



Cynulliad National
Cenedlaethol Assembly for
Cymru Wales

Proposed Affordable Housing LCO Committee

National Assembly for Wales
(Legislative Competence) (No.5) Order 2008

Committee Report
April 2008

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Proposed Affordable Housing LCO Committee

Committee Membership

Leanne Wood (Chair)	Plaid Cymru	South Wales Central
Peter Black	Welsh Liberal Democrats	South Wales West
Alun Davies	Labour	Mid and West Wales
Lesley Griffiths	Labour	Wrexham
Mark Isherwood	Welsh Conservative Party	North Wales

Summary

The conclusions and recommendations of the Proposed Affordable Housing LCO Committee are as follows:

- A majority of the Committee agrees in principle that legislative competence in the areas identified within the proposed Order should be conferred on the National Assembly.
- We recommend that, in terms of the proposed Order as currently drafted, it is amended so that the terms 'dwelling-house', 'dwelling' and 'social landlord' are undefined and accordingly, that cross-references to existing Acts of Parliament in respect of these terms are removed.
- If the Welsh Assembly Government decides to continue with its current approach to the drafting of the proposed Order, we recommend that the definition of 'social landlord' is amended to include specific reference to the term 'registered social landlord'.
- The preferred approach of the Committee is to recommend that the proposed Order is amended so that it refers to 'affordable housing' generally or to another appropriate term, although one Member considers that such an approach should specifically exclude the National Assembly from having legislative competence in respect of suspending or cancelling the right to buy or right to acquire.
- We recommend that as part of its work on preparing its new housing related strategies, the Welsh Assembly Government should consider how the planning system could be used to increase the supply of affordable housing and accordingly what legislative competence, if any, in Field 18 (Town and Country Planning) would be beneficial in helping to achieve this aim.
- We recommend that the proposed Order is not delayed, irrespective of which approach the Welsh Assembly Government chooses to adopt in introducing a related draft Legislative Competence Order for approval by the National Assembly.
- We note the Deputy Minister's comments explaining why legislative competence is being sought through a Legislative Competence Order rather than through provisions within the *Housing and Regeneration Bill* currently progressing through the UK Parliament. However, having considered its long title, we are disappointed that framework powers to tackle affordable housing issues in Wales were not agreed through the *Housing and Regeneration Bill*.

1. Introduction

Background

1. On 3 December 2007, the Deputy Minister for Housing, Jocelyn Davies AM ('the Deputy Minister'), laid the proposed *The National Assembly for Wales (Legislative Competence) (No.5) Order 2008* ('the proposed Order') and Explanatory Memorandum, in accordance with Standing Orders 22.13 and 22.14. Copies of these documents are attached at Annex 1. The Deputy Minister made a statement about the proposed Order in Plenary on 4 December 2007.¹

2. On 11 December 2007, the Business Committee agreed to refer the proposed Order to a committee for detailed consideration, in accordance with Standing Order 22.16. It agreed that the committee must conclude its consideration and report on the proposed Order no later than 11 April 2008 (this date was subsequently extended by the Business Committee to 18 April 2008²).

3. Following a resolution in Plenary on 12 December 2007, the Proposed Affordable Housing LCO Committee ('the Committee') was established in accordance with Standing Order 21, to consider the proposed Order.

4. The role of the Committee, as set out in Standing Order 22.19, is to consider and report on the proposed Order.

Terms of reference

5. At our meeting on 13 December 2007, we agreed the terms of reference of our work, as set out below:

(i) to consider the general principles of the proposed Order and whether legislative competence in the area identified in Matter 11.1 should be conferred on the Assembly; and

(ii) to consider whether the terms of the proposed Order are too broadly or too narrowly defined.

Evidence

6. We issued a general call for evidence and invited key organisations from the field of housing to submit written evidence to inform our work. A copy of the consultation letter is attached at Annex 2. A list of consultation responses is attached at Annex 3.

7. We took oral evidence from a number of witnesses, details of which are attached at Annex 4.

¹ Record of Proceedings (RoP), p39-53, 4 December 2007

² Agreed by the Business Committee on 4 March 2008

8. Supplementary written evidence from the Deputy Minister dated 31 January 2008 and 4 March 2008 is attached at Annex 5.

9. Under Standing Order 22.21, in preparing our report we must, so far as is reasonably practicable, take into account any recommendations made on the proposed Order by:

- (i) any other committee of the National Assembly for Wales; and
- (ii) any committee of the House of Commons, the House of Lords or any Joint Committee of both Houses of Parliament.

No such recommendations have been made in respect of the proposed Order.

10. The following report and recommendations represent the conclusions we have reached based on the evidence received during the course of our work.

2. Principle of the proposed Order

Background

11. The purpose of the proposed Order is to confer legislative competence on the National Assembly for Wales ('the National Assembly') in relation to affordable housing by amending Part 1 of Schedule 5 to the *Government of Wales Act 2006* to insert a new matter into Field 11 (Housing), namely:

Matter 11.1

Disposal by a social landlord of the following—

- (a) a dwelling-house within the meaning of Part 5 of the Housing Act 1985;
- (b) a dwelling within the meaning of section 63 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;
- (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 section 135 of the Local Government, Planning and Land Act 1980;
- (i) the relevant authority within the meaning of section 6A of the Housing Act 1985;
- (j) the relevant authority within the meaning of section 56 of the Housing Act 1996."

*Explanatory Memorandum*³

12. In its Explanatory Memorandum accompanying the proposed Order, the Welsh Assembly Government ('Assembly Government') explains that its National Housing Strategy⁴ 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."⁵

13. The Assembly Government explains further that it has used its existing secondary legislative powers to "develop a distinctive approach tailored to the particular circumstances of Wales".⁶ However, it considers that the current settlement in some respects restricts the Assembly Government from tackling Welsh priorities and issues, noting that in a number of areas its existing powers are constrained.⁷

14. The Assembly Government explains that the principal purpose of the proposed Order is to empower the National Assembly to make Measures:

"...that will give effect to whatever policy decisions are taken forward in due course by the Welsh Ministers to improve the availability of affordable housing in Wales".⁸

and in particular, that the proposed Order:

"...would enable the Assembly to legislate so as to permit the suspension of the Right to Buy/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."⁹

15. The Assembly Government also explains that "increasing the supply of affordable housing for both rent and purchase is an area of priority for the Welsh Assembly Government"¹⁰ and that its intention to acquire legislative competence in order to suspend the right to buy in areas of housing pressure is a commitment in the One Wales¹¹ programme of government.¹²

³ Welsh Assembly Government, *Memorandum from Deputy Minister for Housing, Constitution Law: Devolution, Wales, The National Assembly for Wales (Legislative Competence) (No. 5) Order 2008, Affordable Housing - Legislative Competence Order*, December 2007

⁴ Welsh Assembly Government, *Better Homes for People in Wales: A National Housing Strategy for Wales*, 2001

⁵ Explanatory Memorandum, paragraph 8

⁶ Explanatory Memorandum, paragraph 9

⁷ Explanatory Memorandum, paragraph 11

⁸ Explanatory Memorandum, paragraph 21

⁹ Explanatory Memorandum, paragraph 20

¹⁰ Explanatory Memorandum, paragraph 21

¹¹ Welsh Assembly Government, *One Wales: A progressive agenda for the government of Wales - An agreement between the Labour and Plaid Cymru Groups in the National Assembly*, 27 June 2007

¹² Explanatory Memorandum, paragraph 16

Evidence from organisations

16. There was broad support for the general principles of the proposed Order amongst those responding to the consultation exercise.

17. Cymorth Cymru noted that the proposed Order “comes against the backdrop of a prolonged depletion of social housing stock in Wales, and growing concern about the impact that this is having on the availability of secure, affordable accommodation across all housing sectors.”¹³

18. Carmarthenshire County Council saw the powers being sought through the proposed Order as:

“...a natural extension of legislative powers currently held by the Assembly on housing matters...”¹⁴

19. In voicing their support, the Chartered Institute of Housing Cymru said:

“We feel it is appropriate that the assembly should have legislative powers to address housing challenges and implement solutions specific to Wales.”¹⁵

20. Shelter Cymru were of the view that powers contained in the proposed Order “will make a contribution to addressing the shortage of affordable housing in Wales.”¹⁶

21. However, some witnesses concluded that the proposed Order had a limited potential to impact on the current shortage of affordable housing.

