



House of Commons
Welsh Affairs Committee

**The proposed draft
National Assembly for
Wales (Legislative
Competence) (Housing)
Order 2008**

Seventh Report of Session 2007–08

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

*Ordered by The House of Commons
to be printed 7 October 2008*

HC 812
Published on 14 October 2008
by authority of the House of Commons
London: The Stationery Office Limited
£0.00

The Welsh Affairs Committee

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

Current membership

Dr Hywel Francis MP (*Labour, Aberavon*) (Chairman)
Mr David T.C. Davies MP (*Conservative, Monmouth*)
Ms Nia Griffith MP (*Labour, Llanelli*)
Mrs Siân C. James MP (*Labour, Swansea East*)
Mr David Jones MP (*Conservative, Clwyd West*)
Mr Martyn Jones MP (*Labour, Clwyd South*)
Rt Hon Alun Michael MP (*Labour and Co-operative, Cardiff South and Penarth*)
Mr Albert Owen MP (*Labour, Ynys Môn*)
Mr Mark Pritchard MP (*Conservative, The Wrekin*)
Mr Mark Williams MP (*Liberal Democrat, Ceredigion*)
Mr Hywel Williams MP (*Plaid Cymru, Caernarfon*)

Powers

The committee is one of the Departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the Internet via www.parliament.uk.

Publications

The reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the internet at www.parliament.uk/parliamentary_committees/welsh_affairs_committee.cfm.

Committee staff

The current staff of the Committee is Nick Wright (Clerk), Llinos Madeley (Committee Specialist), Christine Randall (Committee Assistant), Annabel Goddard (Secretary), Jim Lawford (Chief Office Clerk) and Rebecca Jones (Media Officer).

Contacts

All correspondence should be addressed to the Clerk of the Welsh Affairs Committee, House of Commons, 7 Millbank, London SW1P 3JA. The telephone number for general enquiries is 020 7219 6189 and the Committee's email address is welshcom@parliament.uk.

Contents

Report	<i>Page</i>
Introduction	3
Background	3
Introduction of the proposed Order	3
The LCO process in this instance	4
Scrutiny of different texts	4
Delay in the scrutiny process	4
The Welsh Affairs Committee's inquiry	5
1 The purpose and scope of the proposed Order	7
Purpose	7
The proposed Order and existing Welsh Assembly Government policy	8
The "identifiable need" for the proposed Order	8
The "fit" with existing Welsh Assembly Government policy	8
Current legislative constraints	9
Use of the Legislative Competence Order in Council procedure	10
The scope of the proposed Order	11
The power to abolish the Right to Buy/Right to Acquire	12
A whole local authority area or a Wales-wide suspension?	12
The likely effectiveness of the proposed Order in increasing the supply of affordable housing	13
2 Limits on the legislative competence conferred by the proposed Order	16
The Convention Rights	16
Other limits on competence	18
3 Definitions of terms used in the proposed Order	20
"Disposal"	20
The definition of "social landlord"	20
The designation of land "held or used for housing purposes"	22
Broadening the scope of the proposed Order: reference to "land"	22
Designation	22
"In particular"	23
4 Conclusion	25
Conclusions and recommendations	26
Formal Minutes	28
Witnesses	29
List of written evidence	29
List of Reports from the Committee during the current Parliament	30

Introduction

Background

1. The Government of Wales Act 2006 introduced a new procedure whereby the National Assembly for Wales can bring forward proposals which would extend the Assembly's law-making 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 changes in 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 of the Government of Wales Act 2006.

2. These proposals for draft Orders may be introduced by the Welsh Assembly Government, by committees of the National Assembly, or by individual Assembly Members.¹ They are subject to pre-legislative scrutiny by committees of the Assembly appointed for this purpose and, potentially, by committees of the House of Commons and the House of Lords. Whitehall agreement (“clearance”) is a necessary pre-requisite before a proposed Order is referred by the Secretary of State for Wales to each House at this pre-legislative scrutiny stage.

3. 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) following pre-legislative scrutiny. The draft Order must 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 then makes those laws in the form of Assembly Measures, which must be passed by the National Assembly but which require no further approval by either Whitehall or the UK Parliament.

Introduction of the proposed Order

4. If adopted, the proposed Order would expand field 11 (housing) of Schedule 5 of the Government of Wales Act 2006 by adding new a new Matter which would extend the competence of the National Assembly for Wales in relation to social housing. In its original form, the proposed Order was laid before the Assembly by the Deputy Minister for Housing on 3 December 2007, with a statement in Plenary the following day.² On 11 December 2007 the Assembly's Business Committee referred the proposed Order to an

¹ By ballot.

² *National Assembly for Wales (Legislative Competence) (No. 5) Order 2008*; Legislative Statement by the Deputy Minister for Housing to the National Assembly for Wales, 4 December 2007

Assembly Committee for pre-legislative scrutiny. The Assembly Committee published its first Report on this proposed Order on 18 April.³

5. Following agreement with Whitehall departments that the proposed Order proceed,⁴ on 13 May 2008 the Secretary of State for Wales laid the proposed Order in revised form together with an accompanying Explanatory Memorandum before Parliament in the form of a Command Paper.⁵ The Secretary of State wrote to the Chair of the Welsh Affairs Committee and to the Chair of the Select Committee on the Constitution, House of Lords, inviting these committees to undertake pre-legislative scrutiny.⁶ Both Committees decided to do so.

6. The Assembly Committee reconvened to consider the proposed Order in its revised form, and took further evidence from the Assembly Deputy Minister on 8 July 2008. The Assembly Committee published its second Report on this proposed Order on 17 July 2008.⁷

The LCO process in this instance

Scrutiny of different texts

7. This proposed Order has not followed the scrutiny process originally envisaged. The Assembly Committee considered and reported on a different proposal from the one referred to the Welsh Affairs Committee. The Assembly Committee subsequently examined the revised proposal, took further evidence and published a second Report.⁸

Delay in the scrutiny process

8. The Parliamentary Under-Secretary of State, told us that:

... this and two other Orders were ... “hit the ground running” Orders, where there was a will to get them up and going and rapidly move ahead ...

³ *Report by the Proposed Affordable Housing LCO Committee, National Assembly for Wales, 18 April 2008*

⁴ Known as “clearance” - see para 2 above

⁵ Cm 7379

⁶ Letter from the Secretary of State for Wales to the Chair of the Welsh Affairs Committee, 13 May 2008 (Ev 19); letter from the Secretary of State for Wales to the Chair of the Select Committee on the Constitution, House of Lords, 13 May 2008 (not printed here).

⁷ *Report of the Proposed Affordable Housing LCO Committee, National Assembly for Wales, 17 July 2008*

⁸ Ibid

⁹ Q 72

¹⁰ Q 75

¹¹ Q 78

¹² Q 72

¹³ On 22 May 2008 the Committee issued a press notice setting out the scope of its inquiry and inviting written submissions from interested parties (Ev 19-20).

¹⁴ Ev 25-26

However, this has proved to be counter-productive, since as a result:

... an Order was brought forward ... on which there were some improvements to be made ... so we went away and looked at that again.⁹

... where there are genuine technical queries or issues where the request may impact on retained areas and so on, then there can be a dialogue ... and that does take time, but it is important to get that right.¹⁰

For this reason, the proposed Order was not referred to the Welsh Affairs Committee for pre-legislative scrutiny until 13 May, some five and a half months after its original introduction in the National Assembly. However, the Parliamentary Under-Secretary of State was optimistic that the process is likely to improve:

I suspect ... as time goes by we will see less of Orders being brought forward that have rough edges and we will get to a point where they will be brought forward in a way that is eminently appropriate at an earlier stage ...¹¹

9. He went on to say:

... one of the things that we have learnt and we will be seeing next year is a far improved synchronisation and in effect a project management of bringing these LCOs forward.¹²

10. We agree with the Parliamentary Under-Secretary of State in his assessment of the importance of technical detail in the drafting of proposed Orders, and we welcome and fully support his assurance.

The Welsh Affairs Committee's inquiry

11. Our task was to examine the scope and appropriateness of the proposed Order 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.¹³

12. We took oral evidence from the Deputy Minister for Housing and officials, Welsh Assembly Government, and from the Parliamentary Under-Secretary of State and officials of the Wales Office, and from the Head of Right to Buy, Department for Communities and Local Government. We also received written evidence from Community Housing Cymru.¹⁴

1 The purpose and scope of the proposed Order

Purpose

13. The Explanatory Memorandum to the proposed Order notes that the Order would confer enhanced legislative competence on the Assembly to reform the law in relation to housing, with the principal purpose of improving the availability of “affordable housing” in Wales.¹⁵ The Memorandum explains that the proposed Order would:

... 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 and to define the circumstances or conditions which would have to be met in order for such a suspension to be considered or permitted.¹⁶

14. As the Assembly Deputy Minister told us:

The policy intention is to allow, on application from the local authority, temporary suspension of the Right to Buy in areas where there is extreme housing pressure.¹⁷

In later evidence, the Parliamentary Under-Secretary of State and Wales Office officials confirmed that it was a policy decision – rather than a requirement set out in the proposed Order – that a request to suspend the Right to Buy/Right to Acquire¹⁸ is made initially by a local authority.¹⁹

15. It is the Welsh Assembly Government’s intention to require all planning authorities to develop Affordable Housing Delivery Plans. The proposed Order, the Deputy Minister argued, would enable local authorities, in meeting local housing need, to apply for a temporary suspension of the Right to Buy.²⁰

16. We conclude that the purpose of the proposed legislation which the Welsh Assembly Government intends to make under this extended competence is clear.

¹⁵ Cm 7379, p 9 para 21

¹⁶ Ibid, p 9 para 20

¹⁷ Q 12; see also Q 84 (Parliamentary Under-Secretary of State)

¹⁸ Note: Right to Buy refers to local authority housing stock provision from a secured tenancy; Right to Acquire refers to RSL stock from an assured tenancy.

¹⁹ Qs 108-110

²⁰ Q 14

The proposed Order and existing Welsh Assembly Government policy

The “identifiable need” for the proposed Order

17. As well as setting out the purpose of the proposed Order, the Explanatory Memorandum also describes the Welsh Assembly Government’s assessment of the need to provide more social housing in certain areas of Wales:²¹

... in some communities very few properties remain in the social housing stock. Almost 60% of properties in Powys and Ceredigion have been sold under the Right to Buy/Acquire.

Since the introduction of the Right to Buy (in 1980) and Right to Acquire (in 1997) 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).

Although the immediate effect of a tenant exercising these rights is a change in tenure from tenant to owner-occupier, dwellings that would otherwise have become available for re-letting for social housing have been sold on the open market. This has substantially reduced the amount of social housing available for rent by people in housing need. This is a particular problem in areas of housing pressure.²²

The “fit” with existing Welsh Assembly Government policy

18. Part of our scrutiny of proposed Orders is to ascertain the extent to which it “fits” with existing Welsh Assembly Government policy. In this case, the proposed Order clearly develops previously announced Welsh Assembly Government policy, and was supported by those who gave evidence to the Assembly Committee – although, as we set out at paragraphs 37-42 below, reservations were expressed as to its likely effectiveness in increasing the supply of affordable housing. The Deputy Minister told us in evidence:

The powers as described by this Order are perfectly appropriate to sit with the National Assembly considering the other powers that we have in relation to housing and social landlords.²³

It is a distinct commitment in the One Wales document.²⁴ It was in three of the four manifestos for the last Assembly elections for the political parties and also in Shelter’s manifesto and in Community Housing Cymru ... and it is supported by the WLGA.²⁵

19. Mr Chris Meader, Head of Right to Buy at the Department of Communities and Local Government, told us:

²¹ Cm 7379, pp 7-9 paras 11-13

²² Ibid, p 7 para 12

²³ Q 58; see also Q 59

²⁴ *One Wales – A progressive agenda for the government of Wales*, 27 June 2007, 5.1 p 16

²⁵ Q 16; Welsh Local Government Association; see also Q 47, and Q 95 (Parliamentary Under-Secretary of State)

... Ministers formed the view that the power to control the disposal of social housing in Wales – that is the right to buy, the right to acquire, individual voluntary disposals and stock transfers – was an appropriate response to the needs that had been set out by the Welsh Assembly Government and the National Assembly and indeed also as a response to the commitments that had been given in various election manifestos.²⁶

20. Further, as the law currently stands local authorities in Wales are already able to exclude certain categories of property from the right to buy, for example houses that have been constructed or adapted for the use of disabled people or senior citizens.²⁷

Current legislative constraints

21. The Explanatory Memorandum to the proposed Order refers to “limitations to the current settlement, which in some respects restricts the Assembly Government from tackling Welsh priorities and issues”.²⁸ The Memorandum cites as the main limitation the fact that the Assembly does not have the power to vary the qualification provisions of the Right to Buy and Right to Acquire. As the Deputy Minister told us:

We can vary the discount and so on but we do not have the power to suspend it and we feel it is important.²⁹

This was confirmed in evidence by Ms Kellaway of the Welsh Assembly Government Legal Services Department:

We cannot suspend under the current powers. We do not have power at the moment to amend or otherwise the Housing Act, in particular the Right to Buy and Right to Acquire provisions.³⁰

22. And the Parliamentary Under-Secretary of State confirmed:

There is already a range of powers and in fact the Assembly has made good use of those. They include ... the ability to vary discounts on the Right to Buy and so on, but what they do not have is the power to temporarily suspend the right to buy and the Right to Acquire ... [or] ... to alter the regulations around it.³¹

23. We welcome the Parliamentary Under-Secretary of State’s agreement³² that it would be helpful if in future an explanation of the legislative constraints which underlie the request for a Legislative Competence Order were to be set out in the accompanying Explanatory Memorandum. We agree with the assessment of the current legislative constraints given to us in evidence which limit the Welsh Assembly Government’s ability to pursue its policy intentions in this area. We conclude that the Welsh

²⁶ Q 96

²⁷ Qs 103-107

²⁸ Cm 7379, p 7 para 10

²⁹ Q 16

³⁰ Q 17

³¹ Q 85

³² Q 87

Assembly Government has identified a need for additional legislative competence to achieve its policy objectives. We also conclude that the proposed legislation to be made by the Assembly under its extended competence is reasonably clear. We further conclude that the scope of the proposed Order is consistent with Welsh Assembly Government policy, and its existing powers. We also consider that there should be a limit on the period of suspension, and a requirement for periodic review of any such suspension.

Use of the Legislative Competence Order in Council procedure

24. A further consideration for this Committee in its scrutiny of proposed Orders is to establish whether the Legislative Competence Order in Council procedure is the most appropriate route in order to meet the desired policy objective. We explored whether the same result could have been achieved by the use of framework powers, for example in the Housing and Regeneration Bill. In its Report, the Assembly Committee concluded:

... we are disappointed that framework powers to tackle affordable housing issues in Wales were not agreed through the Housing and Regeneration Bill.³³

25. Although in evidence to us, the Deputy Minister said that the Welsh Assembly Government “would always, where possible, seek powers in Westminster Bills”,³⁴ she continued:

When the Housing and Regeneration Bill was published ... the idea of the LCO had already been worked up and there was an expectation that there would be an LCO. ... The remit of the Bill in relation to the Right to Buy was not broad enough in order to give the Assembly powers to suspend. The Right to Buy part of the Bill is quite narrow and specific.³⁵

26. The Parliamentary Under-Secretary of State agreed:

... the scope of that particular Bill was insufficiently broad to include framework powers drafted in similar terms to this particular Order. ... on balance we felt that it would be more appropriate to bring it forward through an LCO route.³⁶

In particular, the Parliamentary Under-Secretary cited the disposal of land held or used by a social landlord as an area in which the Bill was insufficiently broad to allow for such equivalent framework powers.³⁷ While he noted that there were advantages in pursuing the LCO route, the Parliamentary Under-Secretary of State said that:

... the primary reason [for using the LCO procedure] has to be that it does not quite fit within the scope of an existing Bill.³⁸

³³ Report by the Proposed Affordable Housing LCO Committee, National Assembly for Wales, April 2008 p 23 para 101

³⁴ Q 45

³⁵ Qs 45, 23

³⁶ Q 88

³⁷ Q 89

³⁸ Q 90

27. We note that consideration was given to the use of framework powers in the Housing and Regeneration Bill. We are not altogether persuaded by the argument that the scope of that Bill was not sufficiently broad to enable provision for equivalent powers to those sought under the terms of this Order. However, since that opportunity has passed, we acknowledge that the use of the Legislative Competence Order in Council procedure is the best available route.

The scope of the proposed Order

28. We welcome the Parliamentary Under-Secretary of State's comment that "as these LCOs progress we should be trying to define appropriately what the scope, what the breadth of them is".³⁹ Mr Chris Meader, Head of Right to Buy at the Department of Communities and Local Government, told us that the powers contained in the proposed Order were "not that broad", covering:

... the disposal of public housing, social housing, under four very distinct programmes – the right to buy, the right to acquire, voluntary disposal of individual properties and stock transfers – but it does not go beyond that or go into other areas ...⁴⁰

29. The Wales Office told us that the proposed Order would enable Measures to be made giving the power to direct organisations such as housing associations to dispose of land they hold but have not yet developed to other bodies that are prepared to develop the land for affordable housing.⁴¹ The present policy of the Welsh Assembly Government was, the Assembly Deputy Minister explained, to encourage local authorities to dispose of land below market value to housing associations:

We do not have any intentions at the moment to direct local authorities to dispose of land that they have below market value to a housing association but we are hoping that when they have to have the Affordable Housing Delivery Plans that that may focus their minds on how they are to meet the targets ...⁴²

The Deputy Minister continued:

... these powers in the future would give the Assembly Government ... the ability to compel rather than encourage.⁴³

We conclude that the full extent of this change to enable compulsion to dispose of assets is not made clear in the Explanatory Memorandum.

³⁹ Q 95

⁴⁰ Q 97

⁴¹ Q 118-119

⁴² Q 55

⁴³ Q 56

The power to abolish the Right to Buy/Right to Acquire

30. The scope of the proposed Order goes further than enabling the Assembly to suspend the Right to Buy/Right to Acquire. The Deputy Minister confirmed that:

The Assembly would have powers over the full ambit of the Right to Buy so it could allow suspension, complete reform or repeal.⁴⁴

Although we acknowledge the Deputy Minister's assurance that such abolition is not Welsh Assembly Government policy, the powers which would be transferred under the terms of this Order go beyond what the Parliamentary Under-Secretary described as "what it says on the tin".⁴⁵

... the powers would allow a future Assembly to repeal the right to buy but that is a matter for the policy of the government at the time. It is not ours and I have given assurance that we are ... fully committed to assisting home ownership wherever we can.⁴⁶

31. When asked why the proposed Order included the power to abolish the Right to Buy/Right to Acquire, the Parliamentary Under-Secretary of State told us:

... it is one of many tools in front of the Assembly, to actually have ... this power should it be requested by a local authority in very prescribed circumstances, but it does give that competence ...⁴⁷

32. The proposed Order would grant to the National Assembly for Wales in perpetuity the power to abolish the Right to Buy, although this is not Welsh Assembly Government policy.⁴⁸

A whole local authority area or a Wales-wide suspension?

