



House of Commons
Welsh Affairs Committee

The proposed National Assembly for Wales (Legislative Competence) (Local Government) Order 2009

Fourth Report of Session 2009-10

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

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The Welsh Affairs Committee

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Summary

The proposed National Assembly for Wales (Legislative Competence) (Local Government) Order 2009 is the twelfth Legislative Competence Order on which the Welsh Affairs Committee has reported. The Order will give the Assembly powers in respect of the structures and work of local government in Wales at all levels. The Welsh Assembly Government has requested this power because it wishes to develop and strengthen the role of community councils and councillors in Wales. The proposed Order will allow the Welsh Assembly Government to fulfil its commitment to seek legislation to address issues identified in the 2003 ‘Aberystwyth Report’.¹ We agree that a clear need for the proposed LCO has been identified and is consistent with the Government’s commitment to build up the capacity of town and community councils.

There is widespread agreement that amongst large sections of the population, there is a sense of alienation from the political process and from democracy. The proposed Order seeks to enable the Assembly to bring the decision-making process closer to communities, making it easier to form new community councils, thereby replacing a process which is bureaucratic and onerous.

The proposed Order also seeks to strengthen the role of community councils within their communities. The provision of direct grants from Welsh Ministers will enhance their funding. The Order will also enable the Assembly to extend the power of well-being to community councils, allowing them to intervene effectively in their local communities regarding the communities’ economic and social well-being. This will put them on the same footing as parish and town councils in England.

Witnesses commented on the need to bring the democratic process closer to communities and to re-engage people. The proposed Order will allow the Assembly to adopt an holistic approach to changing the law on public participation in governing the communities in which they live. The process of co-option without the requirement to advertise vacancies has resulted in a deterioration in the wider participation of the electorate. The proposed Order will allow the National Assembly for Wales to legislate to make it a requirement to advertise co-option opportunities with the local population and improve transparency and wider participation. Concerns were raised with us regarding the diversity of councillors, with many communities not fully represented by their elected members. The proposed Order will enable the Assembly to remove barriers in order to encourage black and ethnic minorities, disabled people and young people to become councillors.

The proposed Order is drafted in broad and accessible terms with the minimum of exceptions and interpretation. We are however, concerned that there are now many terms used to describe the various tiers of local government in Wales and agree with the suggestion put forward by Legislation Committee No. 2 of the National Assembly for Wales that the Minister should speedily undertake a review of terminology relating to local government. The word “community” is used loosely within the legislation and within both the Explanatory Memorandum and the evidence we received from ministers. In some

¹ See paragraph 9.

contexts, it appears to be used by officials when they are referring to the population represented by a community council. That is not normal colloquial usage, nor is it consistent with the requirements of the 1972 Act and subsequent legislation. Best practice recognises that a community is defined by those who live in it rather than by external or administrative boundaries. Some community councils may represent a single community, but many do not. That is particularly true of the larger town councils which are comprised of several communities. It is also true of rural communities where more than one village is represented. A different word needs to be used to indicate when official documents or communications — including legislation and the Explanatory Memorandum — are talking about the population represented by a community council. The guiding principle should be to seek to reconcile official use of terminology with general public usage rather than the other way round.

Given that there have already been several LCO proposals identified in terms of local government, to call this the National Assembly for Wales (Legislative Competence) (Local Government) Order introduces the potential for confusion and contradicts our previous recommendation that the ‘naming convention’ for LCOs should focus on telling people what the LCO is about. We urge the Wales Office and the Welsh Assembly Government to bring forward a substantive order with a title such as “National Assembly for Wales (Legislative Competence) (Community Councils) Order” or similar, in order to achieve simplicity and clarity.

1 Introduction

Pre-legislative scrutiny of proposed Legislative Competence Orders

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

2. We considered whether the proposed National Assembly for Wales (Legislative Competence) (Local Government) Order 2009 is in the spirit and within the scope of the devolution settlement; the extent to which there is demand for legislation which might follow the adoption of the proposed Order; and whether the use of the Legislative Competence Order procedure is more appropriate in this instance than the use of framework powers in a Westminster Bill. The process is described in Annex B to this report.

2 The terms of the proposed Order

3. The proposed Order would add ten Matters to Field 12 (Local Government) of Schedule 5 of the Government of Wales Act 2006. These Matters are principally concerned with issues affecting local government that serves communities in Wales. They relate to:

- the areas, constitution, structure and procedure of community councils, town councils and community meetings;
- certain electoral arrangements affecting those bodies;
- extension of the powers of those bodies;
- grants by the Assembly Government to fund community government;
- relations between communities and with county and county borough councils;
- quality accreditation of community government; and
- public participation in community government.

In addition, the instrument adds Matters affecting all levels of Welsh local government, including county and county borough councils:

- provision to the public of information relating to local government;
- promotion and support of membership of these local government bodies; and
- remuneration of the members of those bodies and of national park authorities and fire and rescue services.

4. When laying the proposed LCO before the National Assembly the then Minister for Social Justice and Local Government, Dr Brian Gibbons AM, stated:

... the Assembly Government is committed to bringing forward proposals to develop and strengthen the role of community councils. The overall aim will be to increase the effectiveness of community councils in their functional and representational role, and to facilitate their ability to work in partnership with other bodies.²

Legislative Context

5. The Local Government Act 1972 established the basis of the current system of local government in England and Wales and makes provisions regarding the organisation and functions of local authorities in Wales including a system of communities in Wales. The functions of the Secretary of State under the 1972 Act insofar as exercisable in Wales have been transferred, with certain exceptions, to the National Assembly for Wales and are now vested in Welsh Ministers. Local Government was further reorganised under the Local Government (Wales) Act 1994.³

6. Other statutes relating to issues addressed by the proposed Order include:

- the Local Government and Housing Act 1989;
- the Local Government Acts 2000 and 2003; and
- the Representation of the People Acts 1983 and 1985.

Welsh Ministers have executive functions under the Local Government Act 2000 and 2003. The functions of the Secretary of State pursuant to the Representation of the People Acts have not been transferred to Welsh Ministers.

7. As the Explanatory Memorandum makes clear, the National Assembly already has legislative competence in relation to many aspects of local government, as set out in Field 12 of Schedule 5 to the Government of Wales Act 2006. At present, neither the National Assembly nor Welsh Ministers have power to legislate for significant changes to the law covering the following topics: community councils (constitution, structure, procedures and responsibilities); community reviews; relations between tiers of local government, councillor allowances; and the recruitment and retention of councillors.

The proposed Order and existing Welsh Assembly Government policy

8. There are more than 730 community and town councils in Wales, which vary in size, capacity and levels of activity. Almost half serve populations of less than 1,000 but there are eight with populations in excess of 20,000 and the largest (Barry Town Council) serves more than 45,000. Their role is to speak up in support of community interests, organise and promote community events, and provide appropriate local community-based services such as public information signs and notice boards, public seating and bus shelters, war memorials, community centres and indoor recreation facilities. Some community councils have demonstrated considerable powers of imagination and innovation in reflecting the

² RoP, 14 July 2009, National Assembly for Wales

³ Explanatory Memorandum, para 11

nature of their local communities or providing local leadership. In Wales there are approximately 8,000 community and town councillors.

9. The Explanatory Memorandum accompanying the proposed Order argues that the case for the proposed LCO derives from three reports:⁴

- i. research conducted by the University of Wales Aberystwyth on the role, functions, and future potential of community and town councils published in 2003 (the ‘Aberystwyth Report’);
- ii. the recommendations of a Councillor Commission Expert Panel Wales published in August 2009; and
- iii. the report from an Independent Remuneration Panel for Wales which was due to be published in December 2009 but is still awaited.⁵

10. The Aberystwyth Report made a series of recommendations designed to improve the way in which community and town councils run their affairs, formalise their relationships with unitary authorities councils and the Assembly Government, and to enable them to take on greater responsibility for community based services. In its formal response in 2004, the Assembly Government gave a commitment to seek legislation to address issues identified in the review.

11. Witnesses drew attention to the developments that had occurred since the Aberystwyth report and “the groundwork” that had been laid for the legislative changes sought under the proposed Order.⁶ As the Welsh Local Government Association noted:

The Assembly Government has, during recent years, consistently articulated its policy ambitions around community and town councils and the empowerment and support for councillors in their community leadership role.⁷

12. The Welsh Assembly Government set out the relationship it wished to establish with local authorities in its Local Government Policy Statement, *A Shared Responsibility*, in 2007.⁸ In its protocol with One Voice Wales, signed in 2008, it made a commitment to work in partnership and build the capacity of town and community councils through training and sharing good practice. It also issued new guidance on issues such as community planning and performance monitoring, and produced a new model code of conduct for co-opted members. In addition, the recently enacted Local Government Assembly Measure 2009 made community and town councils statutory partners in the development and implementation of community strategies.

13. Wayne David MP, Parliamentary Under-Secretary at the Wales Office, told us that:

⁴ Explanatory Memorandum, paras 7-9

⁵ The initial report of the Independent Panel was published in July 2008 and its supplementary report in December 2008.

⁶ Q 70

⁷ Ev 27

⁸ Welsh Assembly Government, *A Shared Responsibility*, 8 March 2007.

A recognition has been provided of the worth of community councils as the cornerstone of democracy in Wales, and I think now it is appropriate that legislative expression is given to that commitment and that is what this LCO is essentially all about.⁹

14. The proposed Legislative Competence Order clearly develops previously announced Welsh Assembly Government policy to strengthen community and town councils in Wales.

Use of the Legislative Competence Order Procedure

15. Witnesses told us that many of the Aberystwyth Report's recommendations had already been implemented through guidance or other actions, but that there were significant recommendations outstanding which could only be implemented through primary legislation. The Welsh Local Government Association, in support of the proposed Order, commented that it:

... would enable policies to be co-produced in Wales by local government, the Assembly Government and the wider National Assembly, and ensure that they are set in the wider strategic context of local government and governance arrangements, powers over which largely currently reside within the Assembly's competence.¹⁰

16. One Voice Wales described the "significant degree of frustration" at the delay in the implementation of the Aberystwyth Report's recommendations.¹¹ In evidence to the Committee, Dr Brian Gibbons AM, then Welsh Assembly Government Minister for Social Justice and Local Government, stated that the Welsh Assembly Government had been seeking to gain competence under framework legislation but had been unable to do so. It had looked for opportunities under the Local Government and Public Involvement in Health Bill¹² and, more recently, under the Local Democracy, Economic Development and Construction Bill.

17. Dr Gibbons noted that the Local Democracy, Economic Development and Construction Bill would have been a suitable vehicle for the powers the Assembly were seeking under the legislative competence order, and the Welsh Assembly Government was initially "hopeful" that 90% of what was in the proposed Order would have been included in the Bill.¹³ The Bill, which received Royal Assent on 12 November 2009, provides competence for the National Assembly of Wales over the executive arrangements of local authorities and competence over the functions of local government, such as its statutory functions. However, due to the busy Westminster timetable, Dr Gibbons told us that:

⁹ Q 70

¹⁰ Ev 27

¹¹ Ev 26

¹² Received Royal Assent on 30 October 2007.

¹³ Q 6

... the pressure of time meant that the Bill itself had to be readjusted and we lost out as a consequence.¹⁴

18. The Parliamentary Under-Secretary of State, in contrast, commented that inclusion of all the powers sought in the Bill:

... would not have been an appropriate way to try and introduce these various elements into that piece of legislation because it would have been regarded as beyond scope.¹⁵

We note that the “scope” of a Bill is principally determined by what it includes at First Reading. The Minister’s argument suggests therefore that, once again, Whitehall may have paid insufficient attention to Wales when scoping-out the original draft of the Local Democracy, Economic Development and Construction Bill.

19. In describing the Legislative Competence Order procedure as now the most appropriate route, Dr Gibbons argued that:

At this stage, there is no Bill before the Houses of Parliament that would be a suitable vehicle to bring forward these long-standing commitments that are enshrined in this LCO. The only way we can take these proposals forward, as there is no other Bill before the Houses of Parliament, is to put forward a free-standing LCO in its own right.¹⁶

20. While the Welsh Assembly Government has given a commitment to address issues identified in the Aberystwyth Report, it currently does not have the legislative powers to implement all of the agreed recommendations. This proposed Legislative Competence Order would extend the National Assembly’s legislative competence to matters relating to community and town councils. It is disappointing that suitable framework powers were not able to be included in recent Bills and we are concerned that the conflicting evidence that we received from the Welsh Assembly Government and the Wales Office on this matter suggests a lack of effective communication. In any event, we are satisfied that the use of the Legislative Competence Order in Council procedure is appropriate in this case, as no alternative legislative vehicle is likely to become available in the foreseeable future.

¹⁴ Q 8

¹⁵ Q 74

¹⁶ Q 4

3 Scope and Drafting of the Proposed Order

Application

21. Overall, the proposed LCO is drafted in a readily accessible form with a minimum of exceptions and interpretation provisions. All the proposed Matters contain provisions that relate to “communities”. That term is defined in generalised language in the *Interpretation* provision although it has not generally been defined in previous legislation relating to local government:¹⁷

“communities” means separate areas for the administration of local government, each of which is wholly within the area of a county council or county borough council (but does not comprise the whole area of a county council or county borough council).

