects the actual experience of joint meetings. We recommend that the Standing Order be updated to provide for concurrent meetings, reflecting Standing Order 10.48 of the National Assembly for Wales.**

Informal meetings

63. Although formal joint meetings with Assembly committees have not formed a regular part of our pre-legislative scrutiny inquiries, we do hold frequent informal meetings with our counterparts in the National Assembly for Wales. In the case of all the proposed

Orders we have looked at this year, our Chairman has held an informal meeting with the Chair of the Assembly Committee, either in person or via video-link, and in some cases we have held informal joint meetings open to all the members of both committees.

64. One example of co-ordinated action as a result of these meetings is the joint letter written by our Chairman and Mike German AM to the First Minister and Secretary of State for Wales, following our respective scrutiny of the Environment LCO. Both committees concluded that the Order was drafted in a needlessly complex manner, particularly in respect of the exceptions included in the LCO. In the debate on the final draft Order in the Assembly, Mike German AM described the value of this collaboration:

I place on record my thanks to the Welsh Affairs Committee for the valuable informal meeting that we held to discuss the proposed Order. The outcome of that meeting was a joint letter sent from both committees to the Secretary of State for Wales about our reports' recommendations for the future presentation and scrutiny of legislative competence Orders. I sincerely hope that future proposed Orders and accompanying explanatory memoranda take account of our recommendations on the need for greater clarity in defining and explaining the boundaries of the National Assembly's powers. Such an approach is vital to the principles of openness, transparency and good governance.²³

65. Informal meetings have allowed us to benefit from the perspectives of the Assembly Committee members and their reflections on the evidence they have received, before writing our final Report and to join up scrutiny at Westminster and Cardiff Bay. We now consider them a vital part of our approach to our work on LCOs.

66. The use of video-link technology for some informal meetings has enabled us to overcome the inevitable timetabling difficulties involved in organising a joint meeting either in Cardiff Bay or Westminster. It is possible that, in the future, video-link technology could be used for formal joint evidence gathering. However, the practicalities of such a session would need to be given further consideration. For example, the system would need to be compatible with the translation facilities in use in the Assembly.

Timing

67. In the course of the past two years, we have established a pattern of reporting on LCOs slightly after the relevant Assembly scrutiny committee. In part, this is due to the fact that proposed Orders have been referred to the Assembly committee some time before they have been laid in the House of Commons. **Whilst we do not consider that it would be appropriate to delay our inquiry until after the relevant Assembly committee has reported, we do consider that there is merit in publishing our Report slightly after that of the Assembly committee. In this way, we are able to build on the considered view of the Assembly committee and avoid duplication.**

²³ National Assembly for Wales Record of Proceedings, 1 December 2009.

Case Study 2: The Welsh Language LCO

68. Our work on the proposed Welsh Language LCO provides an example of successful joint working with the Assembly on a high profile and complex Order which is of significant importance to all the people of Wales. Following the model that has proven successful during our consideration of other recent LCOs, our Chairman held an informal meeting with the Chair of the Assembly Legislation Committee No. 5, Mark Isherwood AM, at the start of the inquiry. This was followed by a meeting in Cardiff Bay between members of both Committees, after oral evidence sessions had been completed. This meeting allowed us to benefit from the perspectives of the Assembly Committee members and their reflections on the evidence they had received, before agreeing our final report.

69. The intention behind this Order is to enable the National Assembly for Wales to legislate to require large organisations which have significant dealings with the public in Wales to offer a Welsh language service to the growing number of people who would prefer to use Welsh. At the same time, the aim is not to place an unreasonable burden on small companies or charitable bodies who might struggle to cope. Both we and the Assembly scrutiny committee recommended changes to the original proposed Order to establish reasonable, proportionate and cost effective language legislation.

70. For both ourselves and the Assembly committee, the key flaw in the draft was the way its scope was defined. The concerns expressed by the Assembly scrutiny committee in its report covered similar issues to our own and our Report drew on the evidence they were given as well as their conclusions and recommendations. We are sure that our scrutiny of the proposed Welsh Language Order was enhanced through co-operation with the relevant Assembly Legislation Committee and we look forward to continuing good relationships with Assembly committees in future.

71. We are pleased that our key recommendations were reflected in the revised draft Order finally presented by the Secretary of State and the Welsh Assembly Government for approval. It is a significant achievement that an Order which was originally perceived as potentially very controversial has, in its revised form, secured cross-party support. The pre-legislative scrutiny process played an important role in securing this support, as we took evidence from all sectors of Welsh society and produced a unanimous report.

72. One important point we made in our Report was that that whilst language legislation is a fundamental part of making sure that the Welsh language continues to thrive, it is far from the whole picture. This was demonstrated by the evidence we took during our inquiry, including from the Catalan Government, which has a long experience of language law. Catalan witnesses clearly felt that legal sanctions, although necessary, were secondary to the development of a positive culture of acceptance and support for the language. They told us that compulsion and enforcement needed to underpin a continuation of consensual progress and should be used only as a last resort. Clarity of expectation, reflected in legislation, should be the primary route for further progress. We believe that, thanks to the pre-legislative scrutiny process, this Order fulfils that aim.

4 The LCO Process

73. In the final section of this review, we consider the general operation of the LCO procedure over the past two years, beyond our own role in the process. We have now been working with the LCO system for over two years and we consider that we are well placed to analyse the effectiveness of different aspects of its operation. We acknowledge that all parties involved in the process have developed a greater familiarity with the process and as a result are working together more successfully. However, we have identified two areas of continuing concern: the Whitehall clearance process and the emerging complexity of the law in Wales.

Whitehall Clearance

Delays

74. The Whitehall clearance process accounts for the most substantial part of the whole LCO process. As Table 1 shows, some proposed Orders have taken months or even years to progress through the Whitehall clearance process before being referred to the Committee for scrutiny. In preparation for this review, we asked the Secretary of State for Wales, Rt Hon Peter Hain MP, in his most recent appearance before the Committee whether he could account for the time that Orders such as the proposed Environment LCO had spent “wandering through Whitehall”:

It was one of those orders that was announced in June 2007. It had not been subject to prior discussion with the Government and we have come a long way since those early days and I have described this. The other problem with it, partly because it had not been discussed—I make no criticism of the Wales Assembly Government, it wanted to be seen to be getting on with things and it created more of a problem down the line—was that it was very broad in scope, far too broad in scope. It touched on policy interests of a lot of different government departments including the Department for Energy and Climate Change, Business, Innovation and Skills, Ministry of Defence, Defra and the Department of Transport. It took a long time to agree the boundaries to the competence which, in places, related to sensitive and high profile areas of policy such as nuclear energy, defence establishments and energy exploration.²⁴

[...]