22. In supporting the proposed Order, Shelter Cymru suggested that suspending the right to buy would be useful as one instrument among others that could assist in controlling the loss of housing stock but that by itself its impact would be marginal.¹⁷ They went on to explain that:

“...perhaps in the past suspension would have been a far more useful tool to prevent the loss of council housing that has occurred over the last 20-odd years....and....perhaps the time has passed for this power to make a huge difference.”¹⁸

23. Shelter Cymru did, however, acknowledge that the potential of the proposed Order to make a difference would increase if the supply of social

¹³ Cymorth Cymru, Written Evidence, AH2

¹⁴ Carmarthenshire County Council, Written Evidence, AH1

¹⁵ Chartered Institute of Housing Cymru, Written Evidence, AH6

¹⁶ Shelter Cymru, Written Evidence, AH10

¹⁷ RoP, paragraphs [6 and 8], 29 January 2008, Proposed Affordable Housing LCO Committee

¹⁸ RoP, paragraph [25], 29 January 2008, Proposed Affordable Housing LCO Committee

housing were to increase in the future:

“We also have to think about the future, and whether there will be a further increase in social housing. If you have the ability to control the potential loss of that social housing, that could be useful. So I do not think that it is just about now, it is about what might happen in the future. I am optimistic that we will see an increase in social housing in the future and maybe having this kind of Measure will be useful.”¹⁹

24. The Welsh Local Government Association echoed this point, arguing that suspending the right to buy “would make a small but valuable contribution.”²⁰ They also pointed out that while properties sold through the right to buy and right to acquire had dwindled over recent years, and so suspending the right to buy would make a relatively small contribution at the moment, this could change with a change in the housing market.²¹

25. Tenant Participation Advisory Service (TPAS) Cymru concluded that the proposed Order’s impact on addressing affordable housing issues would be marginal²², while the Chartered Institute of Housing Cymru considered the proposal to be “fairly limited”.²³ The Chartered Institute of Housing Cymru also expressed some uncertainty about how productive the proposed Order would be in achieving its purpose²⁴, referring to it as being “a tool” in the provision of affordable housing “and probably no more than that.”²⁵ Nevertheless, both organisations supported the principle of the proposed Order.²⁶

26. When questioned on whether suspending the right to buy would contribute to improving the availability of affordable housing in Wales, Professor Steve Wilcox of York University said he did not believe that it would.²⁷

Evidence from the Deputy Minister

27. The Deputy Minister explained in her evidence to the committee that:

“The purpose of the LCO is to enable the Assembly to amend, or repeal, Part V of the Housing Act 1985, dealing with the right to buy a dwelling-house, and sections 16 and 17 of the Housing Act 1996, dealing with the right to acquire a dwelling. This is so that, in due course, we can produce a Measure suspending the right to buy and

¹⁹ RoP, paragraph [25], 29 January 2008, Proposed Affordable Housing LCO Committee

²⁰ RoP, paragraph [78], 29 January 2008, Proposed Affordable Housing LCO Committee

²¹ RoP, paragraph [79], 29 January 2008, Proposed Affordable Housing LCO Committee

²² RoP, paragraphs [7 and 21], 19 February 2008, Proposed Affordable Housing LCO Committee

²³ RoP, paragraph [77], 5 February 2008, Proposed Affordable Housing LCO Committee

²⁴ RoP, paragraphs [77 and 88], 5 February 2008, Proposed Affordable Housing LCO Committee

²⁵ RoP, paragraph [107], 5 February 2008, Proposed Affordable Housing LCO Committee

²⁶ RoP, paragraph [21], 19 February 2008, Proposed Affordable Housing LCO Committee; RoP, paragraphs [77 and 82], 5 February 2008, Proposed Affordable Housing LCO Committee

²⁷ RoP, paragraphs [136-137], 5 February 2008, Proposed Affordable Housing LCO Committee

the right to acquire in areas of pressure, in line with the 'One Wales' commitment."²⁸

28. She explained that while some powers existed in relation to the right to buy, the Assembly Government does not have the powers to suspend and the proposed Order would enable them to do that.²⁹

29. The Deputy Minister acknowledged that the scope of the proposed Order extended beyond that of suspending the right to buy and right to acquire schemes, noting that:

"...we did not want it to be very narrow, because that might have meant that, shortly, you would have had to go through this process again....the housing field seems to have a lot of legislation and is very complex and you could easily leave something out and then find that you needed that power to achieve what you wanted to achieve a little later on."³⁰

30. In this context, she indicated that the proposed Order would allow for the complete reform of the right to buy³¹, including its abolition.³²

31. She also indicated that the scope of the proposed Order would provide the National Assembly with powers to legislate in relation to stock transfer³³ as it applies to dwelling-houses and dwellings.³⁴

Our view

32. We note the broad support that exists for the proposed Order and in particular that no organisation or individual has opposed, in principle, the conferral of legislative competence in the areas identified within the proposed Order. We also note the reasons put forward by the Deputy Minister for seeking such legislative competence. While four members of the committee are in favour of such legislative competence being conferred on the National Assembly, one Member was opposed to the National Assembly being provided with powers that would enable it to suspend or abolish the right to buy or right to acquire. Accordingly, **a majority of the Committee agrees in principle that legislative competence in the areas identified within the proposed Order should be conferred on the National Assembly.**

33. However, in considering whether the proposed Order is too broadly or too narrowly drawn, and the evidence received, we believe that the specific drafting of the proposed Order needs to be reconsidered. Paragraphs 34 to

²⁸ RoP, paragraph [6], 22 January 2008, Proposed Affordable Housing LCO Committee

²⁹ RoP, paragraph [8], 22 January 2008, Proposed Affordable Housing LCO Committee

³⁰ RoP, paragraph [31], 22 January 2008, Proposed Affordable Housing LCO Committee

³¹ RoP, paragraph [103], 26 February 2008, Proposed Affordable Housing LCO Committee

³² RoP, paragraphs [143 and 145], 22 January 2008, Proposed Affordable Housing LCO Committee

³³ Also known as large scale voluntary transfer, stock transfer is the process by which local authorities transfer the ownership and management of their housing stock to registered social landlords.

³⁴ RoP, paragraphs [67-69], 26 February 2008, Proposed Affordable Housing LCO Committee

96 consider this issue further.

3. The use of definitions in the proposed Order

Background

34. As currently drafted the proposed Order provides definitions of 'dwelling-house', 'dwelling' and 'social landlord' by cross-references to existing Acts of Parliament. However, 'disposal' is not defined in any way.³⁵

Evidence from organisations - general approach

35. In their written evidence, the Welsh Local Government Association suggested that "no new definitions of social housing are created in the interest of simplicity and in order to reduce the potential for confusion."³⁶ They also expressed the need for clarity³⁷ and were in favour of terms being defined in the proposed Order rather than the proposed Measure to avoid the risk of different definitions being used, re-iterating the point that this could potentially cause confusion.³⁸

36. The Chartered Institute of Housing Cymru highlighted the potential advantages and disadvantages of the approach being adopted:

"...the definitions must achieve what you set out to gain. There is always much more clarity when consistent terms are used across different pieces of legislation....but, really, the important thing is what you want to achieve from it, as far as the definitions are concerned. The other side of having consistency is getting hung up on terms that are already there. I think that they have to be fit for purpose."³⁹

37. Professor Steve Wilcox suggested that it is advisable to follow precedent unless there is a good reason to do otherwise.⁴⁰

38. In a supplementary written submission, Shelter Cymru said:

"We do not believe that the LCO itself should include definitions as these can be contained in the subsequent measure. This could be achieved quite simply by adopting the text of the relevant Westminster legislation or developing Welsh definitions; allowing the Assembly the freedom to define the relevant terms as it wishes. The Assembly could of course use sections of the existing legislation e.g. some existing definitions, in addition to its own definition of some relevant terms, such as social landlord etc.

³⁵ Definitions of 'disposal' appear at paragraph 10 of Schedule 9A to the *Housing Act 1985* and section 9(7) of the *Housing Act 1996*.

³⁶ Welsh Local Government Association, Written Evidence, AH12

³⁷ RoP, paragraph [118], 29 January 2008, Proposed Affordable Housing LCO Committee

³⁸ RoP, paragraphs [114 and 118], 29 January 2008, Proposed Affordable Housing LCO Committee

³⁹ RoP, paragraph [119], 5 February 2008, Proposed Affordable Housing LCO Committee

⁴⁰ RoP, paragraph [195], 5 February 2008, Proposed Affordable Housing LCO Committee

This would be similar to the line taken with other LCO's in that definitions are not included but left to the measures themselves."⁴¹

Evidence from organisations - disposal

39. As regards the meaning of 'disposal', Community Housing Cymru said that their assumption was that the proposed Order will make it clear that the transfer of power refers to the disposal in a statutory sense (i.e. the right to buy / right to acquire) rather than a voluntary sense⁴² (i.e. stock transfer).

40. The Chartered Institute of Housing Cymru thought that 'disposal' means "the transfer of land or an asset for a defined purpose" and that as it is used in the proposed Order, its meaning is "fairly plain."⁴³

41. Professor Wilcox suggested that "it can be quite helpful to have loose phrasing that can encompass a number of different forms of disposal."⁴⁴

42. TPAS Cymru took a slightly different view:

"It seems that 'disposal', in general terms, could include disposal in stock transfer terms. That would seem not to be useful in terms of the LCO's intent. Perhaps that suggests that some effort should be made to provide a definition that excludes it....On disposal, specifically, it seems that it could cover stock transfer in terms of how it is stated now and perhaps that needs clarifying."⁴⁵

Evidence from organisations - social landlord

43. In their written submission, Denbighshire County Council said that the definition of 'social landlord' should be:

"...framed to include Local Authorities, Registered Social Landlords but also other bodies such as Community Land Trusts who receive public subsidy towards housing provision."⁴⁶

44. Community Housing Cymru suggested that the definition of 'social landlord' should make reference to a 'registered social landlord' as the definition of 'housing association' used in the proposed Order could omit community housing mutuals from the scope of the proposed Order.⁴⁷ In making this suggestion they said:

"It is important that the new LCO and the Measures that flow from it are able to not only deal with the current situation, but to anticipate

⁴¹ Shelter Cymru, Supplementary Written Evidence, AH10

⁴² RoP, paragraph [60], 5 February 2008, Proposed Affordable Housing LCO Committee

⁴³ RoP, paragraphs [125-127], 5 February 2008, Proposed Affordable Housing LCO Committee

⁴⁴ RoP, paragraph [198], 5 February 2008, Proposed Affordable Housing LCO Committee

⁴⁵ RoP, paragraph [63], 19 February 2008, Proposed Affordable Housing LCO Committee