In supplementary evidence, the Welsh Assembly Government acknowledged that there are several different uses of the terms “community” and “communities” in everyday language:

The expression ‘communities’ is often used in different contexts conveying different meanings and is commonly used to describe organisations or social groups which share (i) a locality; (ii) a sense of common identity and characteristics; or (iii) the quality of holding something in common as in community of interests. The concept of “communities” does not therefore necessarily imply geographical limitations.¹⁸

Deborah Richards, Legal Adviser to the Welsh Assembly Government told us that, due to the different interpretations that could be placed on the term, it had been felt necessary to include an interpretation provision:

It was important in the context of this LCO to differentiate that ‘communities’ does not mean principal councils [...] it was necessary, we thought, to define communities so that it is clear that it relates to the most local tier of local government when we refer to communities ...¹⁹

22. The National Assembly for Wales looked at the use of the term “local government institutions for communities”, and asked the then Minister to explain why, when drafting the proposed Order, he had decided to use a new term and not the more widely known term “community councils”. Deborah Richards noted on this point that:

The term ‘local government institutions’ refers to community meetings and community and town councils, and the word ‘institution’ just means an organisation of some kind directed to a particular purpose. The purpose here is specified as being local government, so in that context, you could argue that a community meeting

¹⁷ Local Government Act 1972.

¹⁸ Ev 29

¹⁹ Q 15

could be an institution because it is an organisation of some kind relating to local government.²⁰

The Minister added:

This would not cover every meeting in the community, but a formally convened meeting with implications for the activities of a council ...²¹

23. One Voice Wales, however, stated in evidence to the National Assembly:

In putting together our submission, I reflected on how many terms we have for local government in Wales. It is immensely confusing. We talk about unitary, principal and local authorities, community councils, county borough councils, county councils and so on, and, at some point, it would be useful to have some sort of tidying-up exercise because it is quite hard for citizens to relate to us.²²

24. In evidence to us, the Welsh Assembly Government commented that the expression was not defined because:

Our lawyers considered that there could not be any real doubt that community meetings, community councils and town councils are institutions concerned with local government. On that basis, the drafting works without a definition of 'local government institutions'. Examples would serve only to narrow the generality of the expression.²³

25. The definition of “communities” included in the proposed Order may appear convenient for the purposes of the Order but it has the potential to introduce confusion if the word “community” is given a specific meaning within legislation or official documents, and is then used within official organisations, in a way which differs from general public usage. The word “community” is used loosely within the legislation and within both the Explanatory Memorandum and the evidence we received from ministers. In some contexts, it appears to be used by officials when they are referring to the population represented by a community council. That is not normal colloquial usage, nor is it consistent with the requirements of the 1972 Act and subsequent legislation. Best practice recognises that a community is defined by those who live in it rather than by external or administrative boundaries. Some community councils may represent a single community, but many do not. That is particularly true of the larger town councils which are comprised of several communities. It is also true of rural communities where more than one village is represented. A different word needs to be used to indicate when official documents or communications — including legislation and the Explanatory Memorandum — are talking about the population represented by a community council. The guiding principle should be to seek to reconcile official use of terminology with general public usage rather than the other way round. In addition, there are now many terms in use to describe the various tiers of local government. We

²⁰ RoP, para 129, 24 September 2009, Legislation Committee No. 2

²¹ RoP, para 131, 24 September 2009, Legislation Committee No. 2

²² RoP, para 110, 22 October 2009, Legislation Committee No. 2

²³ Ev 29

agree with the suggestion put forward by Legislation Committee No. 2 of the National Assembly for Wales that the Minister should speedily undertake a review of terminology relating to local government.

Matter 12.8 — Community areas and their government institutions

26. New Matter 12.8 is intended to confer competence over the constitution, structure and procedures of community councils and community meetings. The Welsh Assembly Government Minister commented that the intended impact of the Order was to make it easier to form new community councils, and replace the current “onerous” process, as recommended in the Aberystwyth report.²⁴ The Assembly could also introduce provision to make it harder to dissolve existing councils.

27. Currently, only 75% of Wales is covered by community and town councils. We were told that the Welsh Assembly Government would like to see an increase in that proportion:

... we [...] see community and town councils as the layer of local government that is closer to the community as an enrichment of our democracy in Wales, so we would like to see that 75% increased.²⁵

This would primarily affect people living in the large cities and valley communities of South Wales. There is almost 100% coverage across the remainder of the country, but less than half of the population of Cardiff, Merthyr Tydfil, Newport, Swansea and Rhondda Cynon Taff is currently served by community or town councils and a third of the population of Blaenau Gwent, Caerphilly and Neath Port Talbot is not covered.

28. We questioned the need for a further layer of government, and whether there was a public demand for an increase in the number of councils. The then Welsh Assembly Government Minister acknowledged that while people “do not articulate it in the way you’ve described,” they did want local government to be “more responsive”.²⁶ He commented on an Assembly survey, which showed that only 5% of people in Wales were involved in the democratic process, excluding elected representatives, noting that “democracy and participation in democracy is remote from the average citizen”.²⁷

29. Wayne David MP, Parliamentary Under-Secretary from the Wales Office, agreed on the need to “revitalise democratic politics in Wales”:²⁸

... there is a general concern amongst many people who are engaged in democratic politics that amongst large sections of the population there is a sense of alienation from political processes and from democracy [...] this LCO essentially is important because it recognises the role of community councils as the tier of local government closest to the people.²⁹

²⁴ Q 24

²⁵ Q 24

²⁶ Q 27

²⁷ Q 27

²⁸ Q 84

²⁹ Q 81

This was supported by One Voice Wales, who believed:

... that bringing the legislative process closer to the communities and institutions affected will make it easier for councils and communities to be informed about and influence such legislation.³⁰

30. Some areas in South Wales, for example, Merthyr Tydfil and Blaenau Gwent, which lack blanket coverage by community and town councils, are served by unitary authorities which are themselves not much bigger than the larger town councils in Wales. Dr Gibbons had no concern regarding a possible duplication of function, as he said there was a “very distinct view as to the role of community and town councils”,³¹ and confirmed that there was no policy to dissolve the smaller unitary authorities.

31. We expressed concern that the proposed Order might not be sufficiently broadly drafted to cover all the aims of the Welsh Assembly Government. The Local Government Act 1972 appears to draw a distinction between “constitution” and “powers”. We agree that the terms currently used in the Matter are broad enough to cover such topics as the establishment and dissolution of councils, membership (including co-option) and membership of qualifications, the charring and other procedural arrangements of councils and community meetings. However, we were less certain that the terms confer competence to legislate as to the handling of finances or to staff serving councils or to confer general or specific functions (i.e. responsibilities, powers and duties) on councils and meetings.

32. The Parliamentary Under-Secretary of State stated that “the definitions which are provided [...] which specifically refer to the constitution of community councils, are sufficient”. He went on to comment:

...I think a lot will depend on specifically what the Assembly brings forward in terms of its fine detail in the Measures it decides to bring forward.³²

33. Matter 12.8 is the means of extending competence to the National Assembly over the constitution, structure and procedures of community councils and for community meetings, giving effect to the relevant recommendations of the Aberystwyth Report. We consider that the Matter should be sufficiently broad to fulfil the Welsh Assembly Government’s objectives and we were reassured by the Minister’s evidence on this point.

Matter 12.9 — Electoral arrangements

34. Matter 12.9 would enable the National Assembly for Wales to introduce legislation regarding electoral arrangements for community councils. The Explanatory Memorandum comments that this would include issues such as the number of councillors that may be returned, whether or not community councils should be divided into wards for electoral purposes and reviews of these arrangements.

³⁰ Ev 26

³¹ Q 33

³² Q 85

35. In evidence to Legislation Committee No. 2 in the National Assembly for Wales, the then Welsh Assembly Government Minister stated that:

Matters 12.8 and 12.9 overlap, but, to summarise the distinction, Matter 12.9 is about the political implications of what would follow Matter 12.8 and it deals with issues such as deciding the number of councillors that community and town councils would have, whether community and town councils should contain wards and similar issues. So, it is about what practical political structure or political mechanism will fall out of that.³³

36. Witnesses acknowledged that changes under Matter 12.9 would not fully address the problems of non-contested elections and lack of public participation, as highlighted by the Aberystwyth Report, but they represented a wider “holistic approach” to changing public participation.³⁴ The then Welsh Assembly Government Minister did not think:

... that public participation in the democratic process is going to be solved by an administrative or a legislative magic bullet, no matter what it is. I think this is a cultural thing and we have to make politics matter and feel relevant to people [...] What we need is a set of proposals that will go with the grain of allowing the public to be more involved, to have the public have a better understanding of what local government does at its various tiers [...] and, equally, for the elected members to be more accountable to the population that they represent.³⁵

The Parliamentary Under-Secretary from the Wales Office agreed:

I think it will be a contribution to that process [...] We cannot pretend this will allow political parties to abrogate their responsibilities in engaging perhaps more effectively at a local level than they do at the moment.³⁶

Exceptions

37. Matter 12.9 specifically excludes the local government franchise, the arrangements for electoral registration and electoral administration, including the conduct of elections, and the voting system used at community council elections in Wales.

38. We note the majority view in favour of the exceptions, expressed in evidence to the National Assembly for Wales’ Legislation Committee No. 2, with a minority expressing their opposition to the exception of these matters. In explaining to the Assembly’s Committee why he had included the exceptions under Matter 12.9, the then Welsh Assembly Government Minister said that these were areas which, by definition, were not within the Assembly’s competence. In relation to exception (c), Dr Gibbons AM commented:

³³ RoP, para 37, 24 September 2009, Legislation Committee No. 2

³⁴ Q 39, Q 86

³⁵ Q 38

³⁶ Q 86

The voting system is more contentious [...] There are a few answers. First, I do not think that there is a real consensus on whether the voting system should be changed. On consistency, it would add complexity rather than simplify the system if there were different voting systems for different local elections.³⁷

39. Matter 12.9 would give the National Assembly for Wales legislative competence to introduce legislation regarding electoral arrangements for community councils. While this would not fully address the lack of public participation, it could form part of a wider package of measures.

Matter 12.10 — Power to promote economic, social and environmental well-being

40. Matter 12.10 would enable the National Assembly for Wales to legislate to give community councils the power to promote or improve the economic, social or environmental well-being of their area.

41. The Local Government Act 2000, section 2, conferred power on local authorities to do anything that they consider likely to promote or improve the economic, social and environmental well-being of their areas. However, in Wales, this provision did not extend beyond county and county borough councils. This “power of first resort”, noted Wayne David MP, Parliamentary Under-Secretary of State at the Wales Office, “would allow community councils for the first time to intervene effectively in their local communities regarding the communities’ economic and social well-being”.³⁸

42. Witnesses expressed their support for the power of well-being contained in Matter 12.10. One Voice Wales was:

... keen to see the extension of the Power of Well-being to community and town councils, power already available to the parish sector in England. One Voice Wales views the power as being very positive and enabling, sending a strong message to councils regarding their role in supporting the broad-based development of their communities.³⁹

43. The then Welsh Assembly Minister for Social Justice and Local Government highlighted how a new Measure flowing from this Legislative Competence Order would sit alongside the obligation introduced in the Local Government Measure requiring principal councils to involve community councils in community planning. This new Measure would enable community councils to have a “broader basket of powers” available to enable them to play a full part in that process.⁴⁰

44. The Local Government Act 2000 refers to the “power”, in the singular, on local authorities to promote the well-being of their area, while the Matter as drafted speaks of “powers”. When asked about the difference in terminology, Susan Olley, Legal Adviser to

³⁷ RoP, para 39, 24 September 2009, Legislation Committee No. 2

³⁸ Q 88

³⁹ Ev 26

⁴⁰ Q 36

the Wales Office, commented that this was to ensure that the power on well-being conferred on community councils would not conflict with the powers already vested in principal councils:

... why it is expressed as ‘powers’ rather than ‘power’, is for there to be an incremental transfer that takes account of that boundary.⁴¹

Deborah Richards, Legal Adviser to the Welsh Assembly Government, explained:

I think the read across to the 2000 Act is helpful but it is distinguishable because the power is directly conferred on local authorities under the 2000 Act whereas this LCO is giving the competence to be able to draw down elements of the scope which includes powers. We feel that ‘powers’ is more appropriate because it gives more flexibility when it comes to drafting measures for the legislators to decide whether they want a range of powers or one power.⁴²

45. Matter 12.10 would enable the Assembly to extend to community councils the power to promote well-being, given to unitary authorities in 2000. This would allow community councils to intervene effectively in their local community regarding the communities’ economic and social well-being. Parish and town councils already have the ability to exercise such powers in England and we are satisfied that the National Assembly for Wales should have the power to extend similar provision to town and community councils in Wales.

Matter 12.11 — Grants by Welsh Ministers

46. Matter 12.11 confers competence on the National Assembly to legislate to enable the Welsh Minister to provide funds for community local government, additional to those derived from precepts, by making grants.

