



House of Commons
Welsh Affairs Committee

**Proposed National
Assembly for Wales
(Legislative
Competence) (Housing
and Local Government)
Order 2010, relating to
Sustainable Housing**

Sixth Report of Session 2009–10

*Report, together with formal minutes, oral and
written evidence*

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The Welsh Affairs Committee

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Summary

The effect of this proposed LCO would be to devolve wide-ranging legislative competence for social housing policy to the National Assembly for Wales. The terms of the proposed Order include the provision of social housing, provision by local authorities of caravan sites for use by gypsies and travellers, measures to tackle homelessness, and council tax payable in respect of dwellings that are not the main residence of an individual.

The current proposal is a revision of an earlier, much narrower, affordable housing LCO laid before Parliament in 2008, which was criticised because the terms of the LCO went much wider than the policy purposes described to us by the Minister in her evidence. A considerable amount of policy work has been undertaken by the Welsh Assembly Government in regard to social housing since that time. As a result, a proposed Order has been produced which provides a coherent approach to the sector, consolidating the executive powers already devolved to Welsh Ministers with legislative powers for the National Assembly. Robust research carried out in partnership with the social housing sector in Wales over the past two years has resulted in a significantly more mature and consistent proposal for the transfer of competence than the previous proposal.

Our evidence suggests that there is indeed a demand in Wales for comprehensive social housing legislation for Wales, to include the regulation of social housing providers and reform of tenure law. A number of areas of housing policy are currently under review, and further legislation may follow in due course.

We conclude that the current Order is a logical extension of the current devolution settlement and, with minor technical changes outlined in this Report, we are content that it should proceed.

We highlight in particular our continuing concerns about the naming of LCOs. As the LCO process results in ever more powers being transferred to the Assembly, the practice of naming Orders after the field(s) into which they insert Matters means that there are now a number of draft or proposed Orders with similar titles. This proposed Order relating to sustainable housing is called the “housing and local government” LCO. However, two other “housing” LCOs (the affordable housing and fire sprinklers LCOs) have already been laid before Parliament as well as one “local government” LCO dealing with community councils. We repeat our recommendation, made in respect of previous proposed Orders, that LCOs should be given a simple title which conveys the actual subject of the Order to the general reader. The link to the relevant field or fields could be made clear in a footnote to the text of the Order as well as in the detailed text and Explanatory Note.

1 Introduction

Pre-legislative scrutiny of proposed Legislative Competence Orders

1. Our task was to examine the scope and appropriateness of the proposed National Assembly for Wales (Legislative Competence) (Housing and Local Government) Order 2009 under the terms of the Government of Wales Act 2006. We considered whether the proposed Order is in the spirit and within the scope of the devolution settlement; the extent to which there is a demand for legislation which might follow the adoption of the proposed Order; and whether the use of the Legislative Competence Order in Council procedure is more appropriate in this instance than, for example, the use of framework powers in a Westminster Bill.

2. This is the thirteenth proposed Legislative Competence Order (LCO) on which the Welsh Affairs Committee has reported. The full background to the LCO process in general and the specific details regarding this particular Order are contained in an Annex to this Report.

Our inquiry

3. We announced our inquiry and issued a call for evidence on 3 December 2009. We took oral evidence from the Welsh Assembly Government Deputy Minister for Housing, Jocelyn Davies AM and the Parliamentary Under-Secretary of State at the Wales Office, Mr Wayne David MP. We received written evidence in support of the proposed Order from Shelter Cymru and Cymorth Cymru. We also benefited from informal discussions with the National Assembly for Wales Legislation Committee No. 2, chaired by Val Lloyd AM, to consider the issues raised by our respective inquiries. We are grateful for the assistance of our specialist advisers, Professor Steve Wilcox, Centre for Housing Policy, University of York¹ and Professor Keith Patchett, Emeritus Professor of Law, University of Wales.²

2 Purpose of the proposed Order

Terms of the proposed Order

4. The effect of the Order would be to devolve wide-ranging legislative competence for social housing policy to the National Assembly for Wales. The Explanatory Memorandum puts forward a rationale for the proposed Order as follows:

In summary, the areas covered by this proposed LCO are closely interrelated. The opportunity to develop a new regulatory framework cannot be divorced from reform of the nature of secure and assured tenancies; the Right to Buy, Preserved Right to Buy and Right to Acquire are inherent to these tenancies. The need to provide

¹ See the Committee's formal minutes for Thursday 3 December 2009:
http://www.parliament.uk/parliamentary_committees/welsh_affairs_committee/wac_formal_minutes_09_10.cfm

² See the Committee's formal minutes for Tuesday 21 July 2009:
<http://www.parliament.uk/documents/upload/FORMALMINUTESWAC08-09v3a.pdf>

affordable and appropriate housing to those in need includes action on homelessness, housing allocations, those needing housing-related support, Gypsy and Traveller sites, and second or empty homes. The lack of legislative competence, and the consequent reliance on Welsh Ministers' executive powers, constrain such action. Legislative competence for the National Assembly will enable the Welsh Ministers to address these constraints and propose legislation to help implement the Assembly Government's overarching housing policy.³

5. The proposed Order adds seven Matters to field 11 (Housing) and one Matter to field 12 (Local Government) of Schedule 5 of the Government of Wales Act. These Matters are:

Matter 11.2: Social housing providers.

Matter 11.3: Relevant social housing bodies.

Matter 11.4: Tenure of rented social housing and other arrangements under which social housing is provided.

Matter 11.5: Disposals of social housing and land held or used for the purposes of, or in connection with, social housing.

Matter 11.6: Provision of advice and non-financial assistance to individuals in respect of their obtaining, and living in, housing.

Matter 11.7: Provision by local authorities of caravan sites for use by gypsies and travellers.

Matter 11.8: Homelessness.

Matter 12.18: Council tax payable in respect of dwellings that are not the main residence of an individual.

Policy background

The 2008 Affordable Housing LCO

6. An 'affordable housing' LCO was first laid before Parliament on 12 May 2008. This Order was relatively narrow in scope and was intended to allow the Assembly to legislate to suspend the Right to Buy in areas of high housing pressure for defined periods (an objective reflected in Matter 11.5 of the current LCO). When we reported on this LCO on 14 October 2008, we expressed concern that the drafting went wider than the policy purposes set out by the Welsh Assembly Government and explained by the Minister in her evidence to the Committee. We noted, for example, that the drafting of the Order would allow the Assembly to effectively abolish the Right to Buy throughout Wales. We recommended that the Order should be amended to apply for limited periods in areas of extreme housing pressure only to reflect the request made by the Assembly and that otherwise the LCO should not proceed.⁴

7. In response to the pre-legislative scrutiny process, the Welsh Assembly Government redrafted the proposed Order so that the Right to Buy could not be suspended without the

³ Explanatory Memorandum, paragraph 44.

⁴ Welsh Affairs Committee, Seventh Report of Session 2007-08, *The proposed draft National Assembly for Wales (Legislative Competence) (Housing) Order 2008*, HC (2007-08) 812.

agreement of the Secretary of State for Wales and Welsh Ministers. This version of the Order was approved by the National Assembly in January 2009 and subsequently laid before Parliament and scrutinised by the Joint Committee on Statutory Instruments (JCSI), which reported the instrument for doubtful *vires* in March 2009. The JCSI objected to the revised draft Order because it delegated discretion over the legislative competence of the Assembly to the Secretary of State and Welsh Ministers. It commented that “This seemed a remarkable proposition in the context of an Order setting out part of the constitutional arrangement between Parliament and the Assembly”.⁵ This objection effectively halted the progress of the draft Order; and the Welsh Assembly Government Minister confirmed in evidence that this new LCO overtakes and replaces it.⁶

Formulation of the current proposal

8. In her evidence, the Welsh Assembly Government Minister said that the current proposal was much more “ambitious”⁷ than the 2008 affordable housing LCO, being based on a solid body of policy work:

...that one was based on manifesto commitments and this one is based on two and a half years of policy work in government, it is entirely different. We have had the Essex Review⁸ and we needed a new housing strategy, a new homelessness plan, and our new approach to policy development has led us to this. I could not have come here two and a half years ago with this because the policy work simply would not have been there.⁹

9. Mr Wayne David MP, Parliamentary Under-Secretary of State at the Wales Office, agreed that:

The period between the difficulties experienced by the previous draft LCO and the situation we are in now has been a very productive period. The Welsh Assembly Government has certainly used the opportunity of that hiatus to ensure that its consultation and its thinking and its policy development is far stronger now than it was a couple of years ago.¹⁰

He concluded that “much of the debate to be had around the previous draft LCO was not that meaningful to the development of housing policy in Wales. What we have before us now is far more relevant”.¹¹

10. The Explanatory Memorandum states that the revision of the LCO and its transformation into a significantly broader proposal was informed by a number of

⁵ Joint Committee on Statutory Instruments, Seventh Report of Session 2008-09, HL 51/HC 3-vii.

⁶ Qq 4-5

⁷ Q 3

⁸ *Report to the Deputy Minister for Housing by the Affordable Housing Task and Finish Group*, June 2008

⁹ Q 26

¹⁰ Q 55

¹¹ Q 57

housing-related policy reviews that the Welsh Assembly Government has commissioned or undertaken over the past year, principally:

- the Report to the Deputy Minister for Housing by the Affordable Housing Task and Finish Group ('the Essex Review'), June 2008;
- the Welsh Assembly Government's draft housing-related support strategy *Supporting People*, published for consultation in February 2009;
- the Welsh Assembly Government's *Ten Year Homelessness Plan*, July 2009;
- *A Road Less Travelled—A Draft Gypsy Traveller Strategy* published by the Welsh Assembly Government for consultation in September 2009;¹²
- *Sustainable Homes: A National Housing Strategy for Wales*, published for consultation in January 2009. The Welsh Assembly Government's final housing strategy is expected "in the new year".¹³

11. The overall approach to housing policy is set out in the draft National Housing Strategy, which lays down guiding principles in six areas:

- Providing the right mix of housing: developing the housing market, and breaking down the barriers that prevent people moving between social housing, private rental, part-ownership and full owner occupation.
- Using housing as a catalyst to improve lives: where necessary, aiming to offer training, financial advice, healthcare and personal support alongside the provision of housing.
- Strengthening communities: ensuring housing investments improve places, support local jobs and skills and strengthen community cohesion.
- Radically reducing the ecological footprint: improving the energy and environmental performance of all housing in Wales.
- Ensuring better services: ensuring that the regulation and management of housing provides high standards of service in the private and public sector.
- Delivering together: co-production of future work on housing policy by all those with an interest in housing.¹⁴

12. The Welsh Assembly Government Minister told us that these principles were the foundation of a distinctive social housing policy for Wales:

Housing has become a priority for the Welsh Assembly Government [...] we developed that housing strategy in partnership with the housing world in Wales that delivers on these issues for us. I mentioned the Essex Review and the 43

¹² Explanatory Memorandum, paragraphs 6-9.

¹³ Legislative statement on the proposed National Assembly for Wales (Legislative Competence) (Housing and Local Government) Order 2010, Jocelyn Davies AM, Tuesday 1 December.

¹⁴ Explanatory Memorandum, paragraph 24.

recommendations that it made. One of the important things it says is that you need to get the right sort of houses in the right places, and that is what we intend to do. Our national strategy envisages better services, an appropriate regulation of housing associations, reducing the ecological footprint, strengthening communities and, most importantly, delivering together.¹⁵

13. The proposed Order arises from a developed policy agenda which has been given a high priority by the Welsh Assembly Government. Robust research carried out in partnership with the social housing sector in Wales over the past two years has resulted in a significantly more mature and coherent proposal for the transfer of competence than the 2008 Affordable Housing LCO, which was based on a single manifesto commitment to suspend the Right to Buy in areas of housing pressure. We note that the Order has attracted widespread support in the housing sector and secured cross-party support in the Assembly.

Legislative context

14. As the Explanatory Memorandum points out, housing is a devolved policy area and the proposed Order would confer legislative competence upon the Assembly in areas of law in respect of which executive functions have already been devolved to Welsh Ministers, both when the Assembly was first established (under section 22 of the Government of Wales Act 1998) and in subsequent Acts of Parliament. The Explanatory Memorandum lists the key legislative provisions through which these powers have been devolved.¹⁶ Supplementary evidence from the Welsh Assembly Government provides a summary of the main primary legislation that may be affected by the proposed extension of legislative competence, but notes that this would be dependent on the nature of the Measures passed.¹⁷

Demand for legislation

15. The recent policy background for housing in Wales is a combination of areas with specific proposals for legislative change and others where strategic direction is envisaged with relatively few concrete proposals for legislation at this stage. Further work is planned to review the statutory context in these areas and determine where Measures would be appropriate. For example, The Welsh Assembly Government's *Supporting people—housing related support strategy* states: "This Strategy aims to provide a long term strategic vision, not to describe a detailed programme of action".¹⁸ And the *Ten Year Homelessness Plan* notes that "Any changes to the statutory framework could not be made until thorough preparatory work, including full impact assessment and consultation, have been carried out".¹⁹

16. The Explanatory Memorandum gives examples of the type of legislation that could be introduced under each of the Matters. It does not tie these examples to the policy

¹⁵ Qq 2-3

¹⁶ Explanatory Memorandum, paragraphs 10-20.

¹⁷ Ev 30

¹⁸ P.11

¹⁹ P.26

intentions of the current administration, but instead offers them as “Examples of how a more comprehensive approach to policy development and improvement could be adopted”.²⁰ They include:

- the ability to serve an Enforcement Notices to housing associations, requiring them to take remedial action, or pay compensation to tenants for poor service;
- establishing a simplified system of secure and standard contracts in place of the existing multiplicity of tenancy and licence types;
- low cost home ownership schemes;
- suspension of the Right to Buy/Right to Acquire;
- establishing a legislative definition of homelessness, duties of housing associations, intentionality, local connection, and strategic planning responsibilities.²¹

17. In its evidence, Shelter Cymru stated that “legislative developments can, in certain circumstances, improve practice and help prioritise resources and therefore contribute to eradicating the trauma of homelessness and housing need in Wales. From this perspective the future ability of the Welsh Assembly Government to legislate when necessary on housing matters is of considerable importance”.²² Shelter Cymru cited more effective regulation of social housing providers and a more integrated approach to homelessness and sustainability as its legislative priorities.²³

18. In oral evidence, the Welsh Assembly Government Minister elaborated on the current constraints to policy development in Wales, and concluded that the policy areas covered by the eight Matters of the proposed LCO were fundamentally interrelated:

If you talk about homelessness legislation or are doing reform of tenure law, that might impact on one of the other powers. I would not say that we will have a series of Measures, it could be that we will have a housing Measure.²⁴

Should this proposal be granted, the Minister thought that more work would be needed before the Welsh Assembly Government would be in a position to introduce legislation into the Assembly:

I have to say I have learned my lesson and we are not counting our Measures until our Orders have hatched. I have not got a secret piece of legislation that has been worked up and is ready to go. You will know from the last time I was here that we do have a One Wales commitment to draw down the powers to suspend the Right to Buy and some work was done in relation to consulting on the principles of that and what that might look like. There is not a secret Bill somewhere that would contain everything and if I had to choose I am not sure which one of these areas would be the

²⁰ Explanatory Memorandum, paragraph 26.

²¹ Explanatory Memorandum, paragraphs 27-38.

²² Ev 28

²³ Ev 28

²⁴ Q 17

most important for me. Certainly I would like to be in a position whereby I could bring legislation before the end of this Assembly term. I appreciate that I am not in a position to say that is going to be possible.²⁵

19. There is a demand to review and revise social housing legislation in Wales, for example, in respect of the regulation of social housing providers and reform of tenure law. This Order also goes beyond current specific proposals for Measures and would transfer competence over areas of housing policy which are currently under review, and where legislation may follow in due course.

Executive powers

20. Welsh Ministers already have extensive executive functions relating to social housing.²⁶ However, Jocelyn Davies AM explained that these powers were proving an inadequate tool to bring about change in the sector, saying, “We have certainly done a lot in terms of attaching conditions to grant but there is only so far you can go with that”. She also stated that the fragmentary nature of executive powers, which have been devolved in an *ad hoc* fashion over the decade since devolution, was now unduly fettering the Assembly Government policy objectives: “Even though we have got powers in a number of these areas, it is not a coherent bundle of powers that allows you to develop policy in the way that you would hope because it is piecemeal”.²⁷

21. Shelter Cymru supported this view:

...current Assembly powers in this area are fundamentally fragmented. The powers included in the order will mean that the Assembly can fully consider many of the issues and the means of addressing them, and to take forward an effective and cohesive framework for tackling housing need in Wales, which includes the provision of suitable homes and drivers for delivery, and a more integrated approach to homelessness and sustainability.²⁸

22. The Minister gave the example of homelessness to illustrate the way in which the piecemeal nature of executive powers was acting as a constraint on policy development:

In relation to homelessness, currently I do have some specific powers in relation to homelessness but that is constrained by the current primary legislation which was largely created with the aim of dealing with people once they had become homeless. In Wales we have developed a homelessness strategy which focuses on prevention, so the executive functions that I have were actually created for a different purpose than our policy direction, and of course the case law that follows it, and we have no ability whatsoever to legislate in the area of homelessness. Local authorities often stress that they would like more flexibility in the way that they discharge their duties but I can do absolutely nothing about that.²⁹

²⁵ Q 18

²⁶ Explanatory Memorandum, paragraphs 4 and 21.

²⁷ Q 19

²⁸ Ev 30

²⁹ Q 9

23. Although Welsh Ministers already possess extensive executive powers in respect of housing, our evidence suggests that the piecemeal nature of these powers is now hampering policy development in Wales.

The devolution settlement

24. The Explanatory Memorandum notes that housing is an area where the extensive executive functions of Welsh Ministers far exceeds the legislative competence of the Assembly.³⁰ On this basis, it argues that the LCO is a logical extension of current constitutional arrangements, providing “full flexibility to define arrangements for Wales in what is a devolved area”³¹ and concludes that legislative competence for the policy area as a whole “improves the clarity of the devolution settlement”.³²

25. In her statement introducing the proposed Order to the Assembly, the Welsh Assembly Government Minister said: “Given the broad executive powers that Assembly Ministers have over disposals and over social housing more generally, we believe that the Assembly should be able to have a role in determining whether any changes are needed to current legislation for Wales”.³³ She told us in evidence that the LCO was a matter of constitutional principle as well as legislative constraint:

It is appropriate that the National Assembly can legislate in the area of housing. I think most Assembly Members are a bit surprised by the fact that there are no legislative powers for them in relation to housing and generally is delivered by executive functions, although I have to say they are piecemeal, as I was explaining earlier, so you are constrained by the primary legislation. If there is legislation that is proposed either by the [Assembly] Government or a committee or backbencher, that is probably more appropriate than just being able to agree or disagree with what the [UK] Government are suggesting [...] I suppose I would say that it is both [principle and need] in a way, that there is a principle attached to it but we can justify all the Matters that we have included in this.³⁴

26. Mr Wayne David MP, Parliamentary Under-Secretary of State in the Wales Office, agreed that:

We have already a piecemeal approach towards devolution of responsibility for large areas of housing policy, and in many ways this LCO provides greater coherence to a strategic approach which has already been accepted. That is one of the main things underpinning this LCO. I would also emphasise the fact that this enhances democracy, because Welsh ministers already have significant powers with regard to housing, but those powers are focused on ministers rather than on the Assembly as a whole.³⁵

³⁰ Explanatory Memorandum, paragraphs 4 and 21.

³¹ Explanatory Memorandum, paragraph 34.

³² Explanatory Memorandum, paragraph 37.

³³ Legislative statement on the proposed National Assembly for Wales (Legislative Competence) (Housing and Local Government) Order 2010, Jocelyn Davies AM, Tuesday 1 December.

³⁴ Q 16

³⁵ Q 54

He therefore considered the proposal “a logical conclusion of powers the Welsh Assembly Government already has”.³⁶

27. In our view, it is appropriate and in line with the devolution settlement that the Assembly should have broad legislative competence over aspects of social housing, a field in which Welsh Ministers already have extensive executive functions.