⁴⁶ Denbighshire County Council, Written Evidence, AH5

⁴⁷ RoP, paragraphs [43-52], 5 February 2008, Proposed Affordable Housing LCO Committee

change, because there has been a huge amount of change over the past two years, particularly with regard to whom the social landlord is and with stock transfer occurring in a total of six local authority areas.”⁴⁸

Evidence from the Deputy Minister

45. The Deputy Minister and her legal adviser explained why the proposed Order defined terms by cross-references to existing Acts of Parliament. The Deputy Minister stated that:

“I think that there is always an attempt, when drawing up legislation, to be consistent, and definitions can make a huge difference. Even though, as lay people, you might say, ‘Well, I know what a dwelling is, or what premises are’, and it is often the case that these things are defined in relation to other pieces of legislation.”⁴⁹

46. The Deputy Minister’s legal adviser added that the proposed Order needed to be defined:

“... with reference to existing legislation and it tied in nicely with ‘dwelling’, which is defined in the Housing Act 1996, and ‘dwelling-house’, which is defined in the Housing Act 1985.”⁵⁰

and:

“I think that we need to define, for the purposes of the LCO, what ‘social landlord’ is; we needed some certainty in there as to what a social landlord is. The definition is based on the definition in section 80 of the Housing Act 1985. Because of the way in which housing has developed historically, for example, we refer to ‘a housing association within the meaning of section 5 of the Housing Act 1985’ and ‘the relevant authority within the meaning of section 6A of the Housing Act 1985’. All the other definitions, as I say, are taken from section 80 of the 1985 Act.”⁵¹

47. In subsequent questioning in relation to the definition of ‘social landlord’ used in the proposed Order, the Deputy Minister said:

“As I said earlier, we want the widest possible definition to be included in the LCO, regardless of how we would use the Measure-making powers later. We would certainly want the LCO to capture the social landlords that operate in Wales.”⁵²

⁴⁸ RoP, paragraph [48], 5 February 2008, Proposed Affordable Housing LCO Committee

⁴⁹ RoP, paragraph [92], 22 January 2008, Proposed Affordable Housing LCO Committee

⁵⁰ RoP, paragraph [93], 22 January 2008, Proposed Affordable Housing LCO Committee

⁵¹ RoP, paragraph [97], 22 January 2008, Proposed Affordable Housing LCO Committee

⁵² RoP, paragraph [99], 26 February 2008, Proposed Affordable Housing LCO Committee

48. When questioned about the possibility of writing the substance of definitions into the proposed Order (rather than cross referencing to existing Acts of Parliament or including the definitions in the proposed Measures), the Deputy Minister stated that:

“...we have chosen to do it in this way to create absolute certainty about what we intend to do.”⁵³

and subsequently emphasised the importance of having certainty about exactly what powers the National Assembly has.⁵⁴

49. When it was suggested that the approach adopted could narrow the scope of the proposed Order, the Deputy Minister said:

“We feel that the way that the LCO is drafted would give us the powers that we need for the policy objective that we intend to pursue.”⁵⁵

50. The Deputy Minister also explained that if the Acts of Parliament containing the definitions referred to in the proposed Order were amended, “there would be a system whereby the definitions would be altered in the Government of Wales Act 2006.”⁵⁶

51. As regards the lack of a definition for ‘disposal’, the Deputy Minister explained that:

“We did not feel that it needed to be defined. We think that everybody will understand what that means.”⁵⁷

52. The Deputy Minister wrote to the Committee to clarify the meaning of ‘disposal’ and whether it covered stock transfer.⁵⁸ In her letter, she confirmed that the term ‘disposal’ would cover stock transfer as it relates to the disposal of a dwelling-house or dwelling (as defined by the relevant Acts of Parliament).

53. The Minister’s letter also stated that:

“It is not considered desirable to limit the term “disposal” in the LCO, but if the concept needs to be narrowed when we come to consider the precise legal reforms required, that can be done in the Measure.”⁵⁹

⁵³ RoP, paragraph [101], 22 January 2008, Proposed Affordable Housing LCO Committee

⁵⁴ RoP paragraphs [12, 23, 50 and 136], 26 February 2008, Proposed Affordable Housing LCO Committee

⁵⁵ RoP, paragraph [103], 22 January 2008, Proposed Affordable Housing LCO Committee

⁵⁶ RoP, paragraph [44], 26 February 2008, Proposed Affordable Housing LCO Committee

⁵⁷ RoP, paragraph [107], 22 January 2008, Proposed Affordable Housing LCO Committee

⁵⁸ Letter from Jocelyn Davies AM, Deputy Minister for Housing, 31 January 2008

⁵⁹ Ibid

Our view

54. We note that the proposed Order defines 'dwelling-house', 'dwelling' and 'social landlord' by cross-references to existing Acts of Parliament. We do not agree with this approach. While we acknowledge that the intention is to provide certainty, we are concerned that this approach could inadvertently narrow the scope of the proposed Order and potentially reduce the flexibility to legislate by proposed Measure at the appropriate time. By way of an example, as the evidence of Community Housing Cymru at paragraph 44 suggests, it is not entirely clear whether all registered social landlords, a term that is not referred to in the proposed Order, would currently be covered by the scope of the proposed Order.

55. We believe that the Explanatory Memorandum accompanying this Legislative Competence Order could identify the organisations it intends to cover, allowing the Assembly Government flexibility to determine the extent of the provisions of the proposed Measure at the time it is drafted.

56. The conclusion we have reached also reflects some concerns we have that the amendment or repeal of any of the statutory provisions within Acts of Parliament could cast doubt on the continuing validity of Measures made in reliance on those provisions.

57. In reaching our view, we note also 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 and believe this argument applies equally to other terms within the proposed Order, and, if adopted, would ensure consistency of approach within the proposed Order.

58. Accordingly, we recommend that, in terms of the proposed Order as currently drafted, it is amended so that the terms 'dwelling-house', 'dwelling' and 'social landlord' are undefined and accordingly, that cross-references to existing Acts of Parliament in respect of these terms are removed.

59. However, if the Welsh Assembly Government decides to continue with its current approach to the drafting of the proposed Order, we recommend that the definition of 'social landlord' is amended to include specific reference to the term 'registered social landlord'.

4. The scope of the proposed Order

Background

60. We asked consultees and witnesses for their views as to whether the scope of the proposed Order was too narrowly or too broadly drawn.

61. The Deputy Minister has made it clear that the purpose of the proposed Order is to bring forward a proposed Measure to suspend the right to buy and right to acquire⁶⁰, although she has acknowledged that its scope is wider, in that it would allow for the complete reform of these schemes.⁶¹

Evidence from organisations - general comments

62. In responding to our request, a number of consultees and witnesses suggested that the proposed Order is too narrowly defined to deal with the affordable housing issues⁶², while others suggested that the power was appropriately drawn⁶³ and specifically so in the context of the right to buy.⁶⁴

63. A view was expressed that affordable housing issues are not amenable to legislative action generally⁶⁵, although, conversely, it was also noted that the potential for legislative intervention might be identified as part of the Assembly Government's current preparation of new housing related strategies (namely a new housing strategy for Wales, a 10 year plan to tackle homelessness and a new supporting people strategy).⁶⁶

Evidence from organisations - action needed to tackle affordable housing

64. A number of organisations suggested that suspending the right to buy and right to acquire is just one tool needed to tackle issues surrounding affordable housing and that a broader approach is required.

65. When asked how they would like to see the scope of the proposed Order widened, TPAS Cymru highlighted a difficulty common to many witnesses:

"It is very difficult, because of its technical, legal nature, to suggest that you should do x, y and z. I can deal with this better in broader policy terms..."⁶⁷

66. Consequently, many organisations made suggestions in terms of the broader policy actions that are required to increase the supply of affordable housing, rather than identifying specific legislative changes to the proposed

⁶⁰ RoP, paragraph [6], 22 January 2008, Proposed Affordable Housing LCO Committee

⁶¹ RoP, paragraph [103], 26 February 2008, Proposed Affordable Housing LCO Committee

⁶² For example, Shelter Cymru, Written Evidence, AH10; TPAS Cymru, Written Evidence, AH11

⁶³ Church in Wales, Written Evidence, AH4

⁶⁴ Pennaf Housing Group, Written Evidence, AH8; RoP, paragraphs [14 and 23], 5 February 2008, Proposed Affordable Housing LCO Committee

⁶⁵ RoP, paragraph [14], 29 January 2008, Proposed Affordable Housing LCO Committee

⁶⁶ RoP, paragraphs [12, 35 and 87], 29 January 2008, Proposed Affordable Housing LCO Committee

⁶⁷ RoP, paragraph [21], 19 February 2008, Proposed Affordable Housing LCO Committee

Order that would cover the actions themselves. A range of views were put forward and some of these are reflected in the paragraphs that follow.

67. Some organisations indicated support for the National Assembly acquiring broader powers in relation to housing. TPAS Cymru expressed support for the full devolution of housing policy to Wales, stating:

“...in order to ensure that the range of important issues which impact on housing in Wales are addressed, the Assembly Government should request all legislation making powers, in relation to social housing, be devolved.”⁶⁸

although they acknowledged in questioning that it may be appropriate to start with a limited approach and then develop a more comprehensive package⁶⁹ (see paragraph 83).

