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Social Services 25 January and February 2008

Proposed Domiciliary Care LCO Committee

Committee Membership

Joyce Watson (Chair)	Labour	Mid and West Wales
Peter Black	Welsh Liberal Democrats	South Wales West
David Lloyd	Plaid Cymru	South Wales West
Jonathan Morgan	Welsh Conservative Party	Cardiff North
Karen Sinclair	Labour	Clwyd South

Summary

The conclusions and recommendations of the Proposed Domiciliary Care LCO Committee are as follows:

1. We note the broad support that exists for the proposed Order and, in particular that no organisation has opposed, in principle, the conferral of legislative competence in the area of charging for non-residential social care. We acknowledge and accept the reasons put forward by the Deputy Minister for seeking legislative competence. In view of this, **we agree, in principle, that legislative competence should be conferred on the Assembly.**
2. We acknowledge the evidence received from organisations concerning the financial implications of any future proposed Measures deriving legislative competence from Matter 15.9. We further acknowledge the view that the Assembly Government should meet the overall total cost of the charging income forgone as a result of the changes made to the charging system.
3. We note the comments made by the Deputy Minister regarding recompense for local authorities and the willingness of the Welsh Local Government Association to work with the Assembly Government in carrying out an assessment of the financial implications of options for a proposed Measure to reform the charging system.
4. We note the Deputy Minister's commitment to work collaboratively with stakeholders in designing options for a future proposed Measure to reform the charging system and welcome this approach.
5. We urge any future Measure committee established to report on any future Measure relating to reform of the charging system for non-residential social care to fully consider the financial implications of the proposals.
6. We note the view of the WLGA and ADSS Cymru on levels and variations in charges. However, given the strength of the evidence received from the Deputy Minister along with the views of others giving evidence, we agree that significant and widespread variations in charging for non-residential social care exist.
7. We note the view of the WLGA and ADSS Cymru in respect of the Fairer Charging guidance. However, we accept the evidence received from the Deputy Minister regarding the limited impact of the current guidance. Furthermore, we believe that the guidance is likely to remain a largely ineffective tool with which to address the variations in charging across local authorities while they are able to depart from it.

8. We note the views of the WLGA and ADSS Cymru regarding the exploration of alternative means to address the variations in charging. However, in the absence of any strong evidence regarding alternative effective means of tackling variations, we accept the view of the Deputy Minister and are persuaded by her argument.
9. We note the views of the WLGA and ADSS Cymru regarding the timing of the request for legislative competence. However, we accept the evidence received from the Deputy Minister and, on this basis, we believe it is appropriate to proceed with the proposed Order.
10. We acknowledge the concerns raised by witnesses relating to charging for non-residential social care for children. We accept the reasons put forward by the Deputy Minister concerning the need to acquire legislative competence in this regard and welcome her assurances that the Assembly Government does not intend to use the power conferred by Matter 15.9 to introduce charging for non-residential social care for children. In view of this, we are content that the scope of the proposed Order encompasses charging for non-residential social care for children.
11. We welcome the Deputy Minister's confirmation and are content that the proposed Order is sufficiently broadly drawn to enable the Assembly, by Measure, to abolish charging. We acknowledge that a significant number of those giving evidence opposed, in principle, charging for care and acknowledge their call for charging to be abolished. Notwithstanding this, we note and accept the Assembly Government's current position regarding the abolition of charging.
12. We accept the reasons put forward by the Deputy Minister for not extending the scope of the proposed Order to residential care and are content.
13. We accept the Deputy Minister's reason for using the term 'payments' in the proposed Order. However, we are concerned that the specific reference to 'direct payments' in the Explanatory Note has the potential to cause confusion. On this basis, **we recommend that the Explanatory Note is amended in line with the wording of Matter 15.9 to ensure clarity and consistency.**
14. We welcome the clarification given by the Deputy Minister regarding the meaning of the term 'particular needs'. We note the alternative wording suggested by those giving evidence. On the basis of evidence and advice received from the Deputy Minister and APS Legal Division respectively we accept that the term 'particular needs' provides for a wider interpretation than 'assessed needs'. Notwithstanding this, we believe that the term 'needs', not qualified by the word 'particular', is more wide-ranging and that it would therefore provide for the widest possible interpretation. In view of this, **we recommend that the proposed Order is amended to refer to 'needs' as opposed to 'particular needs.'**

15. We welcome the clarification given by the Deputy Minister regarding 'community care' and, on this basis are content with the use of the term 'social care'.

16. We acknowledge the views of the Deputy Minister that 'social care' in this proposed Order encompasses all elements of the definition of 'social care' to be inserted in Field 15 (social welfare) other than residential care. However, we are not convinced that the wording of the proposed Order makes clear this intention. In relation to this, we are concerned that the wording of Matter 15.9 may restrict a future proposed Measure to one element of 'social care', i.e. 'non-residential' and that it would not allow for a proposed future Measure which dealt solely with the other elements within the definition, i.e. support, financial or any other assistance, advice or counselling.

17. In view of the above, we feel that further clarity is required and recommend that the Deputy Minister amend the proposed Order to make clear its intention to include all elements of social care, other than residential care. To this end, we believe that this could be achieved by amending the proposed Order so that it refers to social care, not qualified by the words 'non-residential', while specifically excluding 'residential care', and we so recommend.

18. We note the Deputy Minister's view that the definition of 'well-being', as currently drafted, is sufficiently broad so as to encompass the issues of 'participation' and 'dignity'. However, we acknowledge the evidence received regarding the importance attached to these concepts in the UN Principles on Older Persons and agree that their inclusion in the definition would serve to emphasise their importance. On this basis we recommend that the definition of well-being be amended to include in (e) the word 'participation' and in (f) the word 'dignity'.

19. We welcome the Deputy Minister's explanation and are content with the excepted matters as provided for in the proposed Order.

20. We welcome the clarification given by the Deputy Minister regarding the interaction of the proposed Order and the proposed *National Assembly for Wales (Legislative Competence) (No.2) Order 2007* (relating to environmental protection and waste management ('the No.2 Order') and the proposed *National Assembly for Wales (Legislative Competence) (No.3) Order 2007* (relating to Vulnerable Children and Child Poverty) ('the No.3 Order') in relation to definitions and excepted matters. We accept that the proposed Order may need to be amended depending on the progress of the No.2 and No.3 Orders. However, we believe that this could be better explained in the Explanatory Memorandum and we recommend that the Deputy Minister address this before laying the draft Order.

21. In relation to the above, we also consider that the Explanatory Memorandum would better assist the reader if it included the definitions of 'social care' and 'well-being' as set out in the No.3 Order. Again, we

recommend that the Deputy Minister address this prior to laying the draft Order and that, should a similar situation arise for any future proposed Orders, that the definitions are included in the Explanatory Memorandum from the outset.

22. We were pleased to be able to undertake joint working with the Welsh Affairs Committee in scrutinising the proposed Order, which we believe was a valuable exercise and mutually beneficial. We further believe, where circumstances permit, that joint working between Assembly Committees set up to consider and report on proposed Legislative Competence Orders and the Welsh Affairs Committee should be encouraged.

23. We welcome the report of the Welsh Affairs Committee, which provides a detailed account of its scrutiny. We note the Welsh Affairs Committee's conclusions and recommendations and are pleased that they are broadly in line with those of this Committee. In particular, we welcome the recommendations made regarding the inclusion of definitions in the Explanatory Memorandum, the suggested amendment to the definition of 'well-being' and the term 'particular needs', which correspond with our own. We trust that the Welsh Assembly Government will give careful consideration to the Welsh Affairs Committee's recommendations before laying the draft Order.

1. Introduction

Background

1. On 26 November 2007, the Deputy Minister for Social Services laid before the Assembly the proposed National Assembly for Wales (Legislative Competence) (No.4) Order 2008 ('the proposed Order') and Explanatory Memorandum, in accordance with Standing Order 22.13 and 22.14. This was followed by a written statement on the proposed Order¹, which was followed by an oral statement in plenary on 27 November 2007.² Copies of the proposed Order and Explanatory Memorandum are attached at Annex 1.
2. On 27 November 2007, the Business Committee agreed to refer the proposed Order to a committee for detailed consideration,³ in accordance with Standing Order 22.16, and subsequently agreed a deadline for reporting no later than 14 March 2008.⁴
3. Following a resolution in plenary on 5 December 2007, the Proposed Domiciliary Care LCO Committee ('the Committee') was established, in accordance with Standing Order 21, to consider the proposed Order.⁵

Terms of reference

4. At our first meeting on 13 December 2007, we agreed the following terms of reference:
5. To consider:
 - (i) the general principles of the proposed Order and whether legislative competence in the area identified in Matter 15.9 be conferred on the Assembly; and
 - (ii) the terms of the proposed Order, and in particular whether they are too broadly or too narrowly defined.⁶

¹ Welsh Assembly Government, Gwenda Thomas, Deputy Minister for Social Services, *Charging for Non-Residential Social Care - Legislative Competence Order (Domiciliary Care)*, Cabinet Written Statement

² RoP p53-71, 27 November 2007

³ National Assembly for Wales, Business Committee, BC(3)-15-07, Committee Minutes, 27 November 2007

⁴ National Assembly for Wales, Business Committee, BC(3)-16-07, Committee Minutes, 4 December 2007

⁵ RoP p56-57, 5 December 2007

⁶ National Assembly for Wales, Proposed Domiciliary Care LCO Committee, DC(3)-01-07, Committee Minutes, 13 December 2007

Evidence

6. We issued a general call for evidence and invited key stakeholders from within the field of social care 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**. Supplementary evidence from the Deputy Minister for Social Services is attached at **Annex 5**.
8. 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

9. The purpose of the proposed Order is to amend Part 1 of Schedule 5 to the Government of Wales Act 2006⁷ ('the 2006 Act') to confer legislative competence on the Assembly in relation to charging for Non-residential Social Care, by inserting a new matter, Matter 15.9, into Field 15 (social welfare):

Matter 15.9 Charges levied by local authorities for non-residential social care provided or secured by them and payments in respect of individuals with particular needs relating to their well-being so that they, or persons looking after them, may secure non-residential social care to meet those needs.