I think the team that was put in place to coordinate it gradually evolved. It started off with no proper team work and immediately, as you put it, wandering round Whitehall, hit into all the problems in terms of scope and definition and competence issues and so on which could have been eliminated right at the beginning. Rather than necessarily failures in the system systemically, it is more a product of the

²⁴ Transcript of oral evidence taken before the Welsh Affairs Committee on 27 October 2009, HC (2008-09) 1075-I, Q 10

understandable desire to be keen to be getting a move on by the Welsh Assembly Government in its early post-2007 days.²⁵

75. The clearance process will necessarily involve different government departments depending on the policy area concerned, but the Wales Office is best placed to take an overview of the LCO process and ensure that Orders are making adequate progress through Whitehall. We asked the Secretary of State whether the Wales Office would be more proactive in ensuring that proposals for LCOs make progress with Whitehall departments in future:

I think we already are. It is proactivity both in terms of getting in right at the beginning with our colleagues in the Welsh Assembly Government at ministerial and official level. It is also proactivity in immediately engaging with the Whitehall departments. The Wales Office plays an absolutely pivotal role and there is a greater burden of work now than at any time in its existence since 1999 precisely because of the volume of legislation going through. As I say, I think we have all learned along the way and I think we are getting to where we need to be with your help.²⁶

76. Most recently, the Secretary of State addressed the National Assembly for Wales on the subject of the Queen's Speech. During that speech, he said:

I have freely admitted that the [LCO] system took time to bed-down. Many of the delays we encountered with particular LCOs were avoidable, and we have learned our lessons. But the new powers are starting to work, and to work well.²⁷

Responding to that statement, Ann Jones AM agreed that there had been problems with the process:

As the first backbencher to take a Member proposed Order to Westminster, I feel able to say that the Welsh Affairs Committee does not act as a shadow Assembly. I have been treated with the utmost respect. In fact, it is doing everything that it can to ensure that it is passed. Therefore, let us not pretend that the LCO process is not working, because it does. My proposal was the first Member proposed Order, and, with the first one, you have to look at the processes and at the subject, so I like to think that that [problem] was the process.²⁸

The Secretary of State has said recently that the Wales Office has 'learned our lessons' and that delays with particular LCOs were 'avoidable'. We would welcome further elaboration from the Wales Office on the nature of these delays and where they could have been avoided, as well as its plans to ensure that they do not occur in future.

²⁵ *Ibid.* Q 15

²⁶ *Ibid.* Q 16

²⁷ National Assembly for Wales, Record of Proceedings, 25 November 2009.

²⁸ *Ibid.*

Transparency

77. It is important to note that, to date, the Committee has had no access to the substance of Whitehall negotiations concerning LCOs. Although we welcome the informal contacts we have with the Wales Office, which give us some idea of the sequence of Orders we can expect to receive, we have not been made aware of any sticking points in relation to individual Orders, nor have we received formal updates on their progress. In the context of democratic devolution, this lack of transparency is unhealthy and means that the reasons for any delay are not clear. In practical terms, the difficulty in predicting when a proposed Order will be referred to us makes it harder for us to plan a programme of work which balances pre-legislative scrutiny of LCOs with our other activities. It is likely to have had a similar effect on other interested parties (e.g. the voluntary sector, campaign groups etc. with an interest in a particular LCO).

78. We propose to take a more proactive approach to the oversight of Whitehall clearance process in the future, seeking regular and frequent updates from the Secretary of State on the progress of any LCO proposal as soon as it has been announced in the Assembly. The Secretary of State has a personal responsibility to make the process work. The Wales Office—in its own right and as part of the Ministry of Justice which has oversight of constitutional issues— has a clear duty to ensure that the procedure operates effectively and that officials across Whitehall are fully aware of devolved issues and the importance of prioritising negotiations on LCOs. This should result in a speedier resolution of any issues raised in respect of an LCO endorsed by the Assembly.

79. The Wales Office’s experience of LCOs as “a greater burden of work now than at any time in its existence since 1999” is one that we would recognise. It is unfortunate that the resources to deal with this burden were not made available at an earlier stage, but we acknowledge that the Wales Office is now making efforts to speed up the Whitehall clearance process for proposed Orders. There remains, however, an unacceptable lack of transparency within the process which hampers our ability to assess any progress which may have been made.

80. We believe that there is a strong case for a more formal reporting system on the Whitehall clearance system. The Wales Office should provide this Committee with a monthly update on the progress of all proposed Orders together with an explanation of any delays. In the event of this Committee being dissatisfied with progress, we intend to call ministers and officials from Whitehall departments to attend a meeting of the Committee along with a minister or official of the Wales Office in order to identify the issues that remain unresolved, and to provide transparency about the process.

The law in Wales since the Government of Wales Act 2006

81. The LCO system is not the only means by which the Assembly can extend its legislative competence. Powers can also be devolved as part of a Westminster Bill. If Parliament is legislating on a policy area in which the Welsh Assembly Government wishes to modify the Assembly’s competence or the scope of Welsh Ministers’ powers, the Welsh Assembly Government can request the inclusion of “framework powers” or “Welsh only clauses” which devolve powers as part of that Bill. There have been several recent examples of this process. The Secretary of State reported to the Committee in October that:

The devolution settlement put in place through the Government of Wales Act 2006 is delivering much more for Wales than ever before. It has delivered powers to the Assembly in a total of 45 different areas to date. This is massively more than before when we would be lucky to see more than one Wales only bill per parliamentary session. More and more legislative competence orders and framework powers are now flowing through the system providing up to three times as many powers for Wales as under the old system.²⁹

[...]

In just two years four LCOs have been delivered covering additional learning needs and non-residential domiciliary care, vulnerable children, the Welsh red meat industry, a further one on carers is being considered by the Privy Council next month so that will make five. A further seven LCOs are in the pipeline covering subjects as varied as the Welsh language, mental health, waste and local government. Then there have been seven acts of Parliament which have included framework powers from a variety of areas from planning to education and skills to local government and local transport. There are still two further bills in the current session including four framework powers.³⁰

LCOs, framework powers and Welsh-only clauses

82. Powers devolved by means of Westminster Bills may include executive powers devolved to the Welsh Assembly Government Ministers alone, which would not allow Assembly Members (whether Government or backbench AMs) to propose Measures in the relevant policy area, or framework powers which insert new Matters into Schedule 5 of the Government of Wales Act and effect a permanent transfer of law-making powers to the Assembly in the same way as an LCO. For example, the recent Marine and Coastal Access Act 2009 includes provisions which would confer executive powers on Welsh Ministers in relation to marine licensing, marine nature conservation and fisheries, bestow new marine planning functions on the Welsh Ministers and provide Measure-making powers for the Assembly on coastal access.