47. Dr Brian Gibbons AM made it clear that the only source of funding available to town and community councils was via the precept. The current law did not provide for Welsh Ministers to make grants directly available to those councils. He stated that:

... the purpose of this would be to give the Assembly Government competence to bring forward legislation to allow direct grants to take place.⁴³

In laying the proposed LCO before the National Assembly for Wales, Dr Gibbons had spoken of the restrictions the current situation imposed on town and community councils:

The main way of funding community and town councils is through the local precept. That restricts the amount of funding that can go to town and community councils. It also makes it more difficult for them to access other sources of money, such as Community Facilities and Activities Programme funding, or even lottery funding at times. Therefore, as well as freeing up our capacity to give direct grants to community and town councils, it should hopefully provide greater legal certainty for

⁴¹ Q 91

⁴² Q 37

⁴³ Q 42

community and town councils to be able to access sources of funding other than through the precept.⁴⁴

48. In oral evidence to the National Assembly’s Legislation Committee No. 2, Frank Cuthbert, Head of Local Government Democracy in the Welsh Assembly Government, confirmed that the Matter would provide for the Welsh Assembly Minister to directly finance community councils by-elections (one of the recommendations of the Aberystwyth Report).⁴⁵ This was re-iterated by Wayne David MP in evidence to us, who commented:

I suspect that one of the reasons why community councils often have co-options rather than by-elections is that they have not got any specific finance to fund by-elections. They have to fund by-elections from their own precepts.⁴⁶

49. We consider that the proposed Matter to enable the provision of direct grants from the Welsh Minister to town and community councils, thereby enhancing their funding, is appropriate. This will allow the National Assembly for Wales to legislate to provide greater legal certainty for community and town councils to be able to access sources of funding.

Matter 12.12 — Community relations

50. Matter 12.12 would provide a competence for the Assembly to legislate to encourage productive relations and collaboration between community councils and between community councils and principal councils (i.e. county and county borough councils). Encouraging collaboration of this kind is a key part of the Assembly Government’s *Making the Connections* strategy. Mr Wayne David MP, Parliamentary Under-Secretary of State at the Wales Office, commented:

I think that there should be some mechanism, some sort of partnership to ensure that the voice of local representatives is fully taken into account by the principal authority.⁴⁷

51. Witnesses commended the “good momentum” that is being developed on a voluntary basis in collaboration between community councils and principal councils.⁴⁸ Evidence highlighted the charters that were being developed between the community and town councils and the principal authority, such as in Torfaen. Equally, Dr Brian Gibbons AM, then Welsh Assembly Government Minister for Social Justice and Local Government, highlighted the hope that community and town councils would work bilaterally between themselves.

52. The Welsh Assembly Government Minister made it clear that he envisaged the power under Matter 12.12 as a “reserved power”:

⁴⁴ RoP, 14 July 2009, National Assembly for Wales

⁴⁵ RoP, para 71, 24 September 2009, Legislation Committee No. 2

⁴⁶ Q 93

⁴⁷ Q 97

⁴⁸ Q 47

... a statutory requirement to enforce collaboration would be very much a last stop and would not be seen as the routine way of promoting collaboration ...⁴⁹

53. We consider that Matter 12.12 is appropriate and believe that it would allow the National Assembly for Wales to legislate to encourage greater co-operation and collaboration across tiers of local government. We are reassured by the Minister's confirmation that the power under the Matter will be used as a reserve power and that working relationships between local government institutions should principally be developed on a voluntary basis.

Matter 12.13 — Quality accreditation

54. Matter 12.13 would provide legislative competence for the Assembly to put in place Measures to raise the competence of community councils. As the Explanatory Memorandum sets out, there is currently no national programme to assess the competence of community councils in Wales. This is in contrast with England, where the Quality Parish and Town Council Scheme was launched in 2003 following the Government's Rural White Paper and revised in 2008.⁵⁰ The aim of the scheme is to benchmark minimum performance standards for parish and town councils in England, with standards set by participants to the scheme.

55. The then Welsh Assembly Government Minister described the “new sense of vitality” that currently existed in community and town councils.⁵¹ He described the training programme that the Assembly Government had put in place and anticipated that “something like 600 councillors”⁵² will have gone through the programme by the end of the year, although he acknowledged that, with 8,000 community councillors in Wales, “it is only a fraction of the number of councillors that could be trained”.⁵³

56. Mr Chris Stevens from the Legislation Team in the Wales Office, stated that the preference of the Welsh Assembly Government was that of a voluntary accreditation scheme, with the power set out in Matter 12.13 to be used as a “reserve power [...] if it cannot be brought about by natural collaboration”.⁵⁴ The Welsh Assembly Government Minister also made this clear:

What we would like to see is community and town councils themselves taking this agenda on board, but if for some reason it did need to be put on a statutory framework, then the LCO would allow us the powers to do so, but that would not be the preferred route at the minute.⁵⁵

⁴⁹ Q 46

⁵⁰ Ev 29

⁵¹ Q 48

⁵² Q 48

⁵³ Q 62

⁵⁴ Q 104

⁵⁵ Q 48

57. On the use of an accrediting body, the Parliamentary Under-Secretary of State acknowledged that the National Assembly would have the power to establish such a body under the proposed Order. Dr Brian Gibbons AM, then Welsh Assembly Government Minister for Social Justice and Local Government, recognised that such a body could be developed in the future:

... if there were proposals for unitary authorities to delegate some of their powers down to a more community level, they might want to assure themselves that the community and town council had a certain level of competence to carry out those tasks, and one of the ways that they might assure themselves that the community and town council was up to scratch would be that they would have achieved an accredited standard of performance.⁵⁶

58. Matter 12.13 would enable the National Assembly for Wales to legislate to develop the quality and increase the standard of service of town and community councils in Wales. We welcome the Minister’s preferred approach that this should be done initially on a voluntary basis, but we agree that the Assembly should have the legislative competence to establish an accredited scheme on a statutory basis if required.

59. We welcome the training programmes for councillors established by the Welsh Assembly Government. We urge the Welsh Assembly Government to encourage more councillors to take-up the opportunity that these programmes offer.

Matter 12.14 — Public participation in community local government

60. Matter 12.14 allows the National Assembly to make it a requirement to advertise co-option opportunities in the local community. The Explanatory Memorandum states that this would enable the Assembly to legislate to encourage transparency and wider participation in the proceedings of community councils.⁵⁷

61. The Explanatory Memorandum sets out the current law where, under the Representation of the People Act 1985, if an insufficient number of persons are or remain validly nominated to fill the vacancies at an ordinary election of community councillors, the new council may co-opt any person or persons to fill any remaining vacancies. There is no requirement at present for the advertising of vacancies.⁵⁸

62. The then Assembly Minister for Social Justice and Local Government acknowledged that the number of uncontested seats in community and town councils was a “massive problem” with a “fairly substantial” number of unfilled seats on community and town councils.⁵⁹ It was estimated that approximately 40% of community councillors had been elected in Wales, with many co-opted “from the great and good of the circulation of people who are already members of the community and town council”.⁶⁰

⁵⁶ Q 48

⁵⁷ Explanatory Memorandum, para 21

⁵⁸ Explanatory Memorandum, para 21

⁵⁹ Q 51

⁶⁰ Q 50

63. The Welsh Assembly Government Minister explained what he would like to see:

... vacancies [...] advertised more widely in the community in some way, either by public notice, maybe, circulating local clubs and organisations in the community to draw to the attention of civic-minded people that there is a co-option vacancy there rather than just dipping into the same closed circle.⁶¹

64. The process of co-option without the need for advertising vacancies does not encourage the wider participation of the electorate. We welcome the intention of Matter 12.14 to enable the Welsh Assembly Government to improve transparency and wider participation in the proceedings of community councils and consider it an appropriate extension of competence.

Matter 12.15 — Information to the public concerning local government

65. Matter 12.15 provides competence for the Assembly to prescribe the type and mode of information concerning local government that is to be published and the circumstances when such publication must take place. The Explanatory Memorandum stresses that this is intended to encourage greater accountability of local government institutions. This Matter extends to local government in counties and county boroughs as well as for communities. Wayne David MP described the matter as “critical”:

...so that we have the means in place to ensure that public representatives relate not just at elections but on a regular basis to the public they purport to represent.⁶²

66. The then Welsh Assembly Government Minister stated that, although he did not yet have a complete list of the type of information that might be requested under a Measure, examples could include:

... a requirement on the local authority to support elected members to provide an annual report of what they are doing on behalf of their electors, maybe produce newsletters in a more conventional sense ...⁶³

The Parliamentary Under-Secretary of State explained the need to look at a “whole host of imaginative ways to ensure that a councillor is able to relate as effectively as possible to the local community”.⁶⁴

67. We welcome the intention of Matter 12.15 to increase communication between elected representatives in local government and the electorate and consider it an appropriate extension of competence.

⁶¹ Q 50

⁶² Q 107

⁶³ Q 54

⁶⁴ Q 107

Matter 12.16 — Remuneration of Councillors

68. Matter 12.16 empowers the National Assembly to legislate concerning salaries, allowances, pensions and other payments to community councillors, county council and county borough councillors, members of national park authorities and members of combined fire and rescue authorities.

69. An independent panel on remuneration of councillors was due to report in December 2009 but is still awaited. Dr Brian Gibbons AM, then Welsh Assembly Government Minister for Social Justice and Local Government, acknowledged that Matter 12.16 was an enabling power, to allow the Welsh Assembly Government to respond to its recommendations. He commented:

... the Independent Remuneration Panel [...] realised that they were very constrained in what they could do and any proposals essentially had to be within the framework of special allowances [...] and they could produce variations on that but there was no scope for them to radically look at the way that councillors were remunerated or reimbursed for the way that they did their work. So they gave us a very strong message that they would like the National Assembly to seek legal competence in this area so that a greater variety of ways of remunerating and reimbursing elected members should be available to us.⁶⁵

The Parliamentary Under-Secretary for Wales agreed that it was “sensible” for the competence to be in place, allowing the Welsh Assembly Government to “act appropriately when that panel reports”.⁶⁶

70. Matter 12.16 would allow the Welsh Assembly Government to respond legislatively to the recommendations of an independent panel on remuneration of councillors. We are content with the Matter as drafted.

Matter 12.17 — Recruitment, Retention and Support to Councillors

71. Matter 12.17 would enable the Assembly to require unitary authorities and community and town councils to provide better support and working conditions for councillors. The Explanatory Memorandum states that this is “with a view to assisting in the recruitment of greater numbers of candidates for local government and in the retention of councillors once elected”.⁶⁷

72. Dr Brian Gibbons AM, then Welsh Assembly Government Minister for Social Justice and Local Government, commented that the Matter was “drawn sufficiently broadly” to allow the Welsh Assembly Government to respond to recommendations made by the Councillor Commission Expert Panel Wales, which reported in 2009.⁶⁸ The Welsh Assembly Government finished consulting on the recommendations on 27 November

⁶⁵ Q 57

⁶⁶ Q 110

⁶⁷ Explanatory Memorandum, para 24

⁶⁸ This was based on the Councillors Commissions’ *Care in England* Report, published in December 2007.

2009. Wayne David MP stated that the Matter would allow Wales “to adopt policies which are specific to Welsh circumstances”.⁶⁹

73. Frank Cuthbert, Head of the Local Government Democracy Team in the Welsh Assembly Government, commented that historically “inadequate provision” had been made for:

... the support of the majority of the members of an authority who are not part of the leadership in terms of the staffing support that they have for scrutiny, for member development, for members’ services, for democratic services ...⁷⁰

74. The Welsh Assembly Government Minister believed that elected members were not typical of their communities because of the lack of support available:

They are overwhelmingly male, they are overwhelmingly the wrong side of 55 and there are lots of other characteristics which, admirable though they may be, may not be typical.⁷¹

He spoke of the need to remove barriers in order to encourage black and ethnic minorities, disabled people, people with caring responsibilities, and young parents to become councillors, and gave as a possible example the ability of community and town councils to co-opt 16—25 year-olds on to the authority to represent young people’s voice:

I think that the LCO has to be fairly broadly drawn to allow us to have a range of competences so that the Measures that we can bring forward can have that breadth to be as radical as we dare be within the political culture and financial constraints that we face.⁷²

75. It is important that local government representatives should reflect their communities. Matter 12.17 would provide the National Assembly for Wales with legislative competence to bring forward Measures to encourage a more diverse group of councillors. We support the Welsh Assembly Government’s aims to increase diversity and to provide better support for town, community and county councils and we are content with the Matter as drafted.