68. Denbighshire County Council, in supporting the principle of the proposed Order, indicated that they would like “to see the broadest possible interpretation so that the Assembly can introduce measures in support of Affordable Housing provision.”⁷⁰

69. 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. The Chartered Institute of Housing Cymru made this point by stating that:

“A measure to allow local authorities to apply to suspend the Right to Buy will not increase the supply of social housing lettings in the short term.”⁷¹

and suggested that the proposed Order be considered “in the light of [the] wider housing policy context”, making reference to the new national housing strategy and homelessness plan that are both being developed.⁷²

70. Shelter Cymru stated that they believed the proposed Order, as currently drafted, is too narrowly defined and said:

“It may be, for example, that the Assembly may wish to acquire powers that will ease the development of Community Land Trusts, or improve the provision of land in general, or planning measures with regard to the control of second homes, empty homes, tenure reform or indeed reforming homeless persons legislation which would also impact on affordable housing.”⁷³

⁶⁸ TPAS Cymru, Written Evidence, AH11

⁶⁹ RoP, paragraph [42], 19 February 2008, Proposed Affordable Housing LCO Committee

⁷⁰ Denbighshire County Council, Written Evidence, AH5

⁷¹ Chartered Institute of Housing Cymru, Written Evidence, AH6

⁷² Ibid

⁷³ Shelter Cymru, Written Evidence, AH10

71. When questioned, they expanded on these points:

“...if the Assembly wants to look in any real way at the possibilities of Measures and keep the heading of 'affordable housing', it is going to have to look beyond the issue of housing itself to land and planning in particular.”⁷⁴

and provided some specific examples of how this could be achieved:

“Possibly, in relation to second homes, the idea that a second home needs to be agreed through the planning process by a local authority might be an interesting issue to consider. There may be other issues as well related to planning, land and, for example, the development of community land trusts, with, again, some presumptions in favour of affordable housing in the planning system.”⁷⁵

and,

“It is possible to set up community land trusts under the present powers, because three are already in existence in Wales. So I am not suggesting that it is not possible, but it might be possible to facilitate an easier set-up of community land trusts via an LCO.”⁷⁶

72. In response to a question about the advantages of having one broadly defined proposed Legislative Competence Order on affordable housing against a series of proposed Legislative Competence Orders focusing on different areas that might have an impact on the availability of affordable housing, Shelter Cymru said:

“I would suspect...that a broader LCO, which would allow you to create the necessary Measures in a wider range of areas, might be more useful.”⁷⁷

73. The Welsh Local Government Association said in their written evidence that:

“The challenges that Authorities face in increasing the supply of affordable housing are considerable and straddle the interface of housing and planning. It is therefore very important that there is a holistic response to the issues including consideration of wider housing and planning legislation.”⁷⁸

⁷⁴ RoP, paragraph [14], 29 January 2008, Proposed Affordable Housing LCO Committee

⁷⁵ RoP, paragraph [18], 29 January 2008, Proposed Affordable Housing LCO Committee

⁷⁶ RoP, paragraph [20], 29 January 2008, Proposed Affordable Housing LCO Committee

⁷⁷ RoP, paragraph [16], 29 January 2008, Proposed Affordable Housing LCO Committee

⁷⁸ Welsh Local Government Association, Written Evidence, AH12

74. When questioned, they also highlighted planning and land issues as worthy of further consideration:

“The debate is under way about how we need to address issues in Wales, and what potential there is for further legislation. It would be unfortunate to prejudge that debate, which will involve voices from many different sectors. However, at a generic level, planning, building regulations and, possibly, land supply, would be three areas that would I point to.”⁷⁹

75. They also pointed to neutral tenure as being an option to consider:

“We are looking at neutral tenure...Within that particular system, we are coming up against problems with regard to its funding and its future funding. We are not quite clear about and...we are having to clarify, whether the Assembly already has the powers to facilitate the progression of neutral tenure or whether you will need additional powers to protect those properties and to look at the financing of those properties.”⁸⁰

76. Neutral tenure was also strongly advocated by the Chartered Institute of Housing Cymru.⁸¹

77. Community Housing Cymru, while suggesting that the proposed Order was broad enough, noted that some of the housing challenges related to planning matters and suggested that further powers could be devolved through the *Planning Bill*,^{82, 83} currently progressing through the UK Parliament.

78. Other suggestions for areas that need to be considered in order to address the shortfall of affordable housing included reforming the regulation of registered social landlords⁸⁴, borrowing by housing associations⁸⁵, housing allocation policy⁸⁶ and allowing the receipts from right to buy sales to be used to develop replacement homes.⁸⁷

Evidence from organisations - delaying the proposed Order

79. In their written submission, Cymorth Cymru recommending delaying the proposed Order to take account of the development of the wider housing related strategies.⁸⁸ Shelter Cymru also put forward this as one option to consider, with another being to “draw up an Order which is more

⁷⁹ RoP, paragraph [92], 29 January 2008, Proposed Affordable Housing LCO Committee

⁸⁰ RoP, paragraph [98], 29 January 2008, Proposed Affordable Housing LCO Committee

⁸¹ Chartered Institute of Housing Cymru, Written Evidence, AH6; RoP, paragraph [96], 5 February 2008, Proposed Affordable Housing LCO Committee

⁸² Sometimes referred to as the *Planning Reform Bill*

⁸³ RoP, paragraphs [14 and 34], 5 February 2008, Proposed Affordable Housing LCO Committee

⁸⁴ Community Housing Cymru, Written Evidence, AH3

⁸⁵ RoP, paragraph [26], 19 February 2008, Proposed Affordable Housing LCO Committee

⁸⁶ RoP, paragraph [45], 19 February 2008, Proposed Affordable Housing LCO Committee

⁸⁷ Chartered Institute of Housing Cymru, Written Evidence, AH6

⁸⁸ Cymorth Cymru, Written Evidence, AH2

widely defined and which would later allow further housing related legislation.”⁸⁹

80. When questioned about their approach Shelter Cymru identified a dilemma of which approach is best:

“I suppose our concern, and the concern of other people that I have spoken to, is whether this might be the last shot that we will have for some time. In that case, would it be better to wait six or seven months, while the Assembly-facilitated groups develop their ideas? Then, when those ideas emerge, it might be possible to capture a broader set of instruments that might make a reasonable contribution on the issue of affordable housing. Alternatively, if we wait, might we lose out in some ways? Will it be a long time before we come back to address some of the issues that may be identified as key elements of a developing housing strategy? If the housing strategy is to be launched next year, and there are identified areas that could assist in affordable housing through Measures, how long will it be until we get back to that?”⁹⁰

81. At the end of their evidence session, Shelter Cymru suggested that on the basis of the discussion, “a broader Order may be a better approach.”⁹¹

82. We explored the issue of delaying the proposed Order with other witnesses.

83. The Welsh Local Government Association expressed similar sentiments⁹² to those expressed by Shelter Cymru at paragraph 80 above. Community Housing Cymru were opposed to delaying the proposed Order, suggesting that it was best to pursue powers now to suspend the right to buy given that work on the development of a new national housing strategy could mean work on a proposed Order and accompanying Measures not being undertaken until 2010 or 2011.⁹³ On balance, the Chartered Institute of Housing Cymru were also in favour to taking the powers now rather than delaying.⁹⁴ TPAS Cymru were not in favour of delaying the proposed Order but said:

“...perhaps there is an argument for saying that we should do something limited to get it on the books and get the experience under our belts and then, when the housing strategy comes along, we will look at something more comprehensive with the benefit of the experience that we have gained from doing a limited LCO.”⁹⁵

⁸⁹ Shelter Cymru, Written Evidence, AH10

⁹⁰ RoP, paragraph [33], 29 January 2008, Proposed Affordable Housing LCO Committee

⁹¹ RoP, paragraph [53], 29 January 2008, Proposed Affordable Housing LCO Committee

⁹² RoP, paragraphs [87 and 89], 29 January 2008, Proposed Affordable Housing LCO Committee

⁹³ RoP, paragraph [38], 5 February 2008, Proposed Affordable Housing LCO Committee

⁹⁴ RoP, paragraph [99], 5 February 2008, Proposed Affordable Housing LCO Committee

⁹⁵ RoP, paragraph [42], 19 February 2008, Proposed Affordable Housing LCO Committee

Evidence from the Deputy Minister

84. When asked if the proposed Order is drafted broadly enough to enable the Assembly Government to meet its affordable housing policy objectives, the Deputy Minister said:

“Yes, because, as I mentioned earlier, in relation to the right to buy scheme, this would definitely allow us to suspend, on an application being made by a local authority, the right to buy in specific areas of high housing pressure. So, yes, this would achieve that.”⁹⁶

85. An official accompanying the Deputy Minister later added that:

“There are certain issues around the affordable housing policy, and many things are under way to address them. In terms of this LCO being able to address them on the legislative side, however, this is probably broad enough to address the specific social housing issues that we need to deal with.”⁹⁷

86. Nevertheless, the Deputy Minister acknowledged that the proposed Order was not ever presented “as the big panacea to solve affordable housing problems in Wales”⁹⁸ and that it “would be one tool available to local authorities to consider when formulating their policies on affordable housing”.⁹⁹ She also noted that while not absolutely certain that the Assembly Government has every single power needed for all its policies that have yet to be developed, “we do have the powers to fulfil our ‘One Wales’ commitment on housing.”¹⁰⁰

87. On the specific issue of delaying the proposed Order to take account of any recommendations for proposed Measures that may arise from the development of the housing related strategies, the Deputy Minister said:

“...there is a possibility that, while these strategies are being developed, a lack of powers may very well be identified. However, that may not be the case, so we did not want to delay this now, because it is quite a distinct commitment in ‘One Wales’. We did not want to delay this in case we required further powers later on. As I told you the last time that I appeared before this committee, if the need for further powers is identified, then we will go for another LCO. However, whenever we go for an LCO, we would try to get some certainty and clarity around the competence.”¹⁰¹

88. In considering a suggestion that the proposed Order could be widened to cover affordable housing generally (thereby enabling a wider range of Measures to be made once the housing related strategies have been

⁹⁶ RoP, paragraph [37], 22 January 2008, Proposed Affordable Housing LCO Committee

⁹⁷ RoP, paragraph [42], 22 January 2008, Proposed Affordable Housing LCO Committee

⁹⁸ RoP, paragraph [108], 26 February 2008, Proposed Affordable Housing LCO Committee

⁹⁹ RoP, paragraph [108], 26 February 2008, Proposed Affordable Housing LCO Committee

¹⁰⁰ RoP, paragraph [117], 26 February 2008, Proposed Affordable Housing LCO Committee

¹⁰¹ RoP, paragraph [140], 26 February 2008, Proposed Affordable Housing LCO Committee

developed, without the need for further Legislative Competence Orders), the Deputy Minister said that “the term ‘affordable housing’ gives all sorts of impressions, and...would not be clear enough”.¹⁰²

Our view

89. We note the views of many respondents that suspending the right to buy and right to acquire, which would be enabled through this proposed Order and a subsequent proposed Measure, represents just one tool necessary to increase the supply of affordable housing in Wales. In that context, 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.