33. The proposed Order would enable the Welsh Assembly Government to suspend the Right to Buy across a whole local authority area or across the whole of Wales. However, we welcome the Deputy Minister's assurance to us that neither scenario was envisaged, not least because some local authorities rely on the receipts from sales in order to fund their business plans to meet Welsh quality housing standard.⁴⁹ The Deputy Minister concluded:

... we certainly would not expect a whole local authority area to be subject to a suspension and certainly not right across Wales.⁵⁰

34. The policy intention underlying the proposed Order is to allow a temporary suspension of the Right to Buy/Right to Acquire in areas where there is extreme housing pressure.⁵¹

⁴⁴ Qs 25, 32; see also Q 82 (Parliamentary Under-Secretary of State)

⁴⁵ Qs 80, 95

⁴⁶ Q 59; see also Qs 60-61, 96 and Ev 27

⁴⁷ Q 83

⁴⁸ Q 23

⁴⁹ Q 65

⁵⁰ Ibid

35. The full scope of the power to be transferred under a proposed Order, rather than just the current policy intention, should be clearly expressed in the Explanatory Memorandum. Proposed Orders should be drafted so as to transfer only those powers which are required and for which a clear purpose has been established. The same considerations apply to granting to the National Assembly for Wales the ability to abolish the Right to Buy/Right to Acquire. We recommend that the proposed Order be revised so that this power is specifically excluded from its scope. We further recommend that the proposed Order should not proceed unless this proposed revision is made.

36. We are concerned that the proposed Order as drafted would enable the Welsh Assembly Government to suspend the Right to Buy/Right to Acquire across a whole local authority area or across the whole of Wales. We recommend that it be amended so as to apply only in areas of extreme housing pressure, better to reflect the underlying policy intention.

The likely effectiveness of the proposed Order in increasing the supply of affordable housing

37. A study by Professor Steve Wilcox, Special Adviser to this Committee and Professor of Housing Policy at the University of York concluded that a more effective method of increasing the provision of social housing than suspending the Right to Buy/Right to Acquire would be to enable local authorities to invest the receipts from sales to increase supply.⁵² While the Assembly Deputy Minister told us that, in pursuit of the Assembly Government's policy to increase the supply of social housing she "would not rule anything out",⁵³ she also argued that in order to ensure that the Welsh Assembly Government had a range of powers available for policy development, it was "perfectly appropriate" for the Assembly to hold the powers sought under the terms of the proposed Order.⁵⁴

38. Asked whether suspending the Right to Buy would increase the amount of available affordable housing, the Assembly Deputy Minister claimed:

The only way that it would increase the supply is if during the suspension the tenants moved out or moved on. That might not necessarily happen but it does allow the local authority not to lose any more stock while it carries out actions that increase the supply.⁵⁵

39. As the Deputy Minister put it to us, suspension would be just "one piece of a jigsaw",⁵⁶ and the Welsh Assembly Government may well seek further LCOs in future to fully implement its affordable housing policy.⁵⁷ On its own, she admitted, a suspension of the

⁵¹ Q 12; see also Q 84 (Parliamentary Under-Secretary of State)

⁵² *A financial evaluation of the Right to Buy*, Professor Steve Wilcox, University of York

⁵³ Q 29

⁵⁴ Q 31

⁵⁵ Q 37

⁵⁶ Q 40

⁵⁷ Q 44

Right to Buy would not improve the supply of affordable housing, and that she “never claimed that it would”.⁵⁸

It does not increase the supply but it does mean that while the suspension is on the local authority would then be expecting to use a number of other tools available to increase the supply in that area.⁵⁹

The Assembly Deputy Minister told us in evidence that the Welsh Assembly Government’s policy was that the suspension of the Right to Buy/Right to Acquire would be temporary, and that the local authority applying for such a suspension would be required to show what it was going to do during the suspension in order to increase the supply of affordable housing.⁶⁰

40. Suspending the Right to Buy in specified areas would not, of itself, result in an increase in the supply of affordable housing. In applying for such a suspension, a local authority would be expected to demonstrate what it intended to do during the suspension to improve the long-term prospect of meeting housing need in that area.⁶¹

41. As to whether a suspension of the Right to Buy/Right to Acquire was an effective way of increasing the supply of affordable housing, evidence to the Assembly Committee from housing organisations was rather half-hearted. Shelter Cymru suggested to the Assembly Committee that suspending the Right to Buy would be useful as one instrument among others but that by itself its impact would be marginal,⁶² concluding “maybe having this kind of Measure will be useful”.⁶³ The Welsh Local Government Association told the Assembly Committee that suspending the Right to Buy “would make a small but valuable contribution”,⁶⁴ and the Tenant Participatory Advisory Service Cymru told the Assembly Committee that “the proposed Order’s impact on addressing affordable housing issues would be marginal”.⁶⁵ The Parliamentary Under-Secretary of State told us that:

The take-up of the right to buy historically in many areas of Wales has been quite extensive already so the application of this [Order] ... could be fairly limited ...⁶⁶

42. The Assembly Committee’s Report quotes the Chartered Institute of Housing Cymru as expressing uncertainty as to how effective the proposed Order would be in achieving its purpose, referring to it as a “tool” in the provision on affordable housing “and probably no more than that”.⁶⁷ The Assembly Committee concluded:

⁵⁸ Q 38

⁵⁹ Q 39

⁶⁰ Qs 15, 34

⁶¹ Q 42

⁶² Report by the Proposed Affordable Housing LCO Committee, National Assembly for Wales, para 22

⁶³ Ibid, para 23

⁶⁴ Ibid, para 24

⁶⁵ Ibid, para 25

⁶⁶ Q 100

⁶⁷ Report by the Proposed Affordable Housing LCO Committee, National Assembly for Wales, para 25

Much of the written evidence made reference to the limited effect that suspending the Right to Buy/Right to Acquire would have in increasing the availability of affordable housing.⁶⁸

We note the views of many respondents that suspending the Right to Buy and Right to Acquire ... represents just one tool necessary to increase the supply of affordable housing in Wales. ... we note their views that suspending the Right to Buy and Right to Acquire would have only a marginal impact, although it would nevertheless remain useful.⁶⁹

⁶⁸ Report by the Proposed Affordable Housing LCO Committee, National Assembly for Wales, para 69

⁶⁹ Ibid, para 89

2 Limits on the legislative competence conferred by the proposed Order

The Convention Rights

43. In our examination of this proposed Order we considered whether any subsequent Measures could be introduced under it which were likely to be incompatible with aspects of the European Convention on Human Rights - in particular, Article 1 of Protocol 1 (the right to the peaceful enjoyment of possessions) or Article 14 (the right not to be discriminated against).

44. The protection afforded to property rights under Article 1 is not absolute and may be removed or limited where justified as in the public interest. In applying Article 14, the European Court of Human Rights has recognised regional variations allowing for different prevailing social or political circumstances.

45. In evidence to us the Parliamentary Under-Secretary of State referred to interference with the rights of tenants which would be caused by an abolition of the Right to Buy:

[Abolition] ... would ... potentially have impacts on the rights of tenants and the rights of those individuals who could be affected by it.⁷⁰

... the potentiality [of abolition] ... is pretty limited when you start running that past stakeholders and tenants and when it butts up against the European Convention on Human Rights in terms of tenants' rights ...⁷¹

We were keen, therefore, to establish absolute legal clarity on this point.

46. Although such concerns were raised, the legal position is clear. The Assembly cannot introduce Measures which would be incompatible with the Convention Rights. Under Sections 81(1) and 94(6)(c) of the Government of Wales Act 2006 such Measures would be *ultra vires*.⁷² Section 81(1) of the Act states that:

The Welsh Ministers have no power –

(a) to make, confirm or approve any subordinate legislation, or

(b) to do any other act

so far as the subordinate legislation or act is incompatible with any of the Convention rights.

⁷⁰ Q 83

⁷¹ Q 93

⁷² Qs 68, 138-139

47. The Parliamentary Under-Secretary confirmed that Section 94(6)(c) of the Act makes clear that a provision is outside the Assembly's legislative competence if it is incompatible with the Convention rights or with any Community law:⁷³

I can give you the reassurance as with all Legislative Competence Orders that any Measure subsequent to conferring a competence would be subject to the Convention on Human Rights and the Assembly could not act in contradiction to it.⁷⁴

48. The Assembly Deputy Minister noted, in a letter to the Committee:

... the Counsel General to the Assembly Government or the Attorney General may refer questions about whether a proposed Measure or any of its provisions would be within the legislative competence of the Assembly to the Judicial Committee of the Privy Council ... In due course, when the new Supreme Court fully takes up its functions, such references will be made to it.⁷⁵

49. This was also referred to by the Parliamentary Under-Secretary of State:

... the Attorney-General can refer a Measure to the Privy Council or in time to the Supreme Court if he believes that the Assembly has acted outside its competence; the safeguards are there.⁷⁶

50. It is also the case that upon the introduction of a Measure the Assembly Minister is required by Standing Order⁷⁷ to state in the Explanatory Memorandum whether its provisions are within the legislative competence of the Assembly.⁷⁸ This includes an assessment of its compatibility with Convention Rights, so that:

... before introducing a proposed Measure for consideration by the Assembly [the Welsh Assembly Government] will need to satisfy [itself] that the human rights implications have been fully considered and that the proposed Measure is compatible with those Rights.⁷⁹

51. The Assembly Deputy Minister referred to similar provisions regarding the Right to Buy which have already been introduced in Northern Ireland and in Scotland. In the case of Northern Ireland, an application for judicial review was dismissed on the grounds that:

... the provision did not breach Human Rights legislation, and even if there had been a breach the respondent had successfully established a reasonable, objective and proportionate justification for the policy.⁸⁰

52. The Parliamentary Under-Secretary of State concluded that:

⁷³ Q 138

⁷⁴ Q 140

⁷⁵ Ev 27, 29-30

⁷⁶ Q 139

⁷⁷ National Assembly for Wales, Standing Order 23.16

⁷⁸ Ev 27; National Assembly for Wales Standing Order 23.18 (i)

⁷⁹ Ibid

⁸⁰ Ibid; see also Q 141 (Parliamentary Under-Secretary of State)

... it is an issue of proportionality in balancing the public interest against the rights of the individual and ... where this has been looked at before in other jurisdictions it has been proven that there is actually no contravention of the European Convention on Human Rights. ... the Assembly could not legislate in breach of Article 14, it could not apply unjustified discriminatory measures. ... the subsequent Measures could not be brought forward if they were a contradiction of the Convention on Human Rights.⁸¹

53. Sections 81(1) and 94(6)(c) of the Government of Wales Act 2006 mean that no Measure could be introduced under a Legislative Competence Order which was not compatible with the European Convention of Human Rights.

Other limits on competence

54. Section 94 (2) of the Government of Wales Act 2006 states that “An Assembly Measure is not law so far as any provision of the Assembly Measure is outside the Assembly’s legislative competence”.⁸² The National Assembly for Wales’ Standing Orders require⁸³ that upon being laid before the National Assembly a proposed Measure must be accompanied by a statement by the Presiding Officer, which must include reasons if the Presiding Officer thinks that any of the provisions are outside the Assembly’s competence.⁸⁴

55. There are a number of possible further checks on Assembly Measures:⁸⁵

- i. referral by the Attorney General to the Judicial Committee of the Privy Council (in due course, to the Supreme Court), referred to above;⁸⁶
- ii. an Order by the Secretary of State for Wales prohibiting the Clerk of the National Assembly for Wales from submitting a proposed Measure for approval by Her Majesty;⁸⁷
- iii. a requirement under the Standing Orders of the National Assembly for Wales to reconsider a proposed Measure if the Judicial Committee of the Privy Council (Supreme Court) decides that it, or any provision of it, is not within the Assembly’s legislative competence;⁸⁸ or
- iv. referral of a Measure by the Attorney General (or Counsel General) or by an individual to the Supreme Court after the Measure has been made, to establish whether it is within the Assembly’s legislative competence.⁸⁹

⁸¹ Q 141

⁸² Government of Wales Act 2006, Section 94 (2)

⁸³ National Assembly for Wales, Standing Order 23.16

⁸⁴ Ev 29-30

⁸⁵ Ibid

⁸⁶ Government of Wales Act 2006, Section 99 (1)

⁸⁷ Ibid, Section 101

⁸⁸ Ibid, Section 98 (6)

⁸⁹ Ibid, Schedule 9

56. Wales Office legal advice further confirmed that:

[The Government of Wales Act 2006] makes no specific provision for challenges to the Presiding Officer’s decision. That is not necessarily surprising, since the decision only relates to the proposed Measure on its introduction. ...

In principle, the Presiding Officer’s decision on legislative competence could be challenged by third parties through judicial review. However ... we imagine that the courts would be reluctant to intervene. For example, a court might hold that a legal challenge at that stage was premature or inappropriate, on the grounds that the final Measure might differ from the one introduced, there are other ways in which a third party might seek to influence the ultimate content of the Measure, and [the Government of Wales Act 2006] provides other protections once the Measure is passed.⁹⁰

57. The Standing Orders of the National Assembly for Wales place the Presiding Officer as the first “gatekeeper” in ensuring a proposed Measure is within its legislative competence. There are further opportunities for checks and challenges which, while they may never be necessary, are nevertheless an important part of the procedure.

⁹⁰ Ev 29-30

3 Definitions of terms used in the proposed Order

58. We examined some of the terms and definitions contained in the proposed Order in relation to “disposal by a social landlord of land held or used for housing purposes”.⁹¹

“Disposal”

59. The term “disposal” is left undefined in the proposed Order. The Assembly Deputy Minister explained:

We thought that it would be given its ordinary meaning. It would be given its widest possible meaning in the Order and if we need to narrow that down we would probably do that in a Measure.⁹²

This view was supported by the Parliamentary Under-Secretary of State:

“Disposal” is not defined in existing legislation relating to housing but the meaning is quite clear. There is not a definition within this Order but it does not cause confusion because it already exists within other legislation and the meaning is very well understood ... so attempting to put disposal into the Order here could risk success.⁹³

And in its Report, the Assembly Committee concluded:

... that the proposed Order does not define the term “disposal” by cross-references to existing Acts of Parliament and that in the Deputy Minister’s view, this can be achieved subsequently through a proposed Measure. We agree with this approach ...⁹⁴

60. We conclude that it is not necessary to include a definition of the term “disposal” in the proposed Order.

The definition of “social landlord”

61. The proposed Order lists those bodies and individuals considered to be social landlords for the purposes of the Order.⁹⁵ With one minor amendment,⁹⁶ these remain the same as in

⁹¹ Ev 21

⁹² Q 51; see also Q 54

⁹³ Q 76

⁹⁴ Report by the Proposed Affordable Housing LCO Committee, National Assembly for Wales, para 57

⁹⁵ Ev 22

⁹⁶ The addition of “in Wales” to item (a), so that it reads, “a county or county borough council in Wales”.

the list contained in the original Order, although the last two references of the original⁹⁷ have been replaced by the following:

- (i) the Welsh Ministers;
- (j) a social landlord registered under Part 1 of the Housing Act 1996;
- (k) a manager appointed under Chapter 4 of Part 1 of the Housing Act 1996.

62. During its inquiry, the Assembly Committee examined whether it was necessary to include in the proposed Order a definition of the term “social landlord”. A letter to the Committee from the Deputy Minister explained:

It is necessary to define what a social landlord is for the purposes of the LCO, giving certainty as to those social landlords to whom the Order applies. The definition is based upon the list of landlords contained in Section 80 (1) of the Housing Act 1985 and to whom Part 5 of the Housing Act 1985 and Chapter II or Part 1 of the Housing Act 1996 applies.⁹⁸

63. However, in its Report the Assembly Committee recommended that the term “social landlord” be left undefined,⁹⁹ as to define that and other terms:¹⁰⁰

... could inadvertently narrow the scope of the proposed Order and potentially reduce the flexibility to legislate by proposed Measure ...¹⁰¹

64. The Committee concluded that if a definition of the term “social landlord” was to remain in the proposed Order, it should include reference to “registered social landlord”.¹⁰² This recommendation was accepted by the Welsh Assembly Government. In evidence to us, the Parliamentary Under-Secretary of State explained:

In the original ... list of social landlords the list was incomplete ... It would also partially exclude things such as voluntary transfers and so it made no sense of the competence that was being conferred in this respect. It would also exclude land held by a social landlord for housing purposes ... where no dwellings are yet built but it was being held possibly for that purpose ...¹⁰³

The Parliamentary Under-Secretary went on to confirm to us that he was confident that the proposed Order, as revised, was now broad enough to cover all the above.¹⁰⁴

65. We welcome the extension of the definition of the term “social landlord” to include “a social landlord registered under Part 1 of the Housing Act 1996”, and the inclusion

⁹⁷ *The National Assembly for Wales (Legislative Competence) (No. 5) Order 2008*, p 2 items (i) and (j)

⁹⁸ Report by the Proposed Affordable Housing LCO Committee, National Assembly for Wales, Follow-up note from the Deputy Minister for Housing to the Committee, 22 January 2008

⁹⁹ *Ibid*, para 58

¹⁰⁰ References to “dwelling house” and “dwelling”, which were excluded from the proposed Order, as revised.

¹⁰¹ Report by the Proposed Affordable Housing LCO Committee, April 2008 para 54

¹⁰² *Ibid*, para 59

¹⁰³ Q 128

¹⁰⁴ Q 129

of the references to Welsh Ministers and to managers appointed under Chapter 4 of Part 1 of the Housing Act 1996. We conclude that this is a sensible extension of the scope of the proposed Order, which also further clarifies its purpose.

The designation of land “held or used for housing purposes”

Broadening the scope of the proposed Order: reference to “land”

66. The revised proposed Order refers to “disposal by a social landlord of land held or used for housing purposes”, in place of the references in the earlier proposed Order to disposal by a social landlord of “dwellings” and “dwelling houses”. This change broadens the scope of the proposed Order and changes its focus so that it now includes both statutory and voluntary disposals of land by social landlords.¹⁰⁵

67. The reason for these changes was explained to us by Mr Matthew Quinn, Director, Environment, Sustainability and Housing, Welsh Assembly Government:

... there was a risk in the narrow drafting of the first version that there would be elements of disposal that would not be caught within the old code. This one widens the scope to make sure all of those disposals will be caught and the whole of the disposal will be within our competence.¹⁰⁶

As Ms Helen Kellaway of the Legal Services Department, Welsh Assembly Government told us:

We felt this was wider and it did not inhibit anything that needs to be done in the future under the competence.¹⁰⁷

The Deputy Minister clarified the Welsh Assembly Government’s position:

Even though the LCO would cover voluntary disposals, we have no plans to make a Measure.¹⁰⁸

68. We conclude that the revision of the proposed Order to refer to “land” in place of “dwellings” or “dwelling houses” is an appropriate amendment to the scope of the proposed Order.

Designation

69. In order to be within the Order as “land held or used for housing purposes”, it is not enough that land has been designated by a local authority, in its capacity as local planning authority, as suitable for future housing. To fall within the Order, such land must have been acquired or appropriated by a social landlord in order to build houses on it, although it is not currently used for housing. The Assembly Deputy Minister confirmed:

¹⁰⁵ Qs 6, 9, 11

¹⁰⁶ Q 6

¹⁰⁷ Q 10

¹⁰⁸ Q 50

It is not all land held by the local authority; it would have to be land they hold for housing purposes. It could be part of an estate or land that is on an estate not necessarily with houses on it at the moment.¹⁰⁹

70. In the case of land to which the statutory provisions listed in the proposed Order - the Housing Acts 1985 and 1996 – apply, the question of designation does not arise. This was confirmed to us in a letter from the Parliamentary Under-Secretary of State:

The effect is that all disposals of land to which any of the listed provisions apply will be treated as being disposals of land held or used for housing purposes. ... In these cases, the issue of the designation of land for housing does not arise.¹¹⁰

71. Accordingly, the cases covered by the references to the Acts listed in the proposed Order are:

- i. homes occupied by secure tenants who have the Right to Buy under Part 5 of the 1995 Act or by certain tenants of registered social landlords who have the Right to Acquire their homes under Chapter 2 of Part 1 of the 1996 Act;
- ii. houses or land acquired or appropriated by local housing authorities for the purposes of Part 2 of the 1995 Act (which may include buildings that could be made suitable as houses and land on which to build houses and provide associated facilities, as well as land they already hold);
- iii. land held by registered social landlords. Chapter 2 of Part 1 of the 1996 Act gives a general power to dispose of such land. For the purposes of the proposed Order, all such land will be treated as land held or used for housing purposes. In this case, as the Parliamentary Under-Secretary of State pointed out to us:

... the purposes for which [a registered social landlord] may hold land will be limited by its constitution, in accordance with Chapter 1 of Part 1 of the Act. The purposes or powers of a registered social landlord may include both providing and managing existing housing, and acquiring land for the purposes of building homes.¹¹¹

“In particular”

72. The proposed Order states:

For the purposes of this matter, a disposal of land held or used for housing purposes includes, in particular ...