Cross Border Issues

76. Witnesses raised the possibility that the LCO would promote cross-border working. One Voice Wales commented:

... the LCO is likely to promote improved cross-border working (One Voice Wales is a partner under the Wales/West Midlands Cross Border Memorandum of

⁶⁹ Q 115

⁷⁰ Q 61

⁷¹ Q 53

⁷² Q 59

Understanding and organises joint meetings between parish councils and community councils along the border).⁷³

77. While the then Welsh Assembly Government Minister commented that the focus of the LCO was very much “inward looking into Wales first and foremost”, he acknowledged that many local authorities in Wales (both community and principal authorities) had to liaise across the border with counterparts in England “to do a good job.”⁷⁴ The Parliamentary Under-Secretary of State commented that the issues of cross-border co-operation were “vitally important” and looked for the model of the Wales/West Midlands Cross Border Memorandum of Understanding to be replicated elsewhere.⁷⁵

78. We have looked in depth in recent inquiries at the importance of cross-border co-operation. We welcome the Wales/West Midlands Cross Border Memorandum of Understanding and look to the Welsh Assembly Government to encourage the establishment of similar cross-border partnerships.

4 Conclusion

79. The proposed National Assembly for Wales (Legislative Competence) (Local Government) Order 2009 clearly develops previously announced Welsh Assembly Government policy to strengthen town and community councils in Wales. The Welsh Assembly Government has been unable to gain competence under framework legislation. The use of the Legislative Competence Order is therefore appropriate and acceptable in this instance.

80. The proposed Order is drafted in a readily accessible form with a minimum of exceptions and interpretation provisions. We consider it important for there to be clarity and consistency in the terminology used to describe the various tiers of local government and agree with the suggestion put forward by Legislation Committee No. 2 of the National Assembly for Wales that the Minister should undertake a review of terminology relating to local government.

⁷³ Ev 26

⁷⁴ Q 66

⁷⁵ Q 117

Annex A

Background to the Legislative Competence Order procedure

The Government of Wales Act 2006 introduced a procedure whereby the National Assembly for Wales can bring forward proposals which would extend the Assembly's lawmaking powers by way of Legislative Competence Orders in Council. The Orders do not themselves change the general law for Wales—they pave the way to subsequent 'Measures' to change the law applying to Wales within the devolved areas of legislative competence. They do this by adding new "Matters" to the "Fields" of legislative competence set out in Schedule 5 to the Government of Wales Act 2006.

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

Following the pre-legislative scrutiny stage, the National Assembly may agree an actual draft Order. This may take account of committee recommendations (from either its own committees or Westminster) arising from pre-legislative scrutiny. The draft Order may then be laid before Parliament by the Secretary of State for Wales—and he or she may still decline to do so at this stage. If the draft Order is laid, it is considered by both Houses of Parliament, and may be debated by them. Draft Orders at this stage are not amendable and can only be approved or rejected. If approved by both Houses, and once it is given the royal assent in the Privy Council, direct law-making powers are devolved to the Assembly within the scope of the Order in Council. The Assembly can then make laws in the form of Assembly Measures, which need to be passed by the National Assembly but which require no further approval by either Whitehall or Parliament.

Introduction of this proposed Order

The National Assembly for Wales (Legislative Competence) (Local Government) Order 2009 was laid before the National Assembly by the Minister for Social Justice and Local Government, Dr Brian Gibbons AM, on 13 July 2009. The proposed Order was referred to the Assembly's Permanent Legislative Committee No. 2, which formally agreed to undertake pre-legislative scrutiny of the proposed order on 16 July 2009. The Committee issued a call for written evidence and subsequently held four evidence sessions and published its report on 4 December 2009.

Annex B

Our inquiry

We announced our inquiry and issued a call for evidence on 22 July 2009. We took oral evidence from the then Welsh Assembly Government Minister for Social Justice and Local Government, Dr Brian Gibbons AM, and the Parliamentary Under-Secretary of State at the Wales Office, Mr Wayne David MP. We also benefited from an informal meeting with the National Assembly for Wales Legislation Committee No. 2 to discuss the issues raised by our respective inquiries. We received written evidence from One Voice Wales,⁷⁶ Bridgend County Borough Council⁷⁷ and the Welsh Local Government Association.⁷⁸ We are grateful for the assistance of our specialist advisers, Professor Steve Martin, Cardiff Business School, Cardiff University,⁷⁹ and Professor Keith Patchett, Emeritus Professor of Law, University of Wales.⁸⁰

⁷⁶ One Voice Wales represents and provides support services to community and town councils in Wales.

⁷⁷ Bridgend County Borough Council is a unitary authority that delivers a full range of key services to approximately 133,000 people.

⁷⁸ The Welsh Local Government Association represents the interests of local authorities in Wales.

⁷⁹ See Formal Minutes for the Committee for 21 July 2009 at <http://www.parliament.uk/documents/upload/FORMALMINUTESWAC08-09v3a.pdf>

⁸⁰ See Formal Minutes for the Committee for 28 November 2006 at <http://www.parliament.uk/documents/upload/final%20FORMAL%20MINUTES%2006%2007.pdf>

Conclusions and recommendations

The proposed Order and existing Welsh Assembly Government policy

1. The proposed Legislative Competence Order clearly develops previously announced Welsh Assembly Government policy to strengthen community and town councils in Wales. (Paragraph 14)

Use of the Legislative Competence Order Procedure

2. While the Welsh Assembly Government has given a commitment to address issues identified in the Aberystwyth Report, it currently does not have the legislative powers to implement all of the agreed recommendations. This proposed Legislative Competence Order would extend the National Assembly's legislative competence to matters relating to community and town councils. It is disappointing that suitable framework powers were not able to be included in recent Bills and we are concerned that the conflicting evidence that we received from the Welsh Assembly Government and the Wales Office on this matter suggests a lack of effective communication. In any event, we are satisfied that the use of the Legislative Competence Order in Council procedure is appropriate in this case, as no alternative legislative vehicle is likely to become available in the foreseeable future. (Paragraph 20)

Application

3. The definition of “communities” included in the proposed Order may appear convenient for the purposes of the Order but it has the potential to introduce confusion if the word “community” is given a specific meaning within legislation or official documents, and is then used within official organisations, in a way which differs from general public usage. The word “community” is used loosely within the legislation and within both the Explanatory Memorandum and the evidence we received from ministers. In some contexts, it appears to be used by officials when they are referring to the population represented by a community council. That is not normal colloquial usage, nor is it consistent with the requirements of the 1972 Act and subsequent legislation. Best practice recognises that a community is defined by those who live in it rather than by external or administrative boundaries. Some community councils may represent a single community, but many do not. That is particularly true of the larger town councils which are comprised of several communities. It is also true of rural communities where more than one village is represented. A different word needs to be used to indicate when official documents or communications — including legislation and the Explanatory Memorandum — are talking about the population represented by a community council. The guiding principle should be to seek to reconcile official use of terminology with general public usage rather than the other way round. In addition, there are now many terms in use to describe the various tiers of local government. We agree with the suggestion put forward by Legislation Committee No. 2 of the National Assembly for Wales that the Minister should speedily undertake a review of terminology relating to local government. (Paragraph 25)

Matter 12.8 — Community areas and their government institutions

4. Matter 12.8 is the means of extending competence to the National Assembly over the constitution, structure and procedures of community councils and for community meetings, giving effect to the relevant recommendations of the Aberystwyth Report. We consider that the Matter should be sufficiently broad to fulfil the Welsh Assembly Government's objectives and we were reassured by the Minister's evidence on this point. (Paragraph 33)

Matter 12.9 — Electoral arrangements

5. Matter 12.9 would give the National Assembly for Wales legislative competence to introduce legislation regarding electoral arrangements for community councils. While this would not fully address the lack of public participation, it could form part of a wider package of measures. (Paragraph 39)

Matter 12.10 — Power to promote economic, social and environmental well-being

6. Matter 12.10 would enable the Assembly to extend to community councils the power to promote well-being, given to unitary authorities in 2000. This would allow community councils to intervene effectively in their local community regarding the communities' economic and social well-being. Parish and town councils already have the ability to exercise such powers in England and we are satisfied that the National Assembly for Wales should have the power to extend similar provision to town and community councils in Wales. (Paragraph 45)

Matter 12.11 — Grants by Welsh Ministers

7. We consider that the proposed Matter to enable the provision of direct grants from the Welsh Minister to town and community councils, thereby enhancing their funding, is appropriate. This will allow the National Assembly for Wales to legislate to provide greater legal certainty for community and town councils to be able to access sources of funding. (Paragraph 49)

Matter 12.12 — Community relations

8. We consider that Matter 12.12 is appropriate and believe that it would allow the National Assembly for Wales to legislate to encourage greater co-operation and collaboration across tiers of local government. We are reassured by the Minister's confirmation that the power under the Matter will be used as a reserve power and that working relationships between local government institutions should principally be developed on a voluntary basis. (Paragraph 53)

Matter 12.13 — Quality accreditation

9. Matter 12.13 would enable the National Assembly for Wales to legislate to develop the quality and increase the standard of service of town and community councils in Wales. We welcome the Minister's preferred approach that this should be done initially on a voluntary basis, but we agree that the Assembly should have the legislative competence to establish an accredited scheme on a statutory basis if required. (Paragraph 58)
10. We welcome the training programmes for councillors established by the Welsh Assembly Government. We urge the Welsh Assembly Government to encourage more councillors to take-up the opportunity that these programmes offer. (Paragraph 59)

Matter 12.14 — Public participation in community local government

11. The process of co-option without the need for advertising vacancies does not encourage the wider participation of the electorate. We welcome the intention of Matter 12.14 to enable the Welsh Assembly Government to improve transparency and wider participation in the proceedings of community councils and consider it an appropriate extension of competence. (Paragraph 64)

Matter 12.15 — Information to the public concerning local government

12. We welcome the intention of Matter 12.15 to increase communication between elected representatives in local government and the electorate and consider it an appropriate extension of competence. (Paragraph 67)

Matter 12.16 — Remuneration of Councillors

13. Matter 12.16 would allow the Welsh Assembly Government to respond legislatively to the recommendations of an independent panel on remuneration of councillors. We are content with the Matter as drafted. (Paragraph 70)

Matter 12.17 — Recruitment, Retention and Support to Councillors

14. It is important that local government representatives should reflect their communities. Matter 12.17 would provide the National Assembly for Wales with legislative competence to bring forward Measures to encourage a more diverse group of councillors. We support the Welsh Assembly Government's aims to increase diversity and to provide better support for town, community and county councils and we are content with the Matter as drafted. (Paragraph 75)

Cross Border Issues

15. We have looked in depth in recent inquiries at the importance of cross-border co-operation. We welcome the Wales/West Midlands Cross Border Memorandum of Understanding and look to the Welsh Assembly Government to encourage the establishment of similar cross-border partnerships. (Paragraph 78)

Formal Minutes

Thursday 7 January 2010

Members present:

Dr Hywel Francis, in the Chair

Mr David Jones
Alun Michael

Mark Williams

Draft Report (*The proposed National Assembly for Wales (Legislative Competence) (Local Government) Order 2009*), proposed by the Chairman, brought up and read.

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

Paragraphs 1 to 80 read and agreed to.

Annexes and Summary agreed to.

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

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

Written evidence was ordered to be reported to the House for printing with the Report, together with written evidence reported and ordered to be published on 27 October and 3 November 2009.

[Adjourned till Monday 11 January at 10.00 a.m. at the National Assembly for Wales, Cardiff Bay

Witnesses

Tuesday 24 November 2009

Page

Dr Brian Gibbons AM, Minister for Social Justice and Local Government, **Mr Frank Cuthbert**, Head of Local Government Democracy, **Mr Stephen Phipps**, Head of Local Government Partnership and ethics, and **Ms Deborah Richards**, Legal Adviser, Welsh Assembly Government

Ev 1

Thursday 26 November 2009

Mr Wayne David MP, Parliamentary Under-Secretary of State, **Mr Chris Stevens**, Legislation Team, and **Ms Susan Olley**, Legal Adviser, Wales Office

Ev 10

List of written evidence

1	Proposed Order for pre-legislative scrutiny	Ev 19
2	Welsh Assembly Government Explanatory Memorandum	Ev 22
3	Written evidence from Bridgend County Borough Council	Ev 25
4	Written evidence from One Voice Wales	Ev 26
5	Written evidence from the Welsh Local Government Association (WLGA)	Ev 27
6	Letter from Wayne David MP, Parliamentary Under Secretary of State, Wales Office, to the Chairman	Ev 29
7	Letter from Dr Brian Gibbons AM, Minister for Social Justice and Local Government, Welsh Assembly Government, to the Chairman	Ev 29
8	Written evidence from Llangunllo Community Council	Ev 30

List of Reports from the Committee during the current Parliament

Session 2009-10

First Report	The Proposed National Assembly for Wales (Legislative Competence) (Culture and other fields) Order 2009	HC 40
Second Report	Proposed National Assembly for Wales (Legislative Competence) (Housing) Order 2009 relating to Domestic Fire Safety	HC 142
Third Report	Work of the Committee 2008-09	HC 154
Fourth Report	The Proposed National Assembly for Wales (Legislative Competence) (Local Government) Order 2009	HC 36
First Special Report	Proposed National Assembly for Wales (Legislative Competence) (Health and Health Services and Social Welfare) Order 2009: Government Response to the Committee's Fourteenth Report of Session 2008-09	HC 198