90. We note the additional actions that witnesses suggested might be needed to increase the supply of affordable housing, but that it was not always clear whether these actions would require legislative powers to be acquired by the National Assembly in order for them to be delivered successfully.

91. We note also that the Assembly Government is undertaking work on preparing new housing related strategies and the suggestion that this work might identify legislative action to assist in tackling the shortage of affordable housing in Wales. We also note the Deputy Minister’s view that if the need for further powers is identified following this work, further Legislative Competence Orders would be sought.

92. While noting the Deputy Minister’s view that referring to the term ‘affordable housing’ in the proposed Order would not be clear, we remain of the view that referring to the term ‘affordable housing’ generally represents the best and most effective approach. We believe it would provide the Assembly Government with maximum flexibility in this policy area. It would also enable the Assembly Government to legislate by proposed Measure as soon as work is completed on preparing its new housing related strategies, in order to make a real and positive impact on tackling affordable housing issues across communities in Wales. In our view, this approach would negate the need to seek further legislative competence from the UK Parliament, which might restrict the Welsh Assembly Government’s ability to act quickly, particularly if there is any delay in the development of its housing related strategies.

93. Accordingly, the preferred approach of the Committee is to recommend that the proposed Order is amended so that it refers to ‘affordable housing’ generally or to another appropriate term, although one Member considers that such an approach should specifically exclude the National Assembly from having legislative competence in respect of suspending or cancelling the right to buy or right to acquire.

¹⁰² RoP, paragraph [142], 26 February 2008, Proposed Affordable Housing LCO Committee

94. In reaching this conclusion, we recognise and agree with witnesses who have suggested that other policy areas, in particular in relation to planning, could have an impact on tackling affordable housing issues. We acknowledge that planning law is complex and, as a consequence, that it may not be appropriate or possible to provide legislative competence within Field 18 (Town and Country Planning) that is restricted in essence to the 'planning aspects of affordable housing'. **We recommend that as part of its work on preparing its new housing related strategies, the Welsh Assembly Government should consider how the planning system could be used to increase the supply of affordable housing and accordingly what legislative competence, if any, in Field 18 (Town and Country Planning) would be beneficial in helping to achieve this aim.**

95. We note that some organisations have suggested delaying the proposed Order to enable account to be taken of the development of the housing related strategies. Our preferred approach would, to some extent, overcome the need for any such delay to achieve this aim.

96. For the avoidance of doubt, **we recommend that the proposed Order is not delayed, irrespective of which approach the Welsh Assembly Government chooses to adopt in introducing a related draft Legislative Competence Order for approval by the National Assembly.**

5. Housing and Regeneration Bill

Background

97. The *Housing and Regeneration Bill* is currently progressing through the UK Parliament and its aim is to:

Establish the Homes and Communities Agency and make provision about it; to abolish the Urban Regeneration Agency and the Commission for the New Towns and make provision in connection with their abolition; to regulate social housing; to enable the abolition of the Housing Corporation; to make provision about sustainability certificates, landlord and tenant matters, building regulations and mobile homes; to make further provision about housing; and for connected purposes.¹⁰³

98. During the course of its work, the Committee sought, in particular, information from the Deputy Minister about why the Assembly Government did not seek to acquire legislative competence through this Bill.

Evidence from the Deputy Minister

99. When questioned with regard to the possibility that the Bill could have contained framework powers in order to address affordable housing issues in Wales, the Deputy Minister stated:

“We had some discussions during the drafting of the Bill, but the Bill was not broad enough to give us these powers. There are clauses in the Housing and Regeneration Bill that relate to the right to buy....but when the Bill was finalised, it was just not broad enough to give us these particular powers. If we could have done it that way, we certainly would have, because that would have saved a huge amount of resources and time in the Assembly. If we can gain competences via a Bill that is already going through Parliament, that is certainly the preferred route.”¹⁰⁴

100. In subsequent evidence the Deputy Minister reiterated that:

“...the scope of the Bill was not wide enough....Measure-making powers for the Assembly cannot be wider than the scope of the Bill. That is not possible. We tried. If it had been wide enough, we certainly would have taken that route.”¹⁰⁵

¹⁰³ Long title to The *Housing and Regeneration Bill*, Bill 8, 2007-08

¹⁰⁴ RoP, paragraph [49], 22 January 2008, Proposed Affordable Housing LCO Committee

¹⁰⁵ RoP, paragraph [201], 26 February 2008, Proposed Affordable Housing LCO Committee

Our View

101. We note the Deputy Minister's comments explaining why legislative competence is being sought through a Legislative Competence Order rather than through provisions within the *Housing and Regeneration Bill* currently progressing through the UK Parliament. However, having considered its long title, we are disappointed that framework powers to tackle affordable housing issues in Wales were not agreed through the *Housing and Regeneration Bill*.



Draft Order laid before the National Assembly for Wales and Parliament under section 95(5) of the Government of Wales Act 2006, for approval by resolution of the Assembly and of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2008 No.

**CONSTITUTIONAL LAW,
DEVOLUTION, WALES**

**The National Assembly for Wales (Legislative Competence)
(No. 5) 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(a), a draft of this Order has been laid before, and approved by resolution of, the National Assembly for Wales and each House of Parliament.

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

Citation and commencement

1. This Order may be cited as the National Assembly for Wales (Legislative Competence)(No.5) 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.

(a) 2006 (c.32).

(2) In field 11 (housing), insert—

“Matter 11.1

Disposal by a social landlord of the following—

- (a) a dwelling-house within the meaning of Part 5 of the Housing Act 1985;
- (b) a dwelling within the meaning of section 63 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;
- (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 section 135 of the Local Government, Planning and Land Act 1980;
- (i) the relevant authority within the meaning of section 6A of the Housing Act 1985;
- (j) the relevant authority within the meaning of section 56 of the Housing Act 1996.”

Clerk to the Privy Council

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends Schedule 5 to the Government of Wales Act 2006 (“the 2006 Act”). The effect of the Order is to extend the legislative competence of the National Assembly of Wales to make new laws for Wales by Measure under section 93 of the 2006 Act.

Article 2(2) of the Order amends field 11 (housing) in Part 1 of Schedule 5 by inserting a new matter 11.1, which extends the legislative competence of the National Assembly for Wales to cover the disposal by a social landlord of dwellings.

This extended legislative competence of the National Assembly for Wales is subject to the general limitations that apply to the exercise of such competence by virtue of Part 3 of the 2006 Act.

MEMORANDUM FROM DEPUTY MINISTER FOR HOUSING
CONSTITUTION LAW: DEVOLUTION, WALES

The National Assembly for Wales (Legislative Competence) (No.5) Order 2008

Affordable Housing – Legislative Competence Order

Introduction

1. This Memorandum has been prepared and laid in accordance with Standing Order (SO) 22.14. It sets out the background to the provisions in the attached government proposed Legislative Competence Order (LCO) which would confer additional legislative competence upon the National Assembly for Wales (“the Assembly”). The LCO is laid in accordance with SO 22.13 and this Memorandum explains the scope of the powers sought through the LCO.
2. The constitutional context to this request is set out by the Government of Wales Act 2006 (the 2006 Act) and the UK Government’s policy. The UK Government’s White Paper “Better Governance for Wales”, published in June 2005, set out its commitment to enhance the legislative powers of the Assembly as a democratically elected institution with its own detailed scrutiny procedures.
3. Section 95 of the 2006 Act empowers Her Majesty, by Order in Council, to confer competence on the Assembly to legislate by Assembly Measure on specified Matters. These Matters may be added to the Fields contained within Schedule 5 to the 2006 Act. 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 relation to matters, subject to the limitations provided for in Part 3 of the 2006 Act. An Order in Council under section 95 of the 2006 Act is referred to as a Legislative Competence Order (LCO) in this Memorandum.
4. Matters may be inserted into the fields contained in Schedule 5 to the 2006 Act, by either an Act of Parliament or a Legislative Competence Order, approved by the Assembly and both Houses of Parliament. The latter route enables the Assembly to initiate the process for conferral of such competence, via a Legislative Competence Order.
5. The proposed LCO 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 and the mechanism by which it was conferred.