The proposed Order goes on to set out the provisions in the Housing Act 1985 and the Housing Act 1996 which so apply. The Parliamentary Under-Secretary of State told us in evidence that the phrase “in particular” specifically related to the two Acts listed:

¹⁰⁹ Q 49

¹¹⁰ Ev 32

¹¹¹ Ibid

When [the proposed Order] uses the terminology “in particular” it refers to the provisions under those [Acts], so it is not in particular and a range of others, it is in particular those that are referred to there.¹¹²

73. We asked why, in that case, it was necessary to include the phrase “in particular” at all. In a subsequent letter to the Committee, the Parliamentary Under-Secretary of State confirmed:

We believe it is necessary to include the term “in particular” to ensure that the competence is not limited to the existing legislation, and that any future provision made by the National Assembly is within its competence.

Removing the words would result in competence being restricted to the provisions in the four pieces of legislation, which could unduly constrain the way in which the Assembly could legislate.¹¹³

74. We recommend that to ensure the proposed Order includes but does not go beyond the policy intention behind its introduction, it is revised so that the words “includes, in particular” are replaced by “means”.

75. The proposed Order would therefore read:

For the purposes of this matter, a disposal of land held or used for housing purposes means a disposal of land to which any of the following applies –

- (a) a provision of Part 2 of the Housing Act 1985;
- (b) a provision of Part 5 of the Housing Act 1985;
- (c) a provision of Chapter 2 of Part 1 of the Housing Act 1996;
- (d) a provision of Chapter 4 of Part 1 of the Housing Act 1996.

76. We do not consider that this would unduly constrain the way in which the Assembly could legislate, as the Assembly could propose a subsequent further extension of its existing powers in the same way.

¹¹² Q 123

¹¹³ Ev 32-33

4 Conclusion

77. We recommend that the proposed Order be amended to incorporate the recommendations contained in this Report so that it encapsulates but does not overreach the policy justification upon which it is rightly based.

78. Although we support the intention of the proposed Order to increase the supply of affordable housing, we are not convinced that the suspension of the Right to Buy/Right to Acquire in Wales is the most effective method of achieving this, particularly given the decline in sales of local authority dwellings in Wales since 2002-03.¹¹⁴ We acknowledge the Welsh Assembly Government's recognition of the ability to temporarily suspend the Right to Buy in certain circumstances as just one of a number of policy tools with which to tackle the shortage of social housing.

79. With the revisions we recommend in this Report we support this proposed Order in enabling the Welsh Assembly Government on application by a local authority to suspend temporarily, subject to a specified time limit and regular review, the Right to Buy/Right to Acquire in areas where there is extreme housing pressure.

¹¹⁴ Source: *Right to Buy sales*, Statistics for Wales/National Statistics, 19 March 2008

Conclusions and recommendations

1. We agree with the Parliamentary Under-Secretary of State in his assessment of the importance of technical detail in the drafting of proposed Orders, and we welcome and fully support his assurance. (Paragraph 10)
2. We conclude that the purpose of the proposed legislation which the Welsh Assembly Government intends to make under this extended competence is clear. (Paragraph 16)
3. We welcome the Parliamentary Under-Secretary of State's agreement that it would be helpful if in future an explanation of the legislative constraints which underlie the request for a Legislative Competence Order were to be set out in the accompanying Explanatory Memorandum. We agree with the assessment of the current legislative constraints given to us in evidence which limit the Welsh Assembly Government's ability to pursue its policy intentions in this area. We conclude that the Welsh Assembly Government has identified a need for additional legislative competence to achieve its policy objectives. We also conclude that the proposed legislation to be made by the Assembly under its extended competence is reasonably clear. We further conclude that the scope of the proposed Order is consistent with Welsh Assembly Government policy, and its existing powers. We also consider that there should be a limit on the period of suspension, and a requirement for periodic review of any such suspension. (Paragraph 23)
4. We note that consideration was given to the use of framework powers in the Housing and Regeneration Bill. We are not altogether persuaded by the argument that the scope of that Bill was not sufficiently broad to enable provision for equivalent powers to those sought under the terms of this Order. However, since that opportunity has passed, we acknowledge that the use of the Legislative Competence Order in Council procedure is the best available route. (Paragraph 27)
5. The full scope of the power to be transferred under a proposed Order, rather than just the current policy intention, should be clearly expressed in the Explanatory Memorandum. Proposed Orders should be drafted so as to transfer only those powers which are required and for which a clear purpose has been established. The same considerations apply to granting to the National Assembly for Wales the ability to abolish the Right to Buy/Right to Acquire. We recommend that the proposed Order be revised so that this power is specifically excluded from its scope. We further recommend that the proposed Order should not proceed unless this proposed revision is made. (Paragraph 35)
6. We are concerned that the proposed Order as drafted would enable the Welsh Assembly Government to suspend the Right to Buy/Right to Acquire across a whole local authority area or across the whole of Wales. We recommend that it be amended so as to apply only in areas of extreme housing pressure, better to reflect the underlying policy intention. (Paragraph 36)

7. Suspending the Right to Buy in specified areas would not, of itself, result in an increase in the supply of affordable housing. In applying for such a suspension, a local authority would be expected to demonstrate what it intended to do during the suspension to improve the long-term prospect of meeting housing need in that area. (Paragraph 40)
8. Sections 81(1) and 94(6)(c) of the Government of Wales Act 2006 mean that no Measure could be introduced under a Legislative Competence Order which was not compatible with the European Convention of Human Rights. (Paragraph 53)
9. We conclude that it is not necessary to include a definition of the term “disposal” in the proposed Order. (Paragraph 60)
10. We welcome the extension of the definition of the term “social landlord” to include “a social landlord registered under Part 1 of the Housing Act 1996”, and the inclusion of the references to Welsh Ministers and to managers appointed under Chapter 4 of Part 1 of the Housing Act 1996. We conclude that this is a sensible extension of the scope of the proposed Order, which also further clarifies its purpose. (Paragraph 65)
11. We conclude that the revision of the proposed Order to refer to “land” in place of “dwellings” or “dwelling houses” is an appropriate amendment to the scope of the proposed Order. (Paragraph 68)
12. We recommend that to ensure the proposed Order includes but does not go beyond the policy intention behind its introduction, it is revised so that the words “includes, in particular” are replaced by “means”. (Paragraph 74)
13. We do not consider that this would unduly constrain the way in which the Assembly could legislate, as the Assembly could propose a subsequent further extension of its existing powers in the same way. (Paragraph 76)
14. We recommend that the proposed Order be amended to incorporate the recommendations contained in this Report so that it encapsulates but does not overreach the policy justification upon which it is rightly based. (Paragraph 77)
15. With the revisions we recommend in this Report we support this proposed Order in enabling the Welsh Assembly Government on application by a local authority to suspend temporarily, subject to a specified time limit and regular review, the Right to Buy/Right to Acquire in areas where there is extreme housing pressure. (Paragraph 79)

Formal Minutes

Tuesday 7 October 2008

Members present:

Dr Hywel Francis, in the Chair

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

Draft Report, The proposed draft National Assembly for Wales (Legislative Competence) (Housing) Order 2008, proposed by the Chairman, brought up and read.

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

Paragraphs 1 to 79 read and agreed to.

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

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

[Adjourned until Tuesday 14 October at 10.00 a.m.]

Witnesses

Monday 23 June 2008

Page

Jocelyn Davies AM, Deputy Minister for Housing, **Matthew Quinn**, Director, Environment, Sustainability and Housing and **Helen Kellaway**, Legal Services Department, Welsh Assembly Government

Ev 1

Tuesday 1 July 2008

Huw Irranca-Davies MP, Parliamentary Under-Secretary of State, **Geth Williams**, Head of Legislative Policy and **Chris Meader**, Head of Right to Buy, Policy Branch, Department of Communities and Local Government, Wales Office

Ev 9

List of written evidence

1	Letter from Rt Hon Paul Murphy MP, Secretary of State, Wales Office, to the Chairman	Ev 19
2	Welsh Affairs Committee press notice	Ev 19
3	The proposed draft Legislative Competence Order in Council	Ev 21
4	Welsh Assembly Government Explanatory Memorandum	Ev 23
5	Memorandum submitted by Community Housing Cymru	Ev 25
6	Supplementary memorandum submitted by Jocelyn Davies AM, Deputy Minister for Housing, Welsh Assembly Government	Ev 26
7	Supplementary memorandum submitted by Huw Irranca-Davies MP, Parliamentary Under-Secretary of State, Wales Office	Ev 28
8	Supplementary memorandum submitted by the Wales Office	Ev 29

List of Reports from the Committee during the current Parliament

Session 2007-08

First Report	Energy in Wales: follow up inquiry	HC 177
Second Report	The proposed Legislative Competence Order in Council on additional learning needs	HC 44
Third Report	Work of the Committee in 2007	HC 325
Fourth Report	The proposed National Assembly for Wales (Legislative Competence) Order in the field of social welfare 2008	HC 257
Fifth Report	The proposed draft National Assembly for Wales (Legislative Competence) (social welfare and other fields) Order 2008	HC 576
Sixth Report	The provision of cross-border health services for Wales: Interim Report	HC 870
Seventh Report	The proposed draft National Assembly for Wales (Legislative Competence) (Housing) Order 2008	HC 812
First Special Report	The proposed Legislative Competence Order in Council on additional learning needs: Government response to the Committee's Second Report of 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

Session 2006-07

First Report	Work of the Committee in 2005-06	HC 291
Second Report	Legislative Competence Orders in Council	HC 175
Third Report	Welsh Prisoners in the Prison Estate	HC 74
First Special Report	Government Response to the Committee's Second Report of Session 2006-07, Legislative Competence Orders in Council	HC 986

Session 2005-06

First Report	Government White Paper: Better Governance for Wales	HC 551
Second Report	Proposed Restructuring of the Police Forces in Wales	HC 751
Third Report	Energy in Wales	HC 876-I

Oral and written Evidence	Energy in Wales	HC 876-II
Fourth Report	Future of RAF St Athan	HC 1129
Fifth Report	Current Restructuring of the Police Forces in Wales	HC 1418
Oral and written Evidence	NHS Dentistry in Wales	HC 771-i
First Special Report	Government Response to the Committee's Second and Third Reports of Session 2004–05, Manufacturing and Trade in Wales and Public Services Ombudsman (Wales) Bill	HC 433
Second Special Report	Government Response to the Committee's Fourth Report of Session 2004-05, Police Service, Crime and Anti-Social Behaviour in Wales	HC 514
Third Special Report	Government Response to the Committee's First Report of Session 2005-06, Government White Paper: Better Governance for Wales	HC 839
Fourth Special Report	Government Response to the Committee's Second Report of Session 2005-06, Proposed Restructuring of the Police Forces in Wales	HC 1431
Fifth Special Report	Government Response to the Committee's Third Report of Session 2005-06, Energy in Wales	HC 1656
Sixth Special Report	Government Response to the Committee's Fourth Report of Session 2005-06, Future of RAF St Athan	HC 1657
Seventh Special Report	Government Response to the Committee's Fifth Report of Session 2005-06, Current Restructuring of the Police Forces in Wales	HC 1695

Oral evidence

Taken before the Welsh Affairs Committee

on Monday 23 June 2008

Members present

Dr Hywel Francis, in the Chair

Mr David Jones
Alun Michael

Mark Williams
Hywel Williams

Witnesses: **Ms Jocelyn Davies AM**, Deputy Minister for Housing, Welsh Assembly Government, **Mr Matthew Quinn**, Director Environment, Sustainability and Housing, Welsh Assembly Government and **Ms Helen Kellaway**, Legal Services Department, Welsh Assembly Government, gave evidence.

Q1 Chairman: Welcome to the Welsh Affairs Committee. Could I, first of all, Deputy Minister, thank you for coming up to Westminster at short notice. We are very grateful to you. For the record, could you introduce yourself and your colleagues?

Ms Davies: I am Jocelyn Davies and I am the Deputy Minister with responsibility for housing in the National Assembly, and this is Matthew Quinn and Helen Kellaway.

Q2 Chairman: Could I begin by asking some questions about the LCO procedure in practice. The proposed Order that we are looking at now is different from the original that was looked at by the Assembly Committee, therefore those who gave evidence to the Assembly Committee have not had the opportunity to give evidence on this particular Order. How do you think we can avoid this in the future? This, of course, was also the case for the previous LCO that we examined on vulnerable children.

Ms Davies: We are, at the moment, at the beginning of a system and none of us knew exactly how it would work. We have learnt a little bit from experience but ideally both Committees would be considering the same draft. In our defence, I would say to you that the First Minister did announce that the affordable housing LCO would be in the legislative programme for the National Assembly. He announced that in June before the coalition government and it was expected that it would start its journey at the beginning or middle of September but that was not possible. We did have the coalition come into being and also the Whitehall department here was involved in a major Bill at Committee stage. I can understand why this Order was not a top priority at that very moment. That is perfectly understandable. There was a change of Minister here at Westminster, as well as changes of Ministers in the Assembly and maybe all those things conspired to cause delays. In the future I would not imagine that all those things would come together at the same moment. Ideally, as I said, we would have agreement and committees would be looking at exactly the same wording.

Q3 Chairman: Let me place on record my thanks for reminding us of all those problems. I had almost forgotten some of them. Could I also follow up with another related question? This Committee is committed on a case by case basis to joint scrutiny but because of the problems we have not been able to do that. Do you know what suggestions you have to make to this Committee to ensure that we can, if possible, have joint scrutiny in the future?

Ms Davies: One of the problems for us at the Assembly end is the expectation that we would have started earlier which had an implication for our legislative programme. Obviously in the future if it is possible for the process to start at the same time, then that would be much better, or at least to overlap so you can have joint scrutiny committees.

Q4 Chairman: Can I thank you for those observations. They were clearly made in a constructive way and I would like to reciprocate by saying that we too wish to ensure that these processes are improved. We will be working hard at it and shortly giving our report to the Secretary of State for his review of the process. I hope that by next autumn we will all be marching to the same drum beat.

Ms Davies: I am sure we will iron out the problems.

Q5 Mark Williams: Can you outline what the key differences were between the original Order as placed and the revised Order and why those changes were made?

Ms Davies: Helen is the lawyer who has been assisting on this. Would you like us to go through every single change?

Q6 Mark Williams: Just the key ones.

Ms Kellaway: The basic changes involved in the drafting of the Legislative Competency Order are that in the previous draft we referred to “dwellings” and “dwelling houses” whereas this draft refers to “disposal by a social landlord of land held or used for housing purposes” and sets out the statutory provisions that the Order covers. Further down the list of social landlords we have made a few changes towards the end of the Order where we have referred specifically to the Welsh Ministers. Beforehand there

23 June 2008 Ms Jocelyn Davies AM, Mr Matthew Quinn and Ms Helen Kellaway

was the “Relevant Authority” under the Housing Acts 1985 and 1996. Because they were both the Welsh Ministers, we referred to them directly in the Order. Underneath them we have referred to a “Registered Social Landlord” and have included “a manager appointed Chapter 4 of Part 1 of the Housing Act 1996”. All the other changes are minor changes, for example the title now refers to the Fields rather than numbers.

Mr Quinn: Effectively there was a risk in the narrow drawing of the first version that there would be elements of disposal that would not be caught within the old LCO. This one widens the scope to make sure all of those disposals will be caught and the whole of the disposal will be within our competence.

Ms Davies: Before we were focusing rather on the statutory disposals but this wording now covers statutory and voluntary disposals.

Q7 Mark Williams: Were those changes made in the light of dialogue with Whitehall departments or were those issues that were raised in the Assembly Committee’s report and their recommendations?

Ms Davies: When I appeared before the Committee they made a very good point about social landlord and the definition of social landlord but much of this has happened with dialogue between the lawyers, suggestions that improve it or amend it and refine it, so a combination I suppose.

Q8 Mark Williams: The Assembly Committee have had an important place in the process.

Ms Davies: Yes.

Q9 Mr David Jones: Briefly why was the change from “dwellings” and “dwelling houses” to “land”?

Ms Kellaway: I think the initial problems with drafting were that separating voluntary from statutory transfers was a very complex task so it was reworded in this way so that we cover land rather than refer to “dwellings” and “dwelling houses” specifically.

Q10 Mr David Jones: I do not understand why you widened it from dwellings and dwelling houses to land generally. Surely the thrust of this proposed LCO was to catch the sale of council houses, is that not right, or social houses to be more accurate? Why the extension to land?

Ms Kellaway: We felt this was wider and it did not inhibit anything that needs to be done in the future under the competence.

Q11 Mr David Jones: It could comprehend more than simply the sale of council or social houses.

Ms Kellaway: It includes voluntary and statutory disposals of land by social landlords.

Q12 Alun Michael: Listening to this conversation and thinking about the need for simplicity makes one think that actually it is almost inevitable that there will be an iterative process where evidence and discussion is responded to, and perhaps Chair we should not get over-excited if there are changes in the course of drafting if they are responding to genuine

concerns. I think the difficulty is being sure what it is that the objectives are. Following on the point that David has just made, could you outline for us, in very simple terms, what are the principle purposes of the proposed Order. The reason I ask that question is we very often end up with a lot of process and a lot of discussion about the dots and commas in the legislation, which may be fascinating to the lawyers amongst us but the question is what is it for. What is this going to do to benefit people who live and are housed in Wales? I wonder if you could outline for us the intentions there.

Ms Davies: If the Order is successful then the powers would rest with the Assembly to make Measures, that is Assembly legislation, in the area of disposals by social landlords. The policy intention is to allow, on application from the local authority, temporary suspension of the Right to Buy in areas where there is extreme housing pressure.

Q13 Alun Michael: To have the ability to intervene where there is a specific need for it as a result of the local situation.

Ms Davies: That is right, on application from a local authority.

Q14 Alun Michael: Therefore, there has to be the application from the local authority to trigger the Assembly’s intervention.

Ms Davies: Yes. The local authorities carry out the Local Housing Market Needs Assessment. They have local housing strategies and a number of powers and Measures that we have put in place. We just feel that this is one more thing they may consider when they are dealing with housing matters locally. We do intend to require all planning authorities, which includes all the local authorities and the national parks, to have Affordable Housing Delivery Plans as a statutory requirement. They may need a number of tools and this could be just one thing they could consider in order that they are able to meet the needs they have assessed locally.

Q15 Alun Michael: They would need to trigger it and the Assembly would have to be satisfied on the evidential grounds they put forward that it is justified.

Ms Davies: Yes. Obviously we would be consulting on the content of the Measure, but at this stage I would say the policy is that the suspension would be temporary and the local authority would need to demonstrate what it was going to do during that suspension in order to increase supply.