Session 2008-09

First Report	Cross-border provision of public services for Wales: Further and higher education	HC 57
Second Report	Globalisation and its impact on Wales	HC 184 –I, II
Third Report	Proposed National Assembly for Wales (Legislative Competence) (Agriculture and Rural Development) Order 2008	HC 5
Fourth Report	Work of the Committee 2007-08	HC 252
Fifth Report	The provision of cross-border health services for Wales	HC 56
Sixth Report	Proposed National Assembly for Wales (Legislative Competence) (Social Welfare) Order 2009	HC 306
Seventh Report	Legal Services Commission Cardiff Office	HC 374
Eighth Report	Potential Benefits of the 2012 Olympics and Paralympics for Wales	HC 162
Ninth Report	The proposed National Assembly for Wales (Legislative Competence) (Welsh Language) Order 2009	HC 348
Tenth Report	Cross-border provision of public services for Wales: Transport	HC 58
Eleventh Report	English Language Television Broadcasting in Wales	HC 502
Twelfth Report	Proposed National Assembly for Wales (Legislative Competence) (Environment) Order 2009	HC 678
Thirteenth Report	Digital Inclusion in Wales	HC 305
Fourteenth Report	Proposed National Assembly for Wales (Legislative Competence) (Health And Health Services And Social	HC 778

	Welfare) Order 2009	
Fifteenth Report	Ports in Wales	HC 601
First Special Report	The proposed draft National Assembly for Wales (Legislative Competence) (Housing) Order 2008: Government Response to the Committee's Seventh Report of Session 2007–08	HC 200
Second Special Report	Cross-border provision of public services for Wales: further and higher education: Government Response to the Committee's First Report of Session 2008-09	HC 378
Third Special Report	Proposed National Assembly for Wales (Legislative Competence) (Agriculture and Rural Development) Order 2008: Government Response to the Committee's Third Report of Session 2008-09	HC 410
Fourth Special Report	Globalisation and its impact on Wales: Government Response to the Committee's Second Report of Session 2008-09	HC 538
Fifth Special Report	The National Assembly for Wales (Legislative Competence) (Social Welfare) Order 2009: Government Response to the Committee's Sixth Report of Session 2008-09	HC 605
Sixth Special Report	Legal Services Commission Cardiff Office: Government Response to the Committee's Seventh Report of Session 2008-09	HC 825
Seventh Special Report	Proposed National Assembly for Wales (Legislative Competence) (Welsh Language) Order 2009: Government Response to the Committee's Ninth Report of Session 2008-09	HC 1024
Eighth Special Report	Digital Inclusion in Wales: Government Response to the Committee's Thirteenth Report of Session 2008-09	HC 1050
Session 2007-08		
First Report	Energy in Wales: follow up inquiry	HC 177
Second Report	The proposed Legislative Competence Order in Council on additional learning needs	HC 44
Third Report	Work of the Committee in 2007	HC 325
Fourth Report	The proposed National Assembly for Wales (Legislative Competence) Order in the field of social welfare 2008	HC 257
Fifth Report	The proposed draft National Assembly for Wales (Legislative Competence) (social welfare and other fields) Order 2008	HC 576
Sixth Report	The provision of cross-border health services for Wales: Interim Report	HC 870
Seventh Report	The proposed draft National Assembly for Wales (Legislative Competence) (Housing) Order 2008	HC 812
First Special Report	The proposed Legislative Competence Order in Council on additional learning needs: Government response to the Committee's Second Report of	HC 377

	Session 2007-08	
Second Special Report	Energy in Wales – follow-up inquiry: Government Response to the Committee’s First Report of Session 2007-08	HC 435
Third Special Report	The proposed National Assembly for Wales (Legislative Competence) Order in the field of social welfare 2008: Government Response to the Committee’s Fourth Report of Session 2007-08	HC 715
Session 2006-07		
First Report	Work of the Committee in 2005-06	HC 291
Second Report	Legislative Competence Orders in Council	HC 175
Third Report	Welsh Prisoners in the Prison Estate	HC 74
First Special Report	Government Response to the Committee’s Second Report of Session 2006-07, Legislative Competence Orders in Council	HC 986
Session 2005-06		
First Report	Government White Paper: Better Governance for Wales	HC 551
Second Report	Proposed Restructuring of the Police Forces in Wales	HC 751
Third Report	Energy in Wales	HC 876-I
Oral and written Evidence	Energy in Wales	HC 876-II
Fourth Report	Future of RAF St Athan	HC 1129
Fifth Report	Current Restructuring of the Police Forces in Wales	HC 1418
Oral and written Evidence	NHS Dentistry in Wales	HC 771-i
First Special Report	Government Response to the Committee’s Second and Third Reports of Session 2004–05, Manufacturing and Trade in Wales and Public Services Ombudsman (Wales) Bill	HC 433
Second Special Report	Government Response to the Committee’s Fourth Report of Session 2004-05, Police Service, Crime and Anti-Social Behaviour in Wales	HC 514
Third Special Report	Government Response to the Committee’s First Report of Session 2005-06, Government White Paper: Better Governance for Wales	HC 839
Fourth Special Report	Government Response to the Committee’s Second Report of Session 2005-06, Proposed Restructuring of the Police Forces in Wales	HC 1431
Fifth Special Report	Government Response to the Committee’s Third Report of Session 2005-06, Energy in Wales	HC 1656
Sixth Special Report	Government Response to the Committee’s Fourth Report of Session 2005-06, Future of RAF St Athan	HC 1657
Seventh Special Report	Government Response to the Committee’s Fifth Report of Session 2005-06, Current Restructuring of the Police Forces in Wales	HC 1695

Oral evidence

Taken before the Welsh Affairs Committee on Tuesday 24 November 2009

Members present

Dr Hywel Francis, in the Chair

Nia Griffith
Mr David Jones
Mr Martyn Jones

Alun Michael
Albert Owen
Mark Williams

Witnesses: **Dr Brian Gibbons**, Assembly Member, Minister for Social Justice and Local Government, **Mr Frank Cuthbert**, Head of Local Government Democracy, **Mr Stephen Phipps**, Head of Local Government Partnership and Ethics, and **Ms Deborah Richards**, Legal Adviser, Welsh Assembly Government, gave evidence.

Q1 Chairman: Good morning and welcome to the Welsh Affairs Committee on this particular session dealing with the Legislative Competence Order relating to local government. Minister, Dr Gibbons, could you introduce yourself and your colleagues please.

Dr Gibbons: I am Brian Gibbons, Minister for Social Justice and Local Government in the Welsh Assembly Government. On my right is Frank Cuthbert, who will tell you about his official designation.

Mr Cuthbert: I am Head of the Local Government Democracy Team in the Assembly Government.

Dr Gibbons: And Stephen Phipps.

Mr Phipps: I am Head of the Partnership and Ethics Team in the Welsh Assembly Government.

Dr Gibbons: And then Deborah, who is our Legal Adviser.

Ms Richards: Deborah Richards from the Legal Services Department.

Q2 Chairman: Thank you very much and thank you for the introductions. Welcome to you all once again. Could I begin, Dr Gibbons, by asking you a very straightforward question. Could you tell us what this LCO will allow the Welsh Assembly Government to do that cannot be achieved with existing powers?

Dr Gibbons: The purpose of this particular LCO is to give us competence to strengthen the way that community and town councils operate in Wales, including strengthening the process surrounding community meetings. It will also give us the competence to legislate to undertake reviews of communities for the purposes of local government, particularly community and town councils, strengthen partnership working between community and town councils in Wales, improve the support arrangements that are available both to prospective candidates and elected councillors in Wales, to promote better information about the work of councillors, and to be able to have powers over the way councillors are remunerated in Wales.

Q3 Chairman: In other words, that cannot be done currently?

Dr Gibbons: That cannot be done in these areas, no.
Chairman: Mr David Jones?

Q4 Mr David Jones: Dr Gibbons, the Aberystwyth University report, as you know, was published in 2003 and the Welsh Assembly Government responded to it in 2004. Why has it taken so long for this LCO to be sought?

Dr Gibbons: The main reason is that we have been looking for framework legislation opportunities in other legislation that has come forward such as— could you help, Mr Cuthbert?

Mr Cuthbert: The Local Government and Public Involvement in Health Act.

Dr Gibbons: And then there were the proposals in relation to enhancing community legislation which are presently going forward in a more truncated form as the Local Democracy, Economic Development and Construction Bill. That Bill was truncated and consequently a lot of the activities that we would have hoped would have been covered by that legislation fell out of that new timetable. The UK Government were also looking at further legislative opportunities in relation to enhanced community legislation but because of the timetable that particular Bill fell out of the programme. At this stage there is no Bill before the Houses of Parliament that would be a suitable vehicle to bring forward these long-standing commitments that are enshrined in this LCO. The only way we can take these proposals forward, as there is no other Bill before the Houses of Parliament, is to put forward a free-standing LCO in its own right.

Q5 Mr David Jones: Can you tell the Committee what competences you did gain under the Local Democracy, Economic Development and Construction Act?

Dr Gibbons: There were two main areas. There is one over the executive arrangements of local authorities. As you know, most local authorities in Wales have the straightforward leader and cabinet model but three or four local authorities have gone for what was called the fourth option, and there are some inflexibilities in those arrangements, which hopefully will be addressed by that Act, and the Act

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will also give us leading competence over governance arrangements in local government, particularly in relation to scrutiny, scrutiny committees and councillors' calls for action.

Q6 Mr David Jones: It seems to me that that Bill would have been a suitable vehicle for the powers that you are seeking under this LCO. Was it purely a question of shortage of parliamentary time that was the problem?

Dr Gibbons: That is our understanding. We were hopeful that most of what is in this LCO, not quite everything but 90% of what is in this LCO, would have been included initially in that Bill but because of pressure of time it was not possible to include it.

Q7 Mr David Jones: Did you make representations to the Wales Office over this?

Dr Gibbons: The Wales Office, yes.

Q8 Mr David Jones: And what was the response?

Dr Gibbons: The response is, as I said to you, that initially we were optimistic but ultimately the pressure of time meant that the Bill itself had to be readjusted and we lost out as a consequence.

Q9 Mr David Jones: A case of too much legislation going through Parliament?

Dr Gibbons: Possibly.

Q10 Alun Michael: The proposed Matters contain provisions that relate to "communities". Why is there a need for a separate interpretation provision when other legislation, such as the Local Government Act (Wales) 1994, relies on the implicit definition?

Dr Gibbons: I think that is the answer; it is an implicit definition and not an explicit definition.

Q11 Alun Michael: Why is an explicit definition necessary if it has always been satisfactory with an implicit one?

Dr Gibbons: I suppose if you used an analogy, if you asked what is an elephant the definition could be "an elephant is an elephant". In the previous legislation if you asked what is a community or town council, the definition would be "a community or town council is a community or town council", and it does not attempt to more accurately describe it. I think for the purposes of this LCO, because there is greater legal clarity by specifically defining what we mean, then it does bring greater clarity to the LCO and there is greater understanding and transparency in terms of what we are trying to achieve.

Q12 Alun Michael: I am still not clear why that makes a difference. If you go back to, for instance, the legislation on which the 1974 re-organisation of local government was based, there was an essential principle that each ward, and then councils, should be aggregations of communities defined by the way that the communities saw themselves rather than by any external or objective definition. That seems to me quite a good principle because it is bottom-up

rather than top-down, so I cannot see why a definition is better than that form of recognition of what is there?

Dr Gibbons: I think you said at the beginning that it is an implicit definition whereas this is an explicit definition.

Q13 Alun Michael: There are a lot of implicit definitions. There are a lot of definitions that are defined by common law or custom and practice, and a formal definition interferes with that by definition, if I may say so, because you are then constrained by the definition that you have given rather than allowing it to be self-referring.

Dr Gibbons: You could be constrained but you could also bring clarity to the process.

Q14 Alun Michael: Where has the lack of clarity caused problems?

Dr Gibbons: I think you said it yourself. It is the implicit nature of it whereas in this particular LCO, as part of your scrutiny process, you would have absolute clarity in terms of knowing precisely what we are dealing with.

Q15 Alun Michael: Sorry, I do not believe I gave the answer in my question. The question is: what problems have arisen in the past through lack of a formal definition?

Dr Gibbons: There are two definitions given here. One is the definition of "local government for communities"—in other words, this is what town and community councils do—and then there is a reference to local government institutions. The definition of local government institutions refers to the meetings of the town and community councils plus the wider range of community meetings that may flow from that as well that very often are an intrinsic part of that local democracy. For example, you will be aware that community meetings play an important role in the formation or the dissolution of a community or town council. Equally, community meetings can be used as a platform to test public sentiment on particular areas that either a community and town council is undertaking or indeed a principal authority is undertaking as well. It might be helpful if either Deborah, as the Legal Adviser, or Frank were able to give you some more specific, precise legal justification for the words.

Ms Richards: I think the justification is that the word "communities" could be interpreted in a number of ways, not necessarily restricted to geographical location. It was important in the context of this LCO to differentiate that "communities" does not mean principal councils and it was decided that given that this is conferring competence, the scope is very important and it was necessary, we thought, to define communities so that it is clear that it relates to the most local tier of local government when we refer to communities.