10. The competence to be conferred by Matter 15.9 is subject to a number of excepted matters which specify areas where legislative competence is not conferred on the Assembly, namely child support (i.e. arrangements for the provision of maintenance by both parents of a child); tax credits; child benefit and guardian's allowance; social security; Independent Living Funds; and Motability.

Explanatory Memorandum

11. In the Explanatory Memorandum accompanying the proposed Order, the Deputy Minister asserts that the conferral of legislative competence in this area is required to overcome the current legislative restrictions and enable the Assembly Government to regulate the setting of charges and remove the wide variations on charging for non-residential social care that currently exist.⁸

12. She explains that these variations emanate from section 17 of the Health and Social Services and Social Security Adjudications Act 1983 (HASSASSA) under which individual local authorities have discretion over whether to charge, and how much to charge, for non-residential social services.

13. While the Assembly Government can provide guidance to local authorities on the exercise of their charging arrangements under section 7 of the Local Authority Social Services Act 1970, this guidance remains largely good practice except for four statutory elements.

14. The Deputy Minister goes on to explain:

⁷ The *Government of Wales Act 2006*, c.32

⁸ Welsh Assembly Government, *Memorandum from the Deputy minister for Health and Social Services, Constitutional Law: Devolution, Wales, The National Assembly for Wales (Legislative Competence)(No.4) Order 2008, Proposal for a Legislative Competence Order relating to charging for Non-Residential Social care (Domiciliary Care)*, GPO-04-EM

“...if the Assembly Government were to issue further comprehensive guidance under section 7 in relation to charging for non-residential social care it would need to be sure that it did not fetter local authorities’ fundamental discretion to charge for certain services and to recover such charges as they consider reasonable as set out in section 17 of HASSASSA. Any policy that sought to establish a greater uniformity, for example by applying maximum charges or standard charges, could not therefore be achieved using section 7 powers. In this way the current executive powers of Welsh Ministers are not sufficient to allow them to achieve a fairer and more consistent approach.”⁹

Evidence from stakeholders

15. There was widespread support for the principle of the proposed Order, i.e. that legislative competence in the area of charging for non-residential social care be conferred on the Assembly, with many respondents expressly welcoming the proposals. Of the 21 organisations who gave evidence (either orally or in writing) to the Committee, two organisations¹⁰ reported reservations about conferral of legislative competence.

16. Much of the evidence received highlighted the inadequacies of the current charging system and the impact this had on service users. Some respondents suggested that the current charging arrangements had created a ‘postcode lottery’ across local authorities in Wales¹¹. In its evidence to the Committee, Age Concern stated:

“There is an urgent need to reform the current charging system which creates a ‘postcode lottery’ across Wales of widely varying charges depending on local authority area.”¹²

17. It went on:

“We believe that the current system is inequitable, discriminatory and penalises savers and even those with modest assets.”¹³

18. The Coalition on Charging Cymru felt that there was a degree of confusion across the social care sector about the current legislation governing the charging system and that the proposed Order would provide an opportunity for the Assembly to bring clarity to what was, essentially, a complex issue¹⁴.

⁹ GPO-04-EM, paragraph 14

¹⁰ Written evidence, DC19; and RoP, 31 January 2008, Proposed Domiciliary Care LCO Committee

¹¹ Written evidence, DC1, DC4, DC9, DC11, DC13, DC14

¹² Written evidence, DC1

¹³ Written evidence, DC1

¹⁴ RoP, paragraph 104 and 106, 31 January 2008, Proposed Domiciliary Care LCO Committee

19. It was generally felt by those giving evidence that conferral of legislative competence would allow the Assembly, by Measure to introduce a fairer, more transparent charging system which could, ultimately, help ease the financial burden of meeting care costs on services users. In its evidence to the Committee, Age Concern Cymru stated:

“The Welsh Assembly must create fairer, transparent statutory guidance for local authorities on charging, criteria and rates, developed in conjunction with service users and their carers. We feel that conferring legislative competence on the Assembly to do this would be a very positive step.”¹⁵

20. Similarly, Carers Wales stated:

“...it is both important and appropriate for WAG to seek powers to address charging for non-residential care. We hope that in seeking a LCO, WAG will address issues of equality and social justice for disabled people and their carers.”¹⁶

21. Likewise, in welcoming the proposed Order, Mencap Cymru suggested that conferral of legislative competence in this area was:

“...an exciting opportunity to improve the lives of people with a learning disability, their families and carers in Wales.”¹⁷

22. In addition, some respondents felt that conferral of legislative competence would allow the Welsh Assembly Government to facilitate the shift from residential care towards support in the home, as envisaged in its strategic document, *Fulfilled Lives, Supportive Communities*.¹⁸

23. The evidence received from the Welsh Local Government Association (WLGA) and Association for Directors of Social Services Cymru (ADSS Cymru) suggested that they had some reservations about conferral of legislative competence and it was unclear whether they were fully supportive of the principle of the proposed Order.¹⁹

24. While the organisations supported the principle of addressing unacceptable variations in charging they were not entirely convinced that acquiring legislative competence in this area and the introduction of a subsequent Measure was the most appropriate way to achieve this aim. Indeed, they implied that the variations were symptomatic of a wider problem of insufficient local government funding.

¹⁵ Written evidence, DC1

¹⁶ Written evidence, DC6

¹⁷ Written evidence, DC13

¹⁸ Written evidence, DC5, DC7 and DC12

¹⁹ Written evidence, DC19; and RoP, 31 January 2008, Proposed Domiciliary Care LCO Committee

25. In their evidence, the WLGA stated:

“The question as to whether we need to proceed with an LCO to achieve what we want to achieve is fundamental. In our evidence, in principle, we cannot disagree with the overall desire to smooth out unacceptable variances. Beyond that, the Welsh Local Government Association’s position would be that we need further work to explore other ways of achieving this, and that we have to look at it in the context of the main body of our evidence, which is the overall ways and mechanisms of funding social care in Wales.”²⁰

26. Again, in their joint written submission, the WLGA and ADSS Cymru stated that they:

“...approve in principle to the LCO but have serious concerns about its potential impact. Money will inevitably be needed to implement the changes and in isolation from the overall problem can be nothing more than a short term fix. Changes in isolation to the big picture may well cause damage to the delivery of social care services and increase demand way beyond that which is affordable to the Country as a whole.”²¹

27. The financial implications of future Measures deriving legislative competence from Matter 15.9 and the need for adequate funding to be made available to local authorities was an issue, not only for the WLGA and ADSS Cymru, but also for the three individual local authorities and the Welsh Therapy Advisory Committee who submitted written evidence.²² In particular, clarification was sought on whether local authorities would be fully recompensed for loss of income as a result of changes to the charging system.²³

Our view

28. We note the broad support that exists for the proposed Order and, in particular that no organisation has opposed, in principle, the conferral of legislative competence in the area of charging for non-residential social care. We acknowledge and accept the reasons put forward by the Deputy Minister for seeking legislative competence. In view of this, **we agree, in principle, that legislative competence should be conferred on the Assembly.**

29. We acknowledge the evidence received from organisations concerning the financial implications of any future proposed Measures deriving legislative competence from Matter 15.9. We further acknowledge the view that the Assembly Government should meet the overall total cost of the

²⁰ RoP paragraph 23, 31 January 2008, Proposed Domiciliary Care LCO Committee

²¹ Written evidence, DC19

²² Written evidence, DC5, DC10, DC11 and DC18

²³ Written evidence, DC5, DC10 and DC11

charging income forgone as a result of the changes made to the charging system.

30. We note the comments made by the Deputy Minister regarding recompense for local authorities and the willingness of the Welsh Local Government Association to work with the Assembly Government in carrying out an assessment of the financial implications of options for a proposed Measure to reform the charging system.

31. We note the Deputy Minister's commitment to work collaboratively with stakeholders in designing options for a future proposed Measure to reform the charging system and welcome this approach.

32. We urge any future Measure committee established to report on any future Measure relating to reform of the charging system for non-residential social care to fully consider the financial implications of the proposals.

Issues arising in scrutinising the principle of the proposed Order

33. In scrutinising the principle of the proposed Order, the Committee considered a number of specific issues raised by those giving evidence, which are outlined below.

i. Levels and variation in charges across local authorities

Evidence from stakeholders

34. Implicit in the majority of evidence received was the belief that the existing variation in charging policies was a real and significant problem for service users and carers. In giving evidence to the Committee, the Coalition on Charging Cymru stated:

“Determining the level of income of some of the most vulnerable people in Wales on a variable basis across Wales is absolutely wrong.”²⁴

And

“...it is not sensible to have the kinds of variations that you have. There is no maximum charge in many places and there is certainly no statutory maximum charge, so people can be charged a great deal - and the evidence is that they are being charged a great deal.”²⁵

35. While the WLGA and ADSS Cymru acknowledged that variations in charges did exist, they questioned the extent of the problem and stated:

“...there is a significant cohort of authorities in the middle, with a level of consistency in their approach (to charging). However, you will then have some authorities at the extreme ends, and it is about trying to understand why that is the case.”²⁶

And

“...I would argue that the majority of authorities are part of that large cohort in the middle, where there is not that much discrepancy.”²⁷

Evidence from the Deputy Minister

36. In the Deputy Minister’s legislative statement on the proposed Order she gave examples of the current maximum weekly charges for non-

²⁴ RoP paragraph 97, 31 January 2008, Proposed Domiciliary Care LCO Committee

²⁵ Ibid paragraph 98

²⁶ Ibid paragraph 8

²⁷ Ibid paragraph 11

residential social care across local authorities. In giving evidence to the Committee, she asserted that the figures:

“...illustrate graphically the nature of the problem and why the LCO is needed.”²⁸

37. Furthermore, in the Deputy Minister’s letter to the Committee, dated 13 February, she provided supplementary information about the variations in hourly charges, maximum weekly charges and the differences in charging and assessment policies across local authorities.²⁹ In doing so, she reinforced her previous assertion and stated:

“We are quite clear that variations in charging policies are widespread across Wales, are significant, and have a negative effect on service.”³⁰

Our view

38. We note the view of the WLGA and ADSS Cymru on levels and variation in charges. However, given the strength of the evidence received from the Deputy Minister along with the views of others giving evidence, we agree that significant and widespread variations in charging for non-residential social care exist.

ii. Impact of ‘Fairer Charging Policies for Home Care and other non-residential Social Services’

Background

39. In July 2002 the Assembly Government issued guidance to local authorities, *Fairer Charging Policies for Home Care and other non-residential Social Services*³¹ (‘Fairer Charging’ guidance), under the *Local Authority Social Services Act 1970*, with the aim of enabling local authorities to design “reasonable and fair charging policies” and to ensure greater consistency.