Q16 Alun Michael: That is very clear. It gets us out of being bogged down in administrative details so thank you for the very clear reply. The second thing I would like to probe in a similar spirit is the legislative constraints that prevent the Welsh Assembly Government from achieving those outcomes at the moment, in other words why is this Order necessary in order to allow you to implement the secondary legislation that will be the result of the outcome?

23 June 2008 Ms Jocelyn Davies AM, Mr Matthew Quinn and Ms Helen Kellaway

Ms Davies: I believe the Assembly has a number of powers in relation to the Right to Buy. We can vary the discount and so on but we do not have the power to suspend it and we feel it is important. It is a distinct commitment in the One Wales document. It was in three of the four manifestos for the last Assembly elections for the political parties and also in Shelter's manifesto and in Community Housing Cymru's, the umbrella organisation for housing associations, and it is supported by the WLGA. We feel that in Wales there is considerable support in the housing sector to do this. As I say, it is just one piece of the jigsaw that would allow local authorities to be able to meet housing need.

Q17 Alun Michael: I understand that and you have put the case very clearly but is it not true that the Measure to restrict the Right to Buy and the right to acquire, which are the Orders that are likely to be made under this Order, could have been possible through the use of secondary legislation or existing ministerial powers?

Ms Davies: No. We can vary the maximum discount but I do not think we can suspend the Right to Buy.

Ms Kellaway: We cannot suspend under the current powers. We do not have power at the moment to amend or otherwise the Housing Acts, in particular the Right to Buy and right to acquire provisions.

Q18 Alun Michael: It could have been done through secondary legislation at Westminster but not through exercise of ministerial powers.

Ms Davies: This requires a change to primary legislation and that is why we seek the outcome.

Q19 Alun Michael: This goes back to the learning process where, as you rightly said, we are at the early stages but would you agree that it would be helpful to assist pre-legislative scrutiny if the Explanatory Memorandum, as a matter of course, sets out the legislative constraints that justify the Order? Your reply has been a very clear one but it was not spelt out in those terms.

Ms Davies: Certainly if that improves the scrutiny and the transparency then I think that is perfectly in order.

Q20 Alun Michael: In my experience it is always very difficult when you are dealing with legislation to get out of the bureaucratic language and one understands why; it is very often lawyers wanting to very safe about what is said but then it ends up with us arguing about the jargon rather than getting down to the nuts and bolts which you have clarified quite considerably.

Ms Davies: We could take that on board, and the format of the Explanatory Memorandum. We would certainly look at that.

Q21 Alun Michael: In trying to make sure that there are plans in local authorities or national parks will it be your intention to promote mutual or co-operative options at a local level? This has been very much the way that the Assembly, since its inception, has been encouraging as an alternative to some of the models

that have occurred elsewhere. Would that be the case in relation to the plans that come forward from local authorities required as a result of the use of these powers?

Ms Davies: We have put extra money in the budget this year in order to support Community Land Trusts and funding a network of rural housing enablers. We would always seek to engage wherever we could but we do feel that there is now a time to have a statutory requirement for a local authority. We do feel they have been empowered a great deal and it is good practice but it can be patchy. I do not know if you saw the Joseph Rowntree Commission Report on Housing in Rural Wales. It seems quite obvious to me that there does need to be a requirement that local authorities use the powers that they have to the full in order to meet housing need locally.

Q22 Alun Michael: Just as you referred to land in the rephrasing, that can be the key which is why the development of Community Land Trust, which I applaud, is clearly the key in areas of highest need, is it not?

Ms Davies: Yes. I have seen very good examples where local authorities have parted with land at below market value to local Community Land Trusts in order that housing can be secured.

Q23 Hywel Williams: Can I ask you why are you applying to an LCO rather than looking to use framework powers within the Housing and Regeneration Bill?

Ms Davies: As I mentioned earlier, the announcement was made by the First Minister, Rhodri Morgan on the 6 June that there would be an affordable house LCO, so work began on that. When the Housing and Regeneration Bill was published in November the idea of the LCO had already been worked up and there was an expectation there would be an LCO. The remit of the Bill in relation to the Right to Buy was not broad enough in order to give the Assembly powers to suspend. The Right to Buy part of the Bill is quite narrow and specific.

Q24 Hywel Williams: You have referred in evidence to this Committee that you had discussions about the possibility of using that particular Bill. Could you tell us what sort of discussions you had regarding the possibility of having framework powers? How did you take that forward and what was the result?

Ms Davies: As far as the suspension of the Right to Buy, there had always been the expectation following the announcement last year that that would be done by Legislative Competence Order. When the Bill was published obviously we did seek to have powers within that Bill if there were sections which were relevant to us, and most of that Bill is not relevant to us but relevant to England. We have sought powers within that Bill but not framework powers in relation to suspension of Right to Buy because the Bill, in relation to the Right to Buy, is

23 June 2008 Ms Jocelyn Davies AM, Mr Matthew Quinn and Ms Helen Kellaway

quite narrow. It is a minor amendment and could not give the Assembly competence broad enough that would allow the suspension of the Right to Buy.

Q25 Mr David Jones: I think you acknowledged in evidence to the Assembly's own Committee that the proposed Order would allow the passing of Measures which could potentially abolish the Right to Buy completely. That is right, is it not?

Ms Davies: The Assembly would have powers over the full ambit of the Right to Buy so it could allow suspension, complete reform or repeal. It would be a power that would rest with the Assembly in perpetuity.

Q26 Mr David Jones: There is nothing to guarantee that such power would not be exercised by the Assembly in the future if this LCO were to be passed?

Ms Davies: If a future Assembly Government had that as a policy and the Measure could be passed in the Assembly, it is a possibility.

Q27 Mr David Jones: Is it the Welsh Assembly Government's intention to suspend the Right to Buy only in those areas where there is housing pressure?

Ms Davies: Yes, that is the current policy. Obviously the content of the Measure will be subject to consultation but that is the policy intention, yes.

Q28 Mr David Jones: You are aware of Professor Wilcox's view that better value for money would be provided simply by using existing legislation to reduce the discounts offered.

Ms Davies: Yes.

Q29 Mr David Jones: Have you considered taking that course rather than applying for the LCO? Was that a consideration that you ever exercised?

Ms Davies: Professor Wilcox's evidence was to the Committee. I have met with him since and obviously the point of the policy is to increase supply and so I would not rule anything out actually.

Q30 Mr David Jones: It would appear that you decided to go down the LCO route rather than the route which was suggested by Professor Wilcox.

Ms Davies: If you wanted to reform the Right to Buy system you would still need these powers.

Q31 Mr David Jones: You would not, would you? If you were simply to reduce the discounts to enable local authorities to invest the receipts in the provision of more affordable housing, you would not need these powers, would you?

Ms Davies: I think that it is perfectly appropriate for the Assembly to hold these powers so that we have a range of powers available to us for policy development now and in the future. The content of the Measure will be subject to full public consultation and we will see what comes out of that consultation. I think it is appropriate that we pursue this. Do not forget that no suspension will take place

unless there is an application by a local authority and local authorities are always looking for best value for money.

Q32 Mr David Jones: That is your current intention but, as you have already conceded, there would be nothing to prevent an Assembly in the future from simply abolishing the Right to Buy.

Ms Davies: Or completely reforming it, you are quite right.

Q33 Mr David Jones: Have you considered asking for powers to determine the use of revenue generated from right-to-buy sales?

Ms Davies: Some local authorities do use 100% and there are examples of local authorities using 100% of their receipts. You have to understand that the financial position of local authorities in Wales is such that most have debts with the UK Treasury, unless they have stock transferred, and many are facing huge bills for meeting the Welsh Housing Quality Standard. It does appear to me that local authorities who can generate receipts through the sales generally reinvest a good proportion of that money into improvements of their existing stock.

Q34 Mr David Jones: The thrust of the powers that you are seeking is, as I understand it, to increase the supply of affordable housing. That is right, is it not?

Ms Davies: It is a Measure that would allow local authorities to consider this if they felt it was appropriate to their area. As I said, as the Minister I would expect before approving an application that the local authority would have demonstrated what it intends to do during that suspension period to increase the supply.

Q35 Mr David Jones: I understand that but the thrust of the policy is to increase the supply of affordable housing. That is what you are seeking to do by this LCO.

Ms Davies: Yes.

Q36 Mr David Jones: How effective do you think the anticipated Measures to suspend, or maybe even abolish, the Right to Buy would actually be in the context of that policy?

Ms Davies: As I said, it has been welcomed by the housing sector in Wales: Shelter, WLGA and Community Housing Cymru. We know that Scotland has something quite similar that has been used to effect, although I believe it has been available there eight years and covers a small percentage, less than 1%, of the stock. Obviously local authorities there have used it and continue to use it to some effect.

Q37 Mr David Jones: What I am trying to assess is how effective are you telling this Committee this policy would be. What would be the effect of pursuing such a policy? Would you be increasing the amount of available affordable housing? Is that what you are saying would happen?

23 June 2008 Ms Jocelyn Davies AM, Mr Matthew Quinn and Ms Helen Kellaway

Ms Davies: The only way that it would increase the supply is if during the suspension the tenants moved out or moved on. That might not necessarily happen but it does allow the local authority not to lose any more stock while it carries out actions that increase the supply.

Q38 Mr David Jones: The immediate result of applying such a policy does not actually free up that particular house immediately for somebody else, does it? Presumably the existing tenant would wish to continue living there.

Ms Davies: I never claimed that it would.

Q39 Mr David Jones: What I am trying to assess, and what the Committee would like to know, is why you say that this would improve the supply of affordable housing.

Ms Davies: I have tried to express this in a number of different ways and I do not seem to be able to make my point. The local authority, if applying for a suspension and if that application was successful, would not lose any more stock in the intervening period while the suspension was on. It does not increase the supply but it does mean that while the suspension is on the local authority would then be expecting to use a number of other tools available to increase the supply in that area.

Mr David Jones: It does not actually increase the supply at all.

Q40 Alun Michael: Specifically on this point, because it is an important one to tease out, could I try expressing back the point you are making, which is this Measure or action on its own would not have a specific outcome in terms of increasing the available stock although it would perhaps stop the bleeding for a period. Am I right, are you telling us that you would not be relying on this as a single action but this would be merely one sticking plaster which would assist in the general resuscitation of the patient?

Ms Davies: Yes, it is just one piece of a jigsaw.

Q41 Alun Michael: It would buy you a bit of time.

Ms Davies: Yes. It means you would lose no more stock in the intervening period if that is what a local authority chooses to do.

Q42 Alun Michael: Also in your earlier answer to me I think you said, did you not, that you would expect a local authority, in coming forward with evidence for the need for this power to be exercised, would have to show you what they intended to do during the period that the tourniquet is on—I am mixing my metaphors slightly—and what they intended to do in order to improve the long-term prospect of meeting housing need in their area.

Ms Davies: That is perfectly correct.

Q43 Hywel Williams: Can I turn to the LCO itself and the scope of it? The Assembly Committee suggested that it be broadened to address affordable housing in general. What sort of consideration was

given to the possibility of having a broader LCO rather than this one which seems very specifically aimed at a particular aspect?

Ms Davies: When I appeared in front of the Committee in the Assembly the suggestion that was put to me was that the wording just might simply read “affordable housing”. When I asked the Committee what the parameters of that might be they were not able to tell me. I did ask them if that meant nationalisation of land and some said yes it did and some said no it definitely did not. I did feel that you had to have some sort of clear idea about what would be in and what would be out. When we took evidence on the new Government of Wales Act and how this system might work, constitutional experts did say at the time that there would have to be references to previous Acts of Parliament, and that certainly has come to pass from looking at the LCOs I have seen so far. Having something broad is all very well but you do need to know where the edges are and I did not feel the Assembly Committee did know. I could ask you: do you think nationalisation of land would come into affordable housing? That is the reason really. I have not responded to the Committee’s report as yet. I thought I would wait for this Committee to report and I would look at them side by side. I would be very surprised if you made the same recommendation.

Q44 Hywel Williams: Given that answer, do you foresee that there would be future LCOs necessary to fully implement for you the government’s affordable housing policy?

Ms Davies: There may very well be. This was a very distinct commitment in the *One Wales* coalition document: that we would draw down the powers in order to suspend the Right to Buy. It was pursued because it was in manifestos. As time goes on and we develop housing policy, no doubt there will be more power we will seek and would be very happy to do so.

Q45 Hywel Williams: Do you think that in the future Orders might be broader? Is it efficient use of the staff and all the resources to address a particular, some might say, insignificant aspect of the problem, as we are doing now, given, as you say, that it is a manifesto commitment for the parties?

Ms Davies: Yes, if broader powers were required and I could describe them to you and I knew exactly what we were saying and exactly what was sought. Of course we would always, where possible, seek powers in Westminster Bills. It certainly saves resources if we can do it that way. I would imagine in the future when we have policies worked up that we could come with a good case for more powers.

Q46 Hywel Williams: We all like to deliver on our promises but is there a case for delaying this Order until there has been a wider debate on the issue and broader proposals?

Ms Davies: As I say, it was distinct commitment. I have already had representations from Powys County Council in Wales saying please pursue this

as soon as possible without delay. They wrote to me quite recently. I see no reason why we should not pursue this now, and if we need more powers later on then come forward with another application and another request for powers.

Q47 Hywel Williams: I was thinking that it is closing the door after the horse has bolted. Looking at the background material it seems a lot of houses have gone already.

Ms Davies: Yes, about half but about half still remains. Is your cup half full or half empty? I only became a Minister last August so I am not responsible for what did or did not happen before that. As I said, this was in three of the four manifestos for the Assembly elections and contained in manifestos for the housing sector in Wales in the last Assembly elections. I am sure if the housing sector felt that way then they would not have put it in their manifestos.

Q48 Alun Michael: Could I go back to what is now in the Order which is land held or used for housing. How tight is that definition? For instance, could the use of this power apply to land that is capable of being used for housing but is not currently used for housing purposes?

Ms Davies: Yes.

Q49 Alun Michael: It could be applied, for instance, to land that was part of stock held by the local authority for future housing purposes. Could it also include, for instance, school playing fields and land that is currently used for other social purposes?

Ms Kellaway: In land "used" for housing purposes "used" is included to cover a situation where we may want to capture land subsequently used for housing purposes, for example a caretaker's property. Whatever the proposals are for the Measure, if we need to narrow anything down in terms of "land" or the definition, we could do that in the Measure.

Ms Davies: It is not all land held by the local authority; it would have to be land they hold for housing purposes. It could be part of an estate or land that is on an estate not necessarily with houses on it at the moment.

Q50 Alun Michael: That is what I meant: land that is held that is designated for future housing use. I just wanted to be clear that the local authority could not go beyond that. If it did, the Assembly Minister might well say you are going outside the spirit of what is intended. Would it in theory be possible for a local authority to identify other land which has not been designated for housing purposes, like open space land or playing fields or whatever, and seek to apply these powers?

Ms Davies: If it was land that currently did not have houses on it then I suppose suspending the Right to Buy would not apply as it would come under the voluntary disposal if it wanted to dispose of it, even if it was, as we mentioned earlier, below market value to a Community Land Trust. That would be a voluntary disposal and I guess playing fields is probably a voluntarily disposal. The Measure that

we are talking about would only be referring to those people who have a statutory Right to Buy. Even though the LCO would cover voluntary disposals, we have no plans to make a Measure.

Q51 Alun Michael: To be clear, the legal definition is for land that is either currently used for housing or where there is a genuine intention for it to be used for that in the future. The question would merely be whether the wording actually adequately covers that point. Perhaps that is something you might reflect on. Another question of definition is the definition of "disposal". I may be wrong but, as I understand it, the term "disposal" is not defined in the Order. Was that considered? Why has the term not been defined?

Ms Kellaway: We thought that it would be given its ordinary meaning. It would be given its widest possible meaning in the Order and if we need to narrow that down we could probably do that in the Measure.

Q52 Alun Michael: It would refer basically to any form of disposal as it stands.

Ms Kellaway: Yes.

Q53 Alun Michael: The power to legislate with respect to disposal by social landlords of land held or used for housing purposes is expressed in the proposed Order in general terms. It includes particular reference to current statute but it is not confined to it. I do not quite understand what is happening. What other cases of land held or used for housing could be covered by the proposed Order in addition to what is specified? In other words, is there any capacity for the Order to be used more widely than the intentions that you have described?

Ms Kellaway: I am not aware of any.

Ms Davies: I am not able to give a definite answer to that.

Q54 Alun Michael: Perhaps this is a point you looked at. What I am getting at it is whether the lack of a definition of "disposal" results in the Order in its legal effect being less precise than you have been in setting out the intention of the Welsh Assembly Government in asking for the Order. I have plenty of experience of the normal thing that a drafter will want to do, to have it as wide as possible because that then gives the widest possible discretion in the way that it is applied but that sometimes results in the legislation being framed much more widely than the actually expressed policy intentions. Do you see what I mean?

Ms Davies: The wording that you are looking at would be the powers that would come to the Assembly. When we draw up the Measure, that would be the legislation that governs these disposals. We could define it in the Measure without needing to define it in the Legislative Competence Order because we want every sort of disposal to come under our jurisdiction and make legislation, but we will define it in the legislation that we make.

23 June 2008 Ms Jocelyn Davies AM, Mr Matthew Quinn and Ms Helen Kellaway

Q55 Alun Michael: Ministers are always much more precise in defining the boundaries of any power. Is there an intention for the proposed Order to enable Measures directing organisations that hold land that they have not yet developed for housing to dispose of that land to other bodies that are willing to develop affordable housing? One example would be to force a housing association to release land so somebody else could develop it if they do not intend to do so.

Ms Davies: We have been encouraging local authorities to dispose of land below market value to housing associations. In order to do that we have set an example in that in the Assembly we have a new land disposal protocol which we hope will radically improve the amount of publicly available land for affordable housing. If you can control the land price then you can control the cost of the home that is built on it. We do not have any intentions at the moment to direct local authorities to dispose of land that they have below market value to a housing association but we are hoping that when they have to have the Affordable Housing Delivery Plans that that may focus their minds on how they are to meet the targets they will be setting themselves.

Q56 Alun Michael: You refer to forcing a local authority to sell perhaps to housing associations. The other one is if you have housing associations that are holding land or other public bodies that are holding land. Would it be the intention to use the powers to require the release of such land if they are being excessively careful in moving forward on its development?

Ms Davies: We are hoping to encourage, but, as you have pointed out, these powers in the future would give the Assembly Government who have that policy the ability to compel rather than encourage.

Q57 Alun Michael: Your intention at the moment is to do it by persuasion but it might be useful to have a stick in the back pocket.

Ms Davies: I hope they will read the transcript of this evidence session.

Q58 Mr David Jones: You have referred to your desire to have as broadly drafted an LCO as possible and you referred in particular to the expression “disposal”. I can well understand why you want a broad power but is it not the case that you have to persuade this Committee why there is a need for a broad power? Why would you say you need the breadth of the power that you are seeking?

Ms Davies: The powers as described by this Order are perfectly appropriate to sit with the National Assembly considering the other powers that we have in relation to housing and social landlords.

Q59 Mr David Jones: You have conceded that the power that you are seeking would enable you to repeal the Right to Buy. Why do you think this Committee should agree to your having such a broad power? Do you think possibly this Committee might consider it would be better if the power were more narrowly drawn and more closely focused?

Ms Davies: I think the way that it is drawn is appropriate because the Assembly has powers in relation to this policy area, and certainly considerable powers over the regulation of registered social landlords, and this seems to fit perfectly appropriately with that. You make the point that the powers would allow a future Assembly to repeal the Right to Buy but that is a matter for the policy of the government at the time. It is not ours and I have given assurance that we are, in fact, fully committed to assisting home ownership whenever we can.