83. A list of Bills and Acts containing framework powers and Welsh-only clauses which have been considered by Parliament since the passage of the Government of Wales Act 2006 appears in Table 2.³¹ The scrutiny of these bills and orders is a matter for the whole House. Whilst members of the Welsh Affairs Committee sometimes serve on Public Bill Committees and Delegated Legislation Committees considering such legislation, we as a body are not formally involved (though there is nothing to prevent us from commenting if we choose to do so and time allows).

²⁹ Transcript of oral evidence taken before the Welsh Affairs Committee on 27 October 2009, HC (2008-09) 1075-I, Q 2

³⁰ *Ibid.*, Q 4

³¹ Executive powers may also be devolved to the Welsh Ministers by transfer of functions orders. 3 of these have or are being passed since 2006. 11 Matters were also transferred from existing Acts shortly after the passage of the Government of Wales Act via the National Assembly for Wales (Legislative Competence) (Conversion of Framework Powers) Order 2007.

Table 2: Welsh provisions in Westminster legislation³²

Session	Bills with framework powers	Bills with significant Welsh provisions	Proposed LCOs referred to us for scrutiny
2006-07	Further Education and Training Local Government and Public Involvement in Health	Concessionary Bus Travel Consumers, Estate Agents and Redress Further Education and Training Local Government and Public Involvement in Health Local Government Finance Mental Health Offender Management Serious Crime Tribunals, Courts and Enforcement Statistics and Registration Service	None
2007-08	Education and Skills Local Transport Planning	Children and Young Persons Climate Change Criminal Justice and Immigration Dormant Bank and Building Society Accounts Education and Skills Health and Social Care Housing and Regeneration Local Transport Regulatory Enforcement and Sanctions Sale of Student Loans Energy Planning	Additional learning needs Domiciliary care Vulnerable children Affordable housing
2008-09	Constitutional Reform and Governance Local Democracy, Economic Development and Construction Marine and Coastal Access	Apprenticeships, Skills, Children and Learning Autism Business Rate Supplements Child Poverty Constitutional Reform and Governance Coroners and Justice Corporation Tax Equality Health Local Democracy, Economic Development and Construction Marine and Coastal Access Policing and Crime Welfare Reform	Red meat industry Carers Welsh language Environment Mental Health Culture and other fields Local Government Housing (Fire Sprinklers) Education (School Governance)

84. It has been suggested that, to date, Wales has received more powers by means of clauses in Westminster Bills than through the LCO system. The recent report by the All Wales Convention suggested that “Since May 2007, more Matters have been added to Schedule 5

³² See library note. Further information is also available at <http://www.walesoffice.gov.uk/legislation/primary-legislation/> and <http://www.wales-legislation.org.uk/>

through the UK Framework Bill route than through the LCO route. As of 20 July 2009, the start of the National Assembly for Wales’s summer recess, 28 new Matters had been added to Schedule 5—12 through LCOs, and 16 through UK Framework Bills”.³³ The All Wales Convention also refers to a study undertaken in Spring 2009, which found that devolution of executive powers to Welsh Ministers has significantly exceeded the transfer of legislative competence to the Assembly.³⁴ The authors of that study note that whilst the transfer of legislative competence must fall within one of the fields listed in Schedule 5 to the Government of Wales Act 2006, executive devolution to Welsh Ministers is not limited in this way and may relate to any policy area.³⁵

85. Simply counting the number of Matters added to Schedule 5 by various means does not necessarily give a true picture of the extent of legislative competence transferred, as some Matters may be much broader in scope than others. In addition, the inclusion of more new powers within primary legislation may in part be due to the lead time involved in setting up a new system and the fact that many such Bills were already at the planning stage before the LCO process began. Quantification of the extent of powers devolved by different means cannot be a precise science, and the fact that there are several paths along which the process of devolution can be pursued can be seen as a strength of the system. However, it does present a challenge in ensuring that the different legal processes are coherent, consistent and transparent.

Complexity

86. As a result of the devolution of new powers via a combination of framework powers and LCOs, some commentators have argued that the legal record in Wales has reached an undesirable level of complexity.³⁶ In a recent evidence session, we asked the Secretary of State for Wales whether the general public could hope to understand the way in which new powers are now transferred to Wales. He said:

I take the view that a lot of the criticism of LCOs is misplaced. People suggest that this is a hugely complex system; others have used the phrase “a fog around it”. Actually it is no more complex than the process of taking a bill through the House of Commons. I do not think most members of the public would easily understand the process of taking a bill through the House of Commons and the different stages, the descriptions of them and the labels that are put on them. I think actually that the system, after some initial teething troubles which your Committee has dealt with and highlighted, is actually working quite well.³⁷

He acknowledged, however, that more could be done to explain the process to the public, including (as we recommended in our report on the Environment LCO) through improved Explanatory Memoranda accompanying proposed LCOs:

³³ Paragraph 3.3.3

³⁴ This includes Transfer of Functions Orders.

³⁵ ‘Bypassing the Assembly’, *Agenda*, Journal of the Institute of Welsh Affairs, Spring 2009, article by Marie Navarro and David Lambert.

³⁶ See for example evidence to the All Wales Convention: <http://allwalesconvention.org/>

³⁷ Transcript of oral evidence taken before the Welsh Affairs Committee on 27 October 2009, HC (2008-09) 1075-I, Q 2

There is a very important recommendation because I remember reading draft memoranda and, to be honest, it was written in a jargon which parliamentary draughtsmen and officials acquainted with the technical detail of it may have been familiar with it, but to most parliamentarians, let alone most members of the public, it was opaque to say the least.³⁸

87. We are aware of some efforts to present the law relating to Wales in a more user-friendly manner. For example, two services provided by the National Assembly for Wales via its website, the Assembly powers tracking notes³⁹ and the regularly updated version of Schedule 5 to the Government of Wales Act 2006⁴⁰ provide a useful tool for those wishing to monitor the growing competence of the Assembly. Nevertheless, more work is needed to provide a comprehensive picture of powers devolved both to the Assembly and to Welsh Ministers in an accessible and regularly updated form. One vehicle for further research may be *Wales legislation online*, a service supported by the National Assembly for Wales and the Welsh Assembly Government in conjunction with Cardiff University and the Wales Governance Centre, which aims to provide “an accurate, comprehensive and current statement of the devolved functions in Wales and of the laws made in Wales”.⁴¹ This site is currently being revised to better reflect legislation since the Government of Wales Act 2006.