Use of framework powers

28. As part of our inquiry, we considered whether the powers requested by the Assembly Government could be transferred by means of framework powers in Westminster legislation rather than an LCO. The Essex Review, published in June 2008, commented on the desirability of including framework powers for the Assembly in the field of housing:

... a review of the HRA [Housing Revenue Account] is underway in England and this will impact upon Wales. It will include consideration of a process by which LAs could use the HRA as a means of providing new social housing. This clearly is very significant for Wales and there should be a means of the Welsh Assembly Government working together with WLGA to influence this Review. The outcomes of this review may be fed into the planned Housing Bill for the 2008/09 legislative programme. There are opportunities here for the Welsh Assembly Government to secure a framework agreement for Welsh legislation. We recommend that urgent attention be given to these opportunities.³⁷

29. In her evidence, the Welsh Assembly Government Minister that the Housing and Regeneration Bill (now the Housing and Regeneration Act 2008) had not proved an appropriate vehicle for framework powers because “It was very narrow. We did have the conversation about the Housing and Regeneration Bill but it was not considered an appropriate place for us because the provisions were not wide enough.”³⁸ Ceri Breeze, Head of Housing at the Welsh Assembly Government, added that “Even if in the Regeneration Act we had taken limited powers, we would probably still be in a position now of coming back for more competence powers purely because of the body of policy work that has been done since identifying the specific needs in Wales”.³⁹

30. Wayne David MP, Parliamentary Under-Secretary of State at the Wales Office, said that the Welsh Assembly Government had taken “a fairly early decision” to pursue a Legislative Competence Order, rather than seeking framework powers, adding that there was in any case no suitable legislative vehicle on the horizon at Westminster at present.⁴⁰ We asked Mr David whether he was satisfied that Whitehall departments were engaging with the Welsh Assembly Government early enough in the legislative process to ensure that there was a realistic chance of framework powers being included where appropriate. He said that he was, but added “I am more satisfied now than perhaps I would have been

³⁶ Q 57

³⁷ Paragraph 41, p. 61.

³⁸ Q 22

³⁹ Q 26

⁴⁰ Q 60

12 months ago, because this is a new process that we have before us and all players, all participants in it, are learning as they go along. I am far more confident about the situation as it is working now than perhaps was the situation in the past”.⁴¹

31. The powers requested by the Welsh Assembly Government could not have been transferred by means of framework powers in the Housing and Regeneration Act 2008 as the policy framework was not sufficiently advanced at the point when the scope of that Bill was decided upon. There is no current Bill before Parliament in this area. We are therefore satisfied that a Legislative Competence Order procedure is appropriate in this case.

3 Scope of the proposed Order

The need for a broad scope

32. The broad scope of this proposed Order, which includes most aspects of social housing, represents a clear break with the ‘piecemeal’ approach to devolution that has generally characterised the LCO process since 2007. Rather than considering a defined proposal linked to plans for a specific Measure in the short term, the question for us was whether we should recommend to the House that the Assembly should in future decide the law in this broad area without further reference to Westminster and Whitehall.

33. The evidence we received was supportive of a broad scope for the LCO. Shelter Cymru told us that:

While successive Governments have been able to make progress on individual issues, to enable Wales to more fully act in the interest of people facing homelessness and housing need, the Assembly should have the legislative powers to achieve the policy aims it has set, and may set, in the future. The matters referred to in the order will enable the Government to pursue a coherent and long-term policy in terms of housing supply, regulation and homelessness.⁴²

34. In her evidence, the Welsh Assembly Government Minister stated that the need for a broad housing LCO arose directly from the need for flexibility to accommodate a rapidly developing policy area. She concluded that: “You will see from the range of things that we have included, the Matters that we have included, all these things are interrelated, linked together, so it is the delivery of our new strategies and in relation to the homelessness plan and the *Supporting People* strategy that is the most important.”⁴³

35. Evidence from Cymorth Cymru also argued that a broad Order would enable the Welsh Assembly Government to respond to ongoing housing policy reviews:

The proposals rightly state that policy development in this area is being led by the production of a national strategy and action plan. Since the Welsh Assembly

⁴¹ Q 62

⁴² Ev 29

⁴³ Q 3

government memorandum explaining the scope and rationale was drafted however, an independent review into housing-related support has been announced by the Deputy Minister. The review will be making recommendations on the future of services in September 2010 and it would be useful for the Assembly to have as much freedom in this area as possible to take forward any proposals from the review it accepts. As housing-related support links housing with other policy areas such as social care, it is also relevant that there is a review being carried out into social services in Wales. Again, the LCO would provide the opportunity for recommendations from both reviews to be taken forward in a co-ordinated fashion.⁴⁴

36. The Sustainable Housing LCO is wide ranging in nature rather than being focused only on very specific parts of particular Measures linked to developed proposals for policy changes in Wales. We are persuaded that this wider competence is necessary so that the Assembly can develop a coherent strategy to the sector as a whole. It is also appropriate to the devolution settlement as it has developed, with many aspects of social housing already devolved to Welsh Ministers.

Matter 11.5: Right to Buy/Right to Acquire

37. The single Matter that this LCO has in common with the 2008 affordable housing LCO is Matter 11.5, *Disposals of social housing and land held or used for the purposes of, or in connection with, social housing*, which would transfer the legislative competence to “enable the National Assembly, if it so wished, to replace the current Right to Buy scheme with improved and updated schemes”.⁴⁵

38. The previous (2008) proposed Affordable Housing LCO was intended to enable the Assembly to legislate so as to permit the suspension of the Right to Buy/Preserved Right to Buy and the Right to Acquire in certain areas and for certain periods. In its Report on the LCO, we noted that the Order would effectively have allowed the Assembly to abolish the Right to Buy by suspending it repeatedly across all regions of Wales and that this did not reflect the stated policy intention. We recommended that the LCO should not proceed unless it was amended to apply only in areas of extreme housing pressure.⁴⁶

39. Jocelyn Davies AM, Deputy Minister for Housing in the Welsh Assembly Government, unequivocally confirmed to us that there was still no intention on the part of the present administration to abolish the Right to Buy: “The policy in relation to the right to buy remains exactly the same [...] Temporary suspension in areas of high housing pressure on application by the local authority”.⁴⁷ However, with this LCO the Welsh Assembly Government does clearly request that legislative competence be transferred over all aspects of Right to Buy/Right to Acquire. This was not its request at the time of the earlier, narrower LCO. The Minister stated that:

⁴⁴ Ev 27

⁴⁵ Explanatory Memorandum, paragraph 37. Some technical changes have also been made to the drafting of new Matter 11.5 compared to the previous proposal in order to reflect changes in Westminster legislation since 2008. See Q 65.

⁴⁶ Welsh Affairs Committee, Seventh Report of Session 2007-08, *The proposed draft National Assembly for Wales (Legislative Competence) (Housing) Order 2008*, HC (2007-08) 812.

⁴⁷ Qq 37 and 30

...in the intervening time through the Essex work streams we did considerable work on developing and looking at other products which may be more suitable, so purchasing your property if you are a social housing tenant under HomeBuy terms, so you do not go up to 100% but buy a proportion of it, developing intermediate rental products, a whole range of things, we do not want to rule anything out. It could be that to introduce these may need abolition in the future, I do not know, and I cannot say what a future Welsh Assembly Government would do.⁴⁸

40. During scrutiny of the 2008 affordable housing LCO, evidence given both to ourselves and the Assembly Committee questioned the extent to which suspension of the Right to Buy alone could have any significant impact on the availability of social housing in Wales. Witnesses argued that this could only ever be one tool within a wider package of measures. Mr Wayne David MP, Parliamentary Under-Secretary of State in the Wales Office, told us that this experience had been instructive. At that time, the Welsh Assembly Government had not been in a position to put forward a request for broader powers:

In terms of the Right to Buy, one of the difficulties last time was that because in other areas policy development had not been anywhere near as advanced as it is now, the Right to Buy tended to stick out. The impression may have been given that the Assembly believed that that was a much more significant policy than what in fact it was.⁴⁹

However, Mr David said that the policy work undertaken over the past two years meant that this proposed LCO set suspension of the Right to Buy in a more appropriate context as “being one element of a broader housing strategy” and added:

...much of the debate last time focused around the efficacy of the Right to Buy or not. There has been a realisation that in many ways that is not the central debate. That is a debate of the past, in a sense. This LCO takes us beyond that rather sterile debate into new and innovative and far more relevant and meaningful areas.⁵⁰

41. As we noted in our previous Report on the 2008 Affordable Housing LCO, suspension of the Right to Buy would not, of itself, result in an increase in the supply of affordable housing. This proposed Order treats the Right to Buy as part of a package of social housing policy tools. In this context we are satisfied that Matter 11.5 is appropriate.

Potential impact on local government functions

42. In her evidence, Jocelyn Davies AM told us that one of the differences in housing policy between England and Wales was the emphasis on partnership working with local government: “We have a different way of developing policy in Wales. We work very closely with local government and have developed with them their strategic housing role over the last two and a half years and I have a very good relationship with the WLGA”.⁵¹ As

⁴⁸ Q 37

⁴⁹ Q 66

⁵⁰ Q 57

⁵¹ Q 7

evidence for this approach, the Explanatory Memorandum points to Matter 12.8 (council tax in respect of second homes) as a way of providing further flexibility to local authorities:

Where a high proportion of homes are kept empty for a significant proportion of the year it can have an adverse effect on the fabric of a community, for instance in relation to the viability of particular services such as schools, post offices and shops. The evidence from the 2001 census suggested that some localised areas are particularly affected by second homes—27 wards had between 10 and 20% of their stock as second or holiday properties. One potential approach to mitigate the effect of such dwellings in particular areas is to allow local authorities to vary the council tax payable. [...] Currently, the Welsh Ministers have made regulations which give local authorities the discretion not to offer discounts on Council Tax for some classes of dwellings that are not the main residence of an individual. However, the Welsh Ministers and National Assembly for Wales have no power to allow local authorities to charge additional Council Tax in respect of such dwellings.⁵²

43. In contrast, Matter 11.7 (*provision of caravan sites for gypsies and caravans*) would enable the Assembly to legislate to direct local government to provide sites where these were not otherwise forthcoming. This power could be thought to diminish the strategic housing role of local authorities, though others might argue that the present system encourages local authorities to ‘pass the buck’ to neighbouring authorities and thus calls for intervention at a national level. In previous Reports, we have commented on the apparent trend that is emerging for proposed Orders to seek regulatory powers in respect of local government.⁵³ This has also been the subject of comment by the Lords Constitution Committee, whose Chairman wrote to the Secretary of State for Wales as a result of its scrutiny of the Culture LCO in the following terms:

One of the tests adopted by this Committee is ‘will Measures made under the proposed LCO significantly affect the institutional structure of government in Wales?’ Although the Welsh Assembly Government states that it ‘is mindful [of] a need to preserve the local flexibility of individual local authorities to determine and meet the cultural service needs of their own communities,’ the proposed LCO can be seen as part of a broader trend of greater regulatory power of devolved government over local authorities. Looking forward, it may be that the Committee will want to take a closer look at the evolving constitutional relationship of these two tiers of elected authority.⁵⁴

44. However, in her evidence, the Minister said that powers of compulsion would only be exercised against local authorities as a last resort:

We have developed our own Gypsy and Travellers strategy and we do provide financial incentives to local authorities to encourage them to provide sites, but there is no way we could compel [them to provide sites under current arrangements]. I

⁵² Explanatory Memorandum, paragraphs 42 and 43.

⁵³ Welsh Affairs Committee, First Report of Session 2009-10, *The proposed National Assembly for Wales (Legislative Competence) (Culture and other fields) Order 2009*, HC (2009-10) 40.

⁵⁴ Letter to the Secretary of State for Wales from the Chairman of the House of Lords Constitution Committee on the Proposed National Assembly for Wales (Legislative Competence) (Culture and Other Fields) Order 2009, dated 15 October 2009.

put this on the record before, and I am sure the Minister would not mind me repeating this, I do hope that the Assembly would never, ever have to have legislation in this area, but it is important that it is possible as a last resort to do so... If there is a properly assessed and clearly identified need.⁵⁵

45. Mr Wayne David MP, Parliamentary Under-Secretary of State at the Wales Office thought it unlikely that any new powers of compulsion would ever need to be exercised, but said that the existence of such powers would act as an incentive for local authorities to consider these matters more seriously and would “focus the minds of the local authority to come forward with appropriate sites”.⁵⁶

46. We note that the Welsh Assembly Government intends that any new power to compel local authorities to provide caravan sites for Gypsies and Travellers should be used only in extreme circumstances and as a last resort. We are satisfied that Matter 11.7 will allow for this approach. We further note that the House of Lords Constitution Committee has expressed some concern about the “broader trend of greater regulatory power of devolved government over local authorities” in recent LCOs, and that it intends to keep this area under review.

Potential cross-border issues

Housing associations

47. The proposed Order may have implications for housing associations in England and Wales that own properties across the border. The Welsh Assembly Government Minister told us that there were only five properties in England owned by an association in Wales, but several hundred properties in Wales owned by associations registered in England. She gave an undertaking that the needs of these tenants would be taken into account in the development of future Measures.⁵⁷

48. Although the number of tenants directly affected is small, Wales Office officials agreed that close working between the Welsh Assembly Government and relevant Whitehall departments, including the Department for Work and Pensions and the Department for Communities and Local Government, would be necessary to ensure that there were no unintended consequences in border areas.⁵⁸

49. A small number of properties in England and Wales are owned by housing associations registered on the other side of the border. The Welsh Assembly Government and Whitehall departments will need to liaise closely to ensure that any future Measures do not have adverse consequences for these tenants and we expect the Welsh Assembly Government to give an undertaking to have regard to their needs.

⁵⁵ Qq 8-9

⁵⁶ Q 86

⁵⁷ Q 38

⁵⁸ Q 89

Social security

50. Social security, including key housing-related support such as housing benefit and council tax benefit, remains a reserved matter, not only in Wales, but also in Scotland. There have been few calls for any devolution of the social security system within the present settlement. Nevertheless, the fact that benefits are reserved does affect housing policy in the devolved administrations, since the amounts available to tenants could be varied by UK decision.

51. The importance of this distribution of powers for policy development in Wales was noted by the Essex Report:

In the recent 2008 UK Budget a review of housing benefit was announced and any changes flowing from this will impact upon Wales. The review is being undertaken internally at the Department of Work and Pensions and will look closely at work incentives. In Wales it would be important to ensure that any moves on rents or changes to housing benefit do not impact upon poverty and inequality. Limited evidence does suggest that tax credits and some modest reductions in reliance upon housing benefit have meant that the impact of rent increases is somewhat dampened.⁵⁹

52. The Welsh Assembly Government Minister agreed that decisions made by the Treasury did have a significant impact on housing policy in Wales. She added that the Welsh Assembly Government was not always consulted on policy changes in reserved areas:

Certainly in relation to the proposal in relation to housing benefit, which I believe has been withdrawn now, it was paid directly to individuals and they could keep some of the benefit they were entitled to if they could find a cheaper place to rent. There was a proposal that that be withdrawn and we were not consulted on that before it was announced. We have been asked since how we feel about it but we were not consulted on it prior to it being announced. We are not always completely in the flow, I suppose. It is very easy to say that you must communicate a lot but sometimes it is more difficult to do it than you imagine. I am sure sometimes it is inadvertent rather than deliberate.⁶⁰

53. We note that social security, including housing-related benefits, is a reserved matter and likely to remain so. In this context, decisions made at UK level will continue to have a significant impact on the formulation of housing policy in Wales. It is important that the Welsh Assembly Government should be closely engaged in consultation on changes to the social security system in order to identify any potential adverse consequences in Wales at an early stage.

⁵⁹ Paragraph 39, page 61.

⁶⁰ Q 43

4 Drafting

Title

54. We have commented in previous Reports on the confusion surrounding the titles of LCOs. As the LCO process results in ever more powers being transferred to the Assembly in the 20 fields of Schedule 5 to the Government of Wales Act 2006, the practice of naming Orders after the field(s) into which they insert Matters means that there are now a number of draft or proposed Orders with similar titles. This proposed Order relating to sustainable housing is called the “housing and local government” LCO. However, two other “housing” LCOs (the affordable housing and fire sprinklers LCOs) have already been laid before Parliament as well as one “local government” LCO dealing with community councils.

55. Although the Explanatory Memorandum is substantial, notably in its statement of the statutory and policy context, it fails to draw attention to the fact that this proposed Order deals with issues concerned with affordable housing that were previously covered by the earlier affordable housing LCO. The Explanatory Memorandum also gives no indication that the earlier LCO has been superseded by the present proposal and is not to be proceeded with. In addition, the Explanatory Memorandum includes footnote references to the National Assembly for Wales (Legislative Competence) (Housing) Order 2009 that deals with fire sprinklers, without making clear the distinction between this Order and the earlier affordable housing LCO which bore exactly the same title.

56. We repeat our recommendation, made in respect of previous proposed Orders, that LCOs should be given a simple title which conveys the actual subject of the Order to the general reader. This would also enable readers more easily to keep track of the growing number of LCOs which may add Matters to the same fields, but deal with different subjects.

Definitions

57. The Matters in this proposed Order are generally expressed in straightforward language. In some instances, additional definitions have been considered necessary (e.g. Matters 11.2-11.5). However, in others, the Matters rely upon terminology that is in general language use but for which specific statutory definitions also exist. In these cases, the interpretation provisions do not indicate whether the terms are intended to carry their legal meanings, which would govern their use in implementing Measures or whether they are to be treated as carrying their dictionary meaning and so could be displaced in such Measures by differently formulated definitions. Examples of these cases are “homelessness” in Matter 11.8, which is defined in Housing legislation, “gypsies and travellers” in Matter 11.7, and defined for the purposes of Housing legislation, and “caravan” in the interpretation provisions in relation to Matter 11.7. The legal definitions, of course, apply with respect to the functions that are already devolved to Wales.

58. Ministers from the Wales Office and the Welsh Assembly Government told us that terms such as “homelessness” were not intended to relate back to existing statutory

definitions, but were to be understood in the context of the LCO itself.⁶¹ **We recommend that the Explanatory Memorandum should be amended to make clear where terms used in the LCO are intended to be interpreted with reference to existing statutory definitions and where they are not.**

Social housing

59. At present, the proposed Order specifies four aspects of social housing as distinct Matters:

- social housing providers (as defined);
- relevant social housing bodies (as defined);
- tenure of rented social housing and other arrangements under which social housing is provided;
- disposal of social housing and of land held or used for that purpose

Arguably, most of these topics could have been placed within the competence of the Assembly by prescribing a single Matter designating “social housing”, with a more substantive definition than that in the interpretation provisions, thereby obviating the need to provide definitions for “social housing provider” and “relevant social housing bodies”. The latter might read:

“social housing” means any housing provided by a local authority or by another person providing housing to people whose needs are not adequately served by the commercial housing market.

60. We asked Ministers and their officials whether they had considered alternative approaches to the drafting of these Matters. Mr James George, a lawyer in the Wales Office, said that the decision to include a series of Matters was intended to provide clarity: “It might be that if we used a more general term, like ‘social housing’, we might bring in things that we had not thought of”. Nevertheless, the Wales Office acknowledged that all aspects of social housing policy, other than social housing finance, were covered by the Matters included in the proposed Order.⁶²

61. We recommend that the Wales Office and Welsh Assembly Government should review the drafting of Matters relating to social housing to ensure that they convey as clearly as possible the extent of the competence that would be transferred to the Assembly by this Order.

Matter 11.2: “Social housing providers”

62. “Social housing providers”, the subject of Matter 11.2, is defined lengthily in the interpretation provisions with the purpose of ensuring that persons and local authorities are caught by the definition only insofar as they are exercising functions relating to the

⁶¹ Qq 47-49 and Qq 90-92

⁶² Q 96

“provision and allocation of housing”. This part of the definition implies that “allocation” of housing is a function distinct from that of “providing” housing. The “allocation” of housing might be thought to relate to the definition of eligibility criteria and priority for housing, whereas the “provision” of housing might cover actually renting dwellings to tenants.