Background

6. New legislative powers in respect of the specified “matters” will enable the Welsh Assembly Government, Assembly Members and Assembly Committees to bring forward proposals for legislation, in the form of Measures, which are based on Welsh priorities and timescales. These Measures will be subject to thorough scrutiny and approval by the Assembly.
7. 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).
8. 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.
9. The Assembly Government has 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 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.
10. 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 4 years, and
 - e. a protocol to encourage the disposal of surplus Assembly-owned land for affordable housing.

11. 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.
12. 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.
13. 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 1,206 RTB claims during the January to March 2007 quarter, an increase of 126 from the same quarter the previous year.
14. In the January to March 2007 quarter 1,666 households were homeless and in priority need while 3,152 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.
15. 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.
16. 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.

17. 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.
18. The proposed LCO would confer on the National Assembly for Wales the power to pass Assembly Measures in relation to the disposal of dwellings and dwelling houses by social landlords. This would enable the Assembly to develop Welsh solutions to address Welsh priorities.

Scope

19. It is proposed that Part 1 of Schedule 5 to the Government of Wales Act 2006 Act be amended to add a Matter under Field 11: housing. Matter 11.1 (Disposal by a social landlord of the following –
 - (a) a dwelling-house within the meaning of Part 5 of the Housing Act 1985;
 - (b) a dwelling within the meaning of section 63 of the Housing Act 1996.)This would enable the Assembly to bring forward a Measure under Part 3 of the 2006 Act relating to disposal of dwellings held by a social landlord. The scope of the LCO therefore includes the suspension of the Right to Buy and the Right to Acquire in areas of housing pressure.
20. It is proposed the following statutory provisions be encompassed – Part V of the Housing Act 1985 and sections 16-17 of the Housing Act 1996. Disposals of dwelling-houses and dwellings under Part II of the Housing Act 1985 and Chapter II of Part I of the Housing Act 1996 will be within competence but not any other type of land. 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/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 LCO is to empower the Assembly to make Measures under Part 3 of the 2006 Act that will give effect to whatever policy decisions are taken forward in due course by the Welsh Ministers to improve the availability of affordable housing in Wales. Increasing 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 government proposed LCO to which this Explanatory Memorandum relates.

Jocelyn Davies
Deputy Minister for Housing
December 2007

SCHEDULE 5
ASSEMBLY MEASURES

Part 1

Matters

Field 1: agriculture, fisheries, forestry and rural development

Field 2: ancient monuments and historic buildings

Field 3: culture

Field 4: economic development

Field 5: education and training

Matter 5.1

Provision about the categories of school that may be maintained by local education authorities.

Matter 5.2

Provision about the establishment and discontinuance of schools maintained by local education authorities, their change from one category to another and their alteration in other respects.

Matter 5.3

Provision about the admission of pupils to schools maintained by local education authorities.

Matter 5.4

Provision about the curriculum in schools maintained by local education authorities.

Matter 5.5

Provision about school attendance, the behaviour of pupils at school, school discipline and the exclusion of pupils from school (including the duties of parents in connection with those matters).

Matter 5.6

Provision about the making of arrangements for the provision of education for persons of compulsory school age who have been excluded from schools or who for any other reason would not otherwise receive suitable education.

Matter 5.7

Provision about entitlement to primary, secondary and further education and to training.

Matter 5.8

Provision about the provision of services that are intended to encourage, enable or assist people—

- (a) to participate effectively in education or training,
- (b) to take advantage of opportunities for employment, or
- (c) to participate effectively in the life of their communities.

Matter 5.9

Provision about food and drink provided on school premises or provided for children at a place where they receive education or childcare.

Matter 5.10

Provision about the travel of persons receiving primary, secondary or further education or training to and from the schools or other places where they receive it.

This does not include provision about any of the following—

- (a) the regulation of the use of motor vehicles on roads, their construction and equipment and conditions under which they may be so used;
- (b) road traffic offences;
- (c) driver licensing;
- (d) driving instruction;
- (e) insurance of motor vehicles;
- (f) drivers' hours;
- (g) traffic regulation on special roads, pedestrian crossings, traffic signs and speed limits;
- (h) public service vehicle operator licensing;
- (i) the provision and regulation of railway services, apart from financial assistance which—
 - (i) does not relate to the carriage of goods,
 - (ii) is not made in connection with a railway administration order, and
 - (iii) is not made in connection with Council Regulation (EEC) 1191/69 as amended by Council Regulation (EEC) No. 1893/91 on public service obligations in transport;
- (j) transport security;
- (k) shipping, apart from financial assistance for shipping services to, from or within Wales;
- (l) navigational rights and freedoms, apart from regulation of works which may obstruct or endanger navigation;
- (m) technical and safety standards of vessels;

- (n) harbours, docks, piers and boatslips, apart from those used or required wholly or mainly for communications between places in Wales;
- (o) registration of local bus services, and the application and enforcement of traffic regulation conditions in relation to those services.

Matter 5.11¹

Provision for and in connection with securing the provision of facilities for post-16 education or training.

Matter 5.12

Provision for and in connection with the establishment and dissolution of—

- (a) institutions concerned with the provision of further education, and
- (b) bodies that conduct such institutions,

including the circumstances in which an educational institution becomes or ceases to be an institution concerned with the provision of further education.

Provision about—

- (a) the conduct and functions of such institutions and bodies that conduct such institutions;
- (b) the property, rights and liabilities of such institutions and bodies that conduct such institutions;
- (c) property held by any person for the purposes of such an institution;
- (d) the governance and staff of such institutions.

Matter 5.13

Provision for and in connection with securing collaboration—

- (a) between bodies that conduct institutions concerned with the provision of further education, or
- (b) between one or more such bodies and other persons or bodies that have functions relating to education or training in Wales,

including, in particular, provision for and in connection with the establishment of bodies for the purpose of discharging functions on behalf of one or more persons or bodies that are party to arrangements for collaboration.

¹ Matters 5.11 – 5.16 of this Schedule have been inserted by the Further Education and Training Act 2007 and will come into force on the 23rd December 2007.

Matter 5.14

The provision of financial resources for and in connection with—

- (a) education or training provided by institutions concerned with the provision of further education;
- (b) post-16 education or training provided otherwise than by such institutions;
- (c) the carrying out of research relating to education or training falling within paragraph (a) or (b).

Matter 5.15

The inspection of—

- (a) education or training provided by institutions concerned with the provision of further education;
- (b) post-16 education or training provided otherwise than by such institutions;
- (c) the training of teachers and specialist teaching assistants for schools;
- (d) services of the kinds mentioned in matter 5.8.

Matter 5.16

The provision of advice and information in connection with, and the carrying out of studies in relation to, any of the kinds of education, training or services mentioned in matter 5.15.

Interpretation of this field

In this field—

“post-16 education” means—

- (a) education (other than higher education) suitable to the requirements of persons who are above compulsory school age, and
- (b) organised leisure-time occupation connected with such education;

“post-16 training” means—

(a) training suitable to the requirements of persons who are above compulsory school age, and

(b) organised leisure-time occupation connected with such training.

References in this field to an institution concerned with the provision of further education are references to an educational institution, other than a school or an institution within the higher education sector (within the meaning of the Further and Higher Education Act 1992), that is conducted (whether or not exclusively) for the purpose of providing further education.

Expressions used in this field and in the Education Act 1996 have the same meaning in this field as in that Act.

Field 6: environment

Field 7: fire and rescue services and promotion of fire safety

Field 8: food

Field 9: health and health services

Matter 9.1

Provision for and in connection with the provision of redress without recourse to civil proceedings in circumstances in which, under the law of England and Wales, qualifying liability in tort arises in connection with the provision of services (in Wales or elsewhere) as part of the health service in Wales.

Interpretation of this field

In this field-

“the health service in Wales” means the health service continued under section 1(1) of the National Health Service (Wales) Act 2006;

“illness” has the same meaning as in that Act;

“patient” has the same meaning as in that Act;

“personal injury” includes any disease and any impairment of a person’s physical or mental health;

“qualifying liability in tort” means liability in tort owed in respect of or consequent upon personal injury or loss arising out of or in connection with

breach of a duty of care owed to any person in connection with the diagnosis or illness or the care or treatment of any patient.

Field 10: highways and transport

Field 11: housing

Field 12: local government

Matter 12.1²

Provision for and in connection with—

(a) the constitution of new principal areas and the abolition or alteration of existing principal areas, and

(b) the establishment of councils for new principal areas and the abolition of existing principal councils.

“Principal area” means a county borough or a county in Wales, and “principal council” means a council for a principal area.

Matter 12.2

Provision for and in connection with—

(a) the procedure for the making and coming into force of byelaws, and

(b) the enforcement of byelaws.

“Byelaws” means those of a class which may be confirmed by the Welsh Ministers (but the provision which may be made includes provision to remove a requirement of confirmation).

Matter 12.3

Any of the following—

(a) the principles which are to govern the conduct of members of relevant authorities,

(b) codes of conduct for such members,

(c) the conferral on any person of functions relating to the promotion or maintenance of high standards of conduct of such members (including the establishment of bodies to have such functions),

(d) the making or handling of allegations that members (or former members) of relevant authorities have breached standards of conduct, including in particular—

(i) the investigation and adjudication of such allegations and reports on the outcome of investigations,

² Matters 12.1 – 12.5, Paragraph 2A of Part 2 and Paragraph 7A of Part 3 of this Schedule have been inserted by the Local Government and Public Involvement in Health Act 2007 and come into force on the 30th December 2007.

(ii) the action that may be taken where breaches are found to have occurred,

(e) codes of conduct for employees of relevant authorities.

For the purposes of this matter—

“relevant authority” has the same meaning as in Part 3 of the Local Government Act 2000, except that other than in paragraph (d) it does not include a police authority,

“member” includes a co-opted member within the meaning of that Part.

