

MRS Plenary briefing

20 January 2009

Debate on the draft National Assembly for Wales (Legislative Competence) (Housing) Order 2009

This paper provides an overview of the draft *National Assembly for Wales (Legislative Competence) (Housing) Order 2009*, previously known as the proposed *National Assembly for Wales (Legislative Competence) (No.5) Order 2008* (relating to affordable housing) and then amended as the proposed *National Assembly for Wales (Legislative Competence) (Housing) Order 2008*. It goes on to summarise the conclusions and recommendations made in the report of the Assembly's Proposed Affordable LCO Committee and the House of Commons Welsh Affairs Committee and notes how key recommendations have been responded to in the draft Order.

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1. The motion for debate

Carwyn Jones (Bridgend):

To propose that the National Assembly for Wales in accordance with Standing Order 22.34:

Approves the draft The National Assembly for Wales (Legislative Competence) (Housing) Order 2009.

2. Key documents / information

- 3 Dec 2007 The proposed [National Assembly for Wales \(Legislative Competence\) \(Housing\) Order 2008](#) and [Explanatory Memorandum](#)
- 4 Dec 2007 The Deputy Minister for Housing's [statement](#) about the proposed Order
- 18 Apr 2008 The [Proposed Affordable Housing LCO Committee Report on the National Assembly for Wales \(Legislative Competence\) \(No.5\) Order 2008](#)
- 13 May 2008 Amended proposed Order, [National Assembly for Wales \(Legislative Competence\) \(Housing\) Order 2008](#) presented to the Welsh Affairs Select Committee and the House of Lords Constitutional Affairs Select Committee
- 14 Oct 2008 House of Commons Welsh Affairs Committee report [The Proposed Draft National Assembly for Wales \(Legislative Competence\) \(Housing\) Order 2008](#)
- 9 Jan 2009 [Letter](#) from the Deputy Housing Minister to the Chair of the Proposed Affordable Housing LCO Committee
- 12 Jan 2009 [Draft National Assembly for Wales \(Legislative Competence\) \(Housing\) Order 2009](#)

3. Overview of the process

3.1. The *Government of Wales Act 2006* makes provision for the National Assembly for Wales to extend its law making powers through Legislative Competence Orders (LCOs). Proposed LCOs are subject to scrutiny by a committee of the National Assembly (unless agreed otherwise by the Assembly in plenary), and may also be scrutinised by committees of the House of Commons and House of Lords.

3.2. A proposal for an LCO relating to Affordable Housing (the proposed Order) was put forward on 3 December 2007 by the Deputy Minister for Housing. She indicated that this was a response to a lack of available low cost housing in areas of high housing need and, more specifically, the impact of the Right to Buy and Right to Acquire schemes in reducing the amount of social housing available for rent

by people in housing need¹. The proposed Order would have added Matter 11.1 to Schedule 5 of the *Government of Wales Act 2006*, if approved, as follows:

Disposal by a social landlord of the following—

- (a) a dwelling-house within the meaning of Part 5 of the Housing Act 1985;
- (b) a dwelling within the meaning of section 63 of the Housing Act 1996.

Interpretation of this field

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

- (a) a county or county borough council;
- (b) a development corporation established by an order made, or having effect as if made, under the New Towns Act 1981;
- (c) the Commission for the New Towns which continues in being by virtue of section 35 of the New Towns Act 1981;
- (d) a housing action trust established under section 62 of the Housing Act 1988;
- (e) a housing association within the meaning of section 5 of the Housing Act 1985;
- (f) a housing trust within the meaning of section 6 of the Housing Act 1985;
- (g) a housing co-operative within the meaning of section 27B of the Housing Act 1985;
- (h) an urban development corporation established section 135 of the Local Government, Planning and Land Act 1980;
- (i) the relevant authority within the meaning of section 6A of the Housing Act 1985;
- (j) the relevant authority within the meaning of section 56 of the Housing Act 1996.”

3.3. The Explanatory Memorandum which accompanied the proposed Order indicated that any subsequent Measure put forward by the current Assembly Government would focus on suspending the Right to Buy (RTB) and Right to Acquire (RTA) schemes in areas where there is a shortage of affordable housing. This would take place on application from the relevant local authority.