63. In contrast, the distinction between “providing” and “allocating” housing is not found in the earlier paragraph (b) of the definition (relating to providers other than local authorities), which uses only the term “providing”. Arguably, in that context, that term is intended to be construed as including “allocation” as a form of provision. The Explanatory Memorandum states clearly that this Matter and Matter 11.3 enable legislation to be enacted concerning the allocation of social housing.⁶³ But doubt is thrown on that interpretation by the use of both terms in the later part of the definition but not in paragraph (b). The issue is not resolved by the explanatory provisions contained in paragraph (b) and in the later part of the definition. Similar considerations apply elsewhere (.g. Matter 11.4) where the term “providing housing” is used.

64. In addition, the final part of this definition includes the words “if a local authority...has some functions that do not relate to the provision or allocation of housing”. Since “local authority” is defined to mean a county council or a county borough council, this condition will be permanently fulfilled. On the assumption that “providing” is deemed to include “allocation”, a provision on the following lines may be appropriate:

A local authority, or other person referred to in paragraph (b) that has functions, in addition to the provision of housing, that do not relate to the provision of housing, is a social housing provider only insofar as its functions relate to the provision of housing.

65. **Minor redrafting may be needed to make clear that “allocation” is to be treated as within the term “provision” and thus whether a person (other than a local authority) is a social housing provider when it is allocating housing.**

Matter 11.7: “Provision by local authorities of caravan sites for use by gypsies and travellers”.

66. **There is a typographical error in the proposed Order and Explanatory Memorandum in respect of references to Gypsies and Travellers. In the current draft, both words appear in lower case. As recognised as racial groups by law, these names should be capitalised. We recommend that the LCO should be amended in this respect.**⁶⁴

⁶³ Paragraphs 40 and 51.

⁶⁴ See, for example, *Reporting Diversity*: <http://www.communities.gov.uk/publications/communities/cohesionreportingdiversity>

5 Conclusion

67. A considerable amount of policy work has been undertaken by the Welsh Assembly Government in regard to social housing since we last considered a proposal in this area over a year ago. As a result, a proposed Order has been produced which provides a coherent approach to the sector, consolidating the executive powers already devolved to Welsh Ministers with legislative powers for the National Assembly. We conclude that the current Order is a logical extension of the current devolution settlement, and, with the minor technical changes outlined in this Report, we are content that it should proceed.

Annex

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 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. They do this by adding new "Matters" to the "Fields" of legislative competence set out in Schedule 5 to the Government of Wales Act 2006.

These proposals for draft 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.

Introduction of this proposed Order

The National Assembly for Wales (Legislative Competence) (Housing and Local Government) Order 2010 was laid before the National Assembly for Wales on 30 November 2009 by the Deputy Minister for Housing, Jocelyn Davies AM, and referred to

the Assembly's Permanent Legislative Committee No. 2. The Committee held three evidence sessions and has a deadline of 29 January 2010 to publish its report. The Order was laid before Parliament on 2 December 2009 and referred to the Welsh Affairs Committee for pre-legislative scrutiny by the Secretary of State.

Conclusions and recommendations

Policy background

1. The proposed Order arises from a developed policy agenda which has been given a high priority by the Welsh Assembly Government. Robust research carried out in partnership with the social housing sector in Wales over the past two years has resulted in a significantly more mature and coherent proposal for the transfer of competence than the 2008 Affordable Housing LCO, which was based on a single manifesto commitment to suspend the Right to Buy in areas of housing pressure. We note that the Order has attracted widespread support in the housing sector and secured cross-party support in the Assembly. (Paragraph 13)

Legislative context

2. There is a demand to review and revise social housing legislation in Wales, for example, in respect of the regulation of social housing providers and reform of tenure law. This Order also goes beyond current specific proposals for Measures and would transfer competence over areas of housing policy which are currently under review, and where legislation may follow in due course. (Paragraph 19)
3. Although Welsh Ministers already possess extensive executive powers in respect of housing, our evidence suggests that the piecemeal nature of these powers is now hampering policy development in Wales. (Paragraph 23)
4. In our view, it is appropriate and in line with the devolution settlement that the Assembly should have broad legislative competence over aspects of social housing, a field in which Welsh Ministers already have extensive executive functions. (Paragraph 27)

Use of framework powers

5. The powers requested by the Welsh Assembly Government could not have been transferred by means of framework powers in the Housing and Regeneration Act 2008 as the policy framework was not sufficiently advanced at the point when the scope of that Bill was decided upon. There is no current Bill before Parliament in this area. We are therefore satisfied that a Legislative Competence Order procedure is appropriate in this case. (Paragraph 31)

The need for a broad scope

6. The Sustainable Housing LCO is wide ranging in nature rather than being focused only on very specific parts of particular Measures linked to developed proposals for policy changes in Wales. We are persuaded that this wider competence is necessary so that the Assembly can develop a coherent strategy to the sector as a whole. It is also appropriate to the devolution settlement as it has developed, with many aspects of social housing already devolved to Welsh Ministers. (Paragraph 36)

Matter 11.5: Right to Buy/Right to Acquire

7. As we noted in our previous Report on the 2008 Affordable Housing LCO, suspension of the Right to Buy would not, of itself, result in an increase in the supply of affordable housing. This proposed Order treats the Right to Buy as part of a package of social housing policy tools. In this context we are satisfied that Matter 11.5 is appropriate. (Paragraph 41)

Potential impact on local government functions

8. We note that the Welsh Assembly Government intends that any new power to compel local authorities to provide caravan sites for Gypsies and Travellers should be used only in extreme circumstances and as a last resort. We are satisfied that Matter 11.7 will allow for this approach. (Paragraph 46)

Potential cross-border issues

9. A small number of properties in England and Wales are owned by housing associations registered on the other side of the border. The Welsh Assembly Government and Whitehall departments will need to liaise closely to ensure that any future Measures do not have adverse consequences for these tenants and we expect the Welsh Assembly Government to give an undertaking to have regard to their needs. (Paragraph 49)
10. We note that social security, including housing-related benefits, is a reserved matter and likely to remain so. In this context, decisions made at UK level will continue to have a significant impact on the formulation of housing policy in Wales. It is important that the Welsh Assembly Government should be closely engaged in consultation on changes to the social security system in order to identify any potential adverse consequences in Wales at an early stage. (Paragraph 53)

Title

11. We repeat our recommendation, made in respect of previous proposed Orders, that LCOs should be given a simple title which conveys the actual subject of the Order to the general reader. This would also enable readers more easily to keep track of the growing number of LCOs which may add Matters to the same fields, but deal with different subjects. (Paragraph 56)

Definitions

12. We recommend that the Explanatory Memorandum should be amended to make clear where terms used in the LCO are intended to be interpreted with reference to existing statutory definitions and where they are not (Paragraph 58)

Social housing

13. We recommend that the Wales Office and Welsh Assembly Government should review the drafting of Matters relating to social housing to ensure that they convey as clearly as possible the extent of the competence that would be transferred to the Assembly by this Order. (Paragraph 61)

Matter 11.2: “Social housing providers”

14. Minor redrafting may be needed to make clear that “allocation” is to be treated as within the term “provision” and thus whether a person (other than a local authority) is a social housing provider when it is allocating housing. (Paragraph 65)

Matter 11.7: “Provision by local authorities of caravan sites for use by gypsies and travellers”

15. There is a typographical error in the proposed Order and Explanatory Memorandum in respect of references to Gypsies and Travellers. In the current draft, both words appear in lower case. As recognised as racial groups by law, these names should be capitalised. We recommend that the LCO should be amended in this respect (Paragraph 66)

Formal Minutes

Thursday 28 January 2010

Members present:

Dr Hywel Francis, in the Chair

David TC Davies	Alun Michael
Nia Griffith	Albert Owen
Mrs Siân James	Mark Pritchard
Mr David Jones	Hywel Williams

Draft Report (*The proposed National Assembly for Wales (Legislative Competence) (Housing and Local Government) Order 2010*) proposed by the Chairman, brought up and read.

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

Paragraphs 1 to 67 read and agreed to.

Annex and Summary agreed to.

Motion made, and Question put, That the Report be the Sixth Report of the Committee to the House.

The Committee divided.

Ayes, 5

Noes, 3

Nia Griffith	David T C Davies
Mrs Siân James	Mr David Jones
Alun Michael	Mark Pritchard
Albert Owen	
Hywel Williams	

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

Written evidence was ordered to be reported to the House for printing with the Report.

[Adjourned till Tuesday 2 February at 10.00 a.m.]

Witnesses

Tuesday 15 December 2009

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Ms Jocelyn Davies AM, Deputy Minister for Housing, **Mr Neil Buffin**, Senior Lawyer, and **Mr Ceri Breeze**, Head of Housing, Welsh Assembly Government Ev 1

Thursday 7 January 2010

Mr Wayne David MP, Parliamentary Under-Secretary of State, **Mr James George**, Lawyer, **Mr Geth Williams**, Head of Legislation Policy, Wales Office Ev 9

List of written evidence

1	Letter from Rt Hon Peter Hain MP, Secretary of State, for Wales	Ev 16
2	Welsh Affairs Committee Press Notice	Ev 16
3	Proposed Order for pre-legislative scrutiny	Ev 17
4	Welsh Assembly Government Explanatory Memorandum	Ev 20
5	Written evidence from Cymorth Cymru	Ev 26
6	Written evidence from Shelter Cymru	Ev 28
7	Supplementary evidence from Jocelyn Davies AM, Deputy Minister for Housing and Regeneration, Welsh Assembly Government	Ev 30

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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
Sixth Report	Proposed National Assembly for Wales (Legislative Competence) (Housing and Local Government) Order 2010, relating to Sustainable Housing	HC 186
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
Second Special Report	The National Assembly for Wales (Legislative Competence) (Environment) Order 2009: Government Response to the Committee's Twelfth Report of Session 2008-09	HC 243
Third Special Report	Ports in Wales: Government Response to the Committee's Fifteenth Report of Session 2008-09	HC 308

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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	HC 348

	(Legislative Competence) (Welsh Language) Order 2009	
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 Welfare) Order 2009	HC 778
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
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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 Session 2007-08	HC 377
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
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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
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Second Report	Proposed Restructuring of the Police Forces in Wales	HC 751
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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:	HC 839

Better Governance for Wales		
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

Oral evidence

Taken before the Welsh Affairs Committee on Tuesday 15 December 2009

Members present

Dr Hywel Francis, in the Chair

Mr David Jones
Hywel Williams

Mark Williams

Witnesses: **Ms Jocelyn Davies AM**, Deputy Minister for Housing, **Mr Neil Buffin**, Senior Lawyer, and **Mr Ceri Breeze**, Head of Housing, Welsh Assembly Government, gave evidence.

Q1 Chairman: Good afternoon. Welcome to the Welsh Affairs Committee to deal with this Legislative Competence (Housing and Local Government) Order 2010. Minister, could you introduce yourself and your colleagues, please?

Ms Davies: I am Jocelyn Davies, the Deputy Minister with responsibility for housing and regeneration. This is Neil Buffin and this is Ceri Breeze.

Q2 Chairman: Thank you for that. The acoustics in this room are not good, so do not be afraid to raise your voice; we will not be offended. I understand you would like to make a very brief statement, and we would welcome that.

Ms Davies: Thank you very much. I have prepared some introductory remarks and I would like to begin by thanking you very much for this opportunity to appear before you with this latest Legislative Competence Order on housing. Chairman, you will recall the last time I came members commented on the content of the Explanatory Memorandum, and I was grateful for that, your Report certainly challenged whether it made a convincing case for the Order. That was very helpful. You will have noticed that as a result the current Explanatory Memorandum now lays out the legislative framework we operate within and the policy work that has been carried out in this area since 2007. Housing has become a priority for the Welsh Assembly Government. We have a very challenging target of 6,500 more affordable homes over the term of the Government. This has become even more challenging since the downturn in the economy. We have made significantly more resources available as an anti-recession measure. I am sure members will be interested that in 2008 the Essex Review of Affordable Housing reported with 43 recommendations and strongly supported the view that we change the approach to housing by adopting a co-production method of policy development and delivery. We have done that and are working with the housing sector in Wales as equal partners to implement those recommendations and in developing the new housing strategy, the *Supporting People* strategy and our homelessness plan. We have also commissioned external independent experts to review the housing revenue accounts system, to review rents and the *Supporting People* programme.

Members will recall that I did say when we had the policy more well-developed we might well return with a broader bid for powers and this Legislative Competence Order is built on that body of policy work and would enable the Welsh Assembly Government to propose strategic legislation in line with our policy direction and, of course, responds to the challenges for social housing and meeting the needs of vulnerable people. I present the Order to you, thank you for this opportunity again. I am very happy to take questions.

Q3 Chairman: Thank you for that statement. We are particularly grateful for the very positive comments you made about our role last year. Our role was not universally recognised then but we certainly appreciate your warm words today acknowledging that work. You may well have answered this question, but could I begin by referring to your statement in the National Assembly recently when you presented the proposed Order and described it as an “ambitious housing LCO”. Could you explain to us why you think it is ambitious? Is it because of the scope of the powers it devolves or is it intended to pave the way to an ambitious strategy for housing in a specifically Welsh context, or is it both?

Ms Davies: Members will know that we have our new housing strategy, and I gave you some background just now about the way that we developed that housing strategy in partnership with the housing world in Wales that delivers on these issues for us. I mentioned the Essex Review and the 43 recommendations that it made. One of the important things it says is that you need to get the right sort of houses in the right places, and that is what we intend to do. Our national strategy envisages better services, an appropriate regulation of housing associations, reducing the ecological footprint, strengthening communities and, most importantly, delivering together. You will see from the range of things that we have included, the Matters that we have included, all these things are interrelated, linked together, so it is the delivery of our new strategies and in relation to the homelessness plan and the *Supporting People* strategy that is the most important. It is ambitious because we have taken a different direction in Wales and with this new approach that we have developed

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through the Essex Review we have immense goodwill in the housing world in Wales and our partners want to deliver for us.

Q4 Mr David Jones: Good afternoon, Ms Davies. Before I ask the question I was about to ask, can you confirm for the record that the Welsh Assembly Government is not now pursuing the earlier Housing LCO?

Ms Davies: Yes, that is correct.

Q5 Mr David Jones: That is completely abandoned?

Ms Davies: Yes.

Q6 Mr David Jones: That was not clear to us before this afternoon.

Ms Davies: I am sorry.

Q7 Mr David Jones: What do you think are the most important differences in the outcomes which need to be achieved in housing policy between that in Wales and in England?

Ms Davies: I do not follow closely the policy in England, I have got to be perfectly honest with you there. Very often people will say that in rural areas in Wales house prices are extremely high and wages are very low, but there are issues in relation to urban Wales as well where there is a great deal of unemployment, a reliance on the social rented sector and, of course, low wages. We have all round challenges, I think, and the stock that we have is quite old, it can be in very poor condition in some places, and there is an awful lot more stock in private ownership than perhaps you would see elsewhere. There has been a tradition of owner-occupation and the stock is not all that well maintained. We do have differences, but I would not say I avidly follow the housing policy in England. We have a different way of developing policy in Wales. We work very closely with local government and have developed with them their strategic housing role over the last two and a half years and I have a very good relationship with the WLGA. I suppose finance is different. Rents are lower in the social rented sector in Wales, so finance can be more difficult. There are a number of things that you could easily find that are different.

Q8 Mr David Jones: To what extent does the present legislative framework inhibit you from achieving those policy objectives?

Ms Davies: If we could take some examples in the Matters, would that help? In relation to Matters 11.2 and 11.3, these are about social housing providers and social housing bodies. Very soon after becoming Minister, Community Housing Cymru, which is the umbrella organisation for housing associations in Wales, persuaded me to undertake the Essex Review. The regulatory regime in Wales was somewhat out of date, much more out of date than it was in the rest of the UK, I have to say, and it became quite obvious to us once we saw the Essex report that there were very few early intervention powers, for example, if there was a problem with a housing association. We are the regulator. The Welsh Assembly Government is the regulator for housing associations. It became

obvious to us that to complete the powers and for us to have an appropriate regulatory regime it was important that we included this. Of course, in the current situation lenders are particularly concerned about lowering their risks, so what they want to do is to make sure that the regulatory regime under which associations are operating lowers their risks as much possible. In relation to 11.4, which is tenure law, it is something that tenants organisations and tenants raise. It is the fact that there are unexplained and difficult to justify differences between the tenancies that you have if you are in a housing association property than if you are in a council property. That has become evident during debates around stock transfer where tenants worry that they may be losing rights if they transfer over to a housing association. Matter 11.5, of course, is those matters about disposals by social landlords, that is the Right to Buy/Right to Acquire, preserved Right to Buy. That covers all the voluntary and statutory disposals. This is, in fact, very similar to the previous Order that you saw. In 11.6, which is housing related support, largely in Wales we rely on the *Supporting People* programme. Some of that work is delivered via the local authority and some is directly commissioned by the Welsh Assembly Government, which I imagine is unique across the UK. Even though we can attach grant conditions to the money, and it is about £140 million a year, so it is a large sum of money that goes to outside organisations in order for vulnerable people to remain independent at home, I can only attach conditions to the grant, there is no ability for the Assembly to legislate in that area. In relation to 11.7, and this is the sites for Gypsies and Travellers, this would come under the Social Justice Minister but has been included in this Order. We have developed our own Gypsy and Travellers strategy and we do provide financial incentives to local authorities to encourage them to provide sites, but there is no way we could compel. I put this on the record before, and I am sure the Minister would not mind me repeating this, I do hope that the Assembly would never, ever have to have legislation in this area, but it is important that it is possible as a last resort to do so.

Q9 Mr David Jones: Compel to the extent of compelling local authorities to make provision for Gypsies and Travellers?

Ms Davies: If there is a properly assessed and clearly identified need. In relation to homelessness, currently I do have some specific powers in relation to homelessness but that is constrained by the current primary legislation which was largely created with the aim of dealing with people once they had become homeless. In Wales we have developed a homelessness strategy which focuses on prevention, so the executive functions that I have were actually created for a different purpose than our policy direction, and of course the case law that follows it, and we have no ability whatsoever to legislate in the area of homelessness. Local authorities often stress that they would like more flexibility in the way that they discharge their duties but I can do absolutely nothing about that.

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Chairman: Could you pause at that point for a minute. Mr Jones, do you want to ask a question?

Q10 Mr David Jones: That was very helpful, Chairman. In fact, before the session commenced the Committee were discussing the wide-ranging nature of this proposal. I think it would be helpful to the Committee if your office could let us have a note of each individual item of existing national legislation, most of it statute law I would guess, not all of it, that would be impacted or potentially impacted by this proposal. I think that would be very helpful to the Committee if you could do that.

Ms Davies: The last Matter was council tax.

Q11 Chairman: Would you be able to provide us with that note?

Ms Davies: Yes, I assume so.¹ The one last Matter is council tax. The Welsh Assembly Government does have some powers in relation to local government finance. This is something that local authorities have called for in relation to dwellings that are not the main residence of an individual and very recently we had a debate in the Assembly, an opposition debate, and this was the thrust of that debate. We were not able at that time to say this was included in the Order because it had not been published, but certainly there is support across parties in relation to allowing more flexibility to local authorities.

Q12 Mr David Jones: Would that extend to holiday homes?

Ms Davies: Any home that is not the main residence. If it is a business premises and it is a holiday let that would be part of a business.

Q13 Mr David Jones: To that extent it would be different because it would be affected by uniform business rates.

Ms Davies: That is right.

Q14 Mr David Jones: As you know, some holiday homes which are let are not let out for a full 12 months and, therefore, do attract council tax rather than business rates, so it would affect those particular homes.

Ms Davies: If it is not the main residence of an individual.