Q60 Mr David Jones: Is it not the question for this Committee to decide whether it is appropriate for you to have such a broad power? Whilst, as you rightly say, you have no intention to exercise a power to abolish the Right to Buy it might be a concern to this Committee that you would do so.

Ms Davies: It is not the policy of the One Wales Government to abolish the Right to Buy. We have said exactly what we intend to do. You are quite right that this would allow a future Assembly to completely reform or indeed to abolish the Right to Buy but that is not our intention at all.

Q61 Mr David Jones: If this Committee were to decide that the appropriate power would simply be to give you the power to order the suspension of a Right to Buy, would that cause you any problems?

Ms Davies: I am not in pursuit of that particular policy but your colleague, Alun Michael, mentioned it might be quite useful in respect of publicly owned land or land held by social landlords in having power over the disposal. The wording, as we have it here, is perfectly appropriate for these powers to rest with the National Assembly in a Measure-making form.

Q62 Hywel Williams: Can I remark that you are in no position to bind a future Assembly Government any more than the current Labour government is able to bind a future Conservative government.

Ms Davies: Indeed, and if we held these powers if a Westminster government abolished the Right to Buy we could still maintain it.

Q63 Mark Williams: Can I move on to a couple of questions around definitions which seems to be one of the themes in the line of questioning earlier on and it is about referring definitions to precise sections of legislation and looking at the definition of “social landlord” as compared to “registered social landlords” and “managers appointed to deal with land held by an insolvent landlord”. Those latter two are not referenced to precise sections of legislation as is the case in the former term. Why is that? Why is one referenced and the other two are not?

Ms Davies: Which section are you referring to?

Q64 Mark Williams: The definition of “social landlord” in the original draft has been amended to cover these further entities. Why are those referenced to particular sections of legislation?

Ms Kellaway: In terms of the Welsh Ministers, as I said earlier, that was replacing the previous references to the “Relevant Authority” which effectively is the Welsh Ministers. They both meant the Welsh Ministers and we found it was better just to refer to the Welsh Ministers in there. It meant them anyway so we have taken out the previous references, but I take your point in that sense.

Q65 Hywel Williams: There was some discussion about how narrow or how broad this particular LCO is, and it does refer to areas of extreme housing pressure where some of the submissions to the Committee referred to the possibility of having a Wales-wide suspension of the Right to Buy from what I understand. Is the proposed Order defined closely enough to articulate clearly the intentions and scope to all interested parties given that some parties might want to see a broader application whereas clearly you have said it is to be used in areas of extreme housing pressure. I think that is also in the One Wales Delivery Plan.

Ms Davies: That is right. That is what we would envisage. In fact, some local authorities rely considerably on the receipts from sales in order to fund their business plans to meet the Welsh Housing Quality Standard so they certainly would not welcome a suspension right across Wales. That could have significant impact on their own finances and the plans they have for the next 30 years. Likewise, with housing associations certainly the transfer bodies, because they do not have a debt to service, are able to keep 100% of the receipts generally so a sale is beneficial for them. I do not see this as applying right across a local authority area and certainly we would want to be as flexible as possible. One of the things we will consult on is whether a local authority might prefer to restrict it to a certain type of house. If there was a great deal of pressure, for example on three-bedroom properties in a certain part, then why stop sales of one-bedroom properties or two-bedroom properties when that is not the housing that is under extreme pressure. House type might be useful for some local authorities but we certainly would not expect a whole local authority area to be subject to a suspension and certainly not right across Wales.

Q66 Hywel Williams: That is a very specific example you have outlined, three bedrooms as compared to one but is the Order sufficiently defined so that all parties concerned understand that it might be that specific?

Ms Davies: The Measure that will fall from the Order will be subject to full consultation and we will be consulting soon on the principles before the Measure is published. We do not have a draft Measure at the moment but these things will be clear to the housing sector. Of course we would expect any local authority that made an application to have

consulted the people that it affects so the residents and tenants in an area would be consulted before an application could be submitted.

Q67 Chairman: Perhaps, in the context of what you have just said, it ought to have been my first question. Have you given consideration to the rights of tenants in the context of the European Convention on Human Rights in preparing this proposed Order?

Ms Kellaway: For the competence there should not be an issue. We do not envisage any problems at this stage in that respect. When we come to the Measure, we will consider that point further at that stage.

Ms Davies: I understand that some time ago, before I was a Minister so I have not seen the advice myself, that advice was sought and there was an assurance that this was a not of breach of human rights.

Q68 Mr David Jones: With respect, if you are asking us to make a Legislative Competence Order we need to be assured that any Measure that will be forthcoming will not infringe the human rights legislation and you did not give us that assurance in that answer.

Ms Kellaway: Under section 81 of the Government of Wales Act 2006 the Welsh Ministers would not be able to make an Order that was incompatible with a Convention right.

Q69 Mr David Jones: I understand that but you are asking us to grant a Legislative Competence Order without having that assurance at this stage. It is a futile act to grant such a competence if, in fact, the Measure may never be forthcoming because it may infringe human rights.

Ms Davies: I am assured by officials that legal advice was sought some time ago. I have not seen it myself because it was before I was a Minister but we are advised this is not a breach of human rights.

Q70 Mr David Jones: Could a copy of that advice be sent to the Committee?

Ms Davies: Because this was advice that was sought before I was a Minister, I have not seen it so I certainly cannot give a commitment that you can see it.

Chairman: I am prepared to accept that assurance. It would be helpful, however, if you can provide a note or a reference to all of this to contextualize it and to confirm what you have said.¹ Could I finally thank you all for coming, particularly the Deputy Minister, and for the frank and straightforward way in which you have answered the questions. There may have been occasions where you feel that some of your answers might have been open-ended and you would prefer to reflect on some of these answers. If you wish to add anything further in consultation with your colleagues, then we would be delighted to hear from you. Thank you very much.

¹ Ev 30

Tuesday 1 July 2008

Members present

Dr Hywel Francis, in the Chair

Mrs Siân C James
Mr David Jones
Alun Michael

Albert Owen
Hywel Williams

Witnesses: **Huw Irranca-Davies MP**, Parliamentary Under-Secretary of State, Wales Office, **Mr Geth Williams**, Head of Legislative Policy, Wales Office, and **Mr Chris Meader**, Head of Right to Buy, Policy Branch, Department of Communities and Local Government, gave evidence.

Q71 Chairman: Good morning, welcome back to the Welsh Affairs Committee. Minister, could you introduce yourself and your colleagues for the record, please?

Huw Irranca-Davies: Yes, thank you, Dr Francis. I am Huw Irranca-Davies, the Parliamentary Under-Secretary of State for Wales. To my right is Geth Williams, the Head of Legislative Policy and one of the lead officials on this particular LCO and to my left is Chris Meader, who is the Head of Right to Buy in the Policy Branch of CLG, so I have two very well-informed experts sitting either side of me.

Chairman: Thank you very much. Can we begin with a question from Mr Alun Michael?

Q72 Alun Michael: There are differences between the proposed Order that we have in front of us today and that which was originally laid before the Assembly and scrutinised by the Assembly Committee. Some people have suggested that that is a bad thing and that there ought to be consistency; on the other hand I am tempted to think that if deficiencies are identified putting them right by the time they reach us is a good thing. What is your view; how are you seeking to refine the process?

Huw Irranca-Davies: We need to get it right, I would answer, Mr Michael, and certainly you are right in saying that the important role of scrutiny in this place is that if occasionally we do have to look once again at an Order that comes forward and make amendments we do it because it is the right thing to do, and if that leads to improvements, particularly improvements that will affect not only the LCO but ultimately the Measures that might arise out of it, we do this. Certainly, as the Committee is aware, the brief history of this is that an Order was brought forward at one point, on which there were some improvements to be made, that were identified at the point where it was brought forward, so we went away and looked at that again. What we have in front of us today is an improved Order and, in terms of the general point, whilst this and two other Orders were, if you like, the “hit the ground running Orders”, where there was a will to get them up and going and rapidly move ahead, perhaps one of the things that we have learnt and we will be seeing next year is a far improved synchronisation and in effect a project management of bringing these LCOs forward. We particularly welcome the approach taken by the Welsh Affairs Select Committee of trying to move towards forms of—not one

determined type—joint scrutiny or parallel scrutiny on the same Order. That has to be the way forward ultimately.

Q73 Alun Michael: Would it be helpful, do you think, where it has been scrutinised by the Assembly Committee and it is then changed to seek the comments of the Assembly Committee on those changes? The point I am making I suppose is that the scrutiny committee in the Assembly will be commenting on a different Order to the one that comes before us and having their subsequent comments on those changes might help us to be sure that we have understood their comments where they are relevant.

Huw Irranca-Davies: Indeed; I would not want to prescribe for either the Welsh Affairs Select Committee or the National Assembly for Wales how they should do it, but certainly I would think that there is a benefit, particularly where there has been a change in an Order to do it. It depends on the substance of those changes and whether they are small and technical, and it is not for a Wales Office Minister to actually say this is the way it should be done, but certainly in terms of good scrutiny there is the ability to revisit should it be necessary and that flexibility is probably there at the moment, should they want to do it.

Q74 Alun Michael: At what stage does the Wales Office engage in discussions regarding a proposed Order in Council? I am correct, am I, in thinking that it is the Wales Office that does the liaison with other Government departments in Whitehall, but at what stage do you do that?

Huw Irranca-Davies: If I answer broadly and then if it is helpful I might ask Geth to come in as well. We engage at the earliest possible opportunity, at the point at which we know the broad premise of Orders being proposed and, as I say, we are constantly improving so there will be a more improved way of doing it for the ones that are brought forward in the legislative programme from the Assembly this year. We engage early on simply to look at the broad scope of them and to try and see whether they are appropriate in scope and whether they are within vires *et cetera*, and to try and start that negotiation with Whitehall departments at quite an early stage. Then when the actual Order is brought forward and

there is some detail on it, we are able then at an official level to engage right down to the line by line detail of it. Geth, perhaps you want to add to that.

Mr Williams: The Wales Office facilitates discussion between the Welsh Assembly Government and relevant Whitehall departments and on some Orders that is a whole range of Whitehall departments, whereas on this one it was Communities and Local Government in particular. As the Minister said, we are now getting better and better at doing that.

Q75 Alun Michael: Reflecting on personal experience do you have any difficulty in getting prompt replies from other government departments when you ask them for their comments?

Huw Irranca-Davies: I do not think it is an issue of prompt replies; one of the things we have seen is if there is an area—not on policy I have to say because we have been very clear that it should not be an impediment to any LCO that we are looking at that there is a policy differential between England and Wales—where there are genuine technical queries or issues where the request may impact upon retained areas and so on, then there can be a dialogue that will go back and forth and back and forth and that does take time, but it is important to get that right. I do not think that has hugely been the case with this particular LCO but that is the approach we take generally.

Q76 Albert Owen: If I could just move on to the differences between the original and the revised Order, you have just explained the procedure and the practice but in the actual Order before us on housing there are major differences. Could you explain what the differences are between the original Order and the revised Order and explain why those changes were made?

Huw Irranca-Davies: Yes, indeed. Certainly from the original Order one of the issues was around the term of disposal and why or why not it should be defined within the Order. “Disposal” is not defined in existing legislation relating to social housing but the meaning is quite clear. There is not a definition within this Order but it does not cause confusion because it already exists within other legislation and the meaning is very well understood and so on, so attempting to put disposal into the Order here could risk success.

Q77 Albert Owen: That was for continuity with existing legislation.

Huw Irranca-Davies: Absolutely. This proposed Order focuses on “land held or used for housing purposes”. The original Order used the terms “dwelling” and “dwelling-house” and again in terms of continuity with existing legislation that very term “land held or used for housing purposes” would be the relevant one to use, parts of the 1985 and 1996 Acts, rather than using the terms “dwelling” or “dwelling-house”. It also has within this Order a much more comprehensive list of social landlords and this was in fact one of the recommendations made by the National Assembly Committee, so we have actually in the process, going back to Mr

Michael’s point, brought forward changes that reflect some suggestions that were made but also make it more clear where this sits within the existing body of legislation.

Q78 Albert Owen: Was that just an oversight by the original draughtsperson or was it lack of experience?

Huw Irranca-Davies: We have often used the term in the way that we are dealing with these LCOs that it is a learning process, and it genuinely is. One of the advantages of the close working relationship that is going on currently between Whitehall officials and Welsh Assembly Government officials is that we can refine and bring from this place suggestions that say you need to be aware of the way what you are proposing impacts and we will refine where necessary. I suspect, however, as time goes by we will see less of Orders being brought forward that have rough edges and we will get to a point where they will be brought forward in a way that is eminently appropriate at an earlier stage rather than having to knock some of these rough edges off. Geth, would that be fair.

Mr Williams: Yes, that is fair.

Q79 Albert Owen: You have explained the reason for broadening the definitions and you have given a clear explanation of that. Has that therefore widened the scope of the Order at all?

Huw Irranca-Davies: Certainly what we do have here is something that deals with all land available for disposal, social landlords of all types, and that is appropriate based both on the strategy and approach of the Assembly and also giving them, within their armoury of ways that they can deal with affordable housing, the right next level of Measures as well.

Q80 Albert Owen: They did not seek it early on when it first arrived in Whitehall.

Huw Irranca-Davies: The discussion was ongoing around just where the breadth of this should be, what was appropriate, and what we came to agreement on was that it was appropriate to include all land available for disposal rather than simply hold it back to one type or another—voluntary disposals, the right to acquire, the right to buy, stock transfer issues. If they were looking for, as they are, the tools to deal with this issue of specifically located, specific geographically, time-limited instances, it would need to apply across the broad social landlord field rather than one or the other. There is very strong agreement now that what we have here is narrow enough in that it is clearly defined, it does what it says on the tin, as I have mentioned before, and it is not too broad so that it spills over into other areas that are unintended.

Q81 Albert Owen: It does not matter how polished they are when they arrive here, that can still happen in the future, that certain Orders can be improved.

Huw Irranca-Davies: Undoubtedly, and this has always been the issue here with scrutiny in this place, what is the scrutiny in this place for? It is to do with the well-rehearsed arguments of scope and vires and

1 July 2008 Huw Irranca-Davies MP, Mr Geth Williams and Mr Chris Meader

so on, but there may be occasions when the Welsh Affairs Select Committee or when Whitehall says actually we may be able to assist with a suggestion. Ultimately it will still be for the Welsh Assembly Government to decide, to discuss and to negotiate, but there is a learning process both ways on this and there is a body of expertise here in the Welsh Affairs Select Committee, there is a body of expertise in the Welsh Assembly Government but there is also a body of expertise in Whitehall that sometimes can help shape and form a better piece of legislation.

Chairman: David Jones, you wish to ask a supplementary.

Q82 Mr David Jones: Yes. You just mentioned, Minister, that you took the view that the powers comprehended in this Bill were not too broad; however, in evidence last week we heard from the responsible Welsh Deputy Minister who conceded that the powers contemplated in this LCO would in fact give the Assembly power if necessary to abolish totally the right to buy. Is it a case, therefore, that the Wales Office does not think that it is too broad a power in the hands of the Welsh Assembly potentially to abolish the right to buy?

Huw Irranca-Davies: We do not. I understand that the Deputy Minister has indeed made clear, both on the face of the explanatory memorandum and in her presentation to the Welsh Affairs Select Committee that the Welsh Assembly Government still remains committed to the principle of right to buy and the way they see this being used—even though as you rightly say the competence is here to do that should they so wish and should local authorities come forward and say we need this—is very much in specific circumstances to deal with specific local needs.

Q83 Mr David Jones: I understand that but can you tell the Committee why you think the Assembly Government should have the right potentially to abolish the right to buy in Wales?

Huw Irranca-Davies: As I mentioned earlier, it is one of many tools in front of the Assembly, to actually have what they have described at the moment as the need to use this power should it be requested by a local authority in very prescribed circumstances, but it does give that competence, that they could if they identified a need in future do that. I would say as well that that would have to be driven through a lot of detailed discussion and negotiation with stakeholders; it would also potentially have impacts upon the rights of tenants and the rights of those individuals who could be affected by it. There are a lot of hurdles to that, therefore, but the assurance I would give to you is that both in my discussion with Welsh Assembly Government Ministers and what has been said in the public domain is that whilst that competence is there the intention behind this is very, very different.

Q84 Hywel Williams: Good morning, Minister. If I could start with a broad question which we have already explored to some extent, could you tell us

what the principal purposes of the Order are and what it would allow the Assembly to do that it cannot currently do?

Huw Irranca-Davies: As I mentioned, if we start from the premise that the Assembly is still committed fully to the principle of right to buy, what it wants to be able to do is to suspend the right to buy or right to acquire temporarily, for fixed time periods, and in specific local circumstances to address specific local difficulties. It is particularly where there is a mismatch between local housing and labour markets, for example. This power cannot be seen—even though the LCO here is very specific—in isolation from the other range of powers that the Welsh Assembly currently has to tackle the issues of affordable housing, and I am happy to outline those should it be required. The other issue here is it would respond reactively to requests by local authorities. What would this mean for the person in the high street? It could mean that where there is a particular local difficulty over access to social housing which is particularly acute in an area of a town or a city or a rural area where the local authority has identified that there is a particular type of housing—two-bedroom flats or family housing—in a specific ward, not even a local authority area, then a local authority could say we will help those individuals so affected by requesting from our Assembly Government Ministers the power to temporarily suspend that type of housing in this specific area for a set period of time. That is the direct result that it could have, to actually ease some of the acute concerns in particular areas of affordable housing.

Q85 Hywel Williams: Why could this not be done through existing administrative powers or by secondary legislation?

Huw Irranca-Davies: There is already a range of powers and in fact the Assembly has made good use of these. They include, for example, the ability to vary discounts on the right to buy and so on, but what they do not have is the power to temporarily suspend the right to buy and the right to acquire and what they do not have is the ability also to alter the regulations around it. Geth, do you want to add anything to that?

Mr Williams: I think that is it; you have summed it up.

Huw Irranca-Davies: It is important to stress that it is not a magic bullet and it should not be used indiscriminately, but what it does do is it adds a significant new power where there is an acute issue to be addressed and it may well be that existing Assembly policies by and large will be able to address most affordable housing issues.

Q86 Hywel Williams: Can you explain in detail the legislative constraints which prevent the Welsh Assembly Government from achieving its policy objectives and why this Order is required. What are the legislative constraints at present?

Mr Williams: Simply they do not have the legislation allowing them to suspend the right to buy. That is their policy commitment and that is what they want to do.

Huw Irranca-Davies: Also, they cannot vary the eligibility for the right to buy and the right to acquire schemes which you would be able to do within this, but that is the nub of it.

Q87 Hywel Williams: That is a useful answer. Can you agree with me that therefore it would be helpful to have an explanation of legislative constraints like this, that is the background reasons for requiring an LCO, added to the explanatory memorandum beforehand so that it was clearer?

Huw Irranca-Davies: We would agree. One of the things we have been trying to do as each LCO has come forward is to try and get the explanatory memorandum to a position where it is increasingly clear on each one what the rationale is and where the constraints are. Your point is well-made and we will continue to work with the Welsh Assembly Government as each one is put forward to make that clear on the explanatory memorandum.

Q88 Mr David Jones: What discussions did you have with the Welsh Assembly Government as to the possible use of the Housing and Regeneration Bill as a vehicle for devolving the powers that are proposed by this LCO?

Huw Irranca-Davies: We could have looked at the Housing and Regeneration Bill or other alternative Bills as they came through in the parliamentary process but in the discussions with officials, which did look at this, they concluded that the scope of that particular Bill was insufficiently broad to include framework powers drafted in similar terms to this particular Order. It is always a moot point, can you fit it in with an existing Bill, but on balance we felt that it would be more appropriate to bring it forward through an LCO route.