Evidence from stakeholders

40. In its evidence to the Committee, Help the Aged in Wales emphasised the inadequacy of the Fairer Charging guidance and stated:

“Despite intending to provide for a consistent approach, this guidance still resulted in wide variation of application across Wales.”³²

²⁸ RoP paragraph 12, 7 February 2008, Proposed Domiciliary Care LCO Committee

²⁹ Letter from Gwenda Thomas AM, deputy Minister for Social Services, 13 February 2008

³⁰ *Ibid*

³¹ Welsh Assembly Government, *Fairer Charging Policies for Home Care and other non-residential Social Services, Guidance fro Local Authorities*, July 2002

³² Written evidence, DC12

41. Help the Aged in Wales and the Coalition on Charging Cymru acknowledged the revisions to the Fairer Charging guidance which came into effect in April 2007. These revisions were aimed at mitigating the effects of charging by increasing the 25 per cent buffer³³ to 35 per cent and introducing a 10 per cent allowance for disability related expenditure. However, both organisations pointed out that some local authorities had subsequently increased their hourly rate and maximum weekly charge.

42. In giving evidence to the Committee, the WLGA and ADSS Cymru challenged the assertion that the Fairer Charging guidance had had a limited impact.³⁴ Indeed, both organisations believed that the guidance had been helpful, and had started to bring about standardisation and consistency to the approach taken by local authorities in both the charging and assessment process.³⁵

Evidence from the Deputy Minister

43. In giving evidence to the Committee, the Deputy Minister explained that the *Fairer Charging Policies for Home Care and other non-residential Social Services* ('Fairer Charging' guidance) had had a very limited impact on addressing the variations in charging across local authorities.

44. In her letter to the Committee, dated 13 February, the Deputy Minister asserted that disparities and inequities existed despite the Fairer Charging guidance. She went on to explain that:

"The fundamental stumbling block is that the Assembly Government's power to issue guidance on this subject to local authorities would not enable us to issue guidance that fettered the discretion in section 17 of HASSASSA. The legal advice we have is unequivocal: we cannot use the powers in Section 7 of the Local Authority Social Services Act 1970 to achieve the degree of consistency and fairness that we are seeking to achieve. The Assembly Government can give guidance as to how an authority should set about exercising its discretion to charge, but that guidance cannot make it obligatory for local authorities to exercise their discretion in a particular way. Neither can we alter that discretionary power by limiting the power to charge."

³³ The buffer provides an additional safeguard to prevent users' independence of living from being undermined by charging policies - paragraph 18, Welsh Assembly Government, *Fairer Charging Policies for Home Care and other non-residential Social Services, Guidance for Local Authorities*, July 2002

³⁴ RoP, paragraph 11, 31 January 2008, Proposed Domiciliary Care LCO Committee

³⁵ RoP, paragraph 6-8, 31 January 2008, Proposed Domiciliary Care LCO Committee

Our view

45. We note the view of the WLGA and ADSS Cymru in respect of the Fairer Charging guidance. However, we accept the evidence received from the Deputy Minister regarding the limited impact of the current guidance. Furthermore, we believe that the guidance is likely to remain a largely ineffective tool with which to address the variations in charging across local authorities while they are able to depart from it.

iii. Use of alternative means to address the problem of variation in charges

Evidence from stakeholders

46. In considering whether it was appropriate for legislative competence in the area identified to be conferred on the Assembly, the WLGA and ADSS Cymru questioned whether the Welsh Assembly Government had fully explored alternative means by which any unacceptable variations in charges could be addressed. They stated:

“In terms of whether we consider that, as a consequence, we need to have legislative competence in this area, I suppose that the question you might want to ask is whether there are other ways of trying to achieve a more standard approach to charging, as is the case in other services across the social care sector. That is starting to happen as we start to look at increasing collaboration between local authorities, and regional partnerships.”³⁶

And

“...we have not fully explored alternative opportunities, which we are willing to work hard on, to establish whether the powers that we have will do the job or whether we need further powers.”³⁷

Evidence from the Deputy Minister

47. In giving evidence to the Committee, the Deputy Minister confirmed that, in her view, the seeking of legislative competence was:

“...the only way to achieve the uniform approach that we seek. Anything less than an LCO will not provide the guarantee that change will happen, and that fairer charging will result.”³⁸

48. The Deputy Minister reaffirmed this position in her letter to the Committee, dated 13 February 2007, in which she stated:

³⁶ RoP, paragraph 6-8, 31 January 2008, Proposed Domiciliary Care LCO Committee

³⁷ Ibid, paragraph 57

³⁸ RoP, paragraph 53, 7 February 2008, Proposed Domiciliary Care LCO Committee

“We remain firmly of the view, therefore, that the only way to deliver a consistent and fair approach to charging is by conferral of legislative competence and the bringing forward of Measures subsequently.”³⁹

And

“In my view there are no alternative effective and guaranteed means of bringing about the consistency and fairness without needing to go through the Measure process...I am not aware of any such alternatives and the only, rather unsatisfactory, alternative that would seem to be available would amount to a voluntary arrangement of co-operation across local government, that would be vulnerable to unravelling readily at the local level if there were year-to-year budget pressures. That would just perpetuate the existing problem and not deliver the ‘One Wales’ commitment.”⁴⁰

Our view

49. We note the views of the WLGA and ADSS Cymru regarding the exploration of alternative means to address the variations in charging. However, in the absence of any strong evidence regarding alternative effective means of tackling variations, we accept the view of the Deputy Minister and are persuaded by her argument.

iv. Timing

Background

50. In the pre-budget report of October 2007⁴¹ the Chancellor of the Exchequer announced plans to produce a Green Paper on the reform of social care in England. The UK Government intends to re-focus the way social care and related services are provided in England towards personalised care and support and individualised budgets which may encompass other services such as housing, health, benefits, leisure and transport. It also aims to address the issue of the funding of adult social care and the balance between the contribution made by individuals and the state. The Green Paper is expected in the latter part of 2008.

³⁹ Letter from Gwenda Thomas AM, deputy Minister for Social Services, 13 February 2008

⁴⁰ *Ibid*

⁴¹ *2007 Pre-Budget Report and Comprehensive Spending Review*, HM Treasury, October 2007, p100:

http://www.hm-treasury.gov.uk/media/7/4/pbr_csr07_completereport_1546.pdf

Evidence from stakeholders

51. In its evidence to the Committee, the WLGA and ADSS Cymru implied that the Green Paper would bring about fundamental changes to the funding of social services, including the Benefits system. They stated:

“Within this context we are concerned that this initiative to give the Assembly Government powers to set charges for just one element of the social care system, appears to be merely ‘*tinkering at the margins*’ whilst greater effort and focus needs to be on the wider agenda.”⁴²

52. The WLGA went on to question whether the timing of the request for legislative competence was appropriate in light of the Green Paper and raised concerns that the Assembly may be ‘fettering’ its opportunities to look at what other powers were required.⁴³ Indeed, the WLGA was of the opinion that the Assembly Government may wish to delay its request for legislative competence in this area until the implications of the Green Paper for Wales were known.⁴⁴

Evidence from the Deputy Minister

53. In responding to the WLGA and ADSS Cymru’s view, the Deputy Minister acknowledged that the Green Paper would have implications for Wales.⁴⁵ However, early indications of issues to be addressed in the Green Paper would not, in any way, contradict what was in the proposed Order.⁴⁶ The Deputy Minister went on to emphasise the importance of proceeding with the proposed Order in a timely manner to ensure that the necessary reforms to the current charging system could be made.⁴⁷

Our view

54. We note the views of the WLGA and ADSS Cymru regarding the timing of the request for legislative competence. However, we accept the evidence received from the Deputy Minister and, on this basis, we believe it is appropriate to proceed with the proposed Order.

⁴² Written evidence, DC19

⁴³ RoP, paragraph 39, 31 January 2008, Proposed Domiciliary Care LCO Committee

⁴⁴ *Ibid*

⁴⁵ RoP, paragraph 58, 7 February 2008, Proposed Domiciliary Care LCO Committee

⁴⁶ *Ibid*, paragraph 63

⁴⁷ *Ibid*, paragraph 58

3. Scope

i. Charging assessment process

Evidence from stakeholders

55. Many of those giving evidence raised concern about the current charging assessment process. In its written evidence, Help the Aged in Wales stated:

“...there is a lack of clarity regarding the ways in which authorities arrive at the charges an individual is expected to pay which adds to the confusion.”⁴⁸

56. A number of respondents suggested that the treatment of occupational pensions, partners’ income and savings were a particular problem.⁴⁹

57. Both Age Concern Cymru and Help the Aged in Wales strongly believed that the current charging assessment process discriminates against older people.⁵⁰

58. While those who commented on the assessment process felt that the proposed Order would provide an opportunity for the Assembly to tackle the above issues, many believed that improvements aimed at ensuring a fairer system of assessment could be made within the existing powers of the Assembly.⁵¹

Evidence from the Deputy Minister

59. In giving evidence to the Committee, the Deputy Minister acknowledged that inconsistencies existed across local authorities in the charging assessment process and, in particular, the way in which benefits and disability related expenditure were treated in an individual’s financial assessment.⁵² She went on to confirm that the proposed Order, as drafted, would allow the Assembly, by Measure, to make changes to the charging assessment process.⁵³

Our view

60. We acknowledge the evidence received relating to the problems within the current charging assessment system. We note and accept the Deputy Minister’s assertion that the scope of the proposed Order encompasses charging assessment and we are content with this.