Q15 Mark Williams: The Assembly Government will not be publishing the final housing strategy until the new year, it is still open to consultation. I am slightly loath to ask this question because, like you, I am very keen that we should advance these things very speedily, but would it not have been better to consider this proposal in the light of the final outcome of that document?

Ms Davies: We will be publishing it in the new year. If you see the draft of the housing strategy, it is not a terribly long document but in that draft we are committed to reviewing the homelessness legislation, for example, and there is a commitment in relation to tenure law and new approaches to

intermediate housing. I do not think that the strategy once it is finally published is going to be all that different from the draft strategy that you see because we have developed the draft strategy with our housing partners in Wales. Ceri, did you want to add something?

Mr Breeze: The strategy was published earlier this year and the consultation is closed. We have had very supportive comments on it and are now taking the opportunity to update the strategy and bring together a number of separate strategies so, instead of having a separate *Supporting People* strategy and strategy for older people, those will be integrated into the national strategy. The policy direction has not changed, the LCO reflects the direction we are going in that strategy.

Q16 Mark Williams: You touched on the purpose of the LCO in your earlier comments, and it is on a different scale from those we have seen before. Again, some of us very much welcome that. To what extent does this LCO arise from the Assembly Government's view that it would be constitutionally appropriate and in line with the devolution settlement to devolve complete legislative competence over housing, rather than the pressing need? I suspect both principle and need in this case go very much hand-in-hand.

Ms Davies: Yes, they do. It is appropriate that the National Assembly can legislate in the area of housing. I think most Assembly Members are a bit surprised by the fact that there are no legislative powers for them in relation to housing and generally is delivered by executive functions, although I have to say they are piecemeal, as I was explaining earlier, so you are constrained by the primary legislation. If there is legislation that is proposed either by the (Assembly) Government or a committee or backbencher, that is probably more appropriate than just being able to agree or disagree with what the (UK) Government are suggesting. Certainly in relation to the regulatory framework, having no early intervention and enforcement powers can be a considerable barrier should there be problems in a housing association and, as I mentioned earlier, we do need to give lenders much more comfort than perhaps they tolerated in the past. I suppose I would say that it is both in a way, that there is a principle attached to it but we can justify all the matters that we have included in this.

Q17 Mark Williams: Given the breadth of those areas, at any point in time did you consider a series of different LCOs drawing down the powers in particular areas as the need became clearer? Was it always the intention that it should be one composite document?

Ms Davies: Of course we have had two and a half years of policy work and all of these things are so interrelated. If you talk about homelessness legislation or are doing reform of tenure law, that might impact on one of the other powers. I would not say that we will have a series of Measures, it could be that we will have a housing Measure.

¹ Ev 30

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Mr Buffin: For example, if you change tenure you may need to change provisions relating to allocation which would be picked up in 11.2. Sometimes it can be very difficult to be too specific within these matters and these areas because of the interrelated nature of them.

Ms Davies: The two themes are in relation to social housing and vulnerable people. Those are the themes that relate those matters. There are things that we deal with that we have executive functions in relation to that we have not included in this. Mr Williams, I am sure you would not mind me saying you write to me regularly and sometimes raise things with me, and park homes is something members often raise, the private rented sector sometimes. There are a number of things that, even though we may have some functions in relation to we have not included in this because our priority was the social rented sector and protection of vulnerable people.

Q18 Mark Williams: Again, I think you touched on this earlier. What specific legislation is needed to implement the six guiding principles as laid down in the Explanatory Memorandum? Those six are very clear. Perhaps fundamental to that, given the urgency of some of the issues, can one anticipate the Assembly Government introducing legislation under all eight Matters of the LCO before the end of the Assembly term? There is quite a big challenge there, is there not?

Ms Davies: I have to say I have learned my lesson and we are not counting our Measures until our Orders have hatched. I have not got a secret piece of legislation that has been worked up and is ready to go. You will know from the last time I was here that we do have a One Wales commitment to draw down the powers to suspend the Right to Buy and some work was done in relation to consulting on the principles of that and what that might look like. There is not a secret Bill somewhere that would contain everything and if I had to choose I am not sure which one of these areas would be the most important for me. Certainly I would like to be in a position whereby I could bring legislation before the end of this Assembly term. I appreciate that I am not in a position to say that is going to be possible.

Q19 Hywel Williams: Good afternoon, Minister. Housing was very largely devolved when the Assembly was set up and you have extensive powers already. What areas of competence are being extended to the Assembly by this Order which exceed the powers you already have as ministers?

Ms Davies: Of course, as I was explaining, we have some powers as the regulator in relation to housing associations but not all the powers that are laid out here. There are no intervention powers, no enforcement powers. As we go through, I do not think we have got any powers to change tenure law but we could probably tinker around with it a little bit perhaps. We certainly would not have the ability to create one sole social housing tenancy so that there is no difference between a housing association tenancy and a council tenancy, and that is certainly something the tenants organisations would

welcome. As I was explaining in relation to homelessness, there may be specific things that I could change but I certainly could not do anything in relation to the discharge of duty with the current legislation, because it was intended to deal with people who had become victims of homelessness, there tends to be this idea of having to prove that the local authority has a duty to you, that you were not intentionally homeless, and then if there is a duty to you it has to be discharged in a certain way. Even though we have used those powers to the best of our ability, that is not helpful when you want to intervene much earlier than when homelessness happens. We have certainly done a lot in terms of attaching conditions to grant but there is only so far you can go with that. Even though we have got powers in a number of these areas, it is not a coherent bundle of powers that allows you to develop policy in the way that you would hope because it is piecemeal.

Q20 Hywel Williams: Further to that point, would it be fair to describe this Order as bringing the Assembly's powers in line with the executive powers that you already have as ministers?

Ms Davies: We are not drawing them exactly to the current ones.

Q21 Hywel Williams: You are standing back and looking at it?

Ms Davies: Yes. That would not give us whole competence over homelessness, as I was explaining, because the powers that we have are piecemeal within that area. Members of the Assembly are quite surprised that there are not any legislative powers currently for the National Assembly to legislate in relation to housing and some of the things that I can do as a Minister in housing I do not even need to refer to the Assembly for a vote of any nature. Sometimes there is subordinate legislation and when we adopted the model standards for park homes that was brought to the floor of the Chamber, but some things you can do without reference to the Assembly as a whole.

Q22 Hywel Williams: That leads on to my next question. Since the Assembly was established further executive powers have been devolved to you as ministers, looking at the Housing and Regeneration Act, but why were legislative powers not passed on at the same time?

Ms Davies: At the time we had not had the Essex Review because that was not commissioned until October 2007 and, of course, most of the Housing and Regeneration Bill was an England-only Bill because it was setting up the agency for the regulation of housing associations. At the time the previous Legislative Competence Order was being worked up in relation to the Right to Buy, although there were some provisions in relation to Right to Buy in the Housing and Regeneration Bill and we did get executive functions in relation to those, it was not broad enough in order for us to deliver the policy intention of a temporary suspension of the Right to Buy where a local authority made an application to

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do so. It was very narrow. We did have the conversation about the Housing and Regeneration Bill but it was not considered an appropriate place for us because the provisions were not wide enough.

Q23 Hywel Williams: Just standing back looking across the whole piece, do you think there is enough time being allowed for the scrutiny of this proposal, which is broader than what was proposed previously?

Ms Davies: I know that the Assembly Business Committee has set a timetable for the Assembly scrutiny Committee, the Legislative Committee, and the Committee Chair has told me that she and the Committee would like to be able to meet that timetable. That Committee has never reported late. I am hoping that the Assembly Committee can report within the timetable, but we do not have control over the way that the Committee operates other than through the Standing Orders.

Q24 Chairman: Could you remind me of the timetable of all this. The Essex Review was commissioned in October 2007 and reported in June 2008.

Ms Davies: That is right, yes.

Q25 Chairman: When did you draft the first housing LCO?

Ms Davies: The first housing Legislative Competence Order began to be drafted prior to me becoming Minister. You will recall there was a minority government that was elected. I think Rhodri Morgan became First Minister in June of 2007 in a minority government and work began on it then. It was announced then before I was Minister.

Q26 Chairman: Were things out of synch? If you wanted to start afresh I suppose this is the housing LCO you would have preferred rather than the one you had to deal with last year?

Ms Davies: I suppose because work had started on that because that one was based on manifesto commitments and this one is based on two and a half years of policy work in government, it is entirely different. We have had the Essex Review and we needed a new housing strategy, a new homelessness plan, and our new approach to policy development has led us to this. I could not have come here two and a half years ago with this because the policy work simply would not have been there.

Q27 Chairman: In other words, your answer, without putting words into your mouth, is more care and consideration has been put into this one compared with the last one.

Ms Davies: Yes.

Mr Breeze: The Essex report that was published launched a considerable body of work to look in-depth at all of these areas and after the report that was the start of much work. The original focus was Right to Buy. Even if in the Regeneration Act we had taken limited powers, we would probably still be in a position now of coming back for more competence

powers purely because of the body of policy work that has been done since identifying the specific needs in Wales.

Ms Davies: If you looked at the debate that was held in the Assembly when I introduced this new Order, it was universally welcomed right across the Chamber. It has had universal support.

Q28 Mr David Jones: If we turn to proposed Matter 11.5 which relates to disposals, social housing and so on, Right to Buy, what policy changes have taken place which have resulted in this particular draft since the last occasion you came before the Select Committee on the previous LCO?

Ms Davies: There is still the One Wales commitment to draw down the powers for the temporary suspension of the Right to Buy in areas of high housing pressure. There has been some policy work done in development through the Essex work streams because we did not respond to the Essex recommendations in the traditional way by just issuing a response or consulting on the report, we set up work streams and it was not the Welsh Assembly Government that led all the work streams, we invited WLGA and others, housing associations and others, to lead the work streams. One of the things they have been looking at is intermediate products, intermediate rental products and other low cost home ownership models. The way that this is drawn would allow us to legislate if it was needed in areas to maybe introduce a brand new product, I suppose.

Q29 Mr David Jones: The policy as it stands is simply to suspend the Right to Buy?

Ms Davies: Yes.

Q30 Mr David Jones: There is no other policy at the moment in relation to the Right to Buy other than suspension in cases of housing pressure?

Ms Davies: Temporary suspension in areas of high housing pressure on application by the local authority.

Q31 Mr David Jones: So there is no policy to abolish the Right to Buy?

Ms Davies: No, none.

Q32 Mr David Jones: I am sure you will recall on the last occasion that this proved the most problematic aspect of the previous proposed LCO and that resulted in the proposal that the Secretary of State for Wales effectively should have the right of veto in case of the Assembly deciding it wanted to abolish the Right to Buy. The policy framework or policy background, it seems to me, does not appear to have changed. In those circumstances, would you have any objection to the same solution being arrived at, that is that the Secretary of State again would have to give his or her consent to the abolition of the Right to Buy in Wales?

Ms Davies: The Order as it stood amended required agreement between the Secretary of State and Welsh ministers.

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Q33 Mr David Jones: It was effectively a veto, was it not?

Ms Davies: The abolition of the Right to Buy could not have been forced on a minority government because you would have required the agreement of Welsh ministers. I do not think it was just a veto for the Secretary of State, it required the agreement of the Secretary of State and the Welsh Government.

Q34 Mr David Jones: But there would have to be agreement by both parties.

Ms Davies: There would have to be agreement by the Welsh Government and the Secretary of State.

Q35 Mr David Jones: Correct.

Ms Davies: That did not find favour because of its, shall we say, constitutional novelty, and I can see why. Of course, it did lead to the Order not proceeding. The policy certainly has not changed. There is absolutely no intention to abolish the Right to Buy. The Welsh Assembly Government is supportive of home ownership aspirations of tenants and, as I say, we are currently working with housing associations and local authorities to look at new projects which may very well be more appropriate.

Q36 Mr David Jones: I understand that, and I am sorry to interrupt, but it does seem to me that as this Committee is now considering this proposal, the policy background has not changed from the previous policy and, therefore, presumably you would not be surprised if the Secretary of State in due course were to decide that he wanted his previous proposal to remain, that is there would have to be agreement by him and the Welsh Assembly Government before the Right to Buy could be abolished under the provisions of Matter 11.5 because nothing really has changed in terms of policy.

Ms Davies: The addition of that to the previous Order had led to it stalling and not proceeding. I cannot imagine any circumstances where anybody would bother to pursue that line if it meant that the Order would then stall.

Q37 Mr David Jones: I simply make the point that in policy terms, so far as this aspect of the proposal is concerned, it is identical to the policy that prevailed at the time of the last application in terms of the Right to Buy.

Ms Davies: The policy in relation to the Right to Buy remains exactly the same and I am very happy to put on the record that the Welsh Assembly Government has absolutely no intention of abolishing the Right to Buy. I would also add that in the intervening time through the Essex work streams we did considerable work on developing and looking at other products which may be more suitable, so purchasing your property if you are a social housing tenant under HomeBuy terms, so you do not go up to 100% but buy a proportion of it, developing intermediate rental products, a whole range of things, we do not want to rule anything out. It could be that to introduce these may need abolition in the future, I do not know, and I cannot say what a future Welsh

Assembly Government would do. It is certainly not our intention. I do not think that it would find favour to introduce into the Order a mechanism that meant the Order is bound to fail again.

Q38 Chairman: Could we now turn to cross-border issues. There are two important elements of housing policy that are not devolved, namely housing benefit and council tax benefit. How do you take account of that as you develop your housing policy in Wales?

Ms Davies: We do know that there are cross-border issues and I did mention earlier that we have commissioned work on the housing revenue accounts. There has been a review undergoing of the housing revenue accounts, as you know, and I understand that your Housing Minister has said that it may need primary legislation, so no doubt we will be involved at that point because it does affect some local authorities that still own their stock. Independent of the English review, we are undertaking a review ourselves and commissioned an expert on that. We do know there are cross-border issues in relation to tenants who are in the social rented sector. Members might be quite surprised that there are—I think it is just five—five properties in England that are owned by an association in Wales, but the reverse means there are several hundred properties in Wales that are owned by associations registered in England. On a number of occasions English associations have developed in Wales. We do know that there are cross-border issues.

Q39 Chairman: I was specifically asking about council tax benefit and housing benefit.

Ms Davies: If you have a look at the way the Order is drafted in relation to housing related support, for example, it specifically says “non-financial assistance”.

Mr Buffin: The other thing is there are floating exceptions which have recently been introduced by the Exceptions to Matters Order and that includes social security and independent living funds, so that would be excepted from competence.

Q40 Hywel Williams: As you have no control over housing benefits and council tax benefits, does that influence your planning? How can you plan if you might be subject to change in a very short period of time because of something that happens in this place? I will just give you a very quick example. Currently there is a proposal, at least in a Green Paper, to change attendance allowance and disability living allowance for people over-65 and, to say the least, there is a great mystery as to how that will be translated into policy in the Assembly because as far as I can see that has not been particularly well considered.

Ms Davies: No.

Q41 Hywel Williams: Do you struggle with that sort of potential change over which you have no control in formulating your housing policy?

Ms Davies: Of course, because if you are a social landlord perhaps 70% or 80% of your tenants may be entitled to housing benefit and even though we do

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the determination on rent we have to bear in mind that a significant proportion of that will come from the Treasury because of the housing benefit situation. We do have to balance that and have discussions with our colleagues in Treasury on these matters. Council tax does not impinge so much on the work that I do because obviously the finance that I deal with is local government finance rather than housing finance, housing benefit really. Of course, any borrowing that is undertaken by a housing association has to be paid via the rent, the rent policy is influenced by housing benefit and trying to balance those things, so we do have to take them into consideration.

Q42 Chairman: We may need to ask this question in another context and in another place. In the new year we will be starting an inquiry into Wales and Whitehall and it occurred to us in the course of our cross-border inquiry—ongoing—that a great deal is unknown about relationships between ministers in the Welsh Assembly Government and in Whitehall. I do not know what the question is about all of this but we will need to write to you possibly in the new year in the context of our future inquiry because in this policy area specifically—I am speculating—there appears to be a need for greater proactive engagement on the Welsh side to influence UK policy.

Ms Davies: I am quite happy to put on the record that in relation to housing policy I have a good relationship with ministers here and in the Wales Office. I do not think it will be a surprise to anybody that the Treasury is quite an art, I suppose. We often talk about negotiations and I am not sure whether that is the right word to describe discussions with Treasury.

Mr Breeze: If I could just give an example as well of proactive relations with CLG, for example, on the implementation of the Rugg Review into the private rented sector. We are pursuing that with CLG in the new year and it is interesting to note that some things that were in the Rugg Review are already in place in Wales. There are benefits both ways.

Ms Davies: We do have good relations on the whole with Whitehall departments.

Q43 Hywel Williams: I am just thinking it is a two-way street. Sorry for such a cliché. Are you satisfied with the level of information that is passed from this place to you in Cardiff? Can I give you an example? I heard the other day that there is some consideration being given here to changing the term from “council tax benefits” to “council tax rebates” or even “council rates rebates” in the hope that will improve the rates of take-up. Given that you said you do not have particular responsibility for council tax, were you aware of that discussion?

Ms Davies: No. Certainly in relation to the proposal in relation to housing benefit, which I believe has been withdrawn now, it was paid directly to individuals and they could keep some of the benefit they were entitled to if they could find a cheaper place to rent. There was a proposal that that be withdrawn and we were not consulted on that before

it was announced. We have been asked since how we feel about it but we were not consulted on it prior to it being announced. We are not always completely in the flow, I suppose. It is very easy to say that you must communicate a lot but sometimes it is more difficult to do it than you imagine. I am sure sometimes it is inadvertent rather than deliberate.

Mr Breeze: I get a stream of information from Whitehall departments about changes, not always with as much time as I would like in advance. There is no doubt that relationships can get stronger and better, but there are some links going on and getting stronger.

Ms Davies: Sometimes officials will say that the deadline within which they have to reply is too challenging.

Q44 Chairman: Do you find that the Wales Office is sufficiently proactive in facilitating your relationships with Whitehall departments?

Ms Davies: I have got no complaint at all.

Q45 Mr David Jones: Is your experience that they are proactive or reactive in the way that they deal with issues?

Ms Davies: We have had a lot of dealings with the Wales Office because we have had two Legislative Competence Orders. We have had a number of secretaries of states and ministers because there have been changes and sometimes that can halt things. I have to say I have got no complaint at all, I have had cooperation and we have had direct contact with ministers here as well. I met with John Healey and we discussed some of the content of this.

Q46 Mr David Jones: I am not referring specifically to LCOs, I mean generally in facilitating your relationship with DCLG as you just mentioned. Do you find that the Wales Office is helpful and proactive?

Mr Breeze: I have always found them helpful. I think some of it is us engaging the Wales Office in terms of our discussions with CLG direct. It is not simply a one-way street. Yes, it is helpful and we would intend the relationship gets stronger in the future because there is an obligation on us to engage in what we are telling Whitehall departments as well as *vice versa*.

Q47 Mr David Jones: Absolutely. Getting back to the draft LCO, it includes terms, for example “homelessness”, that are already defined in other legislation. Is it intended that those terms should bear those existing statutory definitions? If so, do you think that maybe the interpretation provisions in the draft LCO should be amended to include cross-references to those existing statutory definitions?

Ms Davies: A lot of discussion has gone on in relation to which words would be defined and which ones would not. Neil, I guess you would be best placed to explain that.

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Mr Buffin: In terms of terms which have not been defined the view was they would have a definition within the context of the LCO from the context itself. For example, “homelessness” would not need a specific statutory definition.

Q48 Mr David Jones: So it does not relate back to existing statutory definitions?

Mr Buffin: The definition in the Housing Act, for example, is for the purpose of that Act, it is not intended to be a general all-purpose definition. Similarly, with any subsequent Measure the breadth of homelessness could be set within that Measure. Other definitions we felt were necessary because there is no simple statutory definition. For example, “social housing”, “social housing provider” were ones where it was decided a specific definition was needed in order to frame the legislative competence.