Q16 Alun Michael: But a local community could be represented by a community council that very often is an aggregation of a number of communities.

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Dr Gibbons: Sometimes.

Q17 Alun Michael: Yes.

Dr Gibbons: Not always but sometimes, occasionally.

Q18 Alun Michael: A rural community council covering an area would cover several villages perhaps, and certainly I would say in terms of some of the community and town councils there is a number of very different communities within them. Can I be clear that defining a community in terms of the community council would not in a sense bury the fact that that council might represent a variety of communities in the way that we would understand it?

Ms Richards: Yes.

Q19 Alun Michael: Does this in fact take us back to the definition in the 1972 Act?

Ms Richards: There is not a definition of communities in the 1972 Act.

Q20 Alun Michael: I understood that there was in section 24.

Ms Richards: Communities that exist are those that existed at 1 April 1996.

Q21 Alun Michael: Sorry, that is communities served by the authorities as distinct from communities in the way that it is used in normal language.

Dr Gibbons: Yes, there is a precise legal definition for the purposes of this. Communities have to be formally identified, so there is a formal identification of communities which has a slightly more technical meaning than the colloquial use of communities which we would use in everyday language. Equally, community meetings take place all over the place, but under this legislation “community meeting” does not mean any meeting in the community; it is community meetings that meet certain criteria under the law.

Chairman: At the risk of opening this up into an academic seminar this will be the last question and I will then sum up.

Alun Michael: Can I ask that this is looked at with a little care in terms of the language because I think it is very important that there is a distinction between a community which is people defining the community to which they belong and the community that is being organised or consulted or whatever in terms of a community meeting or a community council. That is where my questions come from.

Q22 Chairman: Mr Cuthbert, you wanted to say something.

Mr Cuthbert: I just wanted to add that when we use the term “community” we are referring to the administrative areas described as communities. As I understand it, the reason why the legal drafting has used the term local government in respect of communities is in order to capture the possibility of legislating on community meetings and community polls as well as community councils.

Dr Gibbons: But there is clarity, I have to say, for the purposes of this legislation as to what a community means, so I do not think there is any ambiguity. We are happy to provide you with a note.¹

Q23 Alun Michael: That would be helpful.

Dr Gibbons: But I do not think there is any lack of clarity as to what is meant by a community in the context. It has got a pretty formal and understandable meaning.

Alun Michael: A note would be welcome. I am willing to be persuaded.

Chairman: That is extremely helpful. Once again at the risk of guiding you towards certain sources, I am reminded of the essay by the Welsh writer Raymond Williams on community where he described it as “a “slippery concept”. Martyn Jones?

Q24 Mr Martyn Jones: Good morning, Dr Gibbons.

It is always a pleasure to have before us ministers like yourself who recognise the value of working with our Committee. Matter 12.8 of the LCO would allow the Assembly to legislate to make it easier to form new community councils. Is there any evidence of public demand for increasing the number of councils?

Dr Gibbons: Three-quarters of Wales have got community and town councils and to establish a community or town council is a fairly onerous activity. You have to have your community meeting, you have to have a poll, you have to win the poll, and then the local authority sets it up. The process is onerous. I guess the big obstacle though is probably the dual precept that would flow from that as well. I suppose the combination of the dual precept and the fairly onerous requirements to actually get a poll established and won makes it difficult to expand, but we would see community and town councils as the layer of local government that is closer to the community as an enrichment of our democracy in Wales, so we would like to see that 75% increased.

Q25 Mr Martyn Jones: To 100%?

Dr Gibbons: Whatever.

Q26 Mr Martyn Jones: Is that the aim?

Dr Gibbons: We have not got an aim. It is up to people and communities to make these decisions but 75% is only 75%.

Q27 Albert Owen: If I may just take that further, are you suggesting that the people are saying we really need more councils in certain areas or are they saying they need more formal meetings of community groups and various things like that? I am not hearing this in my community certainly, that people are calling for additional councils or for the councils to be rejigged. Where does this evidence come from?

Dr Gibbons: For example, I think that people do want their public bodies to be more representative of their interests. They may not articulate it in the way you described it but, equally, people would say, “We have got to have more responsive government,” or,

¹ Ev 29

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“Governments never listen to us,” or, “We have not got any way of hearing our voices.” Indeed, we recently did a survey of public involvement in Wales and I think the number of people involved in the democratic process, not elected members, was something of the order of 5%. One of the single most important reasons as to why they were not being engaged was they did not know how to get involved. I presume one of the reasons for that is that democracy and participation in democracy is remote from the average citizen.

Q28 Albert Owen: Is there not a need for clarity as well? Many people do not know the distinction between their borough councillor and their community councillor and their county councillor. Is that not a process of education rather than legislation?

Dr Gibbons: I think it is both but some of Westminster’s legislation is about promoting democracy in a broader sense. One of the elements of this particular LCO is to provide opportunities for elected members to promote their activities as elected members so as to address that knowledge deficit, which is precisely accurate, and, hopefully, this LCO will go some way towards addressing that knowledge deficit.

Q29 Albert Owen: If I could stick with Matter 12.8, the Local Government Act 1972 has a clear distinction between the constitution and the powers of community councils. Do you think the Measure is sufficiently broad enough to cover everything including the financial administration, staff and functions? Is it broad enough?

Dr Gibbons: Yes, there are some areas that we have excluded such as the franchise and electoral registration and so forth, but within the limit of the exclusions, yes, I think that these proposals, as David Jones highlighted, have been in the making quite a number of years at this stage and have been based predominantly on an academic study by Aberystwyth University with plenty of opportunity for engagement with One Voice Wales and community and town councils in Wales and the Welsh Local Government Association, so these proposals have had a long gestation and I think there is a very strong consensus in Wales from the key stakeholders that these are the tools we need to enhance the role of local government at a community level.

Q30 Albert Owen: So you do not see the need for a distinction between the structures and the powers?

Dr Gibbons: I think in fact again the LCO is trying to do that. I will ask my legal colleagues to address this more technically from the legal point of view, but one of the key elements of this LCO is to give community and town councils the power to promote well-being, so that element of this LCO is actually looking at the powers of community and town councils and enhancing their powers potentially, while other elements of the LCO are looking at the more formal structures and so forth, so these

proposals are looking at powers and structures and constitutions. I do not know whether Deborah, Frank or Steve has anything to add.

Mr Phipps: Only on the powers point, the Local Government Measure that was introduced recently will from January require principal councils to involve community councils in community planning, and through the LCO we look to supplement that to give community councils a broader basket of powers to ensure that they really can play a full part in that community role that they will have.

Q31 Albert Owen: If I could just move on. Some of the unitary authorities in Wales—Merthyr, Anglesey and indeed Blaenau Gwent—although I will take Anglesey out of the equation for obvious reasons at the moment—

Dr Gibbons: It is a rapidly improving authority I am glad to report.

Q32 Albert Owen: It is very vastly improving and I welcome your intervention, as you know. Merthyr and Blaenau Gwent are very small in that sense, and some of the town and community councils that could be created would be almost as big as those unitary authorities. Do you think there is a danger of the duplication of functions? Again, I come back to this confusion that the electorate is not really educated enough to know the difference between those councils and again we need to be educating people more about who is responsible for what.

Dr Gibbons: Yes and no. Clearly with local authorities the size of Blaenau Gwent and Merthyr, I do not know off the top of my head how many communities form the communities—not going back to the point that Alun raised.

Mr Cuthbert: About 25.

Dr Gibbons: If we take Frank’s estimate that Merthyr or Blaenau Gwent are made up of 25 distinct communities in the formal sense, that makes the point that even in a small local authority there is a rich diverse patchwork of communities and they all have their distinctive characters and interests. If they want to more actively participate in the democratic process, the purpose of this LCO is to make it easier for them to do so. If they choose not to do so, fine. I think as well, particularly in those areas, there are opportunities for synergies between Communities First partnerships and community councils at a much more local level. I think that potential really has not been fully explored, even though at the recent AGM of the One Voice Wales in Ceredigion it was one of the themes of the speech I gave to the conference as to where Communities First partnerships and community and town councils could work more constructively together.

Q33 Albert Owen: Are larger town councils not going to have almost equal powers in the future? Is that going to be a threat to them? Is that a danger?

Dr Gibbons: It is theoretical and if you look at the evidence that was given to the Assembly committees on this, One Voice Wales clearly had a very distinct view as to the role of community and town councils

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and they did not see any takeover bid. Another element of this LCO is to try and put in place a legal framework for a more formal set of relationships between community and town councils and the principal council. We would obviously prefer that to be developed on a voluntary basis but, ultimately, if this LCO is approved, then that will allow us to have statutory mechanisms by formalising that as well in a more coherent way.

Q34 Albert Owen: I will come to my point then. There is no agenda to get rid of the smaller unitary authorities?

Dr Gibbons: Not on the back of this LCO. It is not part of the policy of the current Assembly Government either so, no, I would not read that into it.

Albert Owen: That is good.

Q35 Nia Griffith: If I can continue the theme a little bit, Chairman. Looking at the issue of powers, obviously in a county like Carmarthenshire, which is very large and diverse, town councils like Llanelli Town Council and Pembrey and Burry Port Town Council offer people something which is much closer to home and which they feel reflects much more the interests and needs of the local population. I would really like to explore with you this issue of the powers. Sometimes people mix that up with the responsibilities. I would like you, if you could, to clarify to us what are the actual powers that they do not have now? What are the things they are not allowed to do which in fact this LCO might enable them to do?

Dr Gibbons: Again, rather than me reading out the list, there is a list of about 30 or 40 things that community and town councils can do under various legislative competences, for example, allotments, bus shelters, public clocks (I am sure that is of interest), drainage, community centres, maintaining open spaces, so there is a list of particular activities that community and town councils can do. What we want to do is to broaden that range of powers that is already enshrined in law for community and town councils to include the broader power of promoting the social, economic and environmental well-being of the citizens who live in those town and community council areas. Going back to the point that Albert made, that would bring a greater symmetry between what community and town councils can do and what the unitary authorities can do as well, but at the moment what community and town councils can do is very much listed, and there are about 50 or 70 activities they can engage in under the law.

Q36 Nia Griffith: So are you saying that the power to promote well-being could be much more broadly interpreted? It would not be limited to lists, it could have a much broader interpretation; is that what you are actually saying?

Dr Gibbons: Yes. I do not know whether Deborah, Frank or Stephen might want to elaborate on that?

Mr Phipps: That is exactly right; it is a very broad power for each council in effect to decide how it wants to make use of that power. We see it sitting

very much alongside the obligation on the community council come January to work with the principal council in developing the community plan and agreeing the implementation of that plan. It will ensure that it has a broader basket of powers available to enable it to play a really full part in that process.

Q37 Nia Griffith: Perhaps you could clear up something as to whether it is a linguistic problem or whether it actually has some meaning, and that is the issue of the fact that the Local Government Act in 2000 mentioned the “power” to improve economic, social or environmental well-being and the fact that you use the word “powers” in the LCO? Is that significant or is it simply linguistic?

Dr Gibbons: We have done this on the basis of legal advice but I will ask Deborah to explain. One of the underpinning philosophical concepts is to indicate that a range of activities will flow from the competence that will follow from the Measure. There was a clear drafting decision taken by our legal advisers to use the word “powers” rather than “power”, and I think our drafters were conscious that the word power was used in the original Act but they felt again for the purposes of clarity and accuracy that the use of the word powers would bring greater transparency to the process.

Ms Richards: I think the read across to the 2000 Act is helpful but it is distinguishable because the power is directly conferred on local authorities under the 2000 Act whereas this LCO is giving the competence to be able to draw down elements of the scope which includes powers. We feel that “powers” is more appropriate because it gives more flexibility when it comes to drafting Measures for the legislators to decide whether they want a range of powers or one power.

Q38 Mark Williams: Can I turn specifically to Matter 12.9 and electoral arrangements. You have highlighted several times this morning the lack of public participation, as highlighted by that excellent Aberystwyth study, and also the problem of non-contested elections. Can the very limited changes proposed in Matter 12.9 really address those fundamental problems?

Dr Gibbons: I do not think that public participation in the democratic process is going to be solved by an administrative or a legislative magic bullet, no matter what it is. I think this is a cultural thing and we have to make politics matter and feel relevant to people. I think it is a wider issue than something that any law is going to change on its own. What we need is a set of proposals that will go with the grain of allowing the public to be more involved, to have the public have a better understanding of what local government does at its various tiers, as Albert has said, and, equally, for the elected members to be more accountable to the population that they represent. This is what this LCO is trying to achieve. Whether any of those things in themselves are the magic bullet to qualitatively change public participation, I do not think so.

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Q39 Mark Williams: It is very much the holistic approach in the whole LCO?

Dr Gibbons: Yes.

Q40 Alun Michael: Could I turn to Matter 12.11, because it seems to be intended to deal with the making of direct grants to community councils but it is not expressly limited to that. What else could it cover?

Dr Gibbons: Could you be a bit more explicit?

Q41 Alun Michael: It appears to be intended, as I say, to enable the making of direct grants to community councils, which is clearly part of the policy objective of the Order.