⁴⁸ Written evidence, DC12

⁴⁹ Written evidence, DC1, 6, 7 and 15

⁵⁰ Written evidence, DC1 and DC12

⁵¹ Written evidence, DC1, 6, 7 and 15

⁵² RoP, paragraph 68, 17 January 2008, Proposed Domiciliary Care LCO Committee

⁵³ Ibid, paragraph 69

61. We further acknowledge the views of some of those giving evidence that improvements to the current charging assessment system could be made by using the existing powers of Welsh Ministers. In light of this, we seek assurances from the Deputy Minister that she has fully explored all options available within existing powers to address problems within the current system, in particular the treatment of occupational pensions, partners' income and savings.

ii. Charging for non-residential social care for children

Evidence from stakeholders

62. Concern was expressed by organisations who gave oral evidence that the proposed Order would enable the Assembly, by Measure, to legislate on charging by local authorities for non-residential social care for children.⁵⁴ Indeed, it was suggested that children should be specifically excluded from the scope of the proposed Order.⁵⁵

Evidence from the Deputy Minister

63. In giving evidence to the Committee, the Deputy Minister acknowledged these concerns and explained:

“Children’s services are included within the scope only because we want to be able to take remedial action in the future if the need were to arise. For example, if local authorities altered their current policy of not charging for non-residential social services, we would want to be able to ensure that, at the very least, such charges would be set in a fair and consistent manner. If we were to restrict the LCO to charges for non-residential social care for adults only, in theory, we might have to go through the LCO process again in order to deal with the wide variation in charges for non-residential care for children, if that were to occur.”⁵⁶

64. The Deputy Minister provided assurances that it was not the intention of the Assembly Government to encourage or require local authorities to charge for non-residential social care for children if legislative competence in the area identified was conferred on the Assembly.⁵⁷

⁵⁴ RoP, paragraph 59-62 and 144-145, 31 January 2008, Proposed Domiciliary Care LCO Committee

⁵⁵ Ibid

⁵⁶ RoP, paragraph 65, 7 February 2008, Proposed Domiciliary Care LCO Committee

⁵⁷ Ibid, paragraph 65 and 74; see also RoP, paragraph 56, 17 January 2008, Proposed Domiciliary Care LCO Committee

Our view

65. We acknowledge the concerns raised by witnesses relating to charging for non-residential social care for children. We accept the reasons put forward by the Deputy Minister concerning the need to acquire legislative competence in this regard and welcome her assurances that the Assembly Government does not intend to use the power conferred by Matter 15.9 to introduce charging for non-residential social care for children. In view of this, we are content that the scope of the proposed Order encompasses charging for non-residential social care for children.

iii. Abolition of charging

Evidence from stakeholders

66. Mind Cymru and Wales Carers Alliance highlighted the importance of ensuring that the scope of the proposed Order was sufficiently broad to allow the Assembly Government the flexibility to set the level of charging at nil for specific services or for specific client groups.⁵⁸ However, Cardiff County Council raised concern that a move towards this could be seen to be unfair and inequitable for service users who continued to be charged.⁵⁹

67. A number of organisations emphasised the need to ensure that the proposed Order would allow the Assembly to abolish charging for non-residential social care.⁶⁰ In doing so, some made clear that they firmly opposed the fundamental principle of charging and highlighted the need to introduce free home care for older and disabled people.⁶¹

68. While the WLGA and ADSS Cymru expressed concern about the abolition of charges, in particular the financial implications for local authorities, it was not clear if the organisations were content that the proposed Order, in principle, would allow for this. They stated:

“Charging is an inevitable consequence of any local authority’s powers to meet its statutory requirements. Any move to remove that flexibility would be seen in a very unfavourable light from a local authority perspective. I would also struggle with the context and the concept of how to make that a reality, particularly in the current financial climate... A significant amount of local authorities’ total income is raised through charging.”⁶²

⁵⁸ Written evidence, DC3, DC14 and DC16

⁵⁹ Written evidence, DC5

⁶⁰ Written evidence, DC1, DC3, DC6 and DC15, RoP, paragraph 136-140, 31 January 2008, Proposed Domiciliary Care LCO Committee

⁶¹ Written evidence, DC1, DC6, DC12, DC13, DC14 and DC15

⁶² RoP, paragraph 49, 31 January 2008, Proposed Domiciliary Care LCO Committee

Evidence from the Deputy Minister

69. In giving evidence to the Committee, the Deputy Minister confirmed that the scope of the proposed Order would enable the Assembly, by Measure, to abolish charging for non-residential social care.⁶³ However, she made clear that it was not the intention of the Assembly Government to abolish charges at the present time.⁶⁴

Our view

70. We welcome the Deputy Minister's confirmation and are content that the proposed Order is sufficiently broadly drawn to enable the Assembly, by Measure, to abolish charging. We acknowledge that a significant number of those giving evidence opposed, in principle, charging for care and acknowledge their call for charging to be abolished. Notwithstanding this, we note and accept the Assembly Government's current position regarding the abolition of charging.

iv. Residential care

Evidence from stakeholders

71. Only two of those giving evidence made reference to residential care. Cardiff County Council highlighted the need to ensure consistency between residential and non-residential care in the treatment of disregard and capital limits for the purpose of an individual's charging assessment.⁶⁵ In addition, Denbighshire County Council raised concern that the setting of maximum charges for non-residential social care could result in a shift towards residential social care, which may prove a cheaper alternative for local authorities.⁶⁶

Evidence from the Deputy Minister

72. In giving evidence to the Committee, the Deputy Minister confirmed that the scope of the proposed Order was limited to charging for non-residential social care. In explaining why the proposed Order did not extend to residential social care, the Deputy Minister stated:

"Our proposals to legislate on charging for non-residential social services have been made in response to a particular problem with inconsistencies of the charging regime for non-residential social services. This particular problem does not exist in the field of residential social care."⁶⁷

⁶³ RoP, paragraph 59-60, 17 January 2008, Proposed Domiciliary Care LCO Committee

⁶⁴ *Ibid*

⁶⁵ Written evidence, DC5

⁶⁶ Written evidence, DC11

⁶⁷ RoP, paragraph 62, 17 January 2008, Proposed Domiciliary Care LCO Committee

73. Expanding on this, the Acting Director of the Assembly Government's Older People and Long Term Care Policy Directorate explained:

"We already have a robust mechanism in place to ensure consistency in respect of residential accommodation charging, and it is updated through regulations on an annual basis. Therefore, we do not need to do that through this LCO."⁶⁸

74. The Deputy Minister went on to confirm that, should the Assembly wish to make changes to the current charging system for residential social care, a further Legislative Competence Order would be required.⁶⁹

Our view

75. We accept the reasons put forward by the Deputy Minister for not extending the scope of the proposed Order to residential care and are content.

⁶⁸ RoP, paragraph 62, 17 January 2008, Proposed Domiciliary Care LCO Committee

⁶⁹ Ibid, paragraph 65-66

4. Terms and definitions

i. Payments

Background

76. Matter 15.9 refers to 'payments', whereas the Explanatory Note to the proposed Order refers specifically to 'direct payments.'

Evidence from Stakeholders

77. Two of those giving evidence felt it was important for the proposed Order to be sufficiently broadly drawn to encompass new payment arrangements such as 'individualised or personalised budgets'.⁷⁰

Evidence from the Deputy Minister

78. In response to a question on the use of the term 'payments' the Deputy Minister suggested that this was the case and stated:

"...it would not be wise to only talk about direct payments when there is a possibility that other policies will develop that create other charges... we must be open in terms of how policies could develop, and ensure that we have the legislative power to consider that if it were to arise."⁷¹

Our view

79. We accept the Deputy Minister's reason for using the term 'payments' in the proposed Order. However, we are concerned that the specific reference to 'direct payments' in the Explanatory Note has the potential to cause confusion. On this basis, **we recommend that the Explanatory Note is amended in line with the wording of Matter 15.9 to ensure clarity and consistency.**

ii. Particular needs

Background

80. The proposed Order refers to 'individuals with particular needs' in the context of 'payments'.

⁷⁰ Written evidence, DC6 and 7

⁷¹ RoP, paragraph 114, 17 January 2008, Proposed Domiciliary Care LCO Committee

Evidence from stakeholders

81. Some of those giving evidence sought clarification on how 'particular' would be defined in the context of the proposed Order.⁷²

82. Both Carers Wales and the WLGA suggested that the term 'assessed needs' may be more appropriate since it is a term that is currently used within the context of local authority social care provision and, as such, would be more familiar to service users.⁷³ However, in commenting on the term 'assessed needs', Wales Carers Alliance stated:

"The difficulty with that term is that it is reliant on an assessment, which raises the question of who does the assessment. Therefore, the term 'particular needs' may be preferable."⁷⁴

83. It went on to suggest that the term 'individuals' needs' be used.

84. In its evidence to the Committee, Arthritis Care in Wales believed that the word 'particular' should be omitted since it provided for a narrower interpretation than simply using the word 'needs.'⁷⁵

Evidence from the Deputy Minister

85. In giving evidence to the Committee the Deputy Minister explained:

"Direct payments may be made for the provision of care required to meet a wide range of needs. These needs are not specified in the relevant legislation, and accordingly no definition has been included in this LCO. This will enable the Assembly to legislate in respect of all payments for securing non-residential social care which are made to individuals with needs, provided these needs relate to that individual's well-being..."⁷⁶

86. In commenting on the term 'assessed needs' the Deputy Minister asserted:

"...the phrase 'particular needs' relating to well-being has been used because it is wide and will give the Assembly the competence that we consider necessary to ensure a fairer charging regime for all non-residential services. We understand that the term 'assessed needs' is commonly used by local authorities and service users; however, the LCO has been drafted to ensure that the competence is sufficiently

⁷² Written evidence, DC6, 7 and 15

⁷³ RoP, paragraph 70-72 and 150-151, 31 January 2008, Proposed Domiciliary Care LCO Committee

⁷⁴ Ibid, paragraph 152

⁷⁵ Written evidence, DC3

⁷⁶ RoP, paragraph 64, 17 January 2008, Proposed Domiciliary Care LCO Committee

wide and is not granted by reference to existing terminology. In other words, we did not want to give the greatest consideration to existing terminology but rather to ensuring that the LCO was wide enough. In our view, the term 'particular needs' is more appropriate than 'assessed needs', which brings such issues as who must carry out the assessment of needs and the assessment process itself."⁷⁷

87. Advice received from the Assembly Parliamentary Service Legal Division (APS Legal Division) corresponds with the Deputy Minister's view as stated above.