All Wales Convention

88. During the preparation of this Report, the All Wales Convention published its final report, which gave some consideration to these issues.⁴² Many of those who gave evidence to the All Wales Convention stated that they did not understand the LCO process and found it complex. It is regrettable that the All Wales Convention’s report reflected some of the common misconceptions surrounding the LCO process without correcting them. For example, the Report includes a chart which misrepresents the comparative complexity of primary legislation and the LCO process. It also repeats the erroneous assumption that a series of different LCOs would be required to devolve power in a number of related areas. As the recent Environment and Housing LCOs demonstrate, LCOs can devolve powers in several different fields in order to provide for a holistic approach to legislation in a given policy area.⁴³ **Processes for passing legislation possess an inherent degree of complexity, but we do not consider that the LCO procedure is intrinsically any more complex than other legislative processes.**

³⁸ *Ibid.*, Q 14

³⁹ http://www.assemblywales.org/bus-home/bus-legislation/bus-legislation-guidance/bus-legislation-guidance-documents/legislation_fields.htm

⁴⁰ http://www.assemblywales.org/bus-home/bus-legislation/bus-legislation-guidance/bus-legislation-guidance-documents/legislation_fields/schedule-5.htm

⁴¹ <http://www.wales-legislation.org.uk/>

⁴² All Wales Convention Report, November 2009, available at www.allwalesconvention.org

⁴³ Paragraphs 3.11.21 and Chart 3.1.

Case Study 3: The Environment LCO

89. One of the most technically complex Orders we have considered so far was the proposed Environment LCO. This Order, which spent two years in the Whitehall clearance process, would confer legislative competence on the Assembly largely reflecting the existing executive powers of the Welsh Assembly Government. As drafted, the proposed Order contains a large number of exceptions to its three Matters reflecting “topics which are relevant to waste or environmental protections, but where the Welsh Ministers do not have significant functions”.⁴⁴

90. A distinction was made between ‘fixed’ exceptions and ‘floating’ exceptions within the proposed Order. ‘Fixed’ exceptions apply to one or more specific Matters within a given Field, whereas ‘floating’ exceptions apply across all Fields. In addition, the Order contained a number of ‘carve-outs’, or exceptions to exceptions, which do not themselves confer legislative powers but only take effect if they deal with cases that otherwise fall with the scope of an existing Matter.

91. Several of the exceptions, for example regarding health and safety regulations, relate to Matters that would already be excluded from the Assembly’s competence under Part 2 of Schedule 5 to the Government of Wales Act 2006 which prevents the functions of Ministers of the Crown from being modified by means of an Assembly Measure without the permission of the Secretary of State. Other exceptions were to be added to Schedule 5 under three fields that will not otherwise be affected by the proposed Order.

92. Concerns were raised during the scrutiny process, both here and in the Assembly, about the use of terms and definitions and the exceptions to Matters listed in the proposed Order. In its report, the National Assembly for Wales Legislation Committee No. 4 highlighted the sheer complexity that the use of exceptions creates within the LCO and ultimately within the Government of Wales Act 2006, commenting “In our view the effect of the volume and complexity of these new exceptions will be to make it extremely difficult for the public, stakeholders and even relevant professions to be clear where the boundaries of the National Assembly’s legislative competence will lie”.⁴⁵ In our report we suggested that:

...there is a danger that excessive use of these practices could risk making the Government of Wales Act 2006 unwieldy and impenetrable. Furthermore, we suggest that the Explanatory Memorandum accompanying the proposed Order fails to fully convey the precise implications of the proposed Order in terms that are understandable by all. [...] This cannot be helpful, especially at a time when the National Assembly for Wales is trying to promote an understanding of its processes.⁴⁶

93. At the end of our respective inquiries, our Chairman wrote jointly with the Chair of the Assembly Committee to the Secretary of State for Wales and the First Minister to suggest

⁴⁴ Explanatory Memorandum paragraph 30

⁴⁵ National Assembly for Wales Legislation Committee No. 4 Report on the National Assembly for Wales (Legislative Competence) (Environment) Order 2009

⁴⁶ HC (2008-09) HC 678

that they review the use of exceptions in this Order. The letter drew attention to the complexity of the legislative settlement that is developing under Schedule 5 of the Government of Wales Act 2006, and the need to ensure that Explanatory Memoranda accompanying proposed Orders explain clearly and precisely what powers they will confer on the National Assembly.

94. In October 2009, the Lords Constitution Committee reported on the proposed Order. It endorsed our views on the use of exceptions and concluded as follows:

The Constitution Committee considers LCO 8 [the Environment LCO], taken in the round, to be perilously close to the borderline of what is constitutionally acceptable. A common thread is the opaque nature of the evolving ‘written constitution’ that is the Government of Wales Act 2006. To this effect, the Constitution Committee agrees with the Welsh Affairs Committee that “LCOs should be drafted with the aims of clarity and simplicity in mind” and, indeed, recalls that clarity and transparency in the law are elemental to the core constitutional principle of the rule of law. The Wales Office, it is recommended, should actively explore ways in which the proposed Environment LCO may be simplified. The Constitution Committee also urges the importance of user-friendly explanations of the Assembly’s evolving legislative competence, both in the case of individual LCOs and, on a regular basis, of Schedule 5 as a whole. The concept of an evolving ‘written constitution’ for one of the four countries of the Union demands no less.⁴⁷

95. We call for different a type of drafting to be undertaken by the National Assembly for Wales with the support and encouragement of the Wales Office and the Office of Parliamentary Counsel. The traditional approach within Whitehall is to draft any legislative clauses as widely as possible and to give ill-defined powers to ministers and officials. This arises from the wish to be able to deal with unanticipated circumstances and it is understandable when a legislative opportunity may not arise for a considerable period of time and perhaps for many years. Such drafting is not justified given the speed and efficiency of the LCO process, which makes it easy for the Assembly to draft and submit a fresh LCO to deal with specific circumstances that have not been anticipated in the drafting of existing legislation. It follows that each LCO should be as well defined as possible and should reflect the intention that has been stated by Ministers, Assembly members and MPs for each LCO to contain ‘what it says on the tin’.

Recommendations

96. We agree with the Lords Constitution Committee that “clarity and transparency in the law are elemental to the core constitutional principle of the rule of law”. The developing complexity of the law in Wales therefore gives us cause for concern. This situation arises not only from the legal complexity of certain individual instruments, such as the Environment LCO, but also from the need to keep track of a range of legislative vehicles through which powers can be devolved either to the Assembly or Welsh Ministers.