Q89 Mr David Jones: Can you expand on that, in what way was the Bill not regarded as sufficiently broad?

Huw Irranca-Davies: In particular one of the issues was around disposal of land. The Bill includes a number of specific provisions relating to right to buy but the Welsh Assembly Government concluded in discussion with officials and in discussion with Whitehall officials that it was not wide enough to encompass the disposal of land held or used by a social landlord in general, it would have required some tweaking of the main Bill to put it beyond its purpose. What I can assure you of, Mr Jones, is that these discussions did take place. We do look on each one to see whether or not it could be appropriate but on this one, particularly with the issue of the disposal of land held or used by a social landlord, it made it slightly beyond the capacity of that Bill to encompass this.

Q90 Mr David Jones: Are LCOs therefore going to become the favoured route for the devolution of powers to the Welsh Assembly except in the most unusual cases where there may well be a fit with a Bill? Do you see the LCO becoming the preferred route in future?

Huw Irranca-Davies: Not necessarily. Let me give you an example: we have just produced the draft legislative programme for the UK Parliament and it is out for consultation. One of the offers that we have made to the Welsh Assembly Government at an early point is to try and identify in their forthcoming legislative programme where perhaps they could see it would fit more appropriately. Every time we have the possibility of a legislative vehicle coming down we do need to consider it, but there are advantages with the LCO route, both in terms of having legislation that is inspired and initiated from the Welsh Assembly Government, from individual Assembly members, from committees and the additional scrutiny that they are given specifically in the NAW, on the Welsh Affairs Select Committee and so on, so sometimes there are very good reasons. The primary reason has to be that it does not quite fit within the scope of an existing Bill unless you can extend it and slightly mutate it to fit, but we will still have mirror provisions, we will still have framework powers I am sure in future.

Q91 Mr David Jones: Do you regard therefore the scrutiny that is applied to such proposals as being superior here in the LCO route than in the primary legislative route? I have already complained to you about the Planning Bill; I cannot resist the opportunity of complaining again.

Huw Irranca-Davies: I do not think one is superior to the other and one of the things we do need to do—in fact I am grateful for the comments that you and others have made about the input to framework powers as well—is to make sure that when we have framework powers being sought they do have effective scrutiny as well—whether that is in pre-legislative scrutiny or as it comes through committee and so on. I was glad to see, for example, that on the most recent Bill that appeared in the Commons we specifically put aside time within the discussion of amendments on the remaining stages to make sure that the Welsh aspects were debated on the floor of the Commons, and through the usual channels I would like to see that approach being taken. It is not that one is necessarily superior to the other but each is an appropriate vehicle depending on where the request is initiated from and whether or not there is an appropriate Bill coming from the UK Parliament.

Chairman: Mr Hywel Williams, you wish to ask a supplementary and then Mrs Siân James.

Q92 Hywel Williams: Can you, for the benefit of the Committee, just outline broadly at what point a decision is taken as to whether to pursue the LCO route or the framework powers route? You will recall that in another meeting I did ask you, for example, about the Equalities Bill which was announced last week and I did enquire at the time which route was going to be taken. The Minister was less than clear at that particular point; are you yourself particularly involved or is it more the Welsh Assembly Government? How is it done and at what point?

1 July 2008 Huw Irranca-Davies MP, Mr Geth Williams and Mr Chris Meader

Huw Irranca-Davies: The ultimate decision, albeit that there is discussion around this, would have to come from Welsh Assembly Government Ministers and their officials. We can jointly look at identifying different legislative opportunities but ultimately the Welsh Assembly Government in the year ahead will be deciding where its priorities for its own generated, made in Wales legislation will be through the LCO route. For very good reasons they might decide there is nothing appropriate up here so we are going to bring forward these four, five, six LCOs in a particular area. Our involvement—we are constantly there to assist and to help and to offer our legislation as well so that if they want to they can buy into what is coming down, but for very good reasons they will make their own decisions on what they want to take up from the UK legislative offer and also what they want to bring forward themselves, but we are always there to very co-operatively work with them.

Q93 Mrs James: I want to turn back now to the scope and effect of the LCO and you did touch upon it a little earlier. We have had evidence from the Deputy Minister but can you confirm that the proposed Order would enable Measures to abolish completely the right to buy and right to acquire in Wales?

Huw Irranca-Davies: Yes, absolutely, the competence bestowed within this Order should it be signed off does allow, if the case were put forward, the complete suspension of the right to buy but I have to say the potentiality for doing that is pretty limited when you start running that past stakeholders and tenants and when it butts up against the European Convention on Human Rights in terms of tenants' rights, which I am happy to discuss further. The further reassurance I would give you is that both myself and the Assembly Ministers have made clear consistently on repeated occasions that this would be in response to local authorities making a request, it would be geographically specific, time specific and even specific potentially down to types of accommodation. With those assurances whilst, yes, it would give the competence to suspend entirely the right to buy, I would not want anybody to go out of this Committee with the mistaken idea that the Assembly is suddenly going to bring forward a Measure to do that because that would be fraught with difficulties.

Q94 Mrs James: We have taken evidence on the Committee from various organisations which bear out what you are saying. One of those people is Professor Steve Wilcox of York University and he has concluded that there are more effective ways of increasing the supply of affordable housing; how effective do you think that suspending the right to buy and the right to acquire is going to be in increasing the supply of affordable housing, particularly in the context of falling sales?

Huw Irranca-Davies: Professor Wilcox is right in so far as he says that there are indeed many other ways to tackle the issue of affordable housing and in fact the Assembly has a range of those already. He

mentioned a few of them—let me just touch on those a little bit. We have got the issue of discounts which we have already talked about, increasing the social housing grant programme, a protocol encouraging the disposal of surplus Assembly-owned land, the Rural Housing Development Fund, the Community Land Trust, introducing grants for first time buyers. All of these are important but what does this give that is in addition—to come back to the question by Mr Williams early on? It gives in addition one more tool and that tool is in a very specific way to actually suspend the right to buy or the right to acquire. It may never be used, but if there is such an acute need to temporarily suspend the right to buy then that tool will now be put into the toolbox of the Assembly, but where I would agree with him is that there is already a range of other policies that can and will continue to be used, but this tool is missing from the Assembly's armoury at the moment.

Mr Williams: The Welsh Minister last week was clear that any suspension of right to buy would not necessarily increase the supply of social housing, that would depend on whether tenants moved on and whether there was any freeing up of the stock. What it would do is ensure that the supply did not diminish further for specific amounts of time in specific areas.

Q95 Mrs James: You mentioned the Assembly Committee which examined the first version of this LCO and it recommended that its scope be broadened to include affordable housing generally. Although this proposal was not adopted what consideration was given to this recommendation and why was it not accepted?

Huw Irranca-Davies: That is an interesting one and we come back to Mr Jones' question earlier on: how do you get an LCO to do what it says on the tin? This one is very much to do with the issue of right to buy, right to acquire, across all the various assets that could be affected by that, including stock transfer. When you then broaden it to say let us do everything under affordable housing, we have argued consistently that as these LCOs progress we should be trying to define appropriately what the scope, what the breadth of them is. This one very much, I have to say, at this stage does do what it says on the tin; it is quite specific but quite effective. Once you take it wider into that whole domain, where they currently do have, I have to say, the ability to use different policy approaches to affordable housing, it goes well beyond what the original intention of this policy was. Within the *One Wales* document, within the Plaid Cymru manifesto and within the Labour manifesto running up to the last Welsh Assembly elections there were commitments to do this, not to do 101 other things, so this is quite specific, it delivers on what was requested and it does what it says on the tin.

Q96 Mr David Jones: I wonder if I could ask Mr Meader how content the Department of Communities and Local Government is at a policy that could potentially result in the abolition of the right to buy in part of the United Kingdom.

Mr Meader: As the Minister was saying a moment ago it is understood and on the record that the Welsh Assembly Government and the National Assembly do not have the intention to abolish the right to buy. My Ministers formed the view that the power to control the disposal of social housing in Wales—that is the right to buy, the right to acquire, individual voluntary disposals and stock transfers—was an appropriate response to the needs that had been set out by the Welsh Assembly Government and the National Assembly and indeed also a response to the commitments that had been given in various election manifestos.

Q97 Mr David Jones: Given that you accept the Welsh Assembly Government's assurance why do you consider that they need such a broad and extensive power?

Mr Meader: Again, the Minister made the point a few moments ago that perhaps the power is not that broad, it covers the disposal of public housing, social housing, under four very distinct programmes—the right to buy, the right to acquire, voluntary disposal of individual properties and stock transfers—but it does not go beyond that or go into other areas and this was considered appropriate in the circumstances.

Q98 Mr David Jones: What consideration has been given to the potential financial impact on HM Treasury if in fact the right to buy were suspended for an extended period or even abolished?

Mr Meader: In Wales?

Q99 Mr David Jones: Yes.

Mr Meader: Treasury officials formed the view that the effect would be neutral.

Q100 Mr David Jones: Can you explain that a bit more?

Mr Meader: We can take it that the Treasury would be concerned about something that cost money and Treasury officials, on the basis of what they saw, took the view that the financial effects of this would be neutral because there would be no disposals involving discounts. There is obviously a loss to the public purse there in the sense that the disposing authority does not receive the full market value and then again there would not be grant paid out and so on and so forth. You would have to speak to Treasury officials for the full detail on that.

Huw Irranca-Davies: It might be worth adding as well, Mr Jones, that it is quite likely that the application of these Measures could well be fairly limited in terms that local authorities have to bring them forward and the local authorities will also have to make their own decision as to whether they think this will cost them or benefit them as well. The take-up of the right to buy historically in many areas of Wales has been quite extensive already so the application of this, whilst being one tool in the toolbox, could be fairly limited and hence the impact on the Treasury could equally be fairly limited.

Q101 Mr David Jones: It could certainly be limited but it could also amount to the abolition of the right to buy.

Huw Irranca-Davies: You know as well as I do how keen the Treasury are to ensure anything that passes legislation through this place does not have the danger of doing that and they are very content.

Q102 Chairman: Minister, could we have some clarification via you from the Treasury on these points that have just been raised because our advice is to the contrary of what we have just heard, so it would be helpful.

Huw Irranca-Davies: I am happy to do that, Chairman.¹

Q103 Albert Owen: If I could just take you back, Minister, to what you said about local authorities having other tools to suspend certain sections of the community, am I right to say that local authorities as the law currently stands now can say to senior citizens that they waive their right to buy at this moment in time because the housing stock is valuable and also with regard to houses that are adapted for disabled people, they do not have the right to buy? The local authority under the current legislation can prevent the right to buy for those social tenants.

Mr Meader: Yes, up to a point. Certain categories of property, particularly properties that have fixtures and fittings *et cetera* which are suitable for the disabled—

Q104 Albert Owen: What about senior citizens?

Mr Meader: They are excluded from the right to buy and also properties which are deemed particularly suitable for elderly people so long as they have been rented out for that purpose before then. On that though, where a tenant has been denied the right to buy on the grounds that the property is particularly suitable for someone who is elderly, they have the right of appeal to a residential property tribunal.

Q105 Albert Owen: Will this LCO in any way affect that? Will they still have those rights to appeal?

Mr Meader: The LCO will of course give them a legislative competence to legislate in respect of these programmes but at present the right to buy rules apply to England and Wales.

Q106 Albert Owen: I understand that.

Huw Irranca-Davies: It would depend on any subsequent Measure that did come forward is the essence of the answer and any Measure that came forward would have to be subject to the widest consultation.

Q107 Albert Owen: But there may be certain rights to appeal; would that still stand?

¹ Ev 32

1 July 2008 Huw Irranca-Davies MP, Mr Geth Williams and Mr Chris Meader

Mr Williams: Whatever stands at the moment would continue to stand as a result of this competence being conferred on the National Assembly. It may change in the future subject to any Measure that is brought forward.

Q108 Alun Michael: I wonder if I could just clarify this business of the Legislative Competence Order doing what it says on the tin. You just said a moment ago that local authorities would have to request that the sale of properties be suspended but I could not actually see that limit in the Order. Where does that limit come from?

Mr Williams: That is not in the Order, that is the policy intention of the Welsh Assembly Government.

Q109 Alun Michael: Sorry, it is the policy intention not the legislation.

Mr Williams: Yes.

Q110 Alun Michael: In that case can I suggest to you that it does not say that on the tin. The point I am making is that there is a danger of unintended consequences which the Committee is probing. You have said to us that there would have to be an application by a local authority, it is going to be absolutely clear that that is not a necessary requirement, that is a policy decision, that policy decision could be changed by the Assembly at any time, there might be a commitment at the moment that that should be the case but that is not guaranteed in the future.

Huw Irranca-Davies: You are absolutely right, Mr Michael, and it is certainly the case that once a competence is bestowed any subsequent administration could bring forward a Measure, subject to all the parameters we have said, that could change the way it is applied.

Q111 Alun Michael: One of the other issues that we have already probed with the Assembly Minister was the issue of whether land that is capable of being used for housing but is not currently used for housing purposes and perhaps is not even designated for future use for housing purposes, could come under the aegis of this Order—for example, school playing fields or land that is currently held for open space or wider social purposes. Could that sort of land come under the requirements of the Order?

Huw Irranca-Davies: On their own as school playing fields, for example, they could not come under the Order but they could come under the Order if those fields were being held for housing purposes. For example, if similar provision has been identified elsewhere and a social landlord is now holding the site of a former playing field in order to build new homes, it could well do.

Q112 Alun Michael: In other words there has been a designation that the purpose is now for future housing.

Huw Irranca-Davies: Yes.

Q113 Alun Michael: Who has the power to make that designation, does the Assembly or only the local authority?

Huw Irranca-Davies: The term that we are using within this, “land held for housing purposes”, reflects the wording used in the Housing Act 1985; however, the application of that, if I am correct, will depend on the Measures being put forward. For example, you are right in saying that land acquired by a social landlord for purposes other than housing but subsequently identified for housing purposes would be within the scope of this Order.

Q114 Alun Michael: Who can make that designation?

Huw Irranca-Davies: That definition is already enshrined within the 1985 Housing Act.

Q115 Alun Michael: What does it say?

Huw Irranca-Davies: It says “As defined in the Interpretation Act as including buildings and other structures, land covered with water and any estate, interest, easements, servitude or right in or over land.”

Q116 Alun Michael: If land has been used for a purpose—it might have been used as docks land, it might have been used as open space, it might have been used as school playing fields—and is designated as land that can be used for housing in the future, who makes that designation? It is the local authority normally I believe, but can the Assembly?

Mr Williams: What you are getting at here is the planning system in Wales.

Q117 Alun Michael: No, I am getting at the designation of land.

Mr Williams: Perhaps we should offer to write.²

Q118 Alun Michael: I will accept that in the spirit that it is offered. Is the proposed Order intended to enable Measures directing organisations like housing associations to dispose of land to other bodies that are prepared to develop affordable housing? What I am getting at there is if a housing association let us say holds a bank of land that they have not yet developed, which is often the case, is there any intention that the Order could be used to direct them to release that land?

Huw Irranca-Davies: I am afraid on that one, Mr Michael, you have drawn me into the realms of speculation on areas that we have not discussed. That would be really subject to the Measures brought forward.

Q119 Alun Michael: I asked whether it was the intention, can I ask whether it would be possible to make such a direction?

² Ev 32

Mr Williams: I think it would be possible.

Huw Irranca-Davies: Yes, we believe it would.

Q120 Alun Michael: We are going to return to clarity and precision at a later stage but if an Order like this is to be absolutely clear and to have the contents clear on the tin as you put it earlier, should it not be clear that it is limited to the intentions that are expressed in the explanatory papers that come with it?

Huw Irranca-Davies: I would agree with you to an extent but what we cannot do is anticipate every single policy intent that might subsequently come from the Assembly. There is the power within this to alter regulation and we believe there is the power within this to give direction and we can write to clarify as far as we can on that.³

Q121 Alun Michael: I am sorry, what I am saying to you is should not the Legislative Competence Order be so drafted as to only give the powers that are intended to be drafted in order to live up to your suggestion that its content should reflect what is on the tin.

Mr Williams: The Government believes that disposal of land for social housing as a whole was a coherent, sensible, block of competence if you like to confer to the Assembly and that specific provision in relation only to suspension of the right to buy would be relatively narrow and would be relatively complex to express in the Order.

Q122 Alun Michael: The point that I put to you though is that that definition may look narrow but it is actually porous in some respects and we have to think of long term use of powers, do we not, when we agree to them being transferred?

Mr Williams: Indeed, but the Government would argue that it is specific to the provisions set out in the Order that we make in relation to right to acquire, right to buy and stock transfer, disposal of land in that regard.

Huw Irranca-Davies: Just to add for clarification on the point that you raise, it is the local housing authority that can acquire or appropriate land for housing purposes. The Welsh Minister's consent, however, is needed for disposal of the land or to designate it for another purpose. It does fall within the remit of this LCO.

Q123 Mr David Jones: It is a draughtsman issue again. We have discussed already the issues of the term "disposal" and the term land. The Order notes that "disposal of land held or used for housing purposes includes in particular . . ." and then goes on to refer to provisions in the Housing Acts of 1985 and 1996. Are you able to give us an exhaustive list of what it includes? What else does it include apart from those provisions?

Huw Irranca-Davies: In fact the phraseology that is used within the LCO for the purposes of this matter of disposal of land held or used for housing includes "in particular, a disposal of land to which any of the

following applies" and it goes on to the provisions within the 1985 and 1996 Acts covering the right to acquire, the right to buy and stock transfer. When it uses the terminology "in particular" it refers to the provisions under those, so it is not in particular and a range of others, it is in particular those that are referred to there.

Q124 Mr David Jones: Why not refer just to those provisions rather than use the words "in particular"?

Mr Williams: We are not aware of other provisions that would relate to the policy intention of this Order. I do not know whether you want to add anything.

Mr Meader: We considered that. Our lawyers looked into it and those are the provisions governing the disposal of social housing by a social landlord.

Q125 Mr David Jones: Would you accept that we do not need the words "in particular" and we could refer simply to those two pieces of legislation?

Huw Irranca-Davies: I hesitate not being a lawyer myself but I am advised—

Q126 Mr David Jones: Could you write to us?

Huw Irranca-Davies: I am advised that the use of the words "in particular" there specifically relates to the listed acts.

Q127 Mr David Jones: I understand; I can see no reason why we should have the words "in particular" at all, all we need to do is refer to those two pieces of legislation, unless you can come up with any argument to the contrary in which case perhaps you could drop us a line.

Huw Irranca-Davies: I am certainly happy to do that.⁴

Q128 Albert Owen: Earlier on you explained the changes between the original and the revised Order and in particular the definitions of social landlords. Just being specific here, after amendments were made by the Assembly Committee the "registered social landlords" term was used and I believe the term "managers" was also added for insolvent social landlord, but when we read the Order they are not referenced to precise sections of the legislation. Could you explain why that is, why we need this broad reference and why it is not specific to specific areas?

Huw Irranca-Davies: Yes, indeed. In the original there was a list of social landlords but the list contained therein was incomplete, it did not cover the scope of what we currently have in front of us. It would also partially exclude things such as voluntary transfers and so it made no sense of the competence that was being conferred in this respect. It would also exclude land held by a social landlord for housing purposes as has been referred to earlier where no dwellings are yet built but it was being held possibly for that purpose; that is why the changes were subsequently made.