88. In responding to comments made by Arthritis Care in Wales, the Deputy Minister said she would give consideration to use of 'needs', as opposed to 'particular needs', in light of the Committee's report.⁷⁸

Our view

89. We welcome the clarification given by the Deputy Minister regarding the meaning of the term 'particular needs'. We note the alternative wording suggested by those giving evidence. On the basis of evidence and advice received from the Deputy Minister and APS Legal Division respectively we accept that the term 'particular needs' provides for a wider interpretation than 'assessed needs'. Notwithstanding this, we believe that the term 'needs', not qualified by the word 'particular', is more wide-ranging and that it would therefore provide for the widest possible interpretation. In view of this, we recommend that the proposed Order is amended to refer to 'needs' as opposed to 'particular needs.'

iii. Social care

Background

90. The definition of 'social care' used in the proposed Order is imported from the 'Interpretation of Field' to be inserted in Part 1 of Schedule 5 to the *Government of Wales Act 2006* ('the 2006 Act') by the proposed *National Assembly for Wales (Legislative Competence) (No.3) Order 2007* relating to Vulnerable Children and Child Poverty ('the No.3 Order').

91. The definition of 'social care' to be used in Field 15 (social welfare) is as follows:

"social care" includes the provision by any person of residential care, non-residential care, support, financial or any other assistance, advice or counselling in connection with the well-being of any person.." ⁷⁹

⁷⁷ RoP, paragraph 77, 7 February 2008, Proposed Domiciliary Care LCO Committee

⁷⁸ Ibid, paragraph 81

⁷⁹ The proposed *National Assembly for Wales (Legislative Competence) (No.3) Order 2007*

Evidence from stakeholders

92. Some of those giving evidence sought clarification on the types of services that would be covered by the term 'social care' and whether it was synonymous with 'community care' as defined in existing legislation.⁸⁰

93. Age Concern Cymru and the Coalition on Charging felt that the term 'social care' should apply, at the very least, to all services that currently fall within a Community Care Assessment.⁸¹

94. In commenting on the term, Help the Aged stated:

"We hope that the proposed definition of 'social care', whilst relating specifically to 'non-residential' services, will encompass the broadest range of support available to older and disabled people..."⁸²

95. In addition, Cardiff County Council questioned whether the proposed Order would include any service that would enable a service user to remain at home.⁸³

96. While the Coalition on Charging Cymru felt that the term was sufficiently broadly drawn for the purpose of the proposed Order, it suggested there was a need for absolute clarity on the types of services intended to be provided for in any future proposed Measures deriving legislative competence from Matter 15.9.⁸⁴

97. Similarly, Help the Aged in Wales commented:

"We would urge the Assembly to make use of definitions and terminology that are widely understood and that have been tested, to ensure that the Order and future measures are clear and unambiguous."⁸⁵

Evidence from the Deputy Minister

98. In her oral evidence to the Committee, the Deputy Minister stated:

"This LCO is concerned with non-residential social care that is provided by local authorities. With the exception of residential care, this LCO will include all forms of social care referred to in the definition of social care set out in the vulnerable children LCO..."⁸⁶

⁸⁰ Written evidence, DC1, 6, 7 and 15

⁸¹ Written evidence, DC1 and DC7

⁸² Written evidence, DC12

⁸³ Written evidence, DC5

⁸⁴ RoP, paragraph 128, 31 January 2008, Proposed Domiciliary Care LCO Committee

⁸⁵ Written evidence, DC12

⁸⁶ RoP, paragraph 53, 17 January 2008, Proposed Domiciliary Care LCO Committee

99. The Deputy Minister went on to assert that the definition of 'social care' in the proposed Order was broad enough to encompass '...all sorts of services and support' other than residential social care.⁸⁷

100. Again, at the 7 February 2008 meeting, the Deputy Minister confirmed that, for the purpose of the proposed order, 'social care' included all elements contained in the definition to be used in Field 15 (social welfare) other than residential care; namely, 'non-residential care, support, financial or any other assistance, advice or counselling in connection with the well-being of any person.'⁸⁸

101. In commenting on whether the term 'social care' and 'community care' have the same meaning, the Deputy Minister explained that the term 'social care':

"...is not synonymous with the definition of 'community care services' found in the National Health Services and Community Care Act 1990 ('the 1990 Act'). The definition of 'social care' adopted for the purposes of the social care field is broad, and includes a description of different types of care rather than a list of existing legislation. That will ensure that the definition remains extant, and not subject to future changes to legislation concerning powers and duties to provide services. The definition of 'social care' inserted into Schedule 5 is wider than the definition of 'community care services' provided for in the 1990 Act, which is confined to services provided under the legislation referred to in the definition..."⁸⁹

102. She went on to assert that the definition of 'social care' in the 1990 Act excluded services provided under legislation not specifically listed, including section 18 of the Children Act 1989, for which local authorities have the power to charge.⁹⁰

Our view

103. We welcome the clarification given by the Deputy Minister regarding 'community care' and, on this basis are content with the use of the term 'social care'.

104. We note that the wording of Matter 15.9 in the proposed Order is as follows:

"Charges levied by local authorities for non-residential social care..."

105. We acknowledge the views of the Deputy Minister that 'social care' in this proposed Order encompasses all elements of the definition of 'social

⁸⁷ RoP, paragraph 53, 17 January 2008, Proposed Domiciliary Care LCO Committee

⁸⁸ Letter from Gwenda Thomas AM, deputy Minister for Social Services, 13 February 2008

⁸⁹ RoP, paragraph 83, 7 February 2008, Proposed Domiciliary Care LCO Committee

⁹⁰ Ibid

care' to be inserted in Field 15 (social welfare) other than residential care. However, we are not convinced that the wording of the proposed Order makes clear this intention. In relation to this, we are concerned that the wording of Matter 15.9 may restrict a future proposed Measure to one element of 'social care', i.e. 'non-residential' and that it would not allow for a proposed future Measure which dealt solely with the other elements within the definition, i.e. support, financial or any other assistance, advice or counselling.

106. In view of the above, we feel that further clarity is required and recommend that the Deputy Minister amend the proposed Order to make clear its intention to include all elements of social care, other than residential care. To this end, we believe that this could be achieved by amending the proposed Order so that it refers to social care, not qualified by the words 'non-residential', while specifically excluding 'residential care', and we so recommend.

iv. Well-being

Background

107. The definition of 'well-being' used in the proposed Order is also imported from the 'Interpretation of Field' to be inserted in Part 1 of Schedule 5 to the 2006 Act by the No.3 Order.

108. The No.3 Order provides that in Field 15 'well-being' has the following meaning ascribed:-

" "well-being" , in relation to individuals, means well-being so far as relating to any of the following -

- (a) physical and mental health and emotional well-being;
- (b) safety from harm and neglect;
- (c) education, training and recreation;
- (d) the contribution made by them to society;
- (e) social and economic well-being;
- (f) securing their rights. " ⁹¹

Evidence from stakeholders

109. The definition of 'well-being' was not an issue that was addressed by respondents in written evidence. In giving oral evidence to the Committee, the WLGA and ADSS Cymru supported what they felt was a 'comprehensive' definition.⁹² However, the Coalition on Charging Cymru suggested the following amendments:

⁹¹ The proposed *National Assembly for Wales (Legislative Competence) (No.3) Order 2007*

⁹² RoP, paragraph 87, 31 January 2008, Proposed Domiciliary Care LCO Committee

“well-being”, in relation to individuals, means well-being so far as relating to any of the following-

- (a) physical and mental health and emotional well-being;
- (b) safety from harm and neglect;
- (c) education, training and recreation;
- (d) their contribution to society;
- (e) social and economic well-being and participation;
- (f) securing their rights and dignity.⁹³

110. In supplementary written evidence received from the Coalition on Charging Cymru, referring specifically to the inclusion of ‘participation’, it stated:

“It is of vital importance to the well-being of older people, disabled people and carers that they have the opportunity to contribute and play a valued role in the community, in civic society, and in work, education and training.

This is recognised in international treaties, for example the UN Principles for Older Persons, which informed WAG’s Older People’s Strategy and the establishment of the Commissioner for Older People includes a section on participation. It recognises the importance of older people remaining integrated in society and sharing their knowledge and skills.”⁹⁴

111. In commenting on the need to include a specific reference to ‘dignity’ in the definition of well-being, the Coalition on Charging Cymru stated:

“...dignity encompasses having choice and control over how you live...”

And

“The UN Principles include a section on dignity which states that older people should be able to live in dignity and security and be free of exploitation and physical and mental abuse and be treated fairly regardless of age.

COCC acknowledges that terms such as ‘participation’ and dignity’ are included in other documents as well as in the UN Principles on Older Persons. However, it remains vital to have them included in the definition of well-being referred to in the Domiciliary Care LCO as this gives weight to their significance.”⁹⁵

⁹³RoP, paragraph 87, 31 January 2008, Proposed Domiciliary Care LCO Committee; see also written evidence DC7

⁹⁴ Written evidence, DC7

⁹⁵ Ibid

Evidence from the Deputy Minister

112. In responding to the suggested amendments the Deputy Minister stated:

“On the amendment to point (d), about the contribution to society, we do not consider that it changes the definition of ‘well-being’.”⁹⁶

And

“...I would welcome further clarification on the intention of the amendment to point (e), to include ‘and participation’. I will consider carefully any comments that the committee makes in its report. We accept the importance of encouraging participation in society and the need to address barriers to participation. We understand that this is an important aspect of well-being. However, in our view, this is covered by the existing broad definition, and particularly points (d) and (e).”⁹⁷

113. Similarly, with reference to the suggested amendment to (f), the Deputy Minister stated:

“...we accept that dignity is an important aspect of well-being. However, we do not believe that the amendment adds to the existing broad definition, which includes physical and mental health and emotional well-being.”⁹⁸

Our view

114. We note the Deputy Minister’s view that the definition of ‘well-being’, as currently drafted, is sufficiently broad so as to encompass the issues of ‘participation’ and ‘dignity’. However, we acknowledge the evidence received regarding the importance attached to these concepts in the UN Principles on Older Persons and agree that their inclusion in the definition would serve to emphasise their importance. On this basis we recommend that the definition of well-being be amended to include in (e) the word ‘participation’ and in (f) the word ‘dignity’.