⁴⁷ HL (2008-09) 159, paragraph 9

97. A difficulty now exists for legislators, ministers and civil servants, experts and most particularly the general public, in establishing the precise state of the law in Wales. In its report on the Environment LCO, the Lords Constitution Committee recommends the creation of “user-friendly explanations of the Assembly’s evolving legislative competence, both in the case of individual LCOs and, on a regular basis, of Schedule 5 as a whole” to address this difficulty. We agree that there is more work to be done to establish a comprehensive and accessible ‘Welsh statute book’ and consider that this should be combined with a more straightforward approach to the drafting of proposed Orders and Explanatory Memoranda on the part of the Wales Office and Welsh Assembly Government.

5 Conclusion

98. In the light of two years’ experience, we consider that the LCO process is resulting in the transfer of significant powers to Wales. We believe that we play an important role in the process, ensuring that proposed Orders are fit for purpose. We have been greatly assisted by working in collaboration with committees of the National Assembly for Wales and we are convinced that the scrutiny process is significantly strengthened when Westminster and Cardiff Bay take a complementary approach.

99. It is easy to be wise after the event, but in retrospect, it is clear that those responsible for the procedures in Cardiff Bay and in the House of Commons assumed that existing processes would be adequate for dealing with LCOs and with the making of the consequent Orders in Council. The making of the final Order in Council is indeed a relatively simple process that follows normal parliamentary practice, but the earlier stages presented a variety of challenges which were not anticipated. This Committee quickly came to realise that such an assumption was misplaced and that we needed to develop new and robust systems for scrutiny. We accepted the need to almost double our workload in order to keep up with the flow of LCOs from the Assembly at the same time as developing our own processes in partnership with members of the Assembly’s committees. We believe that we have now developed the appropriate expertise and methodology, and become a strong link in the legislative chain. That has not come easily, which is the main reason allocating LCOs to other departmental select committees or to ad hoc committees is not a viable or workable option.

100. We remain concerned about some aspects of the process, in particular the lengthy period some proposals have spent in closed negotiations between the UK and Welsh Assembly Governments, the substance of which is inaccessible both to this Committee and the general public. In addition, it is important that the complexity of some recent proposed Orders should not cause Schedule 5 of the Government of Wales Act to become unwieldy and labyrinthine.

101. We propose to take a more proactive approach to the oversight of Whitehall clearance process in the future, seeking regular and frequent updates from the Secretary of State on the progress of any LCO proposal as soon as it has been announced in the Assembly. This should result in a speedier resolution of any issues raised in respect of an LCO endorsed by the Assembly and contribute to strengthening the devolution settlement as a whole.

Annex A

Background to the Legislative Competence Order procedure

The Government of Wales Act 2006 introduced a procedure whereby the National Assembly for Wales can bring forward proposals which would extend the Assembly's lawmaking powers by way of Legislative Competence Orders in Council. The Order in Council mechanism allows Parliament to confer enhanced legislative powers on the Assembly in relation to specified subject matter within devolved fields. These fields are listed in Schedule 5 to the Act. They are:

- Field 1: agriculture, fisheries, forestry and rural development
- Field 2: ancient monuments and historic buildings
- Field 3: culture
- Field 4: economic development
- Field 5: education and training
- Field 6: environment
- Field 7: fire and rescue services and promotion of fire safety
- Field 8: food
- Field 9: health and health services
- Field 10: highways and transport
- Field 11: housing
- Field 12: local government
- Field 13: National Assembly for Wales
- Field 14: public administration
- Field 15: social welfare
- Field 16: sport and recreation
- Field 17: tourism
- Field 18: town and country planning
- Field 19: water and flood defence
- Field 20: Welsh language

Orders in Council add new “Matters” to the “Fields” of legislative competence set out in Schedule 5 to the Government of Wales Act 2006, within which the Assembly may have legislative competence. For example, Field 18: town and country planning contains the following Matters at the time of writing:

Matter 18.1

Provision for and in connection with -

(a) plans of the Welsh Ministers in relation to the development and use of land in Wales, and

(b) removing requirements for any such plans.

This does not include provision about the status to be given to any such plans in connection with the decision on an application for an order granting development consent under the Planning Act 2008.

Matter 18.2

Provision for and in connection with the review by local planning authorities of matters which may be expected to affect -

(a) the development of the authorities' areas, or

(b) the planning of the development of the authorities' areas.

Matter 18.3

Provision for and in connection with -

(a) plans of local planning authorities in relation to the development and use of land in their areas, and

(b) removing requirements for any such plans.

This does not include provision about the status to be given to any such plans in connection with the decision on an application for an order granting development consent under the Planning Act 2008.

Interpretation of this field

In this field -

“local planning authority” in relation to an area means -

(a) a National Park authority, in relation to a National Park in Wales;

(b) a county council in Wales or a county borough council, in any other case;

“Wales” has the meaning given by Schedule 1 to the Interpretation Act 1978.

There are some general restrictions on the competence of the Assembly, including that a provision of an Assembly Measure cannot alter or impose any function of a Minister of the

Crown. Nor can it create any criminal offence punishable by a fine or imprisonment exceeding a certain level. Certain Acts, such as the European Communities Act 1972, the Government of Wales Act 1998 and the Human Rights Act 1998 are also protected from modification.

The Orders in Council enable the Assembly to pass its own legislation within the scope of the powers delegated by Parliament (as defined by the Order in Council). The Orders do not themselves change the general law for Wales—they pave the way to subsequent ‘Measures’ to change the law applying to Wales within the devolved areas of legislative competence. Provided it complies with the provisions of the Government of Wales Act 2006, an Assembly Measure can have the same effect as an Act of the UK Parliament. In other words it can, for example, modify existing Acts of Parliament or other enactments and it can make new provision not covered by existing statutes.

Proposals for draft Legislative Competence Orders may be introduced by the Welsh Assembly Government, by committees of the National Assembly, or by individual Assembly Members (chosen by ballot). They are subject to pre-legislative scrutiny by committees of the Assembly appointed for this purpose and by committees of the House of Commons and the House of Lords. Whitehall agreement (“clearance”) is a necessary prerequisite before a proposed Order is referred by the Secretary of State for Wales to each House at this pre-legislative scrutiny stage.

Following the pre-legislative scrutiny stage, the National Assembly may agree an actual draft Order. This may take account of committee recommendations (from either its own committees or Westminster) arising from pre-legislative scrutiny. The draft Order may then be laid before Parliament by the Secretary of State for Wales—and he or she may still decline to do so at this stage. If the draft Order is laid, it is considered by both Houses of Parliament, and may be debated by them. Draft Orders at this stage are not amendable and can only be approved or rejected. If approved by both Houses, and once it is given the royal assent in the Privy Council, direct law-making powers are devolved to the Assembly within the scope of the Order in Council. The Assembly can then make laws in the form of Assembly Measures, which need to be passed by the National Assembly but which require no further approval by either Whitehall or Parliament.