Q49 Mr David Jones: So you would anticipate that the definitions where they are needed would not appear in the draft LCO but in the Measure that flows from it?

Mr Buffin: That is correct, yes.

Ms Davies: In relation to “homelessness”, we did not want to use a statutory definition that then kept taking us back to what do you do with someone when they become homeless because the definition in our statute is around that, and this is about homeless prevention wherever we can. Just in the normal use of the word “homelessness” we expect to be able to take those powers that are required for the policies that we are pursuing.

Q50 Hywel Williams: It could be argued that one Matter could replace 11.2, 11.3 and 11.4. That is just a Matter on social housing rather than social housing providers, relevant social housing bodies, tenure of rented social housing and other arrangements in the way social housing is provided, and their definitions. Did you consider at all just having one overarching Matter that is social housing?

Ms Davies: You will see from the Order that social housing in the Order is not actually social rented housing and there is a definition there that “social housing provider” is a person providing housing to people whose needs are not adequately served by the commercial market, so low cost home ownership and other things, anywhere where there has been an intervention in the free market, we are saying for the purposes of this Order are, in fact, social housing

and any body or local authority that has connection with that can be considered a social housing provider, so you could have Community Land Trusts that would fall into this or co-operatives or someone who is providing housing that requires intervention into the private market. We are not confining this to the housing association property or the council property, this is much broader than that.

Mr Buffin: The intention of 11.2 and 11.3 is to cover functions relating to and functions of social housing providers and relevant social housing bodies, whereas if you look at 11.4 that is not a function *per se*, it is about tenure or tenancies. The function by social housing providers is the provision of those tenancies.

Ms Davies: I think it is quite cleverly written. As you can imagine, there has been considerable discussion and negotiation between lawyers about how it is drawn up. The fact that “social housing” is defined in such a broad way that you are not confining yourself to rented and that “social housing provider” is actually related to that in a very succinct way gives us competence over the areas which we hope to be dealing with.

Q51 Hywel Williams: I said earlier on that a great deal of housing had been devolved in the first place, and then we have this Order. Are there other aspects of social housing, other than those specified in these Matters, that will still remain outside the Assembly’s competence?

Ms Davies: In relation to council housing, of course, there is the housing revenue account subsidy system because that relationship is between the local authority and the Treasury. That is an obvious one. Could we have legislation in relation to standards? I cannot think of any obvious area that would be left out, obviously housing benefit and anything like that, but also the housing revenue account subsidy system, and lending to housing associations.

Chairman: Minister, those are all the questions we wish to pose to you today. There may be additional questions that we may write to you about. Could I thank you for your attendance and your agreement to change the arrangement for today. Originally we had intended to have an informal meeting, but this has been much more productive and we are grateful to you for that. We look forward to working with you in the coming weeks and a successful conclusion to this LCO. Finally, could I thank you for the warm words that you gave to us in relation to our work last year. Thank you very much.

Thursday 7 January 2010

Members present

Dr Hywel Francis, in the Chair

Mr David Jones
Alun Michael

Mark Williams

Witnesses: **Mr Wayne David MP**, Parliamentary Under-Secretary of State, **Dr James George**, Legal Adviser, **Mr Geth Williams**, Head of Legislation Policy, Wales Office, gave evidence.

Q52 Chairman: Good morning and Happy New Year. Welcome to the Welsh Affairs Committee. Would you introduce yourself and your colleagues for the record, please?

Mr David: Thank you, Chairman. Happy New Year to you and your colleagues. On my left is James George, a legal adviser from the Wales Office. On my right is Geth Williams from the Wales Office, who focuses upon legislative matters.

Q53 Chairman: As you know, Minister, we are dealing this morning with the sustainable housing Legislative Competence Order. To what extent does the context for housing policy in Wales differ from that in England?

Mr David: There has been a difference of emphasis between Wales and England since the advent of the Welsh Assembly. In terms of the nature of housing stock, there are obviously differences and similarities within Wales and between Wales and England. However, the differences which have developed in terms of policy are more evident in the nature of the issues which are being tackled. For example, in Wales we have seen a bigger emphasis placed on a partnership approach towards tackling housing issues, with greater partnership with the housing associations and local authorities in particular. There have been differences in other areas as well. With regard to the Right to Buy, for example, there has been a difference of emphasis and interpretation of our policy. In England there has been a much larger discount available for people who wish to purchase local authority homes. In Wales the discount has been reduced from £24,000 to £16,000. There has been a difference of emphasis, and the Legislative Competence Order that we have before us takes forward the differences of emphasis in approach that we have seen for the last few years and therefore it is consistent with how the Welsh Assembly Government has been developing these housing policies.

Q54 Chairman: Do I take it that you agree with the Welsh Assembly Government that it would be constitutionally appropriate and in line with the devolution settlement to devolve wide-ranging legislative competence over housing?

Mr David: Yes, I would agree with that. We have already a piecemeal approach towards devolution of responsibility for large areas of housing policy, and in many ways this LCO provides greater coherence to a strategic approach which has already been accepted. That is one of the main things

underpinning this LCO. I would also emphasise the fact that this enhances democracy, because Welsh ministers already have significant powers with regard to housing, but those powers are focused on ministers rather than on the Assembly as a whole.

Q55 Chairman: Given what happened last time—and we will not go into what happened over a year ago now in too much detail but taking on board what you just said—this LCO arises, therefore, mainly out of a matter of principle and a much more considered view of matters rather than what it appeared to be last time, seemingly a pressing need for legislation. Perhaps I am putting words into your mouth, but, in other words, the Welsh Assembly Government seems to have had more time to consider what they are proposing and are developing a much wider policy initiative.

Mr David: Yes, that is correct. The period between the difficulties experienced by the previous draft LCO and the situation we are in now has been a very productive period. The Welsh Assembly Government has certainly used the opportunity of that hiatus to ensure that its consultation and its thinking and its policy development is far stronger now than it was a couple of years ago. For example, we have seen the publication in June 2008 of the Essex report, and that is of quite seminal importance really in the development of housing policy in Wales. It has come forward with some 43 recommendations, and by and large that report has been extremely well received by the people involved in the housing sector. That report has influenced the LCO that we have before us now. There is also the National Housing Strategy which has gone out for consultation. Although the report has not been finalised, nevertheless we are able to say that generally it has received a favourable response. There is also, for example, the Joseph Rowntree Report, which has come forward with some very interesting and positive ideas. These issues taken together have certainly informed the Assembly's thinking, and the Assembly is in a much stronger position to come forward with an LCO which, if implemented, the Measures that follow from it will, I believe, make a big difference in Wales.

Chairman: We will now move on to the scope of the proposed Order.

Q56 Mark Williams: You have acknowledged that this Order is significantly broader than any of the other LCOs we have seen before. Do you think enough time has been allowed for such scrutiny? Or

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would you say, perhaps in the context of what you have just said, that since the earlier housing LCO there has been a prolonged debate? There are two things: has there been a lengthy enough debate more generally, and, specific to this LCO, is enough time being made available by the Assembly for the very tight deadline of 29 January for their report? It is a very broad LCO to cover a lot of points, is it not?

Mr David: I think you are right. My answer to your point follows on from what has been said, that we are not considering this LCO now in anything approaching a vacuum. It does follow on from the previous draft LCO but a lot of lessons have been learned, in terms of process and the drafting of the LCO but in terms of policy formulation as well. I can honestly say, as a Minister who delves in some detail into all the proposed legislation, this legislation (the LCO and the Explanatory Memorandum) does bear testimony to the fact that a great deal of hard work has gone into the development of government policy and the legislation.

Q57 Mark Williams: One of the reasons for requesting legislative competence, as set out in the explanatory memorandum, is that Welsh ministers already have extensive executive powers in this area which originated from when the Assembly was set up. What areas of competence are being extended to the Assembly which go beyond the remit of existing powers to make regulations?

Mr David: You are right, there has been a piecemeal approach towards which executive powers the Welsh ministers have had and in many respects the proposed LCO does build upon that and create a good sense of coherence and unity of purpose. There are a number of instances where this has been proposed. One example stands out to me, and that is with regard to the influence that Welsh ministers have with regard to housing associations. For instance, at the moment the Welsh ministers have the power to undertake statutory investigation into a housing association which it might feel is not being run properly or effectively, but it cannot serve an enforcement notice. Because of this LCO, if it were implemented and eventually followed, they could do that. In a sense, it is a logical conclusion of powers the Welsh Assembly Government already has. Another big area is the whole issue of the nature of home ownership. One of the things the Assembly has been talking about over the last few months has been a move towards mutual ownership, whereby homes are owned maybe co-operatively but the land is owned separately. That is an innovative idea which is worthy of positive development and examination. Those are two practical examples. One point I would make is that much of the debate last time focused around the efficacy of the Right to Buy or not. There has been a realisation that in many ways that is not the central debate. That is a debate of the past, in a sense. This LCO takes us beyond that rather sterile debate into new and innovative and far more relevant and meaningful areas. That is why I think it is important. The final point I would make to reinforce that point is that that is not just our view in the Wales Office but it is the view of many people

engaged in the development of housing policy in Wales. Shelter, for example, who I think are giving evidence to you later on, certainly welcome this new approach and recognise that much of the debate we had around the previous draft LCO was not that meaningful to the development of housing policy in Wales. What we have before us now is far more relevant.

Q58 Mark Williams: I want to turn now to the issue of whether it was appropriate to issue an LCO or the use of framework powers. The explanatory memorandum noted the use of executive powers, giving executive powers to Welsh ministers in Acts of Parliament. Was consideration given to devolving legislative powers in that way rather than in an LCO? A specific question coming from that is: Why could not some of the powers that you have referred to in the LCO have been given to the Assembly as part of the Housing and Regeneration Act of last year?

Mr David: There is the obvious answer in terms of timescale. In many areas of policy it is the preferred approach of the Welsh Assembly Government to introduce Wales-only clauses in England and Wales legislation which is going through, but stemming from the One Wales agreement there is now a commitment to have a specific emphasis on the development of housing policy in Wales and the natural corollary to that has been the emphasis on the Legislative Competence Order—both the initial one and the one we have before us now.

Q59 Mark Williams: Discussion has been ongoing. There has been a long discussion on housing policy.

Mr David: Yes.

Q60 Mark Williams: Were there discussions between the Wales Office and the Assembly Government on the possible inclusion of framework powers?

Mr David: The Welsh Assembly Government took a fairly early decision that they wished to see a Legislative Competence Order. Certainly, in terms of the LCO we have before us now, it would not be appropriate for the matters here to be included in any legislation which is currently passing before the House. In a sense it is opportunist whether or not the Welsh Assembly Government can insert framework clauses, and so initially they wanted to have a freestanding LCO, and, second, I do not think it is possible now to see any legislation in which these matters could be effectively included.

Q61 Mark Williams: Obviously there have been instances when the Assembly Government has requested framework powers but it has been unable to secure them. I suppose the specific question is: What is the Wales Office doing to ensure that Whitehall departments engage with the Assembly early enough so that, if there are two options, both can be explored fully?

Mr David: There is an excellent working relationship between the Welsh Assembly Government and Whitehall departments. The job of the Wales Office is, as you suggest, to ensure that that relationship is

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as effective as possible. We are the facilitators. But we also have made it clear that it is up to the Welsh Assembly Government to determine (a) how it wants to prioritise its bids for legislation and (b) the nature of the bids which are put forward, whether it is framework powers or whether it is LCOs. We have taken our steer very much from the Welsh Assembly Government on that. Once they have made the principle decision about what they want and how they want it, then we seek to facilitate that, but we do not suggest to the Welsh Assembly Government how they should fulfil their legislative ambitions.

Q62 Mark Williams: I welcome that. I think that emphasis is right and appropriate. You are satisfied that the processes are robust enough early on for that discussion nonetheless to take place?

Mr David: Yes, I am satisfied. I will add, however that I am more satisfied now than perhaps I would have been 12 months ago, because this is a new process that we have before us and all players, all participants in it, are learning as they go along. I am far more confident about the situation as it is working now than perhaps was the situation in the past.

Mark Williams: Thank you.

Q63 Mr David Jones: Could you explain the purpose of the changes that have been made to the wording of Matter 11.5 since the Committee last considered a similar proposal—which was the Affordable Housing LCO, which I understand has been now abandoned altogether?

Mr David: Matter 11.5 covers the disposal of land held and used for social housing.

Q64 Mr David Jones: That is right.

Mr David: And enables the Assembly to propose legislation to suspend the Right to Buy in areas of housing pressure. It is important to recognise that Jocelyn Davies, the Deputy Minister for Housing, made it emphatically clear to yourselves when she gave evidence that it was not—

Q65 Mr David Jones: I am sorry to interrupt you, but I will be asking about that a bit later on. I am asking if you could explain the purpose of the textual changes that have been made since we last considered the 2008 proposal.

Dr George: The main reason for the changes is really to reflect the way the rest of the LCO is now drafted to fit it in with that. Paragraphs (a) and (b) are talking generally about disposal of social housing and related land. Paragraph (c) is referring to the specific pieces of legislation that were also mentioned in the previous LCO. The reason for including those is that there may be some categories of disposal under the existing legislation which would not fall within paragraphs (a) and (b) in a few situations.

Q66 Mr David Jones: Thank you. To move on to the policy aspect which you just started on, this Order, which is essentially the revision of one that we have

already considered, would still allow the Welsh Assembly to amend or, if necessary, abolish the Right to Buy. I recall that this proposal was something of a deal breaker on the last occasion that a similar rule was considered by your department. To what extent do you now consider it appropriate that the Assembly should have the right to abolish the Right to Buy?

Mr David: Last time there were essentially two issues which focused the collective mind of this Committee: one was the policy per se of the Right to Buy and the second was the fact that the Explanatory Memorandum did not, I think it is true to say, adequately reflect the nature of the LCO. That second issue has been very effectively addressed. That is why the Explanatory Memorandum that we have before us, on this issue and other issues as well, is exemplary in the way that it has given a very, very clear and precise explanation of both the policy background and also the legislation that is proposed. That is extremely important. In terms of the Right to Buy, one of the difficulties last time was that because in other areas policy development had not been anywhere near as advanced as it is now, the Right to Buy tended to stick out. The impression may have been given that the Assembly believed that that was a much more significant policy than what in fact it was. Although the Right to Buy essentially is by and large the same as it was in the previous LCO, it is put in a much broader context. If we judge that alongside the policy pronounced last week by Jocelyn Davies, that the Assembly Government has no policy intention to abolish the Right to Buy across Wales, we can see it in a context of being one element of a broader housing strategy.

Q67 Mr David Jones: To that extent, the policy of the Welsh Assembly Government remains unchanged. Jocelyn Davies gave evidence to this Committee a few weeks ago in which she said that in terms. The policy objective in terms of the Right to Buy or not to abolish the Right to Buy is identical to its position as it was when the previous application was made for the affordable housing LCO. There has been no change to that extent. Do you consider, therefore, speaking corporately on behalf of the Wales Office, that the Assembly should be empowered to abolish the Right to Buy? If so, why have you changed your mind since the last LCO?

Mr David: There are a number of points there. The first point I would make is that the Welsh Assembly Government is committed to the One Wales agreement. The One Wales agreement is very clear with regard to the Right to Buy but the agreement has not been changed, and, therefore, the policy of the Welsh Assembly Government has not changed. In terms of the Wales Office, it is not our position that we have been opposed to the Right to Buy per se. If you look at the last evidence session of my predecessor Huw Irranca-Davies, he gave no indication that that was the Wales Office's policy at all. Reservations might have been expressed by Members of this Committee, and following the suggestion by the Joint Committee on Statutory Instruments (JCSI), the LCO was modified so that

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before there would be any waiving of the Right to Buy Welsh ministers and the Secretary of State for Wales would have to give their explicit consent. That position was accepted by the Welsh Assembly Government and indeed by the Government here, but nevertheless the *vires* of that was questioned by the JCSI. Following that, it was decided that, although we were confident about the legal veracity of it, nevertheless it would be better if we did not pursue that rather complicated arrangement but suggested to the Welsh Assembly Government that they might look at the issue afresh—which they have done.

Q68 Mr David Jones: Pausing briefly there, I thank you for reminding me of the process that we went through last time. Effectively the Wales Office insisted upon what can only be described as a veto before this particular power should be implemented. Clearly that was done for a particular reason. The particular reason, I would suggest, is that the Wales Office had concerns about the policy that might flow from such a power being granted. To that extent it is fairly clear that your predecessor and the former Secretary of State had concerns about this particularly policy. It is fair to say that, is it not?

Mr David: The first point I would make is that the Wales Office did not insist on a veto, as it has been described, by the Secretary of State. That was a suggestion which came forward in joint discussion between ourselves and the Welsh Assembly Government. It was not at our insistence, but we saw this as a way in which the matter might be effectively expedited. It was a novel approach but, nevertheless, we thought that that was certainly something which was legal and something which could take us out of the difficulty which had arisen. The legal correctness of that, as I say, was questioned, and we took the decision that it would be better, therefore, not to pursue any further that unique approach. I will emphasise that in terms of the policy matter it is not our position in the Wales Office to question the policy of the Welsh Assembly Government.

Q69 Mr David Jones: No, the only policy that you exercise is whether or not you consider it appropriate to grant a particular power. That is the only extent to which you consider policy, is it not? Beyond that, you will leave it up to the Welsh Assembly to decide what they want to do with that power once granted.

Mr David: It is the decision of Parliament as whole really to make a decision as to what powers are appropriate for the Welsh Assembly to have.

Q70 Mr David Jones: But it is your department that puts the proposal before Parliament for consideration, so you do have to exercise a judgment to that extent.

Mr David: The emphasis would be placed on facilitating the policy objectives of the Welsh Assembly Government rather than questioning what the Welsh Assembly Government wish to do.

Q71 Mr David Jones: With respect, I think you are mixing up two points. I fully understand that once the power has been devolved then the way that that power is exercised is a matter for the Welsh Assembly Government, but you have to make the decision beforehand whether or not you are prepared to recommend to Parliament that the power be devolved in the first place. That is the point where you exercise your judgment.

Mr David: I would not wholly agree with that definition of the role of the Wales Office. It is the Welsh Assembly Government who come forward with their wishes for which legislation they wish to have enacted. Obviously negotiations take place, but the negotiations are very much focused on the practicalities of ensuring that the Welsh Assembly Government is able to fulfil its objectives. We do not come to a determination of what is right or wrong or appropriate or inappropriate. It is our job to facilitate things as far as practically possible.

Q72 Mr David Jones: To summarise the position, so that it is on the record and we can return to it later, you acknowledge that the Welsh Assembly Government's policy has not changed in respect of the issue of whether or not there should be the sale of social housing and whether or not that right should be abolished. That is identical on this occasion to the position it was in at the time that this Committee considered the last proposal of the Affordable Housing LCO.

Mr David: You are not wholly accurate in the way you depict the policy of the Welsh Assembly Government.

Q73 Mr David Jones: I understand.

Mr David: The Welsh Assembly Government has been very clear that they are talking about limited circumstances and not a permanent lifting but a temporary lifting. That caveat is very important, that the Welsh Assembly Government's position is not misrepresented.

Q74 Mr David Jones: No, I am not misrepresenting it.

Mr David: Can I also agree with you that there has not been any change in regard to that policy. What is different is that that particular policy has now, in my view, assumed a far less great significance, because it is now placed in a far broader policy context. The emphasis has been placed on other areas rather than, as the impression was given last time, on the Right to Buy.

Q75 Mr David Jones: I am sorry to press the point, but to deal with this issue of whether or not the Welsh Assembly Government either wants or needs the power to abolish the Right to Buy, the policy of the Welsh Assembly Government as enunciated a few weeks ago by Jocelyn Davies, from the seat in which you are sitting at the moment, was that there is no intention on the part of the Welsh Assembly Government to abolish the Right to Buy, and that to

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that extent, and that extent only—let us not stray beyond that—their policy remains unchanged. That is the case, is it not? That is what she said.

Mr David: With regard to the Right to Buy, the policy of the Welsh Assembly Government has not changed.