³ Ev 32

⁴ Ev 32

1 July 2008 Huw Irranca-Davies MP, Mr Geth Williams and Mr Chris Meader

Q129 Albert Owen: Are you confident that the definition “social landlord” is now broad enough to cover all those relevant landlords?

Huw Irranca-Davies: Yes, we are. There has been a lot of dialogue on this back and forth and we are confident, I am advised, that this will cover all the ones relevant to right to buy, right to acquire and stock transfer.

Q130 Alun Michael: Could we come back to the terms of the Bill? Are you absolutely satisfied that the proposed Order is defined well enough to articulate clearly its intentions and its scope to all interested parties?

Huw Irranca-Davies: Yes, I am, and it is noticeable that there is support for this and what is within the Bill from TPAS—the Tenant Participation Advisory Service Cymru. They have looked at this and they are confident that it gives them the clarity to satisfy their needs in terms of affordable housing as well as, I have to say, official confidence that this is appropriate.

Q131 Alun Michael: But we are talking about the precision of a piece of legislation here.

Huw Irranca-Davies: Yes.

Q132 Alun Michael: Therefore the precision is extremely important and it seems to me from some of the earlier answers that you have given that it would be possible to use the powers conveyed in this Order in a variety of ways that are quite different to the intention. You have reinforced the view that has come from some quarters that the proposed Order would be interpreted narrowly rather than broadly, but that is not the way that some people see it and it is not the way that some people want the powers to be used, so there does seem to be a degree of confusion here. Are you sure that the phrasing of the Order is adequate for it to be clear what it does not do or are there dangers of unintended consequences?

Huw Irranca-Davies: The only unintended consequence would be an administration that took the competences bestowed within this Order and had a clearly different policy intent behind it, so I do take what you are saying, we could narrow this or another LCO to the extent that we determine what will subsequently be done with it quite narrowly. There is an element here of working within the Government of Wales Act 2006 in transferring this competence, seeing where the policy intention currently is, but recognising and having confidence in the National Assembly for Wales and the Ministers down there that the Measures that they bring forward will be appropriate and will satisfy the needs of the community out there. You are right in what you are saying, what we are not trying to do within this LCO is actually to determine precisely for now and forever what the Welsh Assembly Government may do with it.

Q133 Alun Michael: Given that the Measure can be used in a variety of ways other than the current policy intentions, given also that the definitions are porous in the sense that land can be defined

differently for the future and this can raise all sorts of community issues, would it not be to everybody’s benefit if there were an element within the Order that said the use of these powers shall be limited to the intentions that have been set out in the explanatory memorandum, would that not be closer to actually putting on the tin the precision of what the contents are?

Huw Irranca-Davies: I do know what you are saying but I am conscious that when we bring forward either this LCO or when we are looking at framework powers going through on the floor of the Commons there is always an element that once we have passed those powers to the Assembly it is then within the gift of the Assembly to change policy over time, to interpret them differently and there is an element of trust and faith in the institution then of the Welsh Assembly Government and the scrutiny given by the National Assembly of Wales members.

Q134 Alun Michael: Does it not go well beyond to the possibility that powers will be dealt with in ways that are wholly unintended by yourself or the Assembly Ministers that are proposing the transfer of these powers at the present time?

Huw Irranca-Davies: I do see what you are saying, Mr Michael, but we recognise as well that over time policy might well change in response to what the housing market is and what the needs for affordable housing in Wales are. It is important that within the scope of any LCO that we deliver it does allow that flexibility for change. I know what you are saying is that there could be a potentially detrimental policy intent.

Q135 Alun Michael: No, what I am saying is that it may go beyond what is intended, beyond the powers that the Assembly is actually seeking in its explanation of the powers that it wants. It is a lack of legislative precision that is concerning me.

Huw Irranca-Davies: What I can reassure you about in terms of the definitional points that you talked about—which are laid out in previous Acts of this Parliament—is that there is certainly clarity in terms of the powers that are being sought and the powers that can be conferred. However, what I cannot give you entire clarity on is what the ultimate policy intention may be in 10 years time.

Q136 Alun Michael: No, but the legislative intention needs to be clear so surely we ought to be clear on the face of the Measure as to the powers that are being transferred and that it is limited to those in order to obviate the danger of unintended legislative complications.

Huw Irranca-Davies: You are right in what you are saying in that the powers conferred need to be clear and we are confident that the powers that are being sought and are being conferred are clear in the competence that they bestow. Whilst there is also quite a clear policy intent that is being argued at the moment that might bring forward Measures, what I cannot do and I know you would not expect me to do is to double-guess five or 10 years down the line.

Q137 Alun Michael: With respect—I will just make this point once more—we are talking about the possibility of unintended legislative consequences which is why precision in the legislation surely is necessary to a greater extent than we have. I suggest you should reflect on that.

Huw Irranca-Davies: Right, okay.

Q138 Chairman: If I could turn at the end of this session now to the European Convention on Human Rights, we have asked a series of questions of the Deputy Minister from the Welsh Assembly Government who appeared before us and she also very kindly sent us a letter clarifying some of her evidence. Could I pose the same question: what consideration have you given to the European Convention on Human Rights concerns in respect of the proposed Order, in particular Article 14. Could it be engaged by Measures suspending the right to buy in one area but not in another?

Huw Irranca-Davies: In bringing forward any Legislative Competence Order, Dr Francis, the process is certainly governed by whether or not we do feel that this would breach any convention issues on human rights. In respect of this particular LCO it is worth pointing out that any Measure brought forward as a response to this LCO is actually outside of the Assembly's legislative competence if it is incompatible with Convention rights. Given the Assembly competence in any particular policy area has no direct impact on the enjoyment by any individual of those rights, it is only an Assembly Measure that could do that subsequently so conferring competence here cannot authorise the Assembly to pass a Measure which violates the European Convention on Human Rights. Section 94(6)(c) of the Government of Wales Act 2006 states clearly that a Measure is outside the Assembly's competence if it is incompatible.

Q139 Chairman: Have you sought legal advice on all of this?

Mr Williams: I do think there is an element here about trusting the National Assembly. I do not think there is any reason why the National Assembly would want to bring forward Measures that were incompatible with Convention rights any more than this House would. If there is not an element of trust there is a whole series of safeguards in the Government of Wales Act. As the Minister said an Assembly Measure is outside competence if it is incompatible with Convention rights; the Attorney-General can refer a Measure to the Privy Council or in time to the Supreme Court if he believes that the Assembly has acted outside its competence; the safeguards are there.

Q140 Chairman: If I can switch back to the Minister, could the Minister then give assurance to this Committee that the Convention could not be breached by Measures which could be introduced under this Order?

Huw Irranca-Davies: Yes, indeed, Dr Francis, and it might be helpful if I explained a bit further how that might work. Whether an interference—and the primary one we are looking at here is the right to peaceful enjoyment of possessions, Article 1 of the first protocol to the European Convention on Human Rights—with property rights is proportionate would depend on the severity of the interference and the strength of the public interest justification for it, so suspending the right to buy could be deemed to interfere with a person's enjoyment of their property and would therefore need to be justified on public interest grounds and satisfy that test of proportionality but, yes, I can give you the reassurance as with all Legislative Competence Orders that any Measure subsequent to conferring a competence would be subject to the Convention on Human Rights and the Assembly could not act in contradiction to it.

Q141 Chairman: Could you clarify one final point for me then? In an earlier response to a question from Mr David Jones you seemed to be saying that the abolition of the right to buy would present problems in respect of the European Convention on Human Rights. The Assembly Deputy Minister in her letter which we received yesterday states—and there is an echo of what you just said a moment ago—that decisions in Northern Ireland and Scotland have found that changes to the right to buy were, she says, “reasonable, objective and proportionate justification for the policy”. Could I ask you once again to outline the legal position as you see it?

Huw Irranca-Davies: Absolutely. The Deputy Minister was right in what she wrote in that part of the letter that you just recited, Dr Francis, because as I have just outlined it is an issue of proportionality in balancing the public interest against the rights of the individual and, certainly, where this has been looked at before in other jurisdictions it has been proven that there is actually no contravention of the European Convention on Human Rights. You mentioned Article 14, Dr Francis, the prohibition on discrimination; the Assembly could not legislate in breach of Article 14, it could not apply unjustified discriminatory Measures. I hope that reassurance gives clarity; the subsequent Measures could not be brought forward if they were a contradiction of the Convention on Human Rights.

Chairman: Minister, thank you and thank you to your colleagues as well for a very helpful session this morning.

Written evidence

Letter from Rt Hon Paul Murphy MP, Secretary of State, Wales Office, to the Chairman

PRE-LEGISLATIVE SCRUTINY OF THE PROPOSED ORDER IN COUNCIL DEALING WITH HOUSING

I am writing to invite you and your committee to undertake pre-legislative scrutiny of the proposed Order in Council dealing with Housing. I am pleased to be able 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.

I have today laid the Order along with the accompanying Explanatory Memorandum before Parliament in the form of a Command Paper (CM7379) 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 enclosing a copy of the Command Paper.

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

13 May 2008

Welsh Affairs Committee Press Notice

PRE-LEGISLATIVE SCRUTINY OF THE PROPOSED LEGISLATIVE COMPETENCE ORDER IN COUNCIL DEALING WITH HOUSING

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 20 May 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 Order dealing with housing. The proposed Order, together with an explanatory memorandum by the Welsh Assembly Government, was published as a Command Paper by the Wales Office in May (Cm 7379) and can be found on the Wales Office website at:

http://www.walesoffice.gov.uk/wp-content/uploads/2008/05/cm-7379-wales-na_housing.pdf

The Welsh Affairs Committee invites written submissions on the proposed Order, which should be received by 6 June. If you wish to submit written evidence, please send it to the following address:

by email:

welshcom@parliament.uk

or by mail:

Welsh Affairs Select Committee, House of Commons, No 7 Millbank, London SW1P 3JA
Please head your submission "Proposed LCO on housing".

The Committee also expects to hear formal oral evidence in this inquiry, and will announce details of this as soon as the programme has been agreed.

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. Is the use of an LCO more appropriate than, for example, the use of framework powers in a Westminster Bill?
4. To what extent there is a demand for legislation on the matter(s) in question?
5. Are there any cross-border issues relating to the LCO? (Would legislation subsequently be required in England?)
6. To what extent might the transfer of functions proposed have wider implications for the UK budget?
7. To what extent might the transfer of functions impact on reserved functions?
8. 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?

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 Select Committee

22 May 2008

 PROPOSED ORDER FOR PRE-LEGISLATIVE SCRUTINY

 DRAFT STATUTORY INSTRUMENTS

2008 No.

CONSTITUTIONAL LAW

DEVOLUTION, WALES

**The National Assembly for Wales (Legislative Competence)
(Housing) Order 2008**

Made - - - - *****

Coming into force in accordance with Article 1

At the Court at Buckingham Palace, the ***** day ***** of ***** 2008

Present

The Queen's Most Excellent Majesty in Council

In accordance with section 95(5) of the Government of Wales Act 2006(1), 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 and commencement

1. This Order may be cited as the National Assembly for Wales (Legislative Competence) (Housing) Order 2008 and it comes into force on the day after the day on which it is made.

Amendments to Schedule 5 to the Government of Wales Act 2006

2.—(1) Part 1 of Schedule 5 to the Government of Wales Act 2006 is amended in accordance with this article.

(2) In field 11 (housing) insert—

“*Matter 11.1*

Disposal by a social landlord of land held or used for housing purposes.

(1) 2006 c. 32.

For the purposes of this matter, a disposal of land held or used for housing purposes includes, in particular, a disposal of land to which any of the following applies—

- (a) a provision of Part 2 of the Housing Act 1985;
- (b) a provision of Part 5 of the Housing Act 1985;
- (c) a provision of Chapter 2 of Part 1 of the Housing Act 1996;
- (d) a provision of Chapter 4 of Part 1 of the Housing Act 1996.

Interpretation of this field

In this field “social landlord” means any of the following—

- (a) a county or county borough council in Wales;
- (b) a development corporation established by an order made, or having effect as if made, under the New Towns Act 1981;
- (c) the Commission for the New Towns which continues in being by virtue of section 35 of the New Towns Act 1981;
- (d) a housing action trust established under section 62 of the Housing Act 1988;
- (e) a housing association within the meaning of section 5 of the Housing Act 1985;
- (f) a housing trust within the meaning of section 6 of the Housing Act 1985;
- (g) a housing co-operative within the meaning of section 27B of the Housing Act 1985;
- (h) an urban development corporation established under section 135 of the Local Government, Planning and Land Act 1980;
- (i) the Welsh Ministers;
- (j) a social landlord registered under Part 1 of the Housing Act 1996;
- (k) a manager appointed under Chapter 4 of Part 1 of the Housing Act 1996.”

Clerk of the Privy Council

WELSH ASSEMBLY GOVERNMENT EXPLANATORY MEMORANDUM

CONSTITUTION LAW: DEVOLUTION, WALES

PROPOSAL FOR A LEGISLATIVE COMPETENCE ORDER RELATING TO HOUSING

INTRODUCTION

1. The Government of Wales Act 2006 (“the 2006 Act”) empowers Her Majesty, by Order in Council, to confer continuing legislative competence on the National Assembly for Wales (“the Assembly”) to legislate by Assembly Measure on specified matters. Assembly Measures may make any provision which could be made by Act of Parliament (and therefore can modify existing legislation and make new provision), in accordance with the competence conferred on the Assembly and subject to the provisions of the 2006 Act.

2. The attached document is a proposed Order in Council. It sets out a matter which it is proposed to add to the legislative competence of the Assembly. In order to do so, an Order in Council will need to be made by Her Majesty following approval of a draft of the Order by the Assembly and by both Houses of Parliament.

3. This memorandum has been prepared by the Welsh Assembly Government. It explains the background to and context of the proposed Order in Council.

4. The proposed Order would confer further legislative competence on the Assembly in the field of housing (Field 11 within Schedule 5 to the 2006 Act). Attached at Annex A is a copy of Schedule 5 showing the legislative competence that the Assembly has acquired to date.

BACKGROUND

5. New legislative powers in respect of the specified “matter” will enable the Welsh Assembly Government, Assembly Members and Assembly Committees to bring forward proposals for legislation, in the form of Measures, which are based on Welsh priorities and timescales. These Measures will be subject to thorough scrutiny and approval by the Assembly.

6. Housing has been a devolved subject area for many years and the Assembly Government has wide ranging powers under the Housing Act 1985 (as amended) and the Housing Act 1996 (as amended).

7. The Assembly Government’s National Housing Strategy sets out a vision “that everyone should have the opportunity to live in good quality, affordable housing; be able to choose where they live and whether buying or renting is best for them and their families”. The Strategy seeks to focus on quality, choice and promoting sustainable home ownership.

8. The Assembly Government has already used its powers to make secondary legislation to develop a distinctive approach tailored to the particular circumstances of Wales which differ in significant respects from those in England. The previous Assembly approved a number of Statutory Instruments concerning Low Cost Home Ownership schemes (such as the Right to Buy and the Right to Acquire) to:

- (a) reduce the maximum discount from £24,000 to £16,000,
- (b) extend the number of rural areas where restrictions may be placed on resale, and
- (c) allow landlords a “right of first refusal” to repurchase properties offered for resale within 10 years of the original purchase under the Right to Buy/Acquire.

9. The Assembly Government has also taken action in a number of other areas concerning affordable housing. These include:

- (a) revised Planning guidance on Affordable Housing and Joint Housing Land Availability Studies;
- (b) a local Housing Market Assessment Guide;
- (c) an Affordable Housing Toolkit (which identifies the full range of powers and tools available to local authorities and their partners to maximise the provision of affordable housing);
- (d) increasing the Social Housing Grant programme by 72% over four years; and
- (e) a protocol to encourage the disposal of surplus Assembly-owned land for affordable housing.

10. The proposal for these powers is also made in the context of the limitations to the current settlement, which in some respects restricts the Assembly Government from tackling Welsh priorities and issues. In a number of areas the Welsh Assembly Government’s existing powers are constrained. The main limit to the current arrangements is that the Assembly has no express statutory power to vary the qualification provisions of the Right to Buy and Right to Acquire in order to meet the particular housing needs of people and communities in Wales.

11. Over 70% of Wales can be regarded as rural in character. The Assembly Government has taken a number of actions to assist the development of affordable housing in rural areas including support for Rural Housing Enablers and Community Land Trusts. However, in some communities very few properties remain in the social housing stock. Almost 60% of properties in Powys and Ceredigion have been sold under the Right to Buy/Acquire.

12. Since the introduction of the Right to Buy (in 1980) and Right to Acquire (in 1997) 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). Although the immediate effect of a tenant exercising these rights is a change in tenure from tenant to owner-occupier, dwellings that would otherwise have become available for re-letting for social housing have been sold on the open market. This has substantially reduced the amount of social housing available for rent by people in housing need. This is a particular problem in areas of housing pressure. There were 631 Right to Buy claims during the July to September 2007 quarter.

13. However, in the same quarter (July to September 2007) 1,578 households were homeless and in priority need while 2,955 households were in temporary accommodation (including Bed and Breakfast). Despite the actions outlined above, homelessness remains at a significant level while the size of the social housing stock continues to diminish.

14. To take further action concerning affordable housing, the Welsh Assembly Government believes that additional powers are required to enable it to legislate by means of an Assembly Measure under powers contained in the Government of Wales Act 2006.

15. The "One Wales" programme of government of the Welsh Assembly Government includes a commitment to draw down legislative power to the Assembly in order to suspend the Right to Buy in areas of housing pressure.

16. This follows on from manifesto commitments put forward by both parties in the 2007 Assembly elections. The Labour manifesto contained a commitment to seek new legislative powers to be able to retain the pool of housing available for rent in areas of high housing need, as one measure to improve the availability of affordable housing. The Plaid Cymru manifesto contained a commitment to repeal the "Right to Buy" in housing hot spots where there is a shortage of rented accommodation.

17. The proposed Order would confer legislative competence on the National Assembly for Wales to enable it to pass Assembly Measures in relation to the disposal by a social landlord of land held or used for housing purposes. This would enable the Welsh Assembly Government to develop Welsh solutions to address Welsh priorities.

SCOPE

18. It is proposed to amend Part 1 of Schedule 5 to the Government of Wales Act 2006 Act to add a Matter under Field 11: housing. Matter 11.1 relates to a disposal by a social landlord of land held or used for housing purposes. For the purposes of matter 11.1, a disposal of land held or used for housing purposes includes, in particular, a disposal of land to which any of the following applies:

- (a) a provision of Part 2 of the Housing Act 1985 (includes a disposal of land under section 32 (land held for housing purposes) and section 43 (disposals not within section 32) of the Housing Act 1985);
- (b) a provision of Part 5 of the Housing Act 1985 (the Right to Buy);
- (c) a provision of Chapter 2 of Part 1 of the Housing Act 1996 (includes disposal of land by a Registered Social Landlord and the right to acquire); and
- (d) a provision of Chapter 4 of Part 1 of the Housing Act 1996 (includes disposal of land by a Manager appointed under this Part).

19. This would enable the Assembly to bring forward a Measure under Part 3 of the 2006 Act relating to disposal by a social landlord of land held or used for housing purposes, in particular a disposal of land to which any of the provisions outlined in (a)–(d) above apply. The scope of the Order therefore includes competence to suspend the Right to Buy, the Preserved Right to Buy and the Right to Acquire in areas of housing pressure in line with the policy intent.

20. In present circumstances, where there can be localised shortages of social housing, the matter would 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 and to define the circumstances or conditions which would have to be met in order for such a suspension to be considered or permitted.