Annex B

Welsh Affairs Committee scrutiny of proposed LCOs

Draft Order	Received by Welsh Affairs Committee	Agreed to conduct scrutiny	Press notice issued	Evidence session(s)	Report published
1 Proposed Legislative Competence Order in Council on additional learning needs	26 July 2007	27 July 2007	31 July 2007	7 & 21 November 2007	21 December 2007
2 Proposed Legislative Competence Order in Council in the Field of social welfare	26 November 2007	27 November 2008	13 December 2007	31 January 2008	5 March 2008
3 Proposed Legislative Competence Order in Council on social welfare and other fields	19 March 2008	31 March 2008	3 April 2008	15 May 2008	26 June 2008
4 Proposed Legislative Competence Order in Council on housing	13 May 2008	20 May 2008	22 May 2008	23 June & 1 July 2008	14 October 2008
5 Proposed Legislative Competence Order in Council on the red meat industry	6 October 2008	14 October 2008	14 October 2008	15 December 2008	23 February 2009
6 Proposed Legislative Competence Order in Council on carers	8 December 2008	16 December 2008	17 December 2008	2 March 2009	28 April 2009
7 Proposed Legislative Competence Order in Council on the Welsh language	9 February 2009	10 February 2009	11 February 2009	23 & 30 March; 20 and 27 April 2009	7 July 2009
8 Proposed Legislative Competence Order in Council on Environment	27 April 2009	28 April 2009	29 April 2009	11 & 25 June, 2 July 2009	28 July 2009
9 Proposed Legislative	21 May 2009	2 June 2009	2 June 2009	2, 9 & 16 July 2009	30 October 2009

Competence Order in Council on Mental Health					
10 Proposed Legislative Competence Order in Council on Culture and other fields	1 July 2009	7 July 2009	10 July 2009	5 November 2009	7 December 2009
11 Proposed Legislative Competence Order in Council on Local Government	14 July 2009	21 July 2009	22 July 2009	24 & 26 November 2009	12 January 2010
12 Proposed Legislative Competence Order in Council on Housing (Fire Sprinklers)	12 October 2009	13 October 2009	14 October 2009	10 November 2009	18 December 2009
13 Proposed Legislative Competence Order in Council on Education	23 October 2009	27 October 2009	28 October 2009	14 January 2010	tbc
14 Proposed Legislative Competence Order in Council on Housing and Local Government	2 December 2009	3 December 2009	3 December 2009	15 December 2009 & 7 January 2010	tbc
15 Proposed Legislative Competence Order in Council on Transport	14 December 2009	15 December 2009	15 December 2009	14 January 2010	tbc

Conclusions and recommendations

Pre-legislative scrutiny role

1. We estimate that the additional task of conducting pre-legislative scrutiny of LCOs has almost doubled the workload of the Committee for its members (Paragraph 13)
2. We do not believe that all proposed Orders should be referred to the Welsh Grand Committee, but in the case of the most complex and wide-ranging Orders, the option of a debate open to all Welsh MPs has proved its worth. (Paragraph 15)
3. There is a clear advantage in nominating members of the Welsh Affairs Committee to serve on Delegated Legislation Committees in relation to draft LCOs. (Paragraph 16)
4. Allowing debate in the Welsh Grand Committee may be necessary if an LCO is particularly controversial or has implications for specific constituencies and localities. Holding a debate on the floor of the House enables any MP from anywhere in the country to comment. We therefore consider that these options should be retained, but used sparingly and only when necessary (Paragraph 17)

Timing

5. For those LCOs which have taken the longest time to proceed from their announcement in the Assembly to approval in Parliament, the main factor by a significant margin is the time taken up by negotiations between the UK and Welsh Assembly Governments to agree on a text. (Paragraph 21)
6. We consider that the delay in respect of the Fire Sprinklers LCO was highly unsatisfactory and that it was clear that a Legislative Competence Order would achieve the desired outcome much earlier than any amendment to building regulations, once devolved. The Committee hopes that lessons can be learned from the unnecessary delays caused in bringing this proposed Order forward. (Paragraph 24)

Future scrutiny of proposed Orders

7. We consider that there should be a standing assumption that proposed Orders will be scrutinised by the Welsh Affairs Committee once they have been laid before the House, without the need for the Secretary of State to specifically refer each Order to us. For clarity, and depending on any other changes which may be made, this could be specified in a Standing Order. In addition, the Secretary of State should be required to provide notification in writing to this committee as soon as an LCO is submitted to the Wales Office, in order to enable us to undertake scrutiny of the process in Whitehall and prepare the ground for our own scrutiny to follow quickly when that is complete. (Paragraph 31)
8. We believe that every proposed LCO should continue to undergo pre-legislative scrutiny in the House of Commons. (Paragraph 33)

9. We consider it important that we continue to issue a public call for written submissions when we receive a proposed Order and that we allow interested parties a reasonable time to respond. (Paragraph 34)
10. We will normally wish to take oral evidence in connection with a proposed Order. We would normally expect to hear from Welsh Assembly Government and Wales Office Ministers, as well as the sponsoring Assembly Member, in the case of private members' LCOs (Paragraph 35)
11. We consider that an accelerated process of scrutiny could be implemented for LCOs which appear to raise no significant legal or policy questions. We intend to adopt this approach and would recommend it to our successor committee in the next Parliament (Paragraph 36)
12. We agree that we must give prompt consideration to LCOs which are referred to us for scrutiny to avoid needless delay. It remains the case, however, that some LCOs will raise issues of broad importance to the people of Wales or may be of some legal complexity. Proposed Orders should receive proper scrutiny via a sustained inquiry and the House of Commons should be fully informed about the implications of any decision it is asked to make on extending the legislative competence of the National Assembly for Wales. (Paragraph 37)
13. To avoid duplication of effort, we can draw on evidence taken in the Assembly rather than holding similar evidence sessions with the same witnesses. This might mean that the number of oral evidence sessions at Westminster could generally be reduced to a single session with Welsh Assembly Government and Wales Office Ministers. We intend to adopt this approach where possible and would recommend it to our successor committee in the next Parliament. (Paragraph 38)
14. We can feel confident in drawing on the evidence taken in the Assembly due to the strong links we have established with our counterparts in Cardiff Bay. (Paragraph 39)