3.4. The National Assembly for Wales Proposed Affordable Housing LCO Committee was established in December 2007 to consider and report on the proposed Order. It published its report on 18 April 2008. A majority of the Committee agreed in principle that legislative competence in the areas identified within the proposed Order should be conferred on the National Assembly, although the Committee recommended some amendments so as to **broaden** its scope.

¹ National Assembly for Wales, 4 December 2007, Deputy Housing Minister's *Legislative Statement on the proposed Affordable Housing Legislative Competence Order*: <http://new.wales.gov.uk/about/cabinet/cabinetstatements/cabinetstates2007/affordhouse/?lang=en>
Enquiry no: 08/081398/ Jonathan Baxter / Denise Rogers

3.5. On 13 May 2008 the Assembly Government submitted a revised proposed Order to the Welsh Affairs Committee (WAC). The text of the proposed Order scrutinised by the WAC was therefore **different** from that scrutinised by the Assembly committee, although the policy intention of the Assembly Government remained the same. WAC recommended that the Order should not proceed unless revised to better reflect the policy intentions of the Assembly Government, i.e. that the scope of the Order should be **narrowed**.

3.6. The Deputy Minister for Housing laid the draft National Assembly for Wales (Legislative Competence) (Housing) Order 2009 (the draft Order) on 12 January 2009. The draft Order inserts the following general restrictions into Parts 2 and 3 of Schedule 5 to the *Government of Wales Act 2006*.

2B (1) A provision of an Assembly Measure cannot abolish any of the following—

- (a) the right to buy under section 118 of the Housing Act 1985;
- (b) the preserved right to buy under section 171A of the Housing Act 1985;
- (c) the right to acquire under section 16 of the Housing Act 1996.

(2) For the purposes of this paragraph, neither of the following is to be taken to be abolition of such a right—

- (a) suspension of the right in particular circumstances;
- (b) modification of the right so that it ceases to apply in relation to particular classes of dwelling.

(3) In this paragraph “dwelling” means a building or part of a building occupied or intended to be occupied as a separate dwelling, together with any yard, garden, outhouses and appurtenances belonging to it or usually enjoyed with it.”.

(3) In Part 3 of Schedule 5 to the 2006 Act (exceptions from Part 2), after paragraph 7A insert—

“Housing

7B (1) If sub-paragraph (2) applies, Part 2 does not prevent a provision of an Assembly Measure from abolishing any of the following—

- (a) the right to buy under section 118 of the Housing Act 1985;
- (b) the preserved right to buy under section 171A of the Housing Act 1985;
- (c) the right to acquire under section 16 of the Housing Act 1996.

(2) This sub-paragraph applies if both the Welsh Ministers and the Secretary of State consent to the provision.”.

4. The draft National Assembly for Wales (Legislative Competence) (Housing) Order 2009

4.1. The draft Order will insert Matter 11.1 into Field 11 (housing) of schedule 5 to the *Government of Wales Act 2006*, if approved, as follows:

“Matter 11.1

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

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



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

Interpretation of this field

In this field "social landlord" means any of the following—

- (a) a county council or county borough council in Wales;
- (b) a development corporation established by an order made, or having effect as if made, under the New Towns Act 1981;
- (c) a housing action trust established under section 62 of the Housing Act 1988;
- (d) a housing association within the meaning of section 5 of the Housing Act 1985;
- (e) a housing trust within the meaning of section 6 of the Housing Act 1985;
- (f) a housing co-operative within the meaning of section 27B of the Housing Act 1985;
- (g) an urban development corporation established under section 135 of the Local Government, Planning and Land Act 1980;
- (h) the Welsh Ministers;
- (i) a social landlord registered under Chapter 1 of Part 1 of the Housing Act 1996;
- (j) a provider of social housing registered under Chapter 3 of Part 2 of the Housing and Regeneration Act 2008;
- (k) a manager appointed under Chapter 4 of Part 1 of the Housing Act 1996;
- (l) a person to whom a grant has been paid under section 27A of the Housing Act 1996."