Q76 Mr David Jones: No. Thank you very much indeed. Has the Wales Office explored any alternative legislative vehicles, other than an LCO, to enable the Welsh Assembly Government to achieve its policy aim of limited local suspensions of the Right to Buy? Is it necessary to do it through an LCO or could it be done in any other manner?

Mr David: My understanding is that it can not be done under the existing powers of the Welsh Assembly Government. That is why this stipulation here is with regard to Matter 11.5.

Q77 Mr David Jones: Is that the view of the legal advisers too?

Dr George: It would have to be either by giving the Assembly the competence to pass legislation, amending existing legislation, or through an Act of Parliament amending the Housing Act.

Mr Jones: Thank you very much.

Q78 Chairman: Minister, I want to ask about Matter 11.7 relating to Gypsies and Travellers. That Matter would enable the Assembly to compel local authorities to provide sites. Do you think this diminishes the key strategic housing role of local authorities?

Mr David: No, I do not. Matter 11.7 is ensuring that the policy objective of the Welsh Assembly Government is fulfilled with regard to Gypsies and Travellers. Concern has been expressed that some of the local authorities in Wales have not been forthcoming in terms of identifying sites for Gypsies and Travellers and, therefore, this Matter will ensure that local authorities do come forward with what is expected of them.

Q79 Mr David Jones: This particular power would enable the Assembly Government to adopt a highly interventionist position, would it not, in certain cases?

Mr David: It would give a reserve power for Welsh ministers to require local authorities to provide sites for an identified group, but the idea of having a reserve power does not imply that it would be used. It would be a means to ensure that the local authorities themselves identify suitable sites.

Q80 Mr David Jones: Jocelyn Davies reiterated this point when she gave evidence.

Mr David: A reserve power is not novel; it has been introduced in other legislation.

Q81 Mr David Jones: If the Welsh Assembly Government considered it appropriate, it could, under the provisions of this power, not only tell a local authority that it should provide a site for Gypsies and Travellers but could in fact specify where that site should be.

Mr Williams: There is no indication whatsoever that the Welsh Assembly Government would wish to do that.

Q82 Mr David Jones: I understand that, but it would have the power to do so if it wished.

Mr David: In an entirely theoretical sense, but that would cut across the whole approach that the Assembly has adopted with regard to its engagement with local authorities and the way the planning process works.

Q83 Mr David Jones: I understand that. Forgive me, if—

Mr David: Yes, but, forgive me, there is no point in talking about things in an abstract, theoretical way.

Q84 Mr David Jones: I am not talking in an abstract way.

Mr David: Yes, you are, with all due respect. We are talking about how policies will be implemented on the basis of this legislation.

Q85 Mr David Jones: But the point is that the power would be granted to the Welsh Assembly Government, should it seek to do so, in terms of acting in a very interventionist manner and telling the local authority whether it should have a traveller site and where it should be. Whether or not they intend to exercise that is a matter for them, but they would have the power to do so.

Mr David: A local development plan would be drawn up, as is the case at the moment, and the relevant local authority would be expected to cater for the needs of Gypsies and Travellers. The inspector appointed by the Welsh Assembly would examine the local development plan and examine whether or not it fulfils the objectives which are set out by the Welsh Assembly Government, to which local authorities are obliged to adhere. It would be up to the local authority then, with proposals asked of them by the inspector on behalf of the Welsh Assembly Government, to come forward with appropriate sites. Frankly, it is inconceivable that the Assembly in Cardiff would somehow, by some vague mechanism, determine that a particular site in an area which they are not familiar with, would have a Gypsy site. They just would not do it.

Q86 Mr David Jones: Why would they want the power?

Mr David: Because the reserve power makes it absolutely clear that this is what is expected by a Welsh Assembly Government. This would focus the minds of the local authority to come forward with appropriate sites.

Q87 Mr David Jones: Precisely, and if the local authority did not do so, in the opinion of the Welsh Assembly Government, then the Welsh Assembly Government could impose one on the local authority.

Mr David: In a theoretical sense, that could happen, but I have absolutely no doubt whatsoever that the local authority, if they were in that situation, would come forward with a reasonable and appropriate site.

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Q88 Chairman: Let us move on to cross-border issues, Minister. Council tax benefit and housing benefit are not devolved. Do you consider that this restricts the future development of housing policy in Wales?

Mr David: We do not see any hugely significant cross-border issues here. As you correctly say, housing benefit and council tax benefit are issues which would not be part of this Legislative Competence Order and our understanding is that there is only a handful of RSL (Registered Social Landlord) sites which belong to English landlords in Wales and *vice versa*. We are talking about only a few hundred registered social landlords in England who would have houses in Wales. We are talking about a very, very small number, and obviously those have been identified and careful consideration would be given to any impact upon registered social landlords in that sense. I do not see cross-border issues as being a hugely problematic area in this context.

Q89 Chairman: The question was not specifically about the physical border, it was more about non-devolved policy areas. Given how important these two major areas of council tax benefit and housing benefit are in the development of housing policy, that is the nature of the question. It is an open-ended question really. I am not suggesting the matter should be devolved, but you would acknowledge that this does constrain the development of housing policy in Wales.

Mr David: You are obviously correct in terms of those two benefits having a direct bearing on the ability of the Welsh Assembly Government to develop its policy on the legislative basis that we are talking about, but I would not see that as being necessarily a huge problem because no one has suggested in Wales that there will be that kind of devolution of that aspect of the benefit system. All organisations, all providers of housing, work within a certain context, and that is how the policy formulation takes place.

Mr Williams: It is about the Welsh Assembly Government working closely with relevant government departments in Whitehall as well, like CLG and DWP, and they certainly do that at the moment.

Chairman: Let us now move on to the drafting of Matters.

Q90 Alun Michael: I apologise, Minister, for the fact that having a question on the floor of the House means that I have missed some of your good evidence this morning. Language is important, particularly when there is a difference between the language that is used in everyday parlance and language that is used in statutory provisions. The proposed Order includes a number of terms that are already defined in legislation. Are these terms intended to bear those statutory definitions; for example, the term “homeless”?

Mr David: As is always the case, the definitions which have been employed in this LCO are definitions which have been on occasions used elsewhere, but the definitions are particular to the circumstances in which they are deployed. There is not an automatic read-across between what is existing in current

legislation and what has been employed here. There is, however, some read-across, but the important thing I would suggest is that there is no incompatibility between the terms which are used here and the terms used in other legislation.

Q91 Alun Michael: There are two different contexts. One is whether there is incompatibility; the other is whether the terms are meant to take the same meaning as it did in other legislation. Would it not be sensible for the interpretation provisions, when you come forward with the substantive Order, to be amended to include cross-references to the statutory definitions so that it is clear where the same intention is placed on the words, or, if there are differences, that those differences are clear?

Dr George: There is a general issue about cross-referring to other legislation which we have talked about in other sessions. The general approach we take is to try not to do that, because then the other legislation may be amended and that would then have a potential knock-on effect upon the competence of the Assembly or the two might get out of sync. On the particular point you mentioned about homelessness, the approach here is that homelessness should have its ordinary meaning, which we think is pretty easily understood. There are statutory definitions of homelessness, but they are there specifically to determine what the duties are of local authorities to provide accommodation and assistance to particular groups of people. They are tied in with a lot of other definitions about eligibility and so on, and so they are not meant to apply directly to this Order.

Q92 Alun Michael: When it comes to explanatory memoranda it may sometimes be helpful to explain in the explanatory memoranda why there is not a cross-reference, if there is not, for the avoidance of doubt. Perhaps that is something that could be considered before the final draft comes forward.

Mr David: That is a fair point and something that we will clearly consider in terms of the final explanatory memorandum.

Q93 Alun Michael: In relation to social housing, was consideration given to prescribing a single Matter “social housing” (appropriately defined) rather than three matters, 11.1, 11.3 and 11.4, and their linking definitions?

Mr David: The three Matters to which you refer 11.2, 11.3 and 11.4, are dealing with specific aspects of the issue of social housing.

Q94 Alun Michael: I understand that, but the alternative of course would have been to have a single Matter, rather more broadly defined. I am trying to understand why this was the choice that you made.

Dr George: Partly we thought that this approach makes it clearer what is intended. The first Matter, 11.2, for example, “Social housing providers”, clearly indicates that we are talking there about things like the regulatory system for social landlords. Matter 11.4 is separate to do with tenure and the kind of tenancies people have and in the way in which

7 January 2010 Mr Wayne David MP, Dr James George and Mr Geth Williams

property is allocated. It might be that if we used a more general term, like “Social housing”, we might bring in things that we had not thought of.

Q95 Alun Michael: You are seeking, therefore, to do something that this Committee has asked for, to be absolutely clear what the intention is in all of this.

Dr George: Yes.

Q96 Alun Michael: I suppose we ought to welcome that. Are there aspects of social housing other than those specified in these Matters that will remain outside the Assembly’s competence?

Mr Williams: Social housing finance is the obvious answer. The housing revenue account does not fall within the competence of the Assembly.

Q97 Alun Michael: Otherwise it would cover all aspects.

Mr Williams: Otherwise, yes.

Chairman: Thank you very much for your co-operation this morning and answering our questions very thoroughly. That is all we have to ask you this morning. Once again, thank you very much.

Written evidence

Letter from Rt Hon Peter Hain MP, Secretary of State, for Wales Office

PRE-LEGISLATIVE SCRUTINY OF THE PROPOSED NATIONAL ASSEMBLY FOR WALES (LEGISLATIVE COMPETENCE) (HOUSING AND LOCAL GOVERNMENT) ORDER 2010

I am writing to invite you and your committee to undertake pre-legislative scrutiny of the proposed Housing Order in Council. I am pleased to inform you that the UK Government has given its consent to this Order being submitted to Parliament for pre-legislative scrutiny and I would be grateful if you could make the necessary arrangements for this to happen.

This proposed Order has been substantially revised from an earlier version which your committee and the House of Lords Constitution Committee scrutinised last year. The revised Order is broader in scope compared to its predecessor, and would confer legislative competence on the National Assembly for Wales in relation to social housing, meeting the housing needs of vulnerable people and the amount of council tax charged on second homes.

I have today laid the Order with the accompanying Explanatory Memorandum before Parliament in the form of a Command Paper (Cm 7765) and I have issued a written ministerial statement drawing the Command Paper to the attention of Members. I have also written specifically to Welsh Members and Members who speak regularly on Welsh matters.

I look forward to you Committee's views on this Order.

December 2009

Welsh Affairs Committee Press Notice

PRE-LEGISLATIVE SCRUTINY OF THE PROPOSED LEGISLATIVE COMPETENCE ORDER IN COUNCIL ON HOUSING AND LOCAL GOVERNMENT

CALL FOR WRITTEN SUBMISSIONS

The Government of Wales Act 2006 introduced a process enabling the National Assembly for Wales further to enhance its law-making powers by a new procedure known as Legislative Competence Orders in Council (LCO).

At its meeting on 3 December, the Welsh Affairs Committee decided formally to accept the Secretary of State's invitation to the Committee to conduct pre-legislative scrutiny of the proposed National Assembly for Wales (Legislative Competence) (Housing and Local Government) Order 2010. The proposed Order, together with an explanatory memorandum by the Welsh Assembly Government, was published as a Command Paper by the Wales Office on 2 December (Cm 7765) and can be found on the internet at:

<http://www.official-documents.gov.uk/document/cm77/7765/7765.pdf>

The Committee asks for written submissions in accordance with the guidelines stated below by 5 January 2010.

The Committee would particularly welcome comments on the following aspects of the proposed Order—

1. Is the LCO request in the spirit and scope of the devolution settlement?
2. Is the use of the LCO mechanism in accordance with the Government of Wales Act 2006?
3. To what extent is there a demand for legislation on the matter(s) in question?
4. Are there any cross-border issues relating to the LCO? (eg financial or policy issues)
5. Are the purpose and scope of the LCO clearly defined, including the terms and definitions used?
6. Does the LCO have the potential to increase the regulatory burden on the private or public sector?
7. Would the proposed LCO necessitate the formation or abolition of Welsh institutions and structures? If so, where does the legislative competence to exercise such changes lie?
8. Is the use of an LCO more appropriate than, for example, the use of framework powers in a Westminster Bill to confer competence on the Assembly?
9. Has full use been made of any existing powers to issue statutory guidance and/or secondary legislation in relation to this Matter?

Concurrent to the work of the Welsh Affairs Select Committee, a detailed legal examination of the proposed Order will be conducted by the Constitution Committee, House of Lords.

Dr Hywel Francis MP
Chair, Welsh Affairs Committee

3 December 2009

Proposed Order for pre-legislative scrutiny

DRAFT STATUTORY INSTRUMENTS

2010 No.

CONSTITUTIONAL LAW

DEVOLUTION, WALES

**The National Assembly for Wales (Legislative
Competence) (Housing and Local Government) Order
2010**

Made - - - - - *****

Coming into force in accordance with Article 1(2)

At the Court at Buckingham Palace, the ***** day ***** of ***** 2010

Present

The Queen's Most Excellent Majesty in Council

In accordance with section 95(5) of the Government of Wales Act 2006(a), a draft of this Order has been laid before, and approved by resolution of, the National Assembly for Wales and each House of Parliament.

Accordingly, Her Majesty, in pursuance of section 95(1) of the Government of Wales Act 2006, is pleased, by and with the advice of Her Privy Council, to order as follows:-

Citation, commencement and interpretation

1.—(1) This Order may be cited as the National Assembly for Wales (Legislative Competence) (Housing and Local Government) Order 2010.

(2) This Order shall come into force on the day after the day on which it is made.

(3) In this Order “2006 Act” means the Government of Wales Act 2006.

Amendments relating to the field of housing

2.—(a) Field 11 (housing) of Part 1 of Schedule 5 to the 2006 Act is amended as follows.

(1) After matter 11.1(b) insert—

“*Matter 11.2*

(a) 2006 c.32.

(b) *Matter 11.1 was inserted by article 2 of the National Assembly for Wales (Legislative Competence) (Housing) Order 2010.*

Social housing providers.

Matter 11.3

Relevant social housing bodies.

Matter 11.4

Tenure of rented social housing and other arrangements under which social housing is provided.

Matter 11.5

Disposals of—

- (a) social housing,
- (b) land held or used for the purposes of, or in connection with, social housing, and
- (c) land in which a provision of any of the following enactments applies—
 - (i) Part 2 of the Housing Act 1985(a);
 - (ii) Part 5 of the Housing Act 1985;
 - (iii) Chapter 2 of Part 1 of the Housing Act 1996(b);
 - (iv) Chapter 4 of Part 1 of the Housing Act 1996;
 - (v) Chapter 4 of Part 2 of the Housing and Regeneration Act 2008(c);(insofar as the disposal does not fall within paragraph (a) or (b) of this matter).

Matter 11.6

Provision of advice and non-financial assistance to individuals in respect of their obtaining, and living in, housing.

This matter includes, in particular, advice and non-financial assistance in respect of skills that are relevant to the ability to live independently, or more independently, in housing.

Matter 11.7

Provision by local authorities of caravan sites for use by gypsies and travellers.

Matter 11.8

Homelessness.

Interpretation of this field

In this field—

“caravan site” means—

- (a) land on which a caravan or other mobile accommodation (apart from a tent) is stationed for the purposes of human habitation, and
- (b) land which is used in conjunction with land falling within paragraph (a) of this definition;

“local authority” means a county council or a county borough council in Wales;

“relevant social housing body” means a person (if, or insofar as, it is not a social housing provider) which has functions relating to—

- (a) social housing providers, or
- (b) social housing;

but if the person has some functions that do not relate to social housing providers or social housing, the person is a relevant social housing body only insofar as its functions relate to social housing providers or social housing;

“social housing” means any housing provided by a social housing provider;

“social housing provider” means—

- (a) a local authority, and

(a) 1985 c.68.
(b) 1996 c.52.
(c) 2008 c.17.

(b) a person (other than a local authority) providing housing to people whose needs are not adequately served by the commercial housing market (whether or not it also provides housing to other people and whether or not it also has functions in addition to providing housing);

but, if a local authority or other person has some functions that do not relate to the provision or allocation of housing, the authority or other person is a social housing provider only insofar as its functions relate to the provision and allocation of housing.”.

Amendments relating to the field of local government

3.—(1) Field 12 (local government) of Part 1 of Schedule 5 to the 2006 Act is amended as follows.

(2) After matter 12.17(a) insert—

“*Matter 12.18*

Council tax payable in respect of dwellings that are not the main residence of an individual.”.

Name
Clerk of the Privy Council

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Government of Wales Act 2006 (“the 2006 Act”). The Order extends the legislative competence of the National Assembly for Wales to make laws known as Measures of the National Assembly for Wales (referred to in the 2006 Act as “Assembly Measures”). The legislative competence conferred by this Order is subject to general limitations on the exercise of that legislative competence, which apply by virtue of section 94 of, and Schedule 5 to, the 2006 Act.

Article 2 inserts matters 11.2 to 11.8 and interpretation provisions into field 11 (housing) of Part 1 of Schedule 5 to the 2006 Act.

Matter 11.2 is about social housing providers.

Matter 11.3 is about specified social housing bodies.

Matter 11.4 is about tenure of social housing and other arrangements under which social housing is provided.

Matter 11.5 is about disposals of social housing and land held or used for connected purposes.

Matter 11.6 is about provision of advice and non-financial assistance to people in respect of their obtaining, and living in, housing.

Matter 11.7 is about provision by local authorities of caravan sites for use by gypsies and travellers.

Matter 11.8 is about homelessness.

Article 3 inserts matter 12.18 into field 12 (local government) of Part 1 of Schedule 5 to the 2006 Act. The matter is about council tax payable in respect of dwellings that are not the main residence of an individual.

A full regulatory impact assessment has not been prepared for this Order since the effect of this Order is only to confer competence on the National Assembly for Wales to legislate.

(a) Matters 12.1 to 12.5 were inserted by the Local Government and Public Involvement in Health Act 2007 (c.28), section 235, Schedule 17, paragraphs 1 and 2. *Matters 12.6 and 12.7 were inserted by section 32 of the Local Democracy, Economic Development and Construction Act 2009 (c.20). Matters 12.8 to 12.17 were inserted by the National Assembly for Wales (Legislative Competence) (Local Government) Order 2010 (S.I. 2010/).*

Welsh Assembly Government Explanatory Memorandum

CONSTITUTIONAL LAW: DEVOLUTION, WALES

The National Assembly for Wales (Legislative Competence) (Housing and Local Government) Order 2010

Proposal for a Legislative Competence Order relating to housing and local government

INTRODUCTION

1. This Memorandum sets out the background to the provisions in the attached government proposed Legislative Competence Order which would confer additional legislative competence upon the National Assembly for Wales. It also explains the scope of the power requested.

2. The constitutional context to this request is set out by the Government of Wales Act 2006 (the 2006 Act) and the UK Government's policy contained in the White Paper "Better Governance for Wales". Section 95 of the 2006 Act empowers Her Majesty, by Order in Council, to confer competence on the National Assembly for Wales to legislate by Assembly Measure on specified Matters. Matters may be added to Fields within Schedule 5 to the 2006 Act. Assembly Measures may make any provision which could be made by Act of Parliament, in relation to matters, subject to the limitations provided for by the 2006 Act. An Order in Council under Section 95 of the 2006 Act is referred to as a Legislative Competence Order (LCO) in this memorandum.

3. The proposed LCO would confer further legislative competence on the National Assembly for Wales, in the Fields of housing and local government (Fields 11 and 12 within Schedule 5 to the 2006 Act). New legislative powers in respect of the specified matters will enable the Welsh Assembly Government, Assembly Members and Assembly Committees to bring forward proposals for legislation, in the form of Measures. These Measures will be subject to thorough scrutiny and approval by the National Assembly. Attached at Annex A is a copy of Schedule 5 showing the legislative competence that the National Assembly has acquired to date.