⁹⁶ RoP, paragraph 94, 7 February 2008, Proposed Domiciliary Care LCO Committee

⁹⁷ Ibid, paragraph 98

⁹⁸ Ibid, paragraph 100

5. Excepted Matters

Background

115. Article 3 of Matter 15.9 refers to six excepted matters, namely child support, tax credit, child benefit and guardian allowance, social security and independent living funds and mobility.

Evidence from Stakeholders

116. Of the few respondents who commented on the excepted matters, none believed that they would hinder the effectiveness of future Measures deriving legislative competence from Matter 15.9.⁹⁹ However, Age Concern Cymru sought clarification on the rationale behind the excepted matters.¹⁰⁰

Evidence from the Deputy Minister

117. In the Explanatory Memorandum the Deputy Minister states:

“The matter covered in this Order will be subject to certain exceptions. The effect of the exceptions will be to exclude the following subjects from the legislative competence in the new matter; child support (i.e. arrangements for the provision of maintenance by both parents of a child); tax credits; child benefit and guardian’s allowance; social security; Independent Living Funds; and Motability.”¹⁰¹

118. In giving evidence the Deputy Minister explained the purpose of the excepted matters and stated:

“Given the scope of this LCO and that it extends to payments in respect of individuals with particular needs relating to their wellbeing, it could be interpreted as giving the Assembly competence in relation to a range of state benefits and awards. The inclusion of the various benefits as an exception makes clear that they are excluded from the competence because they are the responsibility of the United Kingdom Government. This LCO, therefore, reflects the general devolution settlement.”¹⁰²

119. She also confirmed that the excepted matters would not impair the Assembly’s ability to issue statutory guidance to local authorities on the treatment of the various benefits to which they relate in the charging assessment process.¹⁰³

⁹⁹ Written evidence DC1, DC10, DC12, DC16, DC19

¹⁰⁰ Written evidence, DC 1

¹⁰¹ GPO-04-EM, paragraph 21

¹⁰² RoP, paragraph 119, 17 January 2008, Proposed Domiciliary Care LCO Committee

¹⁰³ ROP, paragraph 103-104, 7 February 2008, Proposed Domiciliary Care LCO Committee

Our View

120. We welcome the Deputy Minister's explanation and are content with the excepted matters as provided for in the proposed Order.

6. Other issues

i. Interaction with other proposed Legislative Competence Orders

Background

121. As previously stated, definitions of 'social care' and 'well-being' used in the proposed Order are imported from the 'Interpretation of Field' to be inserted in Part 1 of Schedule 5 to the *Government of Wales Act 2006* ('the 2006 Act') by the proposed *National Assembly for Wales (Legislative Competence) (No.3) Order 2007* relating to Vulnerable Children and Child Poverty ('the No.3 Order').

122. Similarly, the inclusion in the proposed Order of the excepted matters is by way of amendment to the table to be inserted into Schedule 5 of the 2006 Act by the *National Assembly for Wales (Legislative Competence) (No.2) Order 2007* relating to *Environmental Protection and Waste Management* ('the No. 2 Order').

Evidence from the Deputy Minister

123. In the Explanatory Memorandum the Deputy Minister states:

"The definition of 'social care' to be used in Field 15 is set out in the proposed Order dealing with Vulnerable Children and Child Poverty which also seeks to insert matters into this field."¹⁰⁴

124. The Deputy Minister reaffirmed this point when giving evidence to the Committee about the term 'social care' and its meaning within the context of the proposed Order.¹⁰⁵

125. In referring to the excepted matters, the Deputy Minister states in the Explanatory Memorandum:

"...the drafting of the exceptions will be adjusted as necessary in the final draft Order, depending on the progress of each of the proposed Orders under consideration."¹⁰⁶

126. In giving evidence to the Committee, the Deputy Minister clarified that, in respect of the excepted matters and definitions, the final drafting of the No.4 Order and the No.2 and No.3 Orders will be dependent upon the progress of each Order through the Assembly and Parliamentary processes. She stated:

"...the purpose of an LCO is to amend Schedule 5 to the Government of Wales Act 2006. This legislative competence Order must be read

¹⁰⁴ GOP-04-EM, paragraph 18

¹⁰⁵ RoP, paragraph 20 and 53, 17 January 2008, Proposed Domiciliary Care LCO Committee

¹⁰⁶ GOP-04-EM, paragraph 21

and considered in this light, and not as a free-standing piece of legislation. This LCO contains definitions and is subject to exceptions set out in other LCOs -for example some benefits issues that were already accepted in the vulnerable children LCO, and of course the LCO on environmental protection and waste management. If these other LCOs are made before this LCO, Schedule 5 to the Government of Wales Act will already have been amended. Consequently, there will be no need to include in this LCO, the definitions and exceptions to which we refer...Where Schedule 5 has already been amended, then the introduction of subsequent LCOs can rely on the amendments that have previously been made." ¹⁰⁷

127. Furthermore, an official within the Assembly Government's Legal Services went on to clarify:

"If this LCO does come first, it will need to be amended to incorporate those things in the other LCOs that are needed for its purpose." ¹⁰⁸

Our View

128. We welcome the clarification given by the Deputy Minister regarding the interaction of the proposed Order and the No.2 and No.3 Orders in relation to definitions and excepted matters. We accept that the proposed Order may need to be amended depending on the progress of the No.2 and No.3 Orders. However, we believe that this could be better explained in the Explanatory Memorandum and we recommend that the Deputy Minister address this before laying the draft Order.

129. In relation to the above, we also consider that the Explanatory Memorandum would better assist the reader if it included the definitions of 'social care' and 'well-being' as set out in the No.3 Order. Again, we recommend that the Deputy Minister address this prior to laying the draft Order and that, should a similar situation arise for any future proposed Orders, that the definitions are included in the Explanatory Memorandum from the outset.

ii. Pre-legislative scrutiny by Parliamentary Committees

Background

130. In preparing its report on the proposed Order, in accordance with Standing Order 22.21, the Committee must, as far as reasonably practicable, take account of any recommendation on the proposed Order that has been made by any Committee of the House of Commons or the House of Lords or any Joint Committee of both Houses of Parliament.

¹⁰⁷ RoP, paragraph 43, 17 January 2007, Proposed Domiciliary Care LCO Committee

¹⁰⁸ Ibid, paragraph 47

132. We note that the Constitution Committee of the House of Lords has considered the proposed Order and concluded that it does not raise any issues of constitutional principle.

133. In carrying out its scrutiny of the proposed Order, the Welsh Affairs Committee of the House of Commons met jointly with us on 17 January 2008, to take evidence from the Deputy Minister for Social Services. Our respective Committees went on to take additional oral evidence separately to inform their work. The Welsh Affairs Committee published its report on 5 March 2008.

Our view

134. We were pleased to be able to undertake joint working with the Welsh Affairs Committee in scrutinising the proposed Order, which we believe was a valuable exercise and mutually beneficial. We further believe, where circumstances permit, that joint working between Assembly Committees set up to consider and report on proposed Legislative Competence Orders and the Welsh Affairs Committee should be encouraged.

135. We welcome the report of the Welsh Affairs Committee, which provides a detailed account of its scrutiny. We note the Welsh Affairs Committee's conclusions and recommendations and are pleased that they are broadly in line with those of this Committee. In particular, we welcome the recommendations made regarding the inclusion of definitions in the Explanatory Memorandum, the suggested amendment to the definition of 'well-being' and the term 'particular needs', which correspond with our own. We trust that the Welsh Assembly Government will give careful consideration to the Welsh Affairs Committee's recommendations before laying the draft Order.

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.4) 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.4) Order 2008 and it comes into force on the day after the day on which it is made.

Amendments to Schedule 5 to the Government of Wales Act 2006

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

(2) In field 15 (social welfare), after matter 15.8 insert—

(a) 2006 (c.32).

“Matter 15.9

Charges levied by local authorities for non-residential social care provided or secured by them and payments in respect of individuals with particular needs relating to their well-being so that they, or persons looking after them, may secure non-residential social care to meet those needs.”

(3) In the table at the end of Part 1 (excepted matters), insert “, 15.9” after “15.8” in each of the rows relating to excepted matters 19, 21, 22, 23, 24 and 25.

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.

The amendments relate to field 15 (social welfare) in Part 1 of Schedule 5. Article 2(2) inserts matter 15.9 which extends the legislative competence of the National Assembly for Wales to cover—

- charges for non-residential social care provided or secured by local authorities, and
- direct payments in respect of individuals so they, or persons looking after them, may secure non-residential social care.

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 Government of Wales Act 2006.

Article 2(3) applies specified excepted matters to the new legislative competence. The excepted matters are listed in the table in Part 1 of Schedule 5 to the 2006 Act. The table has effect so that the matters specified in the first column (the excepted matters) are not included in the matters identified in the second column (matters inserted under the fields). The excepted matters in the first column will be outside the scope of the matters specified in the corresponding entry in the second column.

The specified excepted matters relate to—

- child support (excepted matter 19),
- tax credits (excepted matter 21),
- child benefit and guardian’s allowance (excepted matter 22),
- social security (excepted matter 23),
- independent living funds (excepted matter 24) and
- motability (excepted matter 25).