4.2. As indicated in section 3.6. above, the draft Order inserts a number of restrictions into Parts 2 and 3 of Schedule 5 to the Government of Wales Act 2006. The draft Order **does not** allow subsequent Assembly Measures to abolish the Right to Buy, Preserved Right to Buy or Right to Acquire **unless both the Welsh Ministers and the Secretary of State consent to the provision.** The draft Order does allow for the making of Assembly Measures which suspend or modify these schemes in particular circumstances.

5. Scrutiny

5.1 The National Assembly for Wales Proposed Affordable Housing LCO Committee

5.1.1. The Proposed Affordable Housing LCO Committee was established in December 2007 to consider and report on the proposed Order. In doing so the Committee considered the general principles of the proposed Order and whether legislative competence in the area identified in Matter 11.1 should be conferred on the Assembly and considered whether the terms of the proposed Order were too broadly or too narrowly defined.

5.1.2. *Overview of the Committee's conclusions and recommendations*

The conclusions and recommendations of the Proposed Affordable Housing LCO Committee are presented in the summary section of their report as follows:

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

5.2 House of Commons Welsh Affairs Committee

5.2.1. An amended version of the proposed Order was presented to the Welsh Affairs Select Committee and the House of Lords Constitutional Affairs Select Committee on 13 May 2008. In a [letter](#) to the Chair of the Assembly's Proposed Affordable Housing LCO Committee, the Deputy Minister for Housing states that *"as a result of comments received from the UK Government, some revisions have been made to the LCO prior to the UK Government sending it for pre-legislative scrutiny in Parliament"*.

5.2.2. The amended proposed Order would have insert Matter 11.1 into Field 11 (housing) of schedule 5 to the *Government of Wales Act 2006*, if approved, as follows:

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

For the purposes of this matter, a disposal of land held or used for housing purposes

includes, in particular, a disposal of land to which any of the following applies—

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

Interpretation of this field

In this field "social landlord" means any of the following—

- (a) a county or county borough council in Wales;
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- (c) the Commission for the New Towns which continues in being by virtue of section 35 of the New Towns Act 1981;
- (d) a housing action trust established under section 62 of the Housing Act 1988;
- (e) a housing association within the meaning of section 5 of the Housing Act 1985;
- (f) a housing trust within the meaning of section 6 of the Housing Act 1985;
- (g) a housing co-operative within the meaning of section 27B of the Housing Act 1985;

- (h) an urban development corporation established under section 135 of the Local Government, Planning and Land Act 1980;
- (i) the Welsh Ministers;
- (j) a social landlord registered under Part 1 of the Housing Act 1996;
- (k) a manager appointed under Chapter 4 of Part 1 of the Housing Act 1996.

5.2.3. Overview of the Committee's conclusions and recommendations

The Welsh Affairs Committee noted that the proposed Order as drafted appeared to allow more than the stated policy aim of the Assembly Government to be implemented. The WAC noted that:

Proposed Orders should be drafted so as to transfer only those powers which are required and for which a clear purpose has been established.²

The Committee recommended that the Order **should not proceed** unless revised to better reflect the policy intentions of the Assembly Government.

A number of specific issues of concern were highlighted:

- That the proposed Order as drafted would allow the **abolition** of the Right to Buy/Right to Acquire;
- That the proposed Order would allow the Welsh Assembly Government to suspend the Right to Buy/Right to Acquire across an **entire** local authority area or across the **whole of Wales**, rather than only in specific areas of housing pressure;
- That the definition of land held or used for housing purposes could potentially be interpreted **broadly**.

As stated above, the draft Order does not allow subsequent Assembly Measures to abolish the Right to Buy, Preserved Right to Buy or Right to Acquire unless both the Welsh Ministers and the Secretary of State consent to the provision. The draft Order does allow for the making of Assembly Measures which suspend or modify these schemes in particular circumstances.

² Welsh Affairs Committee, [The Proposed Draft National Assembly for Wales \(Legislative Competence\) \(Housing\) Order](#), HC812, 2008-09, Page 26, para 5

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