CONTEXT

4. Housing is a devolved policy area and Ministerial functions relating to housing (with certain exceptions) were transferred to the National Assembly following its inception, under section 22 of the Government of Wales Act 1998. In addition, further executive functions in relation to housing have been devolved to the Welsh Ministers in subsequent Acts of Parliament. The proposed LCO would provide the National Assembly with legislative competence over areas where executive competence is already held by the Welsh Ministers. This would allow the National Assembly to have a role in deciding the legislative framework for the policy areas devolved to the Welsh Ministers and enable the Welsh Assembly Government to propose legislation which supported its policy ambitions.

5. Housing policy in Wales has been undergoing a full review. At the centre is the development of a new National Housing Strategy. The Assembly Government consulted widely upon a draft of this Strategy between January and May 2009 and the final version will be published early in 2010. Its vision is to promote an approach to housing supply and management that will help build a more sustainable future, thus improving our communities and the lives of individuals. The new Housing Strategy is also supported by a number of other policy developments.

6. There is a detailed programme of work in hand across the housing sector to put in place a new direction of travel for the delivery of affordable housing. This programme of work responds to a 2008 report by a review group, led by former Minister Sue Essex and commissioned by the Assembly Government, on strengthening affordable housing delivery in Wales (the Report to the Deputy Minister for Housing by the Affordable Housing Task and Finish Group—commonly referred to as the Essex Review).

7. In relation to homelessness and following extensive public consultation, the Welsh Assembly Government launched a Ten Year Homelessness Plan in July 2009. This plan sets out the strategic aims and broader vision for minimising homelessness in Wales from 2009 to 2019. In particular, the plan recommends reviewing the statutory framework for homelessness policy in Wales, with the aim of ensuring an all-encompassing service provision for homeless people.

8. On the issue of housing-related support activities, the Welsh Assembly Government consulted on *Supporting people—housing related support strategy* in spring 2009. This draft strategy sets out the focus for the future direction for housing-related support activities, designed to enable people to live independently in their accommodation.

9. In relation to Gypsies and Travellers, the Welsh Assembly Government published *A Road Less Travelled—A Draft Gypsy Traveller Strategy* for consultation in September 2009.

CURRENT LEGISLATIVE FRAMEWORK

10. The Welsh Ministers already have devolved to them significant executive powers and secondary legislative powers across a wide range of legislation relating to housing. The key legislative provisions which relate to the proposed Order are as follows:

Caravan Sites and Control of Development Act 1960

11. This Act deals with licensing of caravan sites, and provision of sites for Gypsies and Travellers.

Housing Act 1985

12. This Act (among other things) describes the Local Housing Authorities (which are, in Wales, County Councils or County Borough Councils), and their duties. The Act also deals with the provision of housing accommodation, the disposal of land held for housing purposes, the Right to Buy, and defines secure tenancies.

Housing Associations Act 1985

13. This Act confers a number of general functions, relating to Housing Associations, on the Welsh Ministers.

Housing Act 1988

14. This Act governs rented accommodation including assured tenancies granted by private landlords (including housing association and Registered Social Landlords). It also legislates in respect of housing associations.

Local Government Finance Act 1992

15. This Act replaced the Community Charge with the Council Tax. There are substantial secondary legislation-making powers under the Act and the devolution of these gives the Welsh Ministers powers to make significant amendments to the council tax regime.

Housing Act 1996

16. This Act deals with the registration and regulation of Registered Social Landlords, the disposal of land by them, the payment of Social Housing Grant, and the Right to Acquire for tenants of Registered Social Landlords. The 1996 Act also deals with social housing allocations and homelessness. The Welsh Ministers already have executive powers in all these areas.

Local Government Act 2000

17. Section 93 of this Act empowers the Welsh Ministers to provide grants to local authorities to fund, amongst other matters, housing-related support services.

Homelessness Act 2002

18. This Act mainly amends the Housing Act 1996 in relation to Homelessness. It also places duties on local authorities and others in relation to formulating and publishing local homelessness strategies.

Local Government Act 2003

19. Section 87 of this Act empowers Welsh Ministers to require Local Housing Authorities to submit Local Housing Strategies. This power has been used in the development of Affordable Housing Delivery Statements in Wales. Section 88 similarly empowers the Welsh Ministers to require the submission of Housing Revenue Account Business Plans; these have been used by the Assembly Government to scrutinise local planning to meet the Welsh Housing Quality Standard for social housing stock.

Housing Act 2004

20. Section 225 of this Act places a duty on local authorities to undertake an accommodation needs assessment for Gypsies and Travellers within the authority's area and to plan for identified needs. Section 226 provides that the Welsh Ministers may issue guidance regarding the duty.

RATIONALE

21. The primary purpose of the draft LCO is to provide the National Assembly with legislative competence in relation to two main themes, namely social housing and meeting the housing needs of vulnerable people. These are devolved policy areas where the Welsh Ministers currently have extensive executive functions but where the Assembly does not have the corresponding legislative competence.

Legislative competence will enable the Welsh Ministers, Assembly Members or Assembly Committees to introduce legislative proposals to the National Assembly which reflect particular needs and circumstances in Wales.

22. The LCO will assist the Welsh Assembly Government to deliver on its ambitions, set out in *One Wales*, the Welsh Assembly Government's Programme of Government for 2007–11, of ensuring that housing need is met and that there is improved access to housing. In particular, *One Wales* contained three related commitments to:

- suspend the Right to Buy in areas of housing pressure;
- address homelessness;
- provide local authorities with the powers to address the impact of second homes in areas of housing pressure.

23. The aims in *One Wales* are supported by key strategic documents in the policy areas, as set out in paragraphs 5–9. The LCO will assist the Assembly Government in helping to deliver commitments within these strategies.

24. The overall approach to housing policy is set out in the draft National Housing Strategy. The strategy sets out guiding principles in six areas:

- Providing the right mix of housing: developing the housing market, and breaking down the barriers that prevent people moving between social housing, private rental, part-ownership and full owner occupation.
- Using housing as a catalyst to improve lives: where necessary, aiming to offer training, financial advice, healthcare and personal support alongside the provision of housing.
- Strengthening communities: ensuring housing investments improve places, support local jobs and skills and strengthen community cohesion.
- Radically reducing the ecological footprint: improving the energy and environmental performance of all housing in Wales.
- Ensuring better services: ensuring that the regulation and management of housing provides high standards of service in the private and public sector.
- Delivering together: co-production of future work on housing policy by all those with an interest in housing.

25. The National Housing Strategy is supported by other strategic policy documents including those on housing-related support activities and Gypsies and Travellers. In particular, the programme of work stemming from the Essex Review into affordable housing (referred to in paragraph 6) aims, amongst other things, to introduce a new regulatory regime for social housing providers. The Assembly Government's 10 Year Homelessness plan (referred to in paragraph 7) recommends, amongst other things, reviewing the statutory framework for homelessness policy in Wales, with the aim of ensuring an all-encompassing service provision for homeless people.

26. Legislative competence will enable the Welsh Ministers to propose legislation in line with the Welsh Assembly Government's defined and distinct policy agenda. As was detailed in the UK Government's Better Governance for Wales White Paper that preceded the Government of Wales Act 2006 the executive powers already devolved to the Welsh Ministers tend to be, by their very nature, piecemeal. This is certainly the case in relation to housing and legislative competence would allow the National Assembly to have a role in deciding the legislative framework in relation to social housing and meeting the housing needs of vulnerable people under which Welsh Ministers operate. This would, in turn, enable the Welsh Ministers to adopt a more holistic approach to tackling crucial challenges in relation to social housing. Examples of how a more comprehensive approach to policy development and improvement could be adopted as a result of the conferral of legislative competence are set out in paragraphs 27–38 below.

27. For example, in relation to the regulation of Registered Social Landlords (RSLs), the Welsh Ministers already have executive functions but the existing legislative framework constrains the powers for enforcement available to them. As one illustration, the Welsh Ministers can commission a statutory investigation into the performance of a Housing Association, but cannot serve an Enforcement Notice requiring an Association to take remedial action, or require compensation to be paid to tenants. The competence proposed would enable the National Assembly to consider legislation to implement a comprehensive regulatory regime developed in partnership between the Assembly Government and the Housing sector in Wales. The National Assembly could, amongst other things, address the fact that Welsh Ministers' powers relate solely to landlords registered under the Housing Associations Act 1985, and not to local authorities or any other relevant bodies. This position now contrasts with the powers provided to the relevant regulators for England and Scotland—the Tenants Services Authority and the Scottish Housing Regulator. The competence proposed will allow the National Assembly to consider legislating in relation to social housing providers or other bodies with functions related to social housing.

28. Legislative competence would also enable the Assembly Government to make legislative proposals to reform secure and assured tenancies. Under existing legislation, tenants of local authorities are normally secure tenants under the Housing Act 1985, whilst tenants of Registered Social Landlords are normally assured tenants under the Housing Act 1988. As at 31 March 2008, approximately 132,000 dwellings were rented from local authorities, and 89,000 dwellings were rented from Registered Social Landlords. The differences between the two forms of tenure are not significant for most tenants although there are differences in their statutory rights, including in respect of the Right to Buy, as well as some grounds for repossession. Consequently, when housing stock is proposed to be transferred from a local authority to a Registered Social Landlord (to fund improvements in quality) tenants have been concerned about moving from one type of tenancy to another.

29. The Law Commission's report *Renting Homes* (2006) recommended a simplified system of secure and standard contracts in place of the existing multiplicity of tenancy and licence types. Such a move would uncouple the existing link to the status of the landlord whilst providing substantial security of tenure protected by statute. The Commission considered that there is no practical justification for the current distinction and that a single form of tenure would provide many benefits for social housing tenants. These would include easier comprehension of rights, simplifying rights of succession and addressing the concerns of tenants about the transfer of housing stock from a local authority to a Registered Social Landlord which currently involves a change of tenancy.

30. In addition to the above, the Law Commission's report also recommended the creation of a consumer protection approach, a clear statement of rights and obligations, contained within model arrangements. It also suggested the creation of specific tenure provisions for supported housing in the statutory and voluntary sector which would allow for easier possession in the early period of a tenancy and create more flexible options where an individual poses a physical risk to other tenants or staff. The draft National Housing Strategy makes a commitment to review tenure law "with the aim of establishing a clearer and more consistent framework of rights and responsibilities between landlord and tenant". Legislative competence would enable the National Assembly to review the legislative framework for tenure law for social housing.

31. Further legislative competence would enable coherent legislation to be developed to take forward the Assembly Government's policy direction for housing-related support. Housing-related support is provided to those who need help to maintain, or to develop the ability to occupy, their home. At present the Welsh Ministers use general welfare-related powers to provide grants, through the Supporting People programmes, to local authorities and the voluntary sector to ensure that this type of support is provided. Support is provided to enable people to live independently or more independently than they otherwise would and to maintain a tenancy. The Supporting People consultation document referred to in paragraph 8 stated that the focus for the future direction of Supporting People programmes is:

- Using support as part of a range of innovative approaches to social care.
- Using the programme to address underlying needs of individuals, by providing the stability on which co-ordinated and successful interventions can be made.
- Tackling the underlying causes of repeat homelessness.
- Professionalising the work of providers in the sector and increasing the strategic focus of commissioning.
- Promoting independent living as a core value.

32. Legislative competence would enable the Welsh Ministers to consider proposing changes to the legislative framework to ensure that support of the desired standard is provided consistently across the 22 local authorities in Wales, and in line with the focus set out above. Competence in this area would complement the legislative competence relating to regulation, homelessness and social housing tenancies.

33. In relation to the provision of social housing, legislative competence could enable Welsh Ministers to develop and introduce new legislative proposals for new forms of occupation of social housing. The draft National Housing Strategy highlights the importance of developing intermediate housing, that is, housing where prices or rents are below market house prices or rents but above social rent levels. Low cost home ownership schemes, where owners do not hold all the equity in their property, are a key means for developing such intermediate housing. Legislative competence would enable the National Assembly to legislate as necessary regarding low cost home ownership schemes in the future whilst ensuring coherence with other areas of social housing policy. This may involve more novel arrangements, such as mutual home ownership where the built housing assets are owned co-operatively, and the land is owned separately.

34. In relation to the disposals of land held or used for the purposes of providing social housing, legislative competence would provide the National Assembly with full flexibility to define arrangements for Wales in what is a devolved area. Since the introduction of the Right to Buy (including the Right to Buy, Right to Acquire and Preserved Right to Buy) over 140,000 dwellings have been purchased by tenants in Wales. This equates to almost half the original social housing stock (excluding any new-builds). This has substantially reduced the amount of social housing available for rent by people in housing need.

35. The Welsh Ministers have already used their powers to make secondary legislation to develop a distinctive approach for the Right to Buy, tailored to the particular circumstances of Wales which differ in important respects from those in England. For example, secondary legislation has been made to:

- (a) reduce the maximum discount from £24,000 to £16,000 throughout the whole of Wales, and
- (b) extend significantly the number of rural areas where restrictions may be placed on resale of former Right to Buy properties.

36. The Assembly Government's policy aims are to support the aspirations of social housing tenants for home ownership, recognising the wider variety of forms which this can now take, but also ensure that the legislative framework provides a facility for retaining social housing stock in appropriate circumstances.

37. The LCO would provide the National Assembly with competence in relation to the disposals of land held or used for the purposes of providing social housing, including all aspects of the Right to Buy and the Right to Acquire. This would provide the National Assembly with a role in deciding the legislative arrangements for Wales in what is already an area with devolved executive powers, in line with the principles of the devolution settlement and the rationale set out in paragraph 26 of this Memorandum. Legislative competence for the policy area as a whole addresses the piecemeal nature of executive powers, improves the clarity of the devolution settlement and ensures that the National Assembly has the flexibility to improve on current arrangements. For instance, legislative competence would enable the National Assembly, if it so wished, to replace the current Right to Buy scheme with improved and updated schemes to assist home ownership. It also ensures that the Welsh Assembly Government could also adopt a more joined-up approach to policy development in line with the policy aims set out above.

38. Legislative competence would also enable the Assembly Government to propose legislation to the National Assembly that supports the Assembly Government's Homelessness Strategy. The competence would allow the National Assembly to legislate in relation to, for example, the pervention of homelessness, duties of housing associations, the definition of homelessness, intentionality, local connection, discharge of duties, and strategic planning responsibilities. The existing legislation on homelessness would confine Welsh Ministers to piecemeal regulatory reform whilst any legislative proposals under the proposed competence of this LCO would be subject to full and detailed scrutiny by the National Assembly.

39. In addition to enabling Welsh Ministers to adopt a more comprehensive approach to policy development and improvement, as set out in paragraphs 26–38, legislative competence would also enable Welsh Ministers to address legislative constraints within the existing legislative framework. Such legislative constraints hinder the Assembly Government's ability to take forward the policy direction set out in its strategies for housing. In order to overcome these constraints, the National Assembly would require competence so that appropriate Assembly Measures could be developed. Specific examples of legislative constraints are set out in paragraphs 40–43 below.

40. For example, Part 6 of the Housing Act 1996 sets out the statutory framework which local housing authorities must comply with when allocating social housing. This includes allocating secure tenancies of council housing and nominations to assured tenancies with registered social landlords. Under the 1996 Act, the Welsh Ministers have considerable executive powers in relation to social housing allocations, including some powers to amend the primary legislation. However, the Welsh Ministers do not have the power to amend or repeal the factors which local authorities may take into account when determining priorities in allocating housing accommodation (set out in section 167(2A) of the 1996 Act). This is in contrast to section 167(2), which deals with those who should receive reasonable preference in allocation schemes, where Welsh Ministers have full powers to add, amend or repeal, and could do away with reasonable preference categories altogether. Legislative competence would enable the National Assembly to consider social housing allocations alongside closely related issues such as homelessness, tenure and the regulation of registered social landlords.

41. The competence sought also would remove legislative constraints on taking forward the Gypsy and Traveller Strategy. Lack of appropriate sites and insufficient provision has a significant detrimental impact on the lives of Gypsies and Travellers. The links between lack of accommodation and other inequalities experienced by the Gypsy and Traveller community is well established. The Welsh Assembly Government has put in place a policy framework and financial incentives to aid local authorities to deliver appropriate sites but if they do not deliver in line with clearly identified demand, the Welsh Assembly Government will need to be able to require local authorities to deliver new sites. Sections 225 & 226 of the Housing Act 2004 place a duty on local authorities to undertake an accommodation needs assessment for Gypsies and Travellers, and to plan for the identified needs. An Assembly Government Planning Circular has instructed local authorities to identify suitable locations in their local development plans for Gypsy and Traveller sites. However, existing legislation stops short of enabling the Welsh Ministers to require local authorities to deliver Gypsy and Traveller sites.

42. A constraint has also been identified in relation to Council Tax policy on second or empty homes. Where a high proportion of homes are kept empty for a significant proportion of the year it can have an adverse effect on the fabric of a community, for instance in relation to the viability of particular services such as schools, post offices and shops. The evidence from the 2001 census suggested that some localised areas are particularly affected by second homes—27 wards had between 10 and 20% of their stock as second or holiday properties.

43. One potential approach to mitigate the effect of such dwellings in particular areas is to allow local authorities to vary the council tax payable. The relevant legislation is section 12 of the Local Government Finance Act 1992, which makes provision relating to Council Tax. Council Tax powers are broadly devolved; the Welsh Ministers have considerable regulation-making powers. Currently, the Welsh Ministers have made regulations which give local authorities the discretion not to offer discounts on Council Tax for some classes of dwellings that are not the main residence of an individual. However, the Welsh Ministers and National Assembly for Wales have no power to allow local authorities to charge additional Council Tax in respect of such dwellings. Competence in this area would enable the National Assembly to consider any proposed Assembly Measures on this subject.

44. In summary, the areas covered by this proposed LCO are closely interrelated. The opportunity to develop a new regulatory framework cannot be divorced from reform of the nature of secure and assured tenancies; the Right to Buy, Preserved Right to Buy and Right to Acquire are inherent to these tenancies. The need to provide affordable and appropriate housing to those in need includes action on homelessness, housing allocations, those needing housing-related support, Gypsy and Traveller sites, and second or empty homes. The lack of legislative competence, and the consequent reliance on Welsh Ministers' executive powers, constrain such action. Legislative competence for the National Assembly will enable the Welsh Ministers to address these constraints and propose legislation to help implement the Assembly Government's overarching housing policy.

SCOPE

45. It is proposed that seven Matters be inserted under Field 11: (housing) and one Matter under Field 12: (local government) under Part 1 of Schedule 5 to the Government of Wales Act 2006.

46. Article 2 of the proposed Order inserts Matters 11.2 to 11.8 into Field 11, and Article 3 inserts Matter 12.18 into Field 12.

47. The proposed National Assembly for Wales (Legislative Competence) (Housing) Order, if approved inserts Matter 11.1 into Part 1 of Schedule 5 to the 2006 Act. This proposed Order has been referred by the Secretary of State for Wales to Parliament for scrutiny.

48. The following paragraphs describe each new Matter in turn.

49. Matter 11.2 would give the Assembly competence to legislate regarding social housing providers. These are defined as either local authorities, or other bodies providing housing to people whose needs are not adequately served by the commercial housing market. This wording applies a similar requirement to that set out in sections 69 and 70 of the Housing and Regeneration Act 2008 which must be met in relation to low cost rental accommodation or low cost home ownership accommodation in order for it to fall within the definition of "social housing" for the purposes of Part 2 of that Act. However, the definition within the Order does not preclude such bodies from being treated as "social housing providers" on the basis that they provide "other housing". This matter also relates to the function of allocating social housing by social housing providers, in line with the corresponding definition in the interpretation section.

50. Matter 11.3 would give the Assembly competence to legislate regarding relevant social housing bodies. This Matter is included so as to provide competence over bodies which have functions in relation to social housing, without necessarily being social housing providers. The Welsh Ministers would be an example of such a body.

51. Matters 11.2 and 11.3, taken together, will therefore confer competence on the National Assembly to legislate in respect of the regulation of social housing providers and also relevant social housing bodies, and to legislate in respect of the allocation of social housing.