GPO-04 3-I-07 2

**MEMORANDUM FROM THE DEPUTY MINISTER FOR HEALTH AND
SOCIAL SERVICES**

CONSTITUTIONAL LAW: DEVOLUTION, WALES

**The National Assembly for Wales (Legislative
Competence) (No.4) Order 2008**

**Proposal for a Legislative Competence Order
relating to charging for Non- Residential Social
Care (Domiciliary Care)**

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. It is laid in accordance with SO 22.13 and explains the scope of the power requested.
2. The constitutional context to this request is set out by the Government of Wales Act 2006 (the 2006 Act) and the UK Government's policy. The UK Government's White Paper "Better Governance for Wales" published in June 2005 set out the UK Government's commitment to enhance the legislative powers of the National Assembly for Wales, 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 National Assembly for Wales to legislate by Assembly Measure on specified matters. These matters may be added to Fields within Schedule 5 to the 2006 Act. Assembly Measures may make any provision which could be made by Act of Parliament (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 Legislative Competence Order would confer further legislative competence on the National Assembly for Wales, in the field of Social Welfare (field 15 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 'matter' will enable the Welsh Assembly Government, Assembly Members and Assembly Committees to bring forward proposals for legislation, in the form of Measures, which are based on Welsh priorities and timescales. These Measures will be subject to thorough scrutiny and approval by the Assembly.
7. The provision of social services, including charging for services, is a devolved matter. Assessing the need for social services, as defined in section 1 of the Local Authority Social Services Act 1970, and the provision of these services is a local authority function. The powers of the Secretary of State under the 1970 Act were devolved by virtue of the National Assembly for Wales (Transfer of Functions) Order 1999 and it is the Welsh Ministers who are responsible for issuing directions and guidance to local authorities as to the exercise of their social services functions. The Welsh Ministers are also responsible for regulating and supervising the provision of social care under various pieces of social care legislation including the Care Standards Act 2000 and the Health and Social Care (Community Health and Standards Act 2003).
8. In February 2007, the Welsh Assembly Government published its ten year strategy for Social Services in Wales "Fulfilled Lives, Supportive Communities". It sets out how modernised social services will contribute to a better Wales and to improving the lives of its citizens and emphasises the need for modern, accessible and responsive services, delivered flexibly, consistently and sustainably across organisational boundaries to a high standard.
9. It envisages a shift from residential care towards support at home and a switch towards more preventative services. This request for legislative competence therefore derives from a need to ensure that local authority social services charging arrangements support this strategy.
10. Under the terms of section 17 of the "Health and Social Services and Social Security Adjudications Act 1983" (HASSASSA) whether to charge, and how much to charge, for non-residential social services is

at individual local authorities' discretion. This has resulted in significant variations in charging for comparable services.

11. Service users, carers and their representatives are concerned that charges are often set too high and that differing amounts can be charged by different local authorities for similar services resulting in inequities and uncertainties for these groups of people. There is also disparity in the way that benefits and/or disability related expenditure are treated in an individual's assessment.
12. This request for legislative competence is also made in the context of the limitations to the current settlement which, in some respects, restricts the Welsh Assembly Government from tackling Welsh priorities and issues. Whilst the Assembly Government can provide statutory guidance to local authorities under section 7 of the Local Authority Social Services Act 1970 on the exercise of their charging arrangements, this has been limited in its impact.
13. Using the powers in section 7 the Welsh Assembly Government issued "Fairer Charging" guidance to local authorities in 2002 in an attempt to address some of the problems with the wide variation in charging policies operated in Wales. It remains largely good practice except for four key elements which are statutory and which ensure service users are left with a guaranteed level of income after charging has been applied.
14. Section 7 therefore provides a vehicle for issuing general guidance in this area. However, if the Assembly Government were to issue further comprehensive guidance under section 7 in relation to charging for non-residential social care it would need to be sure that it did not fetter local authorities' fundamental discretion to charge for certain services and to recover such charges as they consider reasonable as set out in section 17 of HASSASSA. Any policy that sought to establish greater uniformity, for example by applying maximum charges or standard charges, could not therefore be achieved using section 7 powers. In this way the current executive powers of the Welsh Ministers are not sufficient to allow them to enable them to achieve a fairer and more consistent approach.
15. As well as issuing the "Fairer Charging" guidance, the former Minister for Health and Social Services announced, in February 2006, a package of measures aimed at reducing the impact of charging for non-residential social care for disabled and older people and a range of initiatives to improve the quality and quantity of those services for recipients and carers. He also announced an ongoing commitment to "keep the domiciliary care charging arrangements under review and to make reforms when there is an opportunity to do so".
16. Whilst the Assembly Government has therefore taken steps to ameliorate the impact of charging, other future developments suggest that further action on charging will be necessary:

- a. Rising pressure on services, with budgets increasing more slowly than in recent years, is likely to mean that individual local authorities will increasingly feel compelled to put up charges in ways which are likely to extend the current disparities;
 - b. As a result of “Delivering Beyond Boundaries”, the Assembly Government’s framework for public services in Wales, there is likely to be a move towards more regionally commissioned and delivered services provided jointly by groupings of bodies. Again it will be important that the charging regimes are supportive of this.
17. New powers in this field would therefore enable the Welsh Assembly Government to bring forward coherent proposals for Measures, based on Welsh priorities and timescales that will allow us to achieve a fair and consistent approach to charging.

Scope

18. It is proposed that the Matter be inserted under Field 15: Social Welfare in Schedule 5 to the Government of Wales Act 2006 to enable the Assembly to legislate on this issue by way of an Assembly Measure. The Order only covers charges levied by local authorities in respect of non-residential social care. It would not enable the Assembly to legislate in respect of charges levied for non-residential social care by private care providers. It also encompasses the charging arrangements for those service users in receipt of a direct payment to enable them, or persons looking after them, to secure non-residential social care to meet their needs. The definition of social care to be used in Field 15 is set out in the proposed Order dealing with Vulnerable Children and Child Poverty which also seeks to insert matters into this field. It can also be found at Annex A for ease of reference.
19. The Matter would enable the Assembly to ensure that where a local authority decides to charge it does so in accordance with such requirements as may be specified by or under an Assembly Measure. The Assembly Government also wishes to have the flexibility to set the level of charging at nil for specific services or for specific client groups, should it conclude that this is appropriate, and the Matter is drafted so as to enable such provision to be made by or under an Assembly Measure.
20. The principle purpose of this LCO is therefore to empower the Assembly to pass Assembly Measures under Part 3 of the Government of Wales Act that will enable the Assembly Government to regulate the setting of charges and remove the wide disparities that currently exist.

Exceptions

21. The matter covered in this Order will be subject to certain exceptions. The effect of the exceptions will be to exclude the following subjects from the legislative competence in the new matter: child support (i.e. arrangements for the provision of maintenance by both parents of a child); tax credits; child benefit and guardian's allowance; social security; Independent Living Funds; and Motability. When the Order is formally laid before Parliament, these exceptions will be inserted by article 2(3) into a table at the end of Part 1, Schedule 5. The numbering of the matter is currently shown as 15.9 as Matters provisionally numbered 15.1 – 15.8 are contained in the Vulnerable Children order, which has not yet been referred to Parliament. The numbering of the Matter and the drafting of the exceptions will be adjusted as necessary in the final draft Order, depending on the progress of each of the proposed Orders under consideration.

Geographical limits of any Assembly Measure

22. Section 93 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 the Minister of the Crown without the consent of the Secretary of State for Wales. In relation to any future proposals that may impact on Minister of the Crown functions the appropriate UK Government Department will be consulted and agreement sought to any proposals to change or modify these 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 Order to which this Explanatory Memorandum relates.

Gwenda Thomas
Deputy Minister for Health and Social Services

November 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.

Y Pwyllgor ar y Gorchymyn Arfaethedig
ynghylch Gofal Cartref

Proposed Domiciliary Care LCO Committee



Cynulliad National
Cenedlaethol Assembly for
Cymru Wales

Bae Caerdydd / Cardiff Bay
Caerdydd / Cardiff CF99 1NA

14 December 2007

Dear Colleague

Consultation - Proposed Domiciliary LCO Committee - *The National Assembly for Wales (Legislative Competence)(No.4) Order 2008* relating to charging for Non-Residential Social Care (Domiciliary Care)

The Proposed Domiciliary Care LCO Committee was established on 5 December 2007 to consider and report on the proposed *National Assembly for Wales (Legislative Competence) (No.4) Order 2008* relating to charging for Non-Residential Social Care ('the proposed Order'). 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 15.9*' 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 15.9 be conferred on the Assembly?
2. What are your views on the terms of the proposed Order e.g. are they too narrowly or broadly drawn?
3. Do you consider that the excepted matters would hinder the effectiveness of any future proposed Measures brought forward under Matter 15.9? If so, please explain why.

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. charging for non-residential social care. 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>

As stated in the Explanatory Memorandum, the definition of social care (and well-being) to be used in Field 15 is set out in the proposed Order relating to Vulnerable Children and Child Poverty (*The National Assembly for Wales (Legislative Competence) (No.3) Order 2007*) which also seeks to insert matters into this Field. Some of the excepted matters contained in the proposed Order relating to Vulnerable Children and Child Poverty also apply to the proposed Order relating to Charging for Non-Residential Social Care. The relevant extract of the proposed Order relating to Vulnerable Children and Child Poverty is attached at **Annex 2**.

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 DC 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 Friday 25 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, Liz Wilkinson (tel: 029 2089 8025) or Ruth Hatton, the Deputy Clerk (tel 029 2089 8019).