Matter 12.4

Provision for and in connection with strategies of county councils and county borough councils for promoting or improving the economic, social or environmental wellbeing of their areas or contributing to the achievement of sustainable development in the United Kingdom, including provision imposing requirements in connection with such strategies on other persons with functions of a public nature.

Matter 12.5

Provision for and in connection with—

(a) the making of arrangements by relevant Welsh authorities to secure improvement in the way in which their functions are exercised,

(b) the making of arrangements by relevant Welsh authorities for the involvement in the exercise of their functions of people who are likely to be affected by, or interested in, the exercise of the functions, and

(c) the assessment and inspection of the performance of relevant Welsh authorities in exercising their functions.

The following are “relevant Welsh authorities”—

(a) a county council, county borough council or community council in Wales,

(b) a National Park authority for a National Park in Wales,

(c) a fire and rescue authority in Wales constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004 or a scheme to which section 4 of that Act applies,

(d) a levying body within the meaning of section 74(1) of the Local Government Finance Act 1988 in respect of which the county council or charging authority referred to in section 74(1)(b) of that Act was a council or authority for an area in Wales,

(e) a body to which section 75 of that Act applies (special levies) and which as regards the financial year beginning in 1989 had power to levy a rate by reference to property in Wales.

Field 13: National Assembly for Wales

Matter 13.1

Creation of, and conferral of functions on, an office or body for and in connection with investigating complaints about the conduct of Assembly members and reporting on the outcome of such investigations to the Assembly.

Matter 13.2

Conferral of functions on the Assembly Commission for and in connection with facilitating the exercise by the Assembly of its functions (including the provision to the Assembly of the property, staff and services required for the Assembly's purposes).

Matter 13.3

Provision for and in connection with the payment of salaries, allowances, pensions and gratuities to or in respect of Assembly members, the First Minister, any Welsh Minister appointed under section 48, the Counsel General and any Deputy Welsh Minister.

Matter 13.4

Provision for and in connection with the creation and maintenance of a register of interests of Assembly members and the Counsel General.

Matter 13.5

Provision about the meaning of Welsh words and phrases in-

- (a) Assembly Measures,
- (b) subordinate legislation made under Assembly Measures, and
- (c) subordinate legislation not so made but made by the Welsh Ministers, the First Minister or the Counsel General.

Matter 13.6

Provision for and in connection with the procedures for dealing with proposed private Assembly Measures, including, in particular-

- (a) procedures for hearing the promoters of, and objectors, to proposed private Assembly Measures,
- (b) the persons who may represent such promoters and objectors, and the qualifications that such persons must possess,
- (c) the imposition of fees for and in connection with the promotion of proposed private Assembly Measures, and
- (d) the assessment of costs incurred in connection with proposed private Assembly Measures.

Field 14: public administration

Field 15: social welfare

Field 16: sport and recreation

Field 17: tourism

Field 18: town and country planning

Field 19: water and flood defence

Field 20: Welsh language

PART 2

GENEAL RESTRICTIONS

Functions of Ministers of the Crown

1 (1) A provision of an Assembly Measure cannot remove or modify, or confer power by subordinate legislation to remove or modify, any function of a Minister of the Crown.

(2) A provision of an Assembly Measure cannot confer or impose, or confer power by subordinate legislation to confer or impose, any function on a Minister of the Crown.

Criminal offences

2 (1) A provision of an Assembly Measure cannot create, or confer power by subordinate legislation to create, any criminal offence punishable-

- (a) on summary conviction, with imprisonment for a period exceeding the prescribed term or with a fine exceeding the amount specified as level 5 on the standard scale, or
- (b) on conviction on indictment, with a period of imprisonment exceeding two years.

(2) In sub-paragraph (1) "the prescribed term" means-

- (a) where the offence is a summary offence, 51 weeks, and
- (b) where the offence is triable either way, twelve months.

Police areas

2A A provision of an Assembly Measure cannot make any alteration in police areas.

Enactments other than this Act

3 A provision of an Assembly Measure cannot make modifications of, or confer power by subordinate legislation to make modifications of, any of the provisions listed in the Table below:

TABLE

<i>Enactment</i>	<i>Provisions protected from modification</i>
European Communities Act 1972 (c.68)	The whole Act
Data Protection Act 1998 (c.29)	The whole Act
Government of Wales Act 1998 (c.38)	Sections 144(7), 145, 145A and 146A1
Human Rights Act 1998 (c. 42)	The whole Act
Civil Contingencies Act 2004 (c.36)	The whole Act
Re-Use of Public Sector Information Regulations 2005 (S.I. 2005/1505)	The whole set of Regulations

4 A provision of an Assembly Measure cannot make modifications of, or confer power by subordinate legislation to make modifications of, any provision of an Act of Parliament other than this Act which requires sums required for the repayment of, or the payment of interest on, amounts borrowed by the Welsh Ministers to be charged on the Welsh Consolidated Fund.

5 A provision of an Assembly Measure cannot make modifications of, or confer power by subordinate legislation to make modifications of, any functions of the Comptroller and Auditor General.

This Act

6(1) A provision of an Assembly Measure cannot make modifications of, or confer power by subordinate legislation to make modifications of, provisions contained in this Act.

(2) Sub-paragraph (1) does not apply to sections 20, 22, 24, 36(1) to (5) and (7) to (11), 53, 54 and 156(2) to (5).

(3) Sub-paragraph (1) does not apply to any provision-

- (a) making modifications of so much of any enactment as is modified by this Act, or
- (b) repealing so much of any provision of this Act as amends any enactment, if the provision ceases to have effect in consequence of any provision of, or made under, an Assembly Measure.

PART 3

EXCEPTIONS FROM PART 2

Functions of Ministers of the Crown

7 Part 2 does not prevent a provision of an Assembly Measure removing or modifying, or conferring power by subordinate legislation to remove or modify, any function of a Minister of the Crown if the Secretary of State consents to the provision.

Police areas

7A Part 2 does not prevent a provision of an Assembly Measure making an alteration to the boundary of a police area in Wales if the Secretary of State consents to the provision.

Comptroller and Auditor General

8 Part 2 does not prevent a provision of an Assembly Measure modifying, or conferring power by subordinate legislation to modify, any enactment relating to the Comptroller and Auditor General if the Secretary of State consents to the provision.

Restatement

9 Part 2 does not prevent a provision of an Assembly Measure-

- (a) restating the law (or restating it with such modifications as are not prevented by that Part), or
- (b) repealing or revoking any spent enactment,

or conferring power by subordinate legislation to do so.

Subordinate legislation

10 Part 2 does not prevent an Assembly Measure making modifications of, or conferring power by subordinate legislation to make modifications of, an enactment for or in connection with any of the following purposes-

- (a) making different provision about the document by which a power to make, confirm or approve subordinate legislation is to be exercised,
- (b) making provision (or no provision) for the procedure, in relation to the Assembly, to which legislation made in the exercise of such a power (or the instrument or other document in which it is contained) is to be subject, and
- (c) applying any enactment comprised in or made under an Assembly Measure relating to the documents by which such powers may be exercised.

Data Protection Act 1998

11. Part 2 does not prevent an Assembly Measure making modifications of, or conferring power by subordinate legislation to make modifications of, section 31(6) of the Data Protection Act 1998 so that it applies to complaints under any Assembly Measure relating to matter 9.1 in Part 1.

Pwyllgor ar y Gorchymyn arfaethedig ynghylch
Tai Fforddiad

Proposed Affordable Housing LCO Committee



Cynulliad National
Cenedlaethol Assembly for
Cymru Wales

Bae Caerdydd / Cardiff Bay
Caerdydd / Cardiff CF99 1NA

17 December 2007

Dear Colleague

Consultation - 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)

The Proposed Affordable Housing LCO Committee was established on 12 December 2007 to consider and report on the proposed *National Assembly for Wales (Legislative Competence) (No.5) Order 2008* ('the proposed Order') relating to the disposal of dwellings and dwelling houses by social landlords. At its 13 December 2007 meeting the Committee agreed the following terms of reference:

To consider:

- the general principles of the proposed Order and whether legislative competence in the area identified in Matter 11.1 should be conferred on the Assembly; and
- the terms of the proposed Order, and in particular whether they are too broadly or too narrowly defined.

I am writing to invite you to submit evidence to the Committee to help inform its work. In preparing your submission it would be helpful if you could address the following:

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

The Committee's primary purpose is to consider whether the Assembly should have the power, in principle, to legislate by Measure in the area identified in the proposed Order, i.e. the disposal of dwellings and dwelling houses by social landlords. However, it is not

within the remit of the Committee to consider the specific way in which that power, if conferred, should be exercised. The detail of any future Measures brought forward as a result of conferral of legislative competence in this area will be a matter for scrutiny by the Assembly at a later date.

A copy of the proposed Order and its accompanying Explanatory Memorandum are enclosed at **Annex 1**. An electronic version of these documents along with information on the legislative process and details of the Committee can be found at:
<http://www.assemblywales.org/bus-home/buslegislation.htm>

If you wish to submit evidence please send an electronic copy of your submission to legislationoffice@wales.gsi.gov.uk and entitle the e-mail *Consultation AH LCO*. If you would prefer to send your submission in hard copy, please send it to Ruth Hatton, Deputy Committee Clerk, Legislation Office, National Assembly for Wales, Cardiff Bay CF99 1NA.

The closing date for submissions is **Monday 28 January 2007**. It will not be possible to take into account responses received after this date.