52. Matter 11.4 relates to tenure arrangements for rented social housing, this would include the secure and assured tenancy regime for tenants of local authorities and Registered Social Landlords respectively. The competence that would be granted by this Matter would not extend to private sector tenancies outside social housing. The matter would also give the Assembly competence regarding other arrangements under which social housing is provided. This will enable the Assembly to consider legislation relating to, for example shared ownership arrangements or mutual home ownership.

53. Matter 11.5 relates to disposals of land and would enable the Assembly to legislate regarding the Right to Buy, Preserved Right to Buy or Right to Acquire for tenants of local authorities and Registered Social Landlords. Paragraph (a) relates to social housing and paragraph (b) relates to disposals of land held or used for the purposes of, or in connection with, social housing. Paragraph (c) cites the enactments under which tenants may hold the Right to Buy, Preserved Right to Buy or Right to Acquire and is included to ensure that the Assembly is able to legislate in relation to all circumstances under which those rights might arise, whether or not the land satisfies the definition of "social housing" within the Order. This might cover, for example, disposals under the Right to Buy or Right to Acquire of properties which are held by bodies providing housing under secure or assured tenancies but who are not social housing providers, therefore falling outside paragraphs (a) or (b) of this matter. The competence sought within this matter includes voluntary transfers including stock transfers.

54. Matter 11.6 relates to the delivery of housing-related support to those who need help to maintain or to develop the ability to occupy their home. The competence would cover, for example, situations where assistance is offered to elderly people living in sheltered accommodation, those escaping domestic abuse, or for young people leaving the care system. This matter includes advice and non-financial assistance to people in respect of skills that are relevant to their ability to live independently in housing, who might otherwise be at risk of losing their home, or to enable them to live in more independent accommodation than they otherwise might.

55. Matter 11.7 would provide legislative competence over sites for Gypsies and Travellers. “Caravan sites” are defined in the Order in a similar way to that in section 1(4) of the Caravan Sites and Control of Development Act 1960.

56. Matter 11.8 would provide the National Assembly with legislative competence regarding homelessness.

57. Article 3 of the proposed Order would insert Matter 12.18 into Field 12 (Local Government). This would enable the Assembly to pass legislation relating to the Council Tax charged on dwellings that are not the main residence of an individual.

EXCEPTIONS TO THE COMPETENCE

58. The proposed LCO does not set out any exceptions to the competence which it would confer. However, that competence would need to be considered against the general exceptions set out in paragraph A1 of Part 2 of Schedule 5 to the 2006 Act (which was inserted by the National Assembly for Wales (Legislative Competence) (Exceptions to Matters) Order 2009). This means that social security, including Housing Benefit and Council Tax Benefit, is an exception which applies to all matters, including those in this proposed LCO.

GEOGRAPHICAL LIMITS OF ANY ASSEMBLY MEASURE

59. The proposed LCO would permit the National Assembly to legislate by Assembly Measure in relation to Wales only. In practice, this would be likely to mean that a Measure could make provision in relation to local authorities and other social housing providers based in Wales, housing located in Wales, and the housing needs of people in Wales.

MINISTER OF THE CROWN FUNCTIONS

60. By virtue of Part 2 of Schedule 5 to the 2006 Act, an Assembly Measure cannot confer or impose any function on a Minister of the Crown. By virtue of Parts 2 and 3 of Schedule 5, the National Assembly may not by Measure remove or modify any functions of a Minister of the Crown without the consent of the Secretary of State. For example, HM Treasury is regarded as a Minister of the Crown for these purposes and continues to have some functions under housing and local government legislation which applies to Wales. The Secretary of State’s consent would be required if it were proposed that a Measure should modify or remove any of those functions.

CONCLUSION

61. For the reasons outlined above, the Welsh Assembly Government proposes that the legislative competence of the National Assembly for Wales should be extended in accordance with the provisions of the draft Order to which this Explanatory Memorandum relates.

November 2009

Written evidence from Cymorth Cymru

Cymorth Cymru is the representative body for providers of housing-related support, homelessness and supported living services in Wales and as such has three overarching objectives:

- To ensure that providers maximise their contribution to the lives of the people using their services and the communities in which they operate.
- To improve services by strengthening the links between policy and practice and ensuring those working in frontline service delivery understand and operate effectively within the wider policy context, and those working in policy development understand and learn from the experiences and knowledge of those working on the ground.
- To increase public understanding and support for services that help people build the lives they aspire to within their community.

1. BACKGROUND

Cymorth Cymru has around 100 organisations as members from across third, statutory and private sectors all of whom work to help people overcome a range of barriers to building the life they want and contributing positively to their community.

We wholeheartedly support the proposal for a Legislative Competence Order relating to housing and local government.

2. KEY POINTS

- We believe that the LCO request is in the spirit and scope of the devolution settlement and the LCO mechanism is in accordance with the Government of Wales Act 2006.
- There is considerable support and demand for the LCO amongst providers of housing, housing-related support and homelessness services in Wales.
- We are unaware of any cross-border issues that could prove problematic in relation to the LCO.
- The Memorandum from the Welsh Assembly Government relating to the LCO clearly sets out the purpose, rationale and scope.
- The LCO in and of itself would not necessarily increase the regulatory burden on private, public or third sector organisations but is likely to lead to improvements in this area.
- The LCO doesn't necessitate the formation or abolition of any Welsh institutions or structures to our knowledge.
- We believe the LCO is more appropriate than the use of framework powers or other mechanisms for policy development as the proposal will provide policy makers in Wales with the ability to be more responsive, flexible and inclusive in their development of policy.

3. FURTHER DETAILS

Our submission will naturally focus on the proposals most pertinent to our members but it is important to also state that the key issue for us is that the LCO enables decisions to be made at the local level on a range of housing, support and homelessness issues.

The areas of most interest to our members are the proposals around:

- Housing-related support
- Homelessness
- Tenure

Housing-related support

The proposals rightly state that policy development in this area is being led by the production of a national strategy and action plan. Since the Welsh Assembly Government memorandum explaining the scope and rationale was drafted however, an independent review into housing-related support has been announced by the Deputy Minister. The review will be making recommendations on the future of services in September 2010 and it would be useful for the Assembly to have as much freedom in this area as possible to take forward any proposals from the review it accepts.

As housing-related support links housing with other policy areas such as social care, it is also relevant that there is a review being carried out into social services in Wales. Again, the LCO would provide the opportunity for recommendations from both reviews to be taken forward in a co-ordinated fashion.

There are also policy developments in relation to specific client groups that could be facilitated by the LCO. In particular, housing, support and care for older vulnerable people.

Homelessness

There are significant links between homelessness and housing-related support as many support services provide the route out of homelessness and to independence. The Assembly have produced a national homelessness plan and there are a number of actions that could be taken forward if the LCO went ahead.

Tenure

We fully support the Law Commission's proposals on the introduction of a single tenure. Current tenure law was developed historically and without consideration of the needs of tenants or providers of supported accommodation. Consequently, current options are confusing and not as appropriate for either parties as they could be. The LCO would enable Wales to take these proposals forward. We believe that this would be hugely beneficial for both vulnerable people and providers of support services.

4. RECOMMENDATION

We fully support the proposals for the Legislative Competence Order relating to housing and local government and recommend that it is taken forward.

January 2010

Written evidence from Shelter Cymru

Shelter Cymru is the leading housing and homelessness charity in Wales and works for the prevention of homelessness and the improvement of housing conditions. Our vision is that everyone in Wales should have a decent home.

We believe:

- a home is a fundamental right and essential to the health and well-being of people and communities.

VALUES

INDEPENDENCE

- We work for people in housing need without fear or favour.
- We will constructively challenge to ensure people are properly assisted and to improve practice and learning.

RESPECT

- We work as equals with the people who use our services.
- We will help people identify the best options to find and keep a home and take control of their own lives.

INTRODUCTION

1. Shelter Cymru welcomes the opportunity to provide the Welsh Affairs Committee with evidence on the Proposed National Assembly for Wales (Legislative Competence) (Housing and Local Government) Order 2010.

2. Shelter Cymru believes that everyone in Wales has the right to decent housing and works with the Assembly and partners to improve the approaches to tackling homelessness and poor housing in Wales. We believe that legislative developments can, in certain circumstances, improve practice and help prioritise resources and therefore contribute to eradicating the trauma of homelessness and housing need in Wales. From this perspective the future ability of the Welsh Assembly Government to legislate when necessary on housing matters is of considerable importance to the beneficiaries of the charity.

3. The process of devolution has enabled Wales to make progress in several policy areas, including housing and homelessness, which would not have otherwise occurred as policy was made outside Wales and simply implemented here. In terms of legislation specifically related to homelessness we have seen:

- The Homeless Persons Priority Need Wales Order 2001—which extended the groups of people accorded priority need under s.189 of the Housing Act 1996.
- Homelessness (suitability of accommodation) (Wales) Order 2006

4. These developments ensured that many of the most vulnerable people experiencing homelessness were given greater assistance and placed in more suitable accommodation than before Orders were implemented.

5. To enable Wales to more fully act in the interest of people facing homelessness and housing need, which includes the drivers for delivery, and provision of, suitable homes, more effective regulation of social housing providers and a more integrated approach to homelessness and sustainability, Shelter Cymru believes that the Welsh Government should acquire the powers identified in the Legislative competency Order (LCO).

1. *Is the LCO request in the spirit and scope of the devolution settlement?*

We believe that the proposed Order is in the spirit and scope of the devolution settlement. The Assembly already has the responsibility for developing policy in many areas of housing and homelessness and the matters identified in the LCO but does not currently have the legislative powers to, when necessary, take forward and achieve many of these policy positions.

2. *Is the use of the LCO mechanism in accordance with the Government of Wales Act 2006?*

We believe the Order is in line with the Government of Wales Act 2006 in that it clearly identifies the matters for which powers are requested and explains the rationale for requesting the powers.

3. *To what extent is there a demand for legislation on the matter(s) in question?*

We believe that there is a demand for the legislative powers on the matters included in the Order. Shelter Cymru regularly works with a broad range of stakeholders from both governmental and statutory sectors as well as the voluntary sector in Wales—including recently on the Essex Review, development of the Welsh Government’s ten year homelessness plan and the subsequent delivery groups, the National Housing Strategy and Supporting People Strategy—and we believe that there is consensus amongst partner organisations that the powers relating to homelessness and housing should lie with the Welsh Government in order that it can more comprehensively take forward its strategies.

While successive Governments have been able to make progress on individual issues, to enable Wales to more fully act in the interest of people facing homelessness and housing need, the Assembly should have the legislative powers to achieve the policy aims it has set, and may set, in the future. The matters referred to in the Order will enable the Government to pursue a coherent and long-term policy in terms of housing supply, regulation and homelessness.

In order to prevent homelessness and assist people to live independently and sustain accommodation, we believe that Wales needs to explore the development of a more integrated statutory framework that seeks to assist anyone experiencing homelessness and which leads to more sustainable solutions. This framework will be dependent upon improved access to housing supply, more flexible means of accessing homes to rent or buy, and schemes which can tailor ownership to the individual circumstances of people at different stages of their lives (eg staircasing up or down depending on income). The proposed Order will give the Welsh Government the powers to legislate, if necessary, in many of the areas required to deliver its aims.

4. *Are there any cross-border issues relating to the LCO? (eg financial or policy issues)*

We don’t believe that there are major cross-border issues relating to this order. In their evidence to the Assembly Legislative Committee, the Deputy Minister for Housing and the Assembly’s Head of Housing stated that there were no major cross border issues arising from the Order and that close communication is maintained with the Local Government Department in England to discuss general policy direction.

5. *Are the purpose and scope of the LCO clearly defined, including the terms and definitions used?*

We believe they are and that the explanatory document gives further information on the matters included.

6. *Does the LCO have the potential to increase the regulatory burden on the private or public sector?*

We believe that any Measures that may be developed from the Order must ensure that the regulatory burden is not increased and, where possible, that regulation, while remaining effective and fit for purpose, is reduced eg lighter regulation of Registered Social Landlords is something that the Assembly has already begun to develop and is an aim of the LCO.

In terms of homelessness, any Welsh Measures could reduce the bureaucratic burden on Local Authorities by reducing homelessness categories and some of the procedural work that authorities must currently undertake during the statutory decision making process.

7. *Would the proposed LCO necessitate the formation or abolition of Welsh institutions and structures? If so, where does the legislative competence to exercise such changes lie?*

We don’t believe that the proposed order will necessitate such changes.

8. *Is the use of an LCO more appropriate than, for example, the use of framework powers in a Westminster Bill to confer competence on the Assembly?*

We believe that the proposed order is more appropriate as it will give the Assembly the flexibility to take forward its policy aims in a timely, coherent and comprehensive way. For example, the Assembly is currently beginning its ten year plan to tackle homelessness in Wales. This plan includes reviewing the current statutory framework and considering alternative models of delivery. The Order will give the Assembly the ability to take forward any subsequent plans without having to request powers through, for example, a Westminster Bill, which clearly would need to compete with the diverse priorities of the Parliamentary calendar.

The issues of tackling homelessness and providing suitable homes are broad and having to negotiate time and space at Westminster could easily cause disruption to any plans the Assembly might have in this respect.

In summary, the Order enables the Assembly to consider policy approaches and to, if necessary, legislate in a planned and coordinated manner.

9. *Has full use been made of any existing powers to issue statutory guidance and/or secondary legislation in relation to this Matter?*

Shelter Cymru believes that the Assembly has used its existing powers, through statutory guidance and secondary legislation, in relation to housing and homelessness in Wales. The Assembly produced a Code of Guidance for Local Authorities on Homelessness and Allocations, has introduced two pieces of secondary legislation on homelessness (see Introduction), and in policy terms developed the first National Homelessness Strategy (a UK first) as well as the current ten year plan to tackle homelessness.

However, current Assembly powers in this area are fundamentally fragmented. The powers included in the Order will mean that the Assembly can fully consider many of the issues and the means of addressing them, and to take forward an effective and cohesive framework for tackling housing need in Wales, which includes the provision of suitable homes and drivers for delivery, and a more integrated approach to homelessness and sustainability.

January 2010

**Supplementary evidence from Jocelyn Davies AM, Deputy Minister for Housing and Regeneration,
Welsh Assembly Government**

I was very grateful to you for the early opportunity to give evidence to the Welsh Affairs Committee on 15 December.

We covered a number of broad and specific issues during the session and I hope that the evidence I gave will prove helpful to your considerations, in addition to the detailed rationale set out within the Explanatory Memorandum supporting the Welsh Assembly Government's request for legislative competence. However, should the Committee wish to have further clarification on any of the matters covered in the LCO, please do not hesitate to contact me.

I also agreed to provide the Committee with a list of existing legislation that might be affected by any Assembly Measures brought forward using the legislative competence that is proposed. The table attached shows the principal primary legislation concerned. I would add that there may be other provisions which would only come to light when considering specific proposals for Measures.

The list does not cover legislation in respect of which consequential amendments may be required as a result of any subsequent Measures; again that would be dependent on the precise nature of such Measures.

I hope this information will be of assistance to you in your deliberations, but again I would be happy to provide further details should you so require.

December 2009

**SUMMARY OF PRINCIPAL PRIMARY LEGISLATION THAT MAY BE AFFECTED BY
LEGISLATIVE COMPETENCE**

<i>Matter</i>	<i>Statutory Provision</i>	<i>Function</i>
11.2—Social Housing Providers	Chapter 1 Part 1 Housing Act 1996	Registration of Social Landlords* ¹
	Chapter 4 Part 1 <i>ibid</i>	Regulatory Powers, including: provision of information; housing standards; housing management (eg issuing guidance and powers of entry); and insolvency of RSLs (eg procedure on insolvency and appointment of managers)* ¹

*¹ Note Part 1 is amended by the Housing and Regeneration Act 2008 such that it will apply in relation to Welsh RSLs only

<i>Matter</i>	<i>Statutory Provision</i>	<i>Function</i>
	Part 6 <i>ibid</i>	Allocation of social housing, including: allocation by LAs and nomination by LAs of prospective tenants of RSL housing; maintenance of register of qualifying persons for allocations; and provision of guidance by Welsh Ministers* ²
		* ² Note Part 6 was amended by (<i>inter alia</i>) Homelessness Act 2002
	Schedule 1 <i>ibid</i>	Regulation of RSLs: control of payment to members; constitution, accounts and audit; inquiries
	Sections 75 and 77 Housing Associations Act 1985	General functions in relation to social landlords and provision of advisory services
	Part 2 Housing Act 1985	Insofar as relating to provision of house accommodation by Local Authorities including: main duties; acquisition of land; and provisions relating to management
Matter 11.3— Relevant Social Housing Bodies	Part 1 Housing Act 1996	See entry above
	Part 2 Housing Act 1985	Insofar as relating to management provisions regarding housing accommodation provided by Local Authorities
Matter 11.4— Tenure and other provision of Social Housing	Chapter 1 Part 1 Housing Act 1988	Setting out provisions relating to assured tenancies (insofar as this relates to the social rented sector)
	Part 4 Housing Act 1985	Setting out provisions relating to secure tenancies
Matter 11.5— Disposals	Part 2 Housing Act 1985	Insofar as relating to disposals of Part 2 land
	Part 5 Housing Act 1985	Right to Buy/disposals to private sector landlord/Preserved Right to Buy/disposals by RSLs
	Chapter 2 of Part 1 of the Housing Act 1996	Disposals of land by RSLs under sections 8 & 9 and disposals where RTA extended under section 16A
	Chapter 4 of Part 1 of the Housing Act 1996	Insofar as relating to disposals by a manager appointed in respect of an Insolvent RSL
	Chapter 4 of Part 2 of the Housing and Regeneration Act 2008	Insofar as relating to disposals by manager appointed in respect of an insolvent Registered Provider of Social Housing.
	Sections 9 and 10 Housing Associations Act 1985	Disposals by unregistered Housing Associations
Matter 11.6— Supporting People	Section 93 Local Government Act 2000	Payment of Grants to Local Authorities in respect of the provision of welfare services* ³
	Section 31 Local Government Act 2003	Payment of Grants to a Local Authority in Wales towards expenditure incurred by it* ³
		* ³ In both cases only of relevance insofar as connected with housing related support

<i>Matter</i>	<i>Statutory Provision</i>	<i>Function</i>
	Sections 180 and 181 Housing Act 1996	Payment of Grants to Voluntary Organisations concerned with homelessness or related matters and Welsh Ministers' powers to attach conditions to such funding
Matter 11.7— Provision of Gypsy and Traveller Sites	Section 225 Housing Act 2004	Duties on Local Authorities to carry out an assessment of the accommodation needs of Gypsies and Travellers
	Section 226 <i>ibid</i>	Power of Welsh Ministers to issue guidance in relation to such assessments
	Section 24 Caravan Sites and Control of Development Act 1960	Powers of Local Authorities to provide caravan sites, and including a definition of “Gypsies” and section 29, definition of “Caravan”
	Part 1 Caravan Sites Act 1968	Provisions for Protection of Residential Occupiers* ⁴ * ⁴ the Housing and Regeneration Act 2008 amended Part 1 of this Act to include Gypsies within protection, but this amendment has not yet been brought into force
Matter 11.8— Homelessness	Part 7 Housing Act 1996	Homelessness* ⁵ . Includes provision as to meaning of homelessness and suitable accommodation, applications for assistance, eligibility to receive assistance, duties to provide accommodation, grant funding, provision of guidance * ⁵ Note: amended by the Homelessness Act 2002
	Homelessness Act 2002	Insofar as relating to homelessness reviews and strategies
Matter 12.18— Council Tax and Second Homes	Sections 11 and 12 Local Government Finance Act 1992	Provision regarding council tax discounts on dwellings
	Chapter 2 Part 1 <i>ibid</i>	Maintenance of and provision of information about dwellings within valuation lists Note: Numerous consequential amendments required to other legislation dependent on provision made by subsequent Measure by virtue of section 94 of the Government of Wales Act 2006