Arrangements after the next General Election

15. Depending on the date of the election, some proposed Orders may complete the pre-legislative scrutiny process but may not be finally approved by Parliament before dissolution. Those Orders will be a matter for the new Parliament to consider, but we would not expect our successor Committee to feel it necessary to repeat the pre-legislative scrutiny process in cases where we have already reported on a proposal. This would be a needless duplication of effort. (Paragraph 43)
16. We do not recommend that pre-legislative scrutiny of LCOs should be undertaken by ad hoc committees, established only to consider a single proposed Order. (Paragraph 46)
17. We would support a change to Standing Order 152 to allow departmental select committees to establish more than one sub-committee simultaneously. This may also benefit other select committees and we suggest that the Procedure Committee might wish to consider this matter more widely. (Paragraph 51)

18. It may not need saying, but for the avoidance of doubt, we wish to put on record our strong conviction about the continuing need for the work of the Welsh Affairs Select Committee and we strongly urge the House to maintain a Welsh Affairs Committee in the next Parliament both to pursue the traditional role of the committee in the context of devolution and to undertake pre-legislative scrutiny of LCOs.
19. The Welsh Affairs Committee should retain responsibility for pre-legislative scrutiny of proposed Orders. There are procedural changes which would enable the process to operate more smoothly in future. Some of these require changes to Standing Orders and the new Parliament might provide the opportunity for these to be made and for other committees to revise their working practices at the same time should they so wish. (Paragraph 54)
20. We recommend that, from the new Parliament, the Welsh Affairs Committee be given the power to invite any MP who is not a member of the Committee to attend and ask questions during evidence sessions in respect of LCOs. This change should allow more Members to be involved in the pre-legislative scrutiny process. The attendance of other Members would be at the invitation of the Committee, which is best placed to decide whether their participation would be of value in the context of any given inquiry. As a consequence, we do not recommend any change to the current size of the Committee. (Paragraph 56)
21. We recommend that consideration be given to revising Standing Order 152 to allow departmental select committees to establish more than one sub-committee simultaneously. We suggest that the Procedure Committee might wish to consider this matter in the first instance. (Paragraph 57)

Formal joint meetings

22. Whilst there is little practical effect on the conduct of meetings, we do not believe that the current wording of Standing Order No. 137A(3), which allows us to “invite members of any specified committee of the National Assembly for Wales to attend and participate” in our meetings reflects the actual experience of joint meetings. We recommend that the Standing Order be updated to provide for concurrent meetings, reflecting Standing Order 10.48 of the National Assembly for Wales. (Paragraph 62)

Informal meetings

23. Informal meetings have allowed us to benefit from the perspectives of the Assembly Committee members and their reflections on the evidence they have received, before writing our final Report and to join up scrutiny at Westminster and Cardiff Bay. We now consider them a vital part of our approach to our work on LCOs. (Paragraph 65)

Timing

24. Whilst we do not consider that it would be appropriate to delay our inquiry until after the relevant Assembly committee has reported, we do consider that there is merit in publishing our Report slightly after that of the Assembly committee. In this

way, we are able to build on the considered view of the Assembly committee and avoid duplication. (Paragraph 67)

Whitehall Clearance

25. The Secretary of State has said recently that the Wales Office has 'learned our lessons' and that delays with particular LCOs were 'avoidable'. We would welcome further elaboration from the Wales Office on the nature of these delays and where they could have been avoided, as well as its plans to ensure that they do not occur in future. (Paragraph 76)
26. The Wales Office's experience of LCOs as "a greater burden of work now than at any time in its existence since 1999" is one that we would recognise. It is unfortunate that the resources to deal with this burden were not made available at an earlier stage, but we acknowledge that the Wales Office is now making efforts to speed up the Whitehall clearance process for proposed Orders. There remains, however, an unacceptable lack of transparency within the process which hampers our ability to assess any progress which may have been made. (Paragraph 79)
27. We believe that there is a strong case for a more formal reporting system on the Whitehall clearance system. The Wales Office should provide this Committee with a monthly update on the progress of all proposed Orders together with an explanation of any delays. In the event of this Committee being dissatisfied with progress, we intend to call ministers and officials from Whitehall departments to attend a meeting of the Committee along with a minister or official of the Wales Office in order to identify the issues that remained unresolved, and to provide transparency about the process. (Paragraph 80)

The law in Wales since the Government of Wales Act 2006

28. Processes for passing legislation possess an inherent degree of complexity, but we do not consider that the LCO procedure is intrinsically any more complex than other legislative processes. (Paragraph 88)
29. We call for different a type of drafting to be undertaken by the National Assembly for Wales with the support and encouragement of the Wales Office and the Office of Parliamentary Counsel. The traditional approach within Whitehall is to draft any legislative clauses as widely as possible and to give ill-defined powers to ministers and officials. This arises from the wish to be able to deal with unanticipated circumstances and it is understandable when a legislative opportunity may not arise for a considerable period of time and perhaps for many years. Such drafting is not justified given the speed and efficiency of the LCO process, which makes it easy for the Assembly to draft and submit a fresh LCO to deal with specific circumstances that have not been anticipated in the drafting of existing legislation. It follows that each LCO should be as well defined as possible and should reflect the intention that has been stated by Ministers, Assembly members and MPs for each LCO to contain 'what it says on the tin'. (Paragraph 95)

30. We agree with the Lords Constitution Committee that “clarity and transparency in the law are elemental to the core constitutional principle of the rule of law”. The developing complexity of the law in Wales therefore gives us cause for concern. This situation arises not only from the legal complexity of certain individual instruments, such as the Environment LCO, but also from the need to keep track of a range of legislative vehicles through which powers can be devolved either to the Assembly or Welsh Ministers. (Paragraph 96)
31. A difficulty now exists for legislators, ministers and civil servants, experts and most particularly the general public, in establishing the precise state of the law in Wales. In its report on the Environment LCO, the Lords Constitution Committee recommends the creation of “user-friendly explanations of the Assembly’s evolving legislative competence, both in the case of individual LCOs and, on a regular basis, of Schedule 5 as a whole” to address this difficulty. We agree that there is more work to be done to establish a comprehensive and accessible ‘Welsh statute book’ and consider that this should be combined with a more straightforward approach to the drafting of proposed Orders and Explanatory Memoranda on the part of the Wales Office and Welsh Assembly Government. (Paragraph 97)

Formal Minutes

Thursday 7 January 2010

Members present:

Dr Hywel Francis, in the Chair

Mr David Jones

Mark Williams

Alun Michael

Draft Report (*Review of the LCO process*) proposed by the Chairman, brought up and read.

Ordered, That the Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 101 read and agreed to.