21. The principal purpose, therefore, of this Order is to confer legislative competence on the Assembly to pass Measures under Part 3 of the 2006 Act that will give effect to policies of the Welsh Ministers aimed at improving the availability of "affordable housing" in Wales. Improving the supply of affordable housing for both rent and purchase is an area of priority for the Welsh Assembly Government.

GEOGRAPHICAL LIMITS OF ANY ASSEMBLY MEASURE

22. Section 94 of the 2006 Act imposes a prohibition upon Assembly Measures having effect other than in relation to Wales. It provides that a provision of an Assembly Measure is not law in so far as it is outside the Assembly's legislative competence. A provision is outside competence if it applies otherwise than in relation to Wales or confers, imposes, modifies or removes functions exercisable otherwise than in relation to Wales (or gives power to do so). There are limited exceptions for certain kinds of ancillary provision, for example provision appropriate to make the provisions of the Measure effective, provision enabling the provisions of the Measure to be enforced and to make consequential amendments to other legislation.

23. The limitation relating to functions other than in relation to Wales means that the Assembly would not be able by Measure to confer on the Welsh Ministers, Welsh local authorities or any other public authority functions which did not relate to Wales.

MINISTER OF THE CROWN FUNCTIONS

24. This proposed Order in itself does not seek to modify or remove any functions of a Minister of the Crown. By virtue of Part 2 of Schedule 5 of the 2006 Act, the Assembly may not by Measure alter the functions of Ministers of the Crown without the consent of the Secretary of State. In relation to any future proposals that may impact on Minister of the Crown functions, the appropriate UK Government Departments will be consulted and agreement sought to any future proposals to change or modify those functions.

CONCLUSION

25. 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 proposed Order to which this Explanatory Memorandum relates.

Jocelyn Davies

Deputy Minister for Housing

March 2008

Memorandum submitted by Community Housing Cymru

Community Housing Cymru is the representative body for housing associations and community mutuals in Wales, which are all not-for-profit organisations. Our members provide 95,000 homes and related housing services across Wales. Our members employ 4,000 people and spend over £300 million in the Welsh economy every year. We are also active in community regeneration throughout Wales, including some of its most deprived communities.

PROPOSED AFFORDABLE HOUSING LCO COMMITTEE—THE NATIONAL ASSEMBLY FOR WALES (LEGISLATIVE COMPETENCE) (NO 5) ORDER 2008 RELATING TO THE DISPOSAL OF DWELLINGS AND DWELLING HOUSES BY SOCIAL LANDLORDS (AFFORDABLE HOUSING)

1. *What are your views on the General principle that legislative competence in the area identified in Matter 11.1 be conferred on the Assembly?*

- Community Housing Cymru welcomes the Legislative Competence Order and supports the full devolution of housing policy to Wales. Community Housing Cymru believes that too much social housing stock in Wales has been lost over the past 28 years since the introduction of the Right to Buy. In 1981 Local Authorities in Wales held a stock of 298,000 homes for rent in Wales which represented 28% of total housing stock. By 2005–06 the figure had been reduced to 156,000—12% of total stock.
- The Assembly has already successfully used its powers to make secondary legislation to reduce the amount of discount available under Right to Buy and Right to Acquire. Community Housing Cymru believes that it makes sense for power to be conferred to the Assembly to suspend the Right to Buy and Right to Acquire in areas of housing pressure.
- A number of Community Housing Cymru members would support a Wales wide suspension of the Right to Buy/Acquire scheme.
- Since the introduction of the Right-to-Buy scheme, total investment in affordable housing has not kept pace with need. Though welcome increases in investment have taken place in Wales, there is still a great need for further investment.

- The suspension of the Right-to-Buy/Acquire in some areas of housing pressure may help the situation but it will not be a solution to the crisis in supply. Due to the number of homes already sold and not replaced, it is vital that the supply of homes in Wales is increased through a range of actions including:
 - Increased Social Housing Grant.
 - Regulatory Reform of RSLs.
 - Section 106 Agreements.
 - The use of public land for affordable housing development.
 - Rolling out the Rural Housing Enabler initiative to cover the whole of Rural Wales.
- Suspending the Right to Buy/Acquire will not build any new homes and therefore it should be seen as just one action in a wider policy designed to improve access to housing in communities throughout Wales.
- Increased Social Housing Grant Investment, more effective use of the planning system and publicly owned land and changes to the regulatory environment of Housing Associations will be more effective in tackling the housing challenges in Wales along with greater support for the Homebuy scheme and Shared-Equity schemes in helping to increase supply and access to housing.

2. *What are your views on the terms of the proposed Order? For example are they too narrowly or too broadly drawn?*

- Community Housing Cymru believes that the terms of the proposed order are sufficiently broad to provide flexibility for solutions to be designed to support the housing needs in different regions of Wales. Whilst we accept that the main driver for this change relates to Right to Buy, it is important that the Assembly can react to other circumstances that impact on the strategic aim of improving housing provision in Wales.

3. *Is it necessary to set out the meaning of social landlord in the proposed order? If so, in relation to the meaning of social landlord, is the list of legislative provisions correct, or should there be any additions or deletions?*

- In the definition of “Social Landlord” there is no particular reference to the Community Housing Mutual (CHM) model. This potential problem could be overcome by replacing the term “Housing Association” in the Draft order with “Registered Social Landlord” in accordance with the Housing Act 1996.
- Furthermore, in the interpretation of this field “social landlord” refers to both a county or borough council as well as a housing association. Community Housing Cymru members are concerned by what might happen in the unlikely scenario that the views of a Registered Social Landlord being at odds with that of the Local Authority over the suspension of the Right to Buy/Acquire.
- In the event of a transfer having taken place, where the Local Authority remains the Strategic Housing Authority but not a Social Landlord, it is important that Associations and Local Authorities consult when preparing a case for suspension of the Right-to-Buy. We are aware that some Transfer Associations have a clause in the transfer agreement with Local Authorities requiring consultation on the impact that the use of any new powers will have on the business plan of the individual Association. A shared view of the future of the Right-to-Buy/Acquire will influence not only Stock Transfer business plans but the vision stakeholders have of regeneration and of the development of mixed tenure communities.

Community Housing Cymru

28 January 2008

**Supplementary memorandum from Jocelyn Davies AM, Deputy Minister for Housing,
Welsh Assembly Government**

THE PROPOSED NATIONAL ASSEMBLY FOR WALES (LEGISLATIVE COMPETENCE)
(HOUSING) ORDER 2008

Thank you for giving me the opportunity to provide oral evidence on the proposed Legislative Competence Order at the Committee’s meeting on 23 June.

Towards the end of the discussions, I undertook to let you have a note on whether there are any implications for the LCO arising from Human Rights legislation.

It is worth noting from the outset that there would be no issues arising directly with the LCO in relation to human rights. It must be borne in mind that we are here dealing with the mechanism by which legislative competence can be conferred on the Assembly to subsequently make substantive changes to the law. We are not here dealing with those substantive changes themselves. This LCO would not make any changes to the substantive law in respect of the Right to Buy.

The LCO will of course confer competence on the Assembly to legislate in relation to the Matter set out in the LCO. It is a fundamental feature of the new devolution settlement under the Government of Wales Act 2006 that a proposed Measure would not be within the competence of the Assembly if it was incompatible with the Convention rights and could therefore not become law in that respect (section 94(2) and (6)(c)). Section 81 of the Act also provides that the Welsh Ministers cannot make, confirm or approve any subordinate legislation if it is incompatible with any of the Convention Rights.

The Act further provides that the Presiding Officer must, on or before a proposed Measure is introduced, decide whether a Measure is within the competence of the Assembly and state that decision (section 97(3)). Additionally, the Counsel General to the Assembly Government or the Attorney General may refer questions about whether a proposed Measure or any of its provisions would be within the legislative competence of the Assembly to the Judicial Committee of the Privy Council for a decision (section 99). In due course, when the new Supreme Court fully takes up its functions, such references will be made to it.

In addition, Standing Order 23.18(i) of the Assembly's Standing Orders provides that on introduction of a proposed Measure, the Minister in charge of that proposed Measure must also lay an explanatory memorandum which must state whether in his or her view the provisions of the proposed Measure would be within the legislative competence of the Assembly. In order to be able to give such a statement the Minister will need to be satisfied that the provisions of the proposed Measure are, amongst other things, compatible with the Convention Rights. You will be familiar with the similar requirement on the Secretary of State to provide a statement on compatibility with the Convention Rights on the face of a Bill (a section 19 statement).

Consequently before introducing a proposed Measure for consideration by the Assembly we will need to satisfy ourselves that the human rights implications have been fully considered and that the proposed Measure is compatible with those Rights. It would be difficult to provide a definitive view in relation to the general proposals we have at the moment as we have not yet begun to consider the details of a Measure. However in relation to our current policy intention there is considerable pertinent case law regarding the extent of Articles 1 of the First Protocol, Article 8, and Article 14, which, it is submitted, are the most relevant for the purposes of this LCO. For instance, in *Strunjak v Croatia* the Strasbourg Court reiterated that the rights guaranteed under the Convention do not include a right to buy property. In the judgment of *Marckx v Belgium*, it was held that although a person's existing possessions are subject to protection, the Convention does not guarantee a right to acquire possessions.

Similar changes to that proposed by the Assembly Government have already been introduced in Northern Ireland and Scotland. The Northern Ireland Court of Appeal has already had to consider two applications for Judicial Review (*William McDonnell (1)* and *Nora Lilly (2)*), which were made on the grounds that being denied the opportunity to buy their property constituted a breach of human rights. Applying the above cases (and others), the Court concluded that the provision did not breach human rights legislation, and even if there had even been a breach the respondent had successfully established a reasonable, objective and proportionate justification for the policy. So the application was dismissed.

I hope the outline of the safeguards provided by the Government of Wales Act, together with the information on the case law related to this issue, will help to reassure the Committee that the Welsh Ministers and the National Assembly will give the same consideration to these issues that the Government and Parliament are required to give.

I should also like to take this opportunity to emphasise that the Assembly Government has no objection to the principle of home ownership. We recognise the benefits that mixed tenure provides on large single tenure estates. Indeed, since 2002 we have been promoting the concept of "neutral tenure" whereby Welsh housing associations have been able to offer any housing provided using Social Housing Grant for rent or on Homebuy terms, according to local needs and circumstances. The principle of neutral tenure is that applicants should be allocated housing according to their needs and relative priority. But those with sufficient income to purchase equity with assistance from the Homebuy scheme should be given the opportunity to do so.

At present, neutral tenure may be offered at the discretion of Registered Social Landlords (RSLs) in Wales. However, I intend to consult on the introduction of a requirement that RSLs offer Homebuy to tenants and prospective tenants in schemes provided with public subsidy. Before taking such a step we will need to carefully consider any long-term financial consequences and to ensure that suitable repurchasing arrangements could be put in place to ensure the stock may be retained in the social sector. However, I wanted to reassure you that the Assembly Government recognises the benefits of a plurality of tenures which meet the needs of both tenants and landlords.

Supplementary memorandum submitted by Huw Irranca-Davies MP, Parliamentary Under-Secretary of State, Wales Office

THE PROPOSED NATIONAL ASSEMBLY FOR WALES (LEGISLATIVE COMPETENCE)(HOUSING) ORDER 2008

Thank you for the opportunity to give evidence to your Committee last week on the proposed Housing Order in Council.

I promised to write to clarify three points relating to the proposed Order, and respond below in the order the commitments were given.

First, you asked what consideration has been given to the potential impact on HM Treasury arising from any Assembly Measures enabling the right to buy to be suspended. In most areas, housing policy has been devolved to the National Assembly and similar powers are already available to, and being applied in, Scotland. HM Treasury therefore approved this proposed Order in Council. As is established practice, any costs arising from subsequent policy changes would have to be absorbed by the Welsh Assembly Government.

The Standing Orders of the National Assembly (SO 23.18) require an Explanatory Memorandum to accompany any proposed Measure, setting out best estimates of any administrative, compliance and other costs arising from the provisions in the Measure; the timescales over which such costs would arise; and where they would fall. The National Assembly would therefore have a clear picture of cost implications when debating the proposed Measure.

Your Committee also asked what land would come under the aegis of the Order. For example, could land held for housing purposes include land that is capable of housing development but which is not designated for future housing use?

It may be helpful if I briefly explain the effect of the references to provisions in the Housing Acts in matter 11.1. The effect is that all disposals of land to which any of the listed provisions apply will be treated as being disposals of land held or used for housing purposes. It may therefore be useful to consider when the principle provisions listed in the Order apply.

I will start with the provisions governing the Right To Buy and Right To Acquire. Part 5 of the 1985 Act gives secure tenants the right to buy their home, and Chapter 2 of Part I of the 1996 Act gives certain tenants of registered social landlords the right to acquire their homes. In these cases, the issue of the designation of land for housing does not arise.

Turning to voluntary and stock transfers, Part 2 of the 1985 Act makes provision about other local authority disposals of houses, and of land held for purposes relating to housing accommodation. For those purposes, local housing authorities have the power to acquire not only existing houses, but also buildings which could be made suitable as houses and land on which to build houses and provided associated facilities. They may also appropriate for the purposes of Part 2 land which they already hold. So land would be held or used for housing purposes within the meaning of matter 11.1 if it is a house, or if it is land acquired or appropriated by the authority for the purposes of Part 2.

Chapter 2 of Part I of the 1996 Act gives Registered Social Landlords (RSLs) the power to dispose of land which they hold. The effect of the proposed Order is that any such disposal will be treated as a disposal of land held or used for housing purposes. However, the purposes for which an RSL may hold land will be limited by its constitution, in accordance with Chapter I of Part 1 of the Act. The purposes or powers of a registered social landlord may include both providing and managing existing housing, and acquiring land for the purposes of building homes.

I should also clarify that the fact that a local authority, in its capacity as local planning authority, designates land as suitable for future housing use does not mean that the land is held by the authority (or another owner) for housing purposes. Land would need to be held or used for housing purposes by one or more of the social landlords listed in the interpretation of Field 11 to be within the scope of the Order. For example, a public open space which has simply been designated in the local development plan for future housing use would not be within the scope of matter 11.1. But it would come within scope if acquired or appropriated by a social landlord in order to build new homes.

Finally, the Committee questioned the need for the words “in particular” to refer to the four sets of provisions set out on the face of the proposed Order. Why include these words at all if the scope of the Order is intended to include no other provision? So far as we are aware, the four provisions listed are the only pieces of current legislation under which social landlords dispose of social housing. If there were disposals under powers other than those listed in matter 11.1, they would only fall within the matter if the land in question was held or used for housing purposes.

We believe it is necessary to include the term “in particular” to ensure that the competence is not limited to the existing legislation, and that any future provision made by the National Assembly is within its competence. For example, subject to the Order being made, the National Assembly might decide to replace the existing provisions on the Right To Buy and Right To Acquire schemes (in the Housing Acts 1985 and 1996) with a single Assembly Measure. The Measure might create a comprehensive new scheme for disposals to social tenants in Wales which would not be subject to any of the provisions of the 1985 and 1996 Acts

listed in matter 11.1. The words “in particular” ensure that the provisions in any such Measure, and further amendments to those provisions, would be within the Assembly’s competence. Removing the words would result in competence being restricted to the provisions in the four pieces of legislation, which could unduly constrain the way in which the Assembly could legislate.

I hope your Committee will find these clarifications helpful in preparing its report.

9 July 2008

Supplementary memorandum submitted by the Wales Office

ASSEMBLY MEASURES:

SAFEGUARDS TO ENSURE THE NATIONAL ASSEMBLY ACTS WITHIN ITS COMPETENCE

Section 97(2) of the Government of Wales Act 2006 (“GoWA 2006”) requires the person in charge of a proposed Assembly Measure (usually a Welsh Minister), on or before introduction of the proposed Measure, to state that in his view its provisions would be within the Assembly’s legislative competence.

Section 97(3) of GoWA 2006 requires the Presiding Officer, on or before introduction of an Assembly Measure, to state his decision whether, in his view, its provisions are within the Assembly’s competence. The statement must be made in English and Welsh, and the National Assembly’s standing orders may impose publication requirements. (Standing Order 23.16 requires that when a proposed Measure is laid before the Assembly it must be accompanied by the Presiding Officer’s statement, which must include reasons if he thinks that any of the provisions are outside the Assembly’s competence.)

The Presiding Officer’s statement helps to inform the Assembly’s consideration of a proposed Measure and reduces the risk of a Measure being passed which is outside the Assembly’s competence. However, it is only one of several safeguards which are designed to ensure that the Assembly does not exceed its competence.

The first of these is that the Wales Office monitors proposed Measures on behalf of the UK Government as they pass through the Assembly. Where we identify concerns about legislative competence, we will raise them with the Welsh Assembly Government, and where necessary we would request amendments to the Measure. We would expect to resolve concerns about legislative competence in this way, rather than by challenging the Presiding Officer’s statement.

GoWA also enables the UK Government to consider the question of whether an Assembly Measure is within the legislative competence of the National Assembly. Section 99(1) provides that the Attorney General (and the Counsel General) may refer the question of whether a proposed Assembly Measure, or any provision of a proposed Measure, would be within the National Assembly’s legislative competence to the Supreme Court for decision. The Judicial Committee of the Privy Council has this responsibility until the Supreme Court is established. The Attorney General (or Counsel General) may make a reference at any time during the four weeks after the passing of the proposed Measure.

Section 101 of GoWA gives the Secretary of State the power to make an Order prohibiting the Clerk from submitting a proposed Assembly Measure for approval by Her Majesty. To do so, the Secretary of State would need to have reasonable grounds to believe that the proposed Measure contained provisions which would have an adverse impact on any matter which is not specified in Schedule 5; might have a serious adverse impact on water resources, water supply or water quality in England; would have an adverse effect on the operation of the law in England; or would be incompatible with any international obligation, defence interests or national security. The section 101 power is not specifically concerned with issues of legislative competence, but in practice the issues which are relevant to sections 99 and 101 will be similar.

Section 98(6) of GoWA requires the standing orders of the National Assembly to provide for it to reconsider a proposed Assembly Measure if the Supreme Court decides, on a reference under Section 99, that the proposed Measure or any provision of it is not within the Assembly’s competence, or if the Secretary of State makes a section 101 order. Any revision of the proposed Measure approved by the Assembly would also be subject to the safeguards set out above.

Finally, once an Assembly Measure had been made, the Attorney General (or Counsel General) could bring court proceedings for a decision about whether the Measure was within legislative competence, or refer a legislative competence issue to the Supreme Court, under Schedule 9 to GoWA. Individuals could also bring proceedings to challenge Measures on the ground that they were outside the Assembly’s competence.

GoWA makes no specific provision for challenges to the Presiding Officer’s decision. That is not necessarily surprising, since the decision only relates to the proposed Measure on introduction. After that, the scrutiny of the proposed Measure is a matter for the Assembly, and GoWA requires that the Assembly must have the opportunity to consider and vote on a Measure at several stages. The Measure may be significantly amended during its passage through the Assembly, and it is the final Measure passed by the Assembly which Her Majesty is asked to make in Council. Once the final Measure is passed, the other safeguards in GoWA come into play.

In principle, the Presiding Officer's decision on legislative competence could be challenged by third parties through judicial review. However, for the reasons given above, we imagine that the courts would be reluctant to intervene. For example, a court might hold that a legal challenge at that stage was premature or inappropriate, on the grounds that the final Measure might differ from the one introduced. There are other ways in which a third party might seek to influence the ultimate content of the Measure, and GoWA provides other protections once the Measure is passed.

The Government believes that the safeguards set out above, in addition to the rigorous scrutiny of framework powers in UK Bills and proposed and draft Orders in Council, ensure that National Assembly will not be able to make Measures which are outwith its competence.

June 2008