Joyce Watson AM
Committee Chair

Consultation Responses

Reference	Organisation
DC 1	Age Concern
DC 2	All Wales Nursing and Midwifery Committee
DC 3	Arthritis Cymru
DC 4	Brecon and Radnorshire Community Health Council
DC 5	Cardiff Council
DC 6	Carers Wales
DC 7	Coalition on Charging Cymru
DC 7	Coalition on Charging Cymru (Supplementary Paper)
DC 8	College of Occupational Therapists
DC 9	Conwy and Denbighshire NHS Trust
DC 10	Conwy County Borough Council
DC 11	Denbighshire County Council
DC 12	Help the Aged
DC 13	Mencap Cymru
DC 14	Mind Cymru
DC 15	RNIB Cymru
DC 16	Wales Carers Alliance
DC 17	Wales Council for Deaf People

- DC 18 Welsh Therapy Advisory Committee
- DC19 Welsh Local Government Association and the Association
 of Directors of Social Services Cymru
- DC 20 Gwynedd Council

Responses to the consultation can be found at:

http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-legislative-competence-orders/bus-legislation-lco-2007-4/dc_-_responses.htm

Schedule of Oral Evidence

Date	Witnesses
17 January 2008 (Meeting with Welsh Affairs Select Committee)	Deputy Minister for Social Services
31 January 2008	Welsh Local Government Association Association of Directors of Social Services Coalition on Charging Cymru Wales Carers Alliance
7 February 2008	Deputy Minister for Social Services

Transcripts of oral evidence sessions can be found at:

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



Eich cyf/Your ref
Ein cyf/Our ref: GT/0057/08

Joyce Watson AM
Chair, Charging for Non-Residential
Social Care LCO Committee
National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA

February 2008

Dear Joyce

At the recent meeting of the Assembly Committee on the proposed LCO on charging for non-residential care, I undertook to write to you to provide further details of the variations in charging policies currently operated by local authorities in Wales for non-residential social care.

We are quite clear that variations in charging policies are widespread across Wales, are significant, and have a negative effect on service users. Recent figures provided to us by local authorities themselves show that hourly charge rates for home care differ significantly according to which area a care user lives in. In Pembrokeshire, for instance, they are likely to be asked to pay £5.45 for an hour's home care. But in the Vale of Glamorgan, they might be asked to pay up to £16.40 for the same hour's care. Whilst these two rates are at the extremes of the charges made, there is by no means consistency between the other local authorities' charges.

Seventeen authorities have a single rate for home care; two charge around £5 to £6 an hour; three charge around £7 an hour; four charge around £8 an hour; three charge around £9 an hour; four charge around £10 an hour and one charges £12.33 an hour. Three authorities each apply a range of hourly charge rates for home care, which between them span £7.72 to £16.40. The rate applied in each circumstance may depend on whether the service is delivered by the local authority directly or an agency or on the financial circumstances of the service user. Two authorities do not use hourly rates at all to calculate their charges but instead charge a set amount irrespective of the number of hours of service received. These set amounts range between £10.50 and £30.33.

In addition to variations in home care charges, local authorities also vary in their approach to charging for day care. Some authorities choose not to charge service users at all for attending a day centre whilst the information that we have shows that charges made by authorities that do charge range between £1.50 and £31.07. Nearly all authorities also charge, often nominal, but varying amounts for meals and transport associated with day care.

Furthermore, different local authorities apply different weekly maxima when they levy charges for non-residential services. For instance, in Rhondda Cynon Taff, there is a policy that a care user would be charged no more than a total of £16.20 for a week's non-residential social care. If they moved to Powys, they might find that they were charged up to £185 for an identical week of non-residential care.

Again, there is not a "norm" at the centre of this range, with a majority clustered around it. Three authorities charge a maximum of less than £55 per week. Three charge a maximum of £80-£85 per week; three charge a maximum of between £100 and £120 per week; two charge a maximum of £150 per week and three charge £160 to £185 per week and in Newport, banded maxima are applied depending on service levels and accessible income. Seven local authorities do not set a maximum charge at all and as such do not limit the potential amount that they could charge. A table showing both the hourly and maximum weekly charges rates applied by each local authority is at Annex A.

Local authority charging policies do not only vary in respect of the charge rates that they levy for particular services but also in what income they choose to include or disregard from an assessment of an individual's income thereby determining how much of it is available to charge against. By means of an illustration, a survey of local authority charging policies conducted in 2005 showed that there was variation in the treatment of disability related benefits in the income assessment. Nine authorities disregarded Disability Living Allowance either in full or in part and eight disregarded Attendance Allowance either in full or in part, from an assessment of income. The remaining authorities took into account all components of these benefits that it was legally possible for them to include in an assessment of income.

The current position is of course perfectly permissible under the existing legal framework. Under section 17 of the Health and Social Services and Social Security Adjudications Act (HASSASSA) 1983, local authorities have a discretionary power to recover charges they consider reasonable from recipients of home care and other non-residential social services - day care, domestic help, personal home care, transport, equipment and housing adaptations. The only restriction on an authority's power to charge is found in section 17(3). This provides that an authority shall not require users to pay more for services than it appears to them it is reasonably practical for them to do so. This wide discretion has resulted in significant variations because local authorities have made decisions to fit local circumstances and in accordance with their own budgetary priorities.

I believe that, from the service user's perspective, the current position is unclear and inconsistent. It is difficult for a service user to be able to understand how charges are calculated and how their own income is assessed; and when comparisons are made with other areas – perhaps areas that are close to where they live – the system can seem arbitrary and unfair. The Welsh Assembly Government believes that the current, marked disparities need to be tackled and that care service users deserve a charging system that is both transparent and consistent in the way that it operates; and that is why this LCO has been brought forward in accordance with the One Wales commitment that we made.

Committee members will be aware that we have previously attempted to improve the situation by issuing Fairer Charging guidance, but – as the recent figures I quoted earlier illustrate – the disparities and inequities for service users continue. The fundamental stumbling block is that the Assembly Government's power to issue guidance on this subject to local authorities would not enable us to issue guidance that fettered the discretion contained in section 17 of HASSASSA. The legal advice we have is unequivocal: we cannot use the powers in Section 7 of the Local Authority Social Services Act 1970 to achieve the degree of consistency and fairness that we are seeking to achieve. The

Assembly Government can give guidance as to how an authority should set about exercising its discretion to charge, but that guidance cannot make it obligatory for local authorities to exercise their discretion in a particular way. Neither can we alter that discretionary power by limiting the power to charge.

We remain firmly of the view, therefore, that the only way to deliver a consistent and fair approach to charging is by the conferral of legislative competence and the bringing forward of Measures subsequently. I hope that I have made clear on previous occasions that we see the process of designing options for such a Measure as very much a collaborative process, to be undertaken in partnership with a range of stakeholders.

In my view there are no alternative effective and guaranteed means of bringing about the consistency and fairness without needing to go through the Measure process. I hope that if colleagues in local government have any firm proposals to the contrary they will spell out the details in the next stage. However, I would be concerned if the Committee were to give undue weight to this possibility. I am not aware of any such alternatives and the only, rather unsatisfactory, alternative that would seem to me to be available would amount to a voluntary arrangement of co-operation across local government, that would be vulnerable to unravelling readily at the local level if there were year-to-year budget pressures. That would just perpetuate the existing problems and not deliver the 'One Wales' commitment.

In the meantime, in the absence of any realistic alternatives, the Assembly Government would want to press on to obtain the legislative competence that we need to enable us to take action by statutory means.

Finally, I would also welcome the opportunity to clarify one further point. There has been some interesting debate in the Committee about whether the Assembly Government's intention in bringing forward this legislation is to create consistency or standardisation, and what this would mean for local authorities' discretion.

It is not our intention to remove altogether local authorities' discretion as to whether to charge, but rather to ensure that where a local authority does decide to charge, it does so in accordance with a specified set of requirements. Removing the wide discretion that local authorities currently have about how much to charge for non-residential social services is unavoidable if we are to address the significant discrepancies that currently exist and introduce a fairer and more consistent approach to charging. Furthermore, we are not seeking to impose a universal set of charges across the board in Wales, but to ensure that where charges are made, they are made in a logical and consistent way, and up to a reasonable level.

Yours sincerely

A handwritten signature in cursive script that reads "G Thomas".

Gwenda Thomas AC/AM

Gwenda Thomas AC/AM
Y Dirprwy Weinidog dros Wasanaethau Cymdeithasol
Deputy Minister for Social Services

Annex 5



Llywodraeth Cynulliad Cymru
Welsh Assembly Government

Eich cyf/Your ref
Ein cyf/Our ref: MB/GT/00029/08

Joyce Watson AM
Chair, Charging for Non-Residential
Social Care LCO Committee
National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA

25 January 2008

Dear Joyce

The Proposed Legislative Competence Order (LCO) on Charging for Non-Residential Social Care

At the recent meeting of the joint Welsh Affairs and Assembly Committees on the proposed LCO on charging for non-residential social care I undertook to write to you to clarify the circumstances in which non-residential social care for individuals residing in border areas in Wales would be provided by local authorities in England.

The circumstances in which the above situation might arise are quite limited given that the vast majority of non-residential social services are received in an individual's home. However, it might be possible, for example, to have a scenario where an individual living in the border regions of Wales attended day care in England. In this situation, while the service would be provided by an English local authority or private care provider, it would be provided on behalf of the Welsh local authority. Therefore any charge for that service to the service user would be levied by the Welsh local authority. As such it would be subject to any changes introduced by the Welsh Assembly Government as a result of a subsequent Measure in this area. The Welsh service user would not be subject to English charging arrangements even though they were receiving a service in England.

The issue of whether respite services would fall within the scope of the LCO was also raised and I would like to take this opportunity to clarify our discussion on this. The LCO covers charges and payments made by local authorities for non-residential social care. It would therefore cover respite services received in a person's own home such as 24 hour emergency care or sitting services. However it does not cover charges and direct payments for residential social care. Consequently charges or payments made in respect of securing temporary respite care in a care home would fall outside the scope of the Order.

In order to bring such respite care within this Order, the scope of the Order would need to be widened beyond what is required so as to include all charges made by local authorities for residential care.

Where concerns arise in relation to residential respite care we will look to use the existing primary and secondary legislation governing charging for residential care to address these concerns. In

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doing so we will seek to ensure that the same principles of consistency and fairness apply to charging for residential respite care as those that will be applied by way of an Assembly Measure to charging for non-residential social care.

I would like to thank you and other Committee members for providing me with an opportunity to come and clarify issues on the LCO and look forward to attending future meetings if required. I am committed to ensuring that the process is transparent and helpful and appreciate member's thorough scrutiny and commitment to this very important agenda.

Yours sincerely

A handwritten signature in cursive script that reads "Gwenda Thomas".

Gwenda Thomas AC/AM