Dr Gibbons: Yes.

Q42 Alun Michael: But it does not seem to be limited just to making direct grants, otherwise it would be much more explicitly drafted. I am just wondering what else you envisage might be done under that particular Matter.

Dr Gibbons: The policy intention is just to do the first. Community and town councils, almost invariably, are funded from the precept and there is not really any scope for us to provide direct support to them, so the purpose of this would be to give the Assembly Government competence to bring forward legislation to allow direct grants to take place.

Q43 Alun Michael: That I understand. It just seems to be broader than that in the phraseology.

Dr Gibbons: I will ask Deborah or Stephen maybe.

Ms Richards: I think it speaks for itself. A grant is a grant. That is what the provision says.

Q44 Alun Michael: So it is not meant to do anything other than making direct grants.

Ms Richards: No.

Mr Phipps: It might be helpful for you to know that in section 31 of the Local Government Act 2003 there is an equivalent power in respect of grants to principal councils, in effect. This would provide a sort of comparable power to that.

Q45 Alun Michael: But there is not any intention to use it other than in direct grants?

Mr Phipps: No.

Q46 Alun Michael: Can you just explain your thinking in terms of collaboration—two forms of collaboration—first the collaboration between community councils and the other collaboration between community councils and principal councils? Clearly the Assembly Government has come to the view that legislation is necessary to encourage that collaboration. Does that mean that experience has shown that encouraging voluntary collaboration has failed to make enough difference in that particular area?

Dr Gibbons: I think probably in this area we would hope that a statutory requirement to enforce collaboration would be very much a last stop and

would not be seen as the routine way of promoting collaboration; it would really be when the issues were sufficiently important and there was no other way of making progress. So it is very much almost a reserved power, if you want, and really should be seen in that context.

Q47 Alun Michael: I think that is helpful, and I would agree with that approach, but are there examples that you have come across where the lack of a power to require collaboration has caused problems?

Dr Gibbons: Not in this particular context, no, but I think you are right. The collaboration agenda essentially flows from the Beecham Review, and so forth, in Wales. It is only three years old and we are just beginning to see the development of good momentum in the collaboration. Indeed, in Carmarthenshire, which Nia referred to earlier, some of the best examples of collaborative working are to be found, so there is a momentum building here, but this, here, has got to do with the relationships between community and town councils and their principal authority. A number of local authorities are developing charters between the community and town councils and the principal authority—Torfaen is an example, Caerphilly, there is some work going on in the Vale, I understand, as well. Equally, we would like to see community and town councils working bilaterally between themselves, sharing projects that make sense between two adjacent communities; but if at some stage we found that there were some legal impediments to prohibit that, or if a legal requirement was necessary to finally catalyse that relationship, those would be the circumstances in which we would use these powers, but it is essentially a voluntaristic activity at the minute.

Q48 Mark Williams: Matter 12.13 allows the National Assembly to prescribe quality standards that community local government institutions are expected to meet. Does the LCO give you the capacity to set up an accrediting body yourself, and what do you have in mind in that area? You have the standards.

Dr Gibbons: Yes, I think ultimately, but, again, compared to in England, there is not any accreditation process in Wales. What we would like to see is community and town councils themselves taking this agenda on board, but if for some reason it did need to be put on a statutory framework, then the LCO would allow us the powers to do so, but that would not be the preferred route at the minute. Since the Aberystwyth report I think we are seeing a renaissance in community and town councils driven by, for example, One Voice Wales, and we as an Assembly Government have provided a lot of training and support to community and town council clerks. Something like 600 councillors, hopefully, by the end of this year will have been through training programmes which we as an Assembly Government have been supporting. So I think there is a new sense of vitality out there in

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community and town councils and we would like to capture that in some way, but, equally, again, going back to Albert's question, if there were proposals for unitary authorities to delegate some of their powers down to a more community level, they might want to assure themselves that the community and town council had a certain level of competence to carry out those tasks, and one of the ways that they might assure themselves that the community and town council was up to scratch would be that they would have achieved an accredited standard of performance.

Q49 Mark Williams: So it is anecdotal, but it is a relevant issue in parts of the Ceridigion constituency.
Dr Gibbons: Yes.

Q50 Mark Williams: That is very good to hear. Turning to Matter 12.14, it is drafted more broadly than is required for the particular purpose stated in the Explanatory Memorandum, namely of ensuring that vacancies on community councils are adequately advertised. Why is it as broadly drawn as it is?

Dr Gibbons: I think, again, good practice would indicate that if there were vacancies on community and town councils, community and town councils would seek co-option from the broadest range of local citizens, but I think very often we realise that, in practice, community and town councils meet and somebody is co-opted from the great and good of the circle of people who are already members of the community and town council. What we would like to see, as an example, would be that these vacancies would be advertised more widely in the community in some way, either by public notice, maybe, circulating local clubs and organisations in the community to draw to the attention of civic-minded people that there is a co-option vacancy there rather than just dipping into the same closed circle.

Q51 Mark Williams: How big a problem has that been?

Dr Gibbons: The number of uncontested seats in community and town councils is massive, and the number of unfilled seats on community and town councils is fairly substantial. I do not know whether Frank or Stephen have a figure.

Mr Cuthbert: I think only 40%, approximately, of community councillors have been elected in Wales.

Dr Gibbons: Some of them would have been unopposed and some of them then would have just been co-opted.

Q52 Mark Williams: Particularly on the issue of co-option, there have been concerns, have there not, that it is a very small core in the community who are drawing on their own and alienating potentially the very good talented people out there with good experience.

Dr Gibbons: Yes, and the purpose would be to give us the competence to bring forward legislative proposals in Wales that would address that and that possibly, let us call it, best practice would actually become the legal requirement.

Q53 Nia Griffith: Following on from that last question, as you say, Dr Gibbons, very often these co-options are done very quickly, perhaps in haste, by the same people just co-opting their friends. Do you think there would be scope for putting time requirements that they would have to advertise things more than once and several times over, and, also, what thought might be given to increasing diversity and asking them to look very carefully at the balance of perhaps male and female or different community groups on their councils?

Dr Gibbons: That is one of the proposals in the LCO as well. One of the implications is that there should be, for example, the ability of community and town councils to co-opt 16–25 year-olds on to the authority to represent young people's voice. Obviously young people below 18 cannot vote and serve, but if the LCO was accepted, then that would give us the opportunity to bring forward proposals to allow young people to be co-opted on to community and town councils. Equally, in the report of the Expert Panel *Are we being served?* one of the proposals there was to require unitary authorities particularly to undertake, if you like, an equality audit of both elected members and what are their needs so that they will be able to more effectively undertake their duties, but, equally, to try and identify possible obstacles to the people who put themselves forward to be local representatives. I do not think anyone would argue that our elected representatives try to be representative of their communities, but, equally, I think none of us would argue that elected members are typical of their communities. They are overwhelmingly male, they are overwhelmingly the wrong side of 55 and there are lots of other characteristics which, admirable though they may be, may not be typical. Black and ethnic minorities, disabled people, people with caring responsibilities, young parents—none of these people. They are very important consumers of public services but very rarely are able to be public representatives, and the reason is that there are lots of barriers in the way of allowing them to put their names forward. Where there are legal barriers in regards to people coming forward, we would hope that this LCO would give us the competence to address a number of those issues.

Q54 Mr Martyn Jones: Matter 12.15—information to the public concerning local government. What additional information do you propose to require councils to provide under this Matter?

Dr Gibbons: We are not prescriptive. What we are looking for is just the competence at this stage to allow us to consider options, but the sort of thing would be maybe a requirement on local authorities to allow every councillor to have their web page on the local authority's website, there might be a requirement on the local authority to support elected members to provide an annual report of what they are doing on behalf of their electors, maybe produce newsletters in a more conventional sense, whatever. We have not got a range of prescribed activities, but they are the sorts of things that would be—

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Q55 Mr Martyn Jones: Enabling?

Dr Gibbons: —enabling so as to, again, address that.

Q56 Mr Martyn Jones: That sort of thing has not been addressed by the Local Government Measure 2009? I thought there was some element of that.

Dr Gibbons: Yes. I think that the slightly different emphasis in this LCO is about promoting elected members more as community representatives representing their community. I think there is an overlap, but the balance in the Measure that you referred to was very much about the corporate governance of local government and how elected members and the local authorities themselves deliver corporately good public services. The sort of emphasis here is more to how can the elected member better represent their individual community and their community to hold them to account at an individual level rather than at a corporate, local government level.

Q57 Mr Martyn Jones: Moving on to Matter 12.16—remuneration of councillors—the Independent Panel on the remuneration of councillors is due to report in December. Why has the Assembly Government thought to bring this forward at this time?

Dr Gibbons: One of the first meetings I had when I was appointed to minister was to meet the Independent Remuneration Panel and the big message that they wanted as they were starting their work was that they realised they were very constrained in what they could do and any proposals essentially had to be within the framework of special allowances, and so forth, and they could produce variations on that but there was no scope for them to radically look at the way that councillors were remunerated or reimbursed for the way that they did their work. So they gave us a very strong message that they would like the National Assembly to seek legal competence in this area so that a greater variety of ways of remunerating and reimbursing elected members should be available to us.

Q58 Mr Martyn Jones: Once again, you are enabling something you see as a possibility for the future?

Dr Gibbons: Yes.

Q59 Mark Williams: You mentioned earlier in response to Nia Griffith some of the barriers to women, younger people and people in employment seeking elected office. Do you feel perhaps you could have been more ambitious in what you are aspiring to in this LCO to assist those groups to address that particular problem?

Dr Gibbons: The LCO is just to give competence. I think that the ambition, if you like, is going to come in the Measures. I think that the LCO has to be fairly broadly drawn to allow us to have a range of competences so that the Measures that we can bring forward can have that breadth to be as radical as we dare be within the political culture and financial constraints that we face.

Q60 Mark Williams: But you are confident the radicalism will follow then?

Dr Gibbons: That is what we would like to see. Clearly enhanced democracy is in all our interests.

Q61 Albert Owen: Minister, in the response to my colleague, Alun Michael, earlier on you said that there was good practice around training, you provided support to One Voice Wales and there is good practice. Why do we need to have legislation to ensure that training is provided? Why can that good practice not be spread, the Gospel be spread, and everybody providing good support and training?

Dr Gibbons: It is not so much the training but some of the support activities that would be allowed for elected members to do their duty, such as special requirements to be in place to allow carers or better support from council officers to support backbench members and so forth. So it is more that. I do not think we are saying that there should be mandatory training as such. I do not know whether Frank or Stephen want to add to that.

Mr Cuthbert: The only thing I would say in relation to county councils and borough councils is that, although this is not the case in every local authority, we feel that since the introduction of the Local Government Act 2000 and the introduction of executive structures there has been inadequate provision made for the support of the majority of the members of an authority who are not part of the leadership in terms of the staffing support that they have for scrutiny, for member development, for members' services, for democratic services, which in the best authorities are done well but in others are sadly lacking in some respects, and would like to have competence to address this in some way because of the areas where it is lacking.

Q62 Albert Owen: I know this will be a matter for the Measure, and some of your colleagues tell us that on every question we ask, but on this one specifically would you envisage minimum standards for community councillors? Would there be a book that they receive when they become one that says: this is the trend; this is what you should be doing?

Dr Gibbons: We would like to see more induction training, and so forth, and, indeed, one of the programmes that we have is to train trainers to go out and train elected members, but, as I say, 600 councillors, hopefully, by the end of this year will have been through the training. It sounds a lot, but there are about 8,000 community councillors—thousands anyway—so even though 600 seems a lot, it is only a fraction of the number of councillors that could be trained and need to be trained possibly.

Q63 Albert Owen: Another thing you have mentioned in an earlier reply was the Expert Panel Wales. We understand that that reported in August of this year?

Dr Gibbons: It is out for consultation, yes.

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Q64 Albert Owen: Do you think it is premature to bring an LCO forward without really looking at their recommendations and encompassing them in future legislation?

Dr Gibbons: We have got the recommendations from them. I think the consultation must be just about finished now.

Mr Cuthbert: There are about three days left.

Dr Gibbons: The report was published in August, as you said. We sent it out to consultation straightaway and it is just finishing now. So we know what is in the report and, indeed, the report was based on the Councillors Commission's [report] here in England. We thought that that Councillors Commission report was a very useful document but it did need a Welsh perspective put on it. So the Expert Group was set up to look at what was in that Councillors Commission report but they put a Welsh gloss on it, if you like.

Q65 Albert Owen: So that Welsh dimension, you believe, could be brought into being in the future Measures?

Dr Gibbons: Yes, there are 35 recommendations in that and probably a quarter, or even less, of those recommendations would need legislative competence to bring them forward. A lot of them would not need legislation but just good practice and guidance, and so on and so forth, but there are a number of proposals in that that would need legislative competence to give effect to them. So, again, the LCO, hopefully, will be drawn sufficiently broadly to allow us to do that.