Annexes and summary agreed to.

Resolved, That the Report be the Fifth Report of the Committee to the House.

Ordered, That the Chairman make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned until Monday 11 January at 10 a.m. at the National Assembly for Wales, Cardiff Bay

List of Reports from the Committee during the current Parliament

Session 2009-10

First Report	The Proposed National Assembly for Wales (Legislative Competence) (Culture and other fields) Order 2009	HC 40
Second Report	Proposed National Assembly for Wales (Legislative Competence) (Housing) Order 2009 relating to Domestic Fire Safety	HC 142
Third Report	Work of the Committee 2008-09	HC 154
Fourth Report	The Proposed National Assembly for Wales (Legislative Competence) (Local Government) Order 2009	HC 36
Fifth Report	Review of the LCO Process	HC 155
First Special Report	Proposed National Assembly for Wales (Legislative Competence) (Health and Health Services and Social Welfare) Order 2009: Government Response to the Committee's Fourteenth Report of Session 2008-09	HC 198

Session 2008-09

First Report	Cross-border provision of public services for Wales: Further and higher education	HC 57
Second Report	Globalisation and its impact on Wales	HC 184 –I, II
Third Report	Proposed National Assembly for Wales (Legislative Competence) (Agriculture and Rural Development) Order 2008	HC 5
Fourth Report	Work of the Committee 2007-08	HC 252
Fifth Report	The provision of cross-border health services for Wales	HC 56
Sixth Report	Proposed National Assembly for Wales (Legislative Competence) (Social Welfare) Order 2009	HC 306
Seventh Report	Legal Services Commission Cardiff Office	HC 374
Eighth Report	Potential Benefits of the 2012 Olympics and Paralympics for Wales	HC 162
Ninth Report	The proposed National Assembly for Wales (Legislative Competence) (Welsh Language) Order 2009	HC 348
Tenth Report	Cross-border provision of public services for Wales: Transport	HC 58
Eleventh Report	English Language Television Broadcasting in Wales	HC 502
Twelfth Report	Proposed National Assembly for Wales (Legislative Competence) (Environment) Order 2009	HC 678
Thirteenth Report	Digital Inclusion in Wales	HC 305
Fourteenth Report	Proposed National Assembly for Wales (Legislative Competence) (Health And Health Services And Social	HC 778

	Welfare) Order 2009	
Fifteenth Report	Ports in Wales	HC 601
First Special Report	The proposed draft National Assembly for Wales (Legislative Competence) (Housing) Order 2008: Government Response to the Committee's Seventh Report of Session 2007–08	HC 200
Second Special Report	Cross-border provision of public services for Wales: further and higher education: Government Response to the Committee's First Report of Session 2008-09	HC 378
Third Special Report	Proposed National Assembly for Wales (Legislative Competence) (Agriculture and Rural Development) Order 2008: Government Response to the Committee's Third Report of Session 2008-09	HC 410
Fourth Special Report	Globalisation and its impact on Wales: Government Response to the Committee's Second Report of Session 2008-09	HC 538
Fifth Special Report	The National Assembly for Wales (Legislative Competence) (Social Welfare) Order 2009: Government Response to the Committee's Sixth Report of Session 2008-09	HC 605
Sixth Special Report	Legal Services Commission Cardiff Office: Government Response to the Committee's Seventh Report of Session 2008-09	HC 825
Seventh Special Report	Proposed National Assembly for Wales (Legislative Competence) (Welsh Language) Order 2009: Government Response to the Committee's Ninth Report of Session 2008-09	HC 1024
Eighth Special Report	Digital Inclusion in Wales: Government Response to the Committee's Thirteenth Report of Session 2008-09	HC 1050
Session 2007-08		
First Report	Energy in Wales: follow up inquiry	HC 177
Second Report	The proposed Legislative Competence Order in Council on additional learning needs	HC 44
Third Report	Work of the Committee in 2007	HC 325
Fourth Report	The proposed National Assembly for Wales (Legislative Competence) Order in the field of social welfare 2008	HC 257
Fifth Report	The proposed draft National Assembly for Wales (Legislative Competence) (social welfare and other fields) Order 2008	HC 576
Sixth Report	The provision of cross-border health services for Wales: Interim Report	HC 870
Seventh Report	The proposed draft National Assembly for Wales (Legislative Competence) (Housing) Order 2008	HC 812
First Special Report	The proposed Legislative Competence Order in Council on additional learning needs: Government response to the Committee's Second Report of	HC 377

	Session 2007-08	
Second Special Report	Energy in Wales – follow-up inquiry: Government Response to the Committee’s First Report of Session 2007-08	HC 435
Third Special Report	The proposed National Assembly for Wales (Legislative Competence) Order in the field of social welfare 2008: Government Response to the Committee’s Fourth Report of Session 2007-08	HC 715
Session 2006-07		
First Report	Work of the Committee in 2005-06	HC 291
Second Report	Legislative Competence Orders in Council	HC 175
Third Report	Welsh Prisoners in the Prison Estate	HC 74
First Special Report	Government Response to the Committee’s Second Report of Session 2006-07, Legislative Competence Orders in Council	HC 986
Session 2005-06		
First Report	Government White Paper: Better Governance for Wales	HC 551
Second Report	Proposed Restructuring of the Police Forces in Wales	HC 751
Third Report	Energy in Wales	HC 876-I
Oral and written Evidence	Energy in Wales	HC 876-II
Fourth Report	Future of RAF St Athan	HC 1129
Fifth Report	Current Restructuring of the Police Forces in Wales	HC 1418
Oral and written Evidence	NHS Dentistry in Wales	HC 771-i
First Special Report	Government Response to the Committee’s Second and Third Reports of Session 2004–05, Manufacturing and Trade in Wales and Public Services Ombudsman (Wales) Bill	HC 433
Second Special Report	Government Response to the Committee’s Fourth Report of Session 2004-05, Police Service, Crime and Anti-Social Behaviour in Wales	HC 514
Third Special Report	Government Response to the Committee’s First Report of Session 2005-06, Government White Paper: Better Governance for Wales	HC 839
Fourth Special Report	Government Response to the Committee’s Second Report of Session 2005-06, Proposed Restructuring of the Police Forces in Wales	HC 1431
Fifth Special Report	Government Response to the Committee’s Third Report of Session 2005-06, Energy in Wales	HC 1656
Sixth Special Report	Government Response to the Committee’s Fourth Report of Session 2005-06, Future of RAF St Athan	HC 1657
Seventh Special Report	Government Response to the Committee’s Fifth Report of Session 2005-06, Current Restructuring of the Police Forces in Wales	HC 1695