When preparing your submission please keep the following in mind:

- Your response should be as succinct as possible. Please reference your response using the title applied above.
- The National Assembly normally makes responses to public consultation available for public scrutiny and they may also be seen and discussed at Committee meetings. **If you do not want your response or name published it is important that you specify this at the end of your submission.**
- Please indicate whether you are responding on behalf of an organisation, or as an individual.
- Please indicate whether or not you would be prepared to give oral evidence to the Committee.

If you have any queries please contact the Clerk, Gareth Williams (tel: 029 2089 8008) or Ruth Hatton, the Deputy Clerk (tel 029 2089 8019).

Yours sincerely

Leanne Wood AM
Committee Chair

List of Consultation Responses

Reference	Organisation
AH 1	Carmarthenshire County Council
AH 2	Cymorth Cymru
AH 3	Community Housing Cymru
AH 4	Church in Wales
AH 5	Denbighshire County Council
AH 6	Chartered Institute of Housing Cymru
AH 7	Nationwide
AH 8	Pennaf Housing Group
AH 9	Professor Steve Wilcox
AH 10	Shelter Cymru
AH 11	TPAS Cymru
AH 12	Welsh Local Government Association

Responses to the consultation can be found at:

http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-legislative-competence-orders/bus-legislation-lco-2007-6/ah_-_written_consultation_responses.htm

Schedule of Oral Evidence

Date	Witnesses
22 January 2008	Deputy Minister for Housing
29 January 2008	Shelter Cymru Welsh Local Government Association
5 February 2008	Community Housing Cymru Chartered Institute of Housing Cymru Professor Steve Wilcox
19 February 208	TPAS Cymru
26 February 2008	Deputy Minister for Housing

Transcripts of oral evidence sessions can be found at:

<http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third-af-home/bus-committees-third-af-agendas.htm>

Jocelyn Davies AC/AM
Y Dirprwy Weinidog dros Dai
Deputy Minister for Housing

Annex 5



Llywodraeth Cynulliad Cymru
Welsh Assembly Government

Our ref MB/JAD/0024/08

Leanne Wood AM
Chair
Proposed Affordable Housing LCO Committee
Cardiff Bay
Cardiff
CF99 1NA

31 January 2008

Dear *Leanne*

Thank you for the opportunity of presenting evidence to the Committee on the Affordable Housing LCO on 22 January.

At the meeting, I undertook to let you have a note on the meaning of "disposal" and the implications of not having a definition within the proposed Order. I attach a note for your assistance and have also added a paragraph on the definition of a 'Social Landlord' to give added clarity to Committee Members.

If you have any further queries, I would be happy to address them.

Yours Sincerely

A handwritten signature in cursive script, appearing to read 'Jocelyn'.

Jocelyn Davies AM

WELSH ASSEMBLY GOVERNMENT

Affordable Housing LCO Committee meeting on 22 January 2008: Follow up note from the Deputy Minister for Housing

At its meeting on 22 January, the Committee asked whether, in the absence of a definition of "disposal", would the LCO as drafted give the National Assembly more powers than it already has in respect of "stock transfer".

I would respond as follows:

One of the difficulties that arose during drafting the LCO has been separating out "voluntary" from "statutory" disposals. A voluntary disposal would be a disposal of land held for housing purposes by a local authority under section 32 of the Housing Act 1985. A local authority has power by these provisions to dispose of land which is held by the authority for certain housing purposes. This is without prejudice to the statutory provisions relating to the Right to Buy under Part 5 of the Housing Act 1985.

The current version of the LCO "touches upon" stock transfer in part but that is unavoidable due to the complexities involved. There is provision in the Housing and Regeneration Bill relating to stock transfers that will also apply in Wales whereby sections 34 and 43 of the Housing Act are amended.

Under section 32(1) of the Housing Act 1985 a local authority has power to dispose of land held by it for the purposes of Part 2 (Provision of Housing Accommodation). However, a disposal under section 32 must not be made without the consent of the Secretary of State (subsection (2)). The functions of the Secretary of State, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales, by the National Assembly of Wales (Transfer of Functions) Order 1999 and were transferred to the Welsh Ministers under paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

It is under section 32 (amongst others) that consent is sought by a local authority seeking to dispose of its housing stock under a stock transfer. In a stock transfer, consent may be given to a disposal of land held for housing purposes by the Welsh Ministers under section 32 and/or a disposal by a local authority of a house which has not been acquired or appropriated by the authority for housing purposes under section 43 of the Housing Act 1985.

A secure tenant of a local authority has rights in respect of a "dwelling-house" and an assured tenant of a registered social landlord has rights in respect of a "dwelling", hence the references in the LCO to dwelling-houses and dwellings.

"Land" let together with a dwelling-house is to be treated as part of a dwelling-house, (unless the land is agricultural land exceeding 2 acres) but not any other type of land, so it is this land that is within competence but not any other type of land.

The current draft means that all matters in Part 5 of the Housing Act 1985 and sections 16 to 17 of the Housing Act 1996 (right to acquire) are brought within competence. Disposals of dwelling-houses (within the meaning of Part 5 of the Housing Act 1985) and dwellings (within the meaning of section 63 of the Housing Act 1996) under Part II of the Housing Act 1985 and Chapter 2 of Part 1 of the Housing Act 1996 will also be within competence, but not any other type of land.

The current draft does not attempt to limit the LCO strictly to the Right to Buy and Right to Acquire schemes neither is it intended to cover all voluntary transfers and stock transfers that can be made under Part 2 of the Housing Act 1985 and Part 1 of the Housing Act 1996, but it is intended to cover the disposal under those provisions of land that would be a "dwelling house" for the purpose of Part 5 of the Housing Act 1985 or a "dwelling" for the purpose of section 63 of the Housing Act 1996.

The conclusion is that in the current draft, absence of a definition of "disposal" would not give the Assembly wider powers than it already has on stock transfer and it is not considered necessary that the inclusion of voluntary disposals in the current draft should give rise to concern. "Disposal" without definition will take its widest meaning. In this context a disposal means an alienation of the rights of the person holding the land. This can occur in a number of ways including in particular sale, lease, charge, mortgage or gift. All such disposals are included within competence. It is not considered desirable to limit the term "disposal" in the LCO, but if the concept needs to be narrowed when we come to consider the precise legal reforms required, that can be done in the Measure.

Definition of Social landlord

The Committee also asked whether a definition of "social landlord" was needed in the LCO and why couldn't this be defined in the Measure. 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 of Part 1 of the Housing Act 1996 applies.

Jocelyn Davies AM
Deputy Minister for Housing

Jocelyn Davies AC/AM
Y Dirprwy Weinidog dros Dai
Deputy Minister for Housing

Annex 5



Llywodraeth Cynulliad Cymru
Welsh Assembly Government

Our ref: LF/JAD/006/08

Leanne Wood AM
Chair
Proposed Affordable Housing LCO Committee
Cardiff Bay
Cardiff
CF99 1NA

4 March 2008

Dear Leanne,

Thank you for the further opportunity of presenting evidence to the Committee on the Affordable Housing LCO on 26 February.

At its meeting on 26 February, the Committee asked about the position if the Westminster Government proposed to legislate to narrow one of the Assembly's competences and I undertook to write to clarify the position.

The Government of Wales Act 2006 did not affect the UK Parliament's sovereignty and power to legislate for Wales on all issues. However, in accordance with established principle, the UK Parliament would not normally legislate with regard to devolved matters except with the agreement of the devolved legislature.

It was therefore considered appropriate to develop a convention in relation to the Assembly where a UK Parliament Bill proposed to make certain provision in respect of the Assembly's legislative competence under GOWA 2006. Whilst this convention is not enshrined in legislation, it is incorporated into the Memorandum of Understanding between the UK Government and the devolved administrations¹ and is the subject of extensive guidance, notably the UK Government's Devolution Guidance Notes.

In accordance with paragraph 17 of Devolution Guidance Note 9 (a copy of which is published on the Ministry of Justice's website, along with the Memorandum of Understanding referred to above) if any provision of a UK Parliamentary Bill is either on matters within the legislative competence of the Assembly or would have a negative effect on that competence (including removal of some aspect of the Assembly's legislative competence or modification of the legislative competence in a way that is considered to be

negative), the Welsh Ministers will need to obtain the consent of the Assembly. This is reflected in the Assembly's Standing Order 26. A Legislative Consent memorandum must be laid before the Assembly no later than 2 weeks after the Bill has been introduced into the

¹ See, for example, paragraph 13 of the "Memorandum of Understanding and Supplementary Agreements" which was presented to Parliament by the, then, Deputy Prime Minister by Command of Her Majesty in December 2001.

first House of Parliament. A legislative consent memorandum must summarise the policy objectives of the Bill, specify the extent to which the Bill makes (or would make) relevant provision (i.e. provision in relation to Wales) and explain whether it is considered appropriate for that provision to be made and for it to be made by means of the Bill.

When a legislative consent memorandum is laid, the Assembly Government must at the same time table a legislative consent motion which must seek the Assembly's agreement to the inclusion of the relevant provision(s) in the Bill. The Assembly must consider a legislative consent motion which has been tabled.

In the event that consent is refused, the UK Government would, subject to collective agreement being secured, table an appropriate amendment removing the relevant provisions.

This requirement for consent similarly applies to any Government amendments to Bills that would make provision on matters within the Assembly's legislative competence or would have a negative effect on that competence..

I hope that this clarifies the position and if you have any further queries, please let me know.

Yours Sincerely

A handwritten signature in blue ink that reads "Jocelyn Davies". The signature is written in a cursive, flowing style.

Jocelyn Davies AM