Q66 Albert Owen: A final question I have with regards to One Voice Wales again and their comments that this LCO would promote cross-border working. This Committee has been involved in a number of cross-border areas, in particular health and education. Do you envisage that this LCO will help that to be achieved, that there would be co-operation between local government institutions across the English/Welsh border? We have got good co-operation with the Irish in many ways. I was invited to put the lights on last week, only the weather prevented me from going across,

but there is co-operation, I understand, there. Do you think that this LCO can codify that in some ways?

Dr Gibbons: I think it would be fair to say that the focus is very much inward looking into Wales first and foremost. This is about improving community and town councils working better in Wales, working better together in Wales, but, as Frank said, by improving the capacity of councils in general, clearly a lot of local authorities in Wales (both community and principal authority), to do a good job, must liaise across the border with their counterparts in England. So in a generic sense, yes, but the focus of this is not really targeted at cross-boundary working, it is very much inward looking, if you like, in that sense.

Q67 Albert Owen: My concern is that we found that when England only legislation is passed and there is a Welsh dimension to it, that there is a grey area in between. Do you envisage talking to your counterparts in the future, for instance, and bringing that together, and will this LCO help that?

Dr Gibbons: Yes, absolutely, and I think that by improving the resilience and the professionalism and the breadth of vision of local government in Wales good local authorities will want to learn from wherever. We know that the good local authorities in Wales travel to England, Scotland, Northern Ireland and the Republic of Ireland to learn their lessons. So, yes, I think that it is part of improving the professionalism and standards of local government in the round.

Chairman: Thank you very much, Minister, and to you all, for coming today. It has been a very helpful and useful session. There are two matters I would like to place on record. First of all, we had a meeting yesterday with Val Lloyd and her colleagues in the Assembly. Her committee has completed their work, I understood, and we were briefed by her and her colleagues on their findings and that was very helpful in preparing us for today. Secondly, as you probably know, Wayne David, the Wales Office Minister, was due to be here today—sadly, he has a family funeral to go to—but we were fortunate to rearrange that session for Thursday, so that will not unduly delay our work and we hope to produce our report very, very soon.

Thursday 26 November 2009

Members present

Dr Hywel Francis, in the Chair

Mrs Siân C James
Mr David Jones
Alun Michael

Albert Owen
Hywel Williams
Mark Williams

Witnesses: **Mr Wayne David, MP**, Parliamentary Under-Secretary of State, **Mr Chris Stevens**, Legislation Team, and **Ms Susan Olley**, Legal Adviser, Wales Office, gave evidence.

Q68 Chairman: Good morning, Minister, and welcome to this Welsh Affairs Committee dealing with the Legislative Competence Order. Could you introduce yourself and your colleagues, please?

Mr David: Thank you, Dr Francis. Can I thank you and the Committee first of all for having this session and providing a recognition of my difficulties regarding Tuesday because of a family bereavement. On my left is Chris Stevens, who is on the Wales Office Legislative Policy Team, and on my right is Sue Olley, who is a Legal Adviser to the Wales Office.

Q69 Chairman: Thank you, and please accept our condolences for your recent bereavement. Could you tell us very briefly what this LCO, which is called Local Government, will allow the Welsh Assembly Government to do that cannot already be achieved with its existing powers?

Mr David: The proposed LCO would confer competence on the National Assembly to legislate to strengthen the way community councils operate, improve the information the public receive about their local councils, encourage more people to stand for the elections and ensure more councillors are retained, and make changes to the remuneration structures for councillors in Wales. To enable this to happen there will be ten new Matters inserted into Field 12 of section 5 of the Government of Wales Act.

Q70 Mark Williams: Much of the substance of the LCO was contained in a report from Aberystwyth University that was published in 2003. The Assembly Government's response was in 2004. Why has it taken so long to get to this stage?

Mr David: To be perfectly honest with you, sometimes community councils in particular are not regarded as important as perhaps they should be. Every legislature has to determine its priorities and I think that sometimes community councils tend not to be at the front of the queue. Having said that, I think it is true that the Welsh Assembly Government has not ignored community councils. We have seen developments since that report from Aberystwyth in 2003. The groundwork has been laid. For example, there has been the All Wales Association which has been strengthened and set up so I think generally speaking the groundwork has been laid. A recognition has been provided of the worth of community councils as the cornerstone of democracy in Wales, and I think now it is

appropriate that legislative expression is given to that commitment and that is what this LCO is essentially all about.

Q71 Mark Williams: It just strikes me as a long time, the time lag between 2004 and now, five years. I am not knocking in any way what you have just said in terms of the value and the substance of the LCO, but five years to get to this point?

Mr David: I was a community councillor myself a number of years ago. In fact, I was Chairman of Cefn Cribw Community Council, and one of the things that struck me, looking at the situation now and the situation some 20 years ago almost, was that the situation has not changed that much, and I think it has generally been the case that, although I believe passionately that community councils have an important role in local democracy and should have a more important role, it has taken quite a long time for the arguments to be made and a momentum to be built up. However, I will emphasise that a lot of groundwork has been done and I think this LCO will take forward the growing recognition that there is in Wales that democracy, according to the principle of subsidiarity, must be vested very close to the people, and that is what community councils essentially are all about.

Q72 Mr David Jones: I take it also that part of the delay is attributable to the fact that the Government of Wales Act was not enacted until 2006 and therefore it was not possible for the Assembly to exercise primary competence until 2006 at the very earliest.

Mr David: That is certainly the case.

Q73 Mr David Jones: So that would account for two years of the delay.

Mr David: Possibly. It is a valid point in the sense that community councils, given the order of priorities of government, are not always up there at the top, and I think this LCO goes some way to recognising that and putting things according to a more accurate prioritisation.

Q74 Mark Williams: In the evidence we heard from Dr Gibbons earlier in the week he told us that the Assembly Government felt that it would have been appropriate for about 90% of the powers sought under the LCO to be included in the Local

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Democracy Economic Development Construction Bill. Were powers sought in that direction? Would that have been a speedier route?

Mr David: I think I am correct in saying that there were two framework provisions for the Welsh Assembly under that particular Act but I think that many of the powers which are being sought here were deemed beyond scope, quite accurately. I think it would not have been an appropriate way to try and introduce these various elements into that piece of legislation because it would have been regarded as beyond scope. I think it is therefore more appropriate to have this free-standing LCO specifically focusing on what the Assembly determines its needs to be.

Q75 Mark Williams: You mentioned the framework powers, and the Wales Office therefore did make some representations to the UK Government to include some of those provisions in that Bill?

Mr David: Yes, we did, and I believe we did so successfully.

Mr Stevens: Yes, that is correct. They were discussions which involved the Wales Office, CLG and the Welsh Assembly Government in relation to that Bill, and the scope was examined and the framework powers were considered appropriate for that Bill.

Q76 Alun Michael: We pursued with Brian Gibbon the issue of the definition of “community” and I think there is a real danger of some confusion between normal language and legislative language if we are not careful, and I think it became obvious as he answered the questions that that was the case. Could you tell us why you feel there is a need for separate interpretation provisions of communities when other legislation, for instance, the Local Government (Wales) Act in 1994, relies on an implicit definition?

Mr David: I think it is an important and valid question. When I read the draft LCO to begin with it did surprise me that community councils, for example, were not specifically referred to, or town councils; in England there are parish councils, but I think there was a valid reason for that. One of the reasons is that, although to some extent the focus is on community councils, this LCO also refers to communities beyond community councils.

Q77 Alun Michael: Beyond or within?

Mr David: Beyond, within county boroughs but beyond community councils.

Q78 Alun Michael: You mean those who are not represented by community councils?

Mr David: That is right. I think it is true that roughly 70% of the population of Wales are represented by community councils; nevertheless, there is a significant minority of people who are not, and I think that the Assembly wishes to explore extending participatory democracy beyond community councils and more broadly into communities.

Q79 Alun Michael: I accept that as being an issue that needs to be explored, and I can think of examples within my own constituency, but if I can go back to the fact that the 1994 Act did not provide a definition, and my understanding is that that is because it implicitly took on board the definitions in the 1972 Act and the 1972 Act essentially said that communities should be self-defining and that the Boundary Commission, in deciding on boundaries of wards and then of councils, should respect the way that people define their own community and be aggregations of those. That worked quite well. I can give examples of my own constituency where there are some wards which would include three or four defined communities, and there is nothing wrong with that. I can also give examples within my own constituency of community councils, for instance, Penarth. It is a town council, it is a fairly large community council. There are quite a number of definable communities within Penarth. Llandough, on the other hand, is a community council and by and large people in Llandough regard Llandough as the community. Sully, just down the road, has the old village of Sully and Lavernock new development, which are two quite different communities. The point of my question is that surely we ought to respect the definition of “community” as where people define themselves as living. That does not prevent us going on then to look at how communities which currently do not have a community council might be represented in the future, whereas surely the 1972 definition allows people to define the community and asks officialdom to define the community that is represented, whether by a councillor in a ward or a councillor in a community council, as being either a community or an aggregation of communities in the everyday sense of the word. Do you see the point I am making?

Mr David: Yes, I do see the point you are making. I think the definition that is employed here allows your concern to be taken into account. I think it provides a recognition of the existing boundaries of community councils, but also recognises that communities can be defined in other ways as well.

Alun Michael: Sure. My concern is that—

Chairman: Mr Michael, you are not going to give us another tour of your constituency, are you?

Q80 Alun Michael: No. The danger is that bureaucrats say that a community is what is defined in the legislation and the legislation tends to define it in terms of the community that is represented by a community council, which may in fact include a number of communities. I just think the language needs to reflect that somehow.

Mr David: I take your point, and I think the language actually does reflect that. As I understand it, it is a very flexible definition of what is a community. It has to be based in past precedent and I think that is done with regard to the previous legislation, but at the same time I think inherent in it is a flexibility which will allow the empowerment of communities variously defined by the communities

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themselves, and I think that it will allow community councils to be able to reinforce their own influence within their particular defined community.

Alun Michael: Chairman, it might be a point that could be expanded in the explanatory note when we get the substantive Legislative Competence Order coming forward.

Q81 Mrs James: Speaking as an ex-town councillor in Neath, I am now representing a constituency where there are no community or town councils. I am interested to hear what evidence there is of the public demand for increasing the number of councils.

Mr David: I think there is a general concern amongst many people who are engaged in democratic politics that amongst large sections of the population there is a sense of alienation from political processes and from democracy. There is no easy answer to this but I believe that one way for us to tackle this huge problem is for a recognition of the power of communities, however defined, to be given greater credence, and I think that this LCO essentially is important because it recognises the role of community councils as the tier of local government closest to the people. If people feel that it is worth going out to vote because their vote makes a difference it will have a real influence on their community and that is only good for democracy. More specifically with regard to the number of councillors, and I do not think it is an easy mechanistic formula that you have more councillors, therefore you have more participation, one of the issues of concern with regard to community councils especially is that all too often there are not any elections and individuals are co-opted onto a council where there is a vacancy. I think that is one of the issues which needs to be addressed because a community council by-election, in the order of things, might not seem that important, but often to people in their communities it can be an important issue if those councillors are shown to be able to make a difference.

Q82 Mrs James: I am speaking from a personal point of view. It was amazing how many people did not realise that there was that tier but what an effect it had when something did happen, the debate it generated and the interest in local politics it then engendered.

Mr David: I absolutely agree with you and I think it is one of the great worries that when there are elections the turnout is so low. In my own advice surgery, and I am sure it is the same with other MPs, at least half of the issues which are brought are local government issues and I think that does underline the fact that people do not easily relate to local government and I think this LCO will help in that sense. It will provide the Assembly with the facility, for example, to ensure that there is greater publicity and greater public awareness of the structures of local government, but also, and I come back to the role of community councils, it will give the Assembly

the power to reinforce the role of community councils to make them more relevant to their communities.

Q83 Hywel Williams: Looking at Mrs James's question from another angle, there is a procedure for community councils to be dissolved if the public so wishes. Are you aware of any community councils in Wales which have been dissolved by public demand and, if so, is that because of their unpopularity or is it because of apathy or whatever? I am not aware myself.

Mr David: I think there are community councils where there has been a problem and they have been dissolved, and I do not want to get into the particularities. As a general principle I think that is a shame because in a sense people are voting away democracy. That goes back to the point I was making earlier. People feel alienated from structures of government and I think it is extremely worrying in a participative democracy that people are, when given the chance on occasion, voting away the possibility to change their communities for the better. It is incumbent on us all to make that democratic case for involvement at the most important level, which is the lowest level close to the people.

Q84 Mr David Jones: You do not think, Minister, that it might be also a question of people thinking they have got too much government?

Mr David: I do not think it is, personally. I think people want to see effective government and good government and responsive government. I think it is a mistake if some people think that things will get better if only you do away with government. By removing the instruments of change I do not think change is therefore possible. I think that is why it is so important to make sure that we reinforce our structures, make them more responsive, make them more in tune with the needs of the local communities and enhance democracy. There is no magic wand to wave but I believe that this LCO is important because it is one important intervention which will help to revitalise our democratic politics in Wales.

Q85 Albert Owen: I find this very fascinating, this discussion we are having on communities. As somebody who believes in decentralisation I think this is what this LCO is trying to do. I want to see powers devolved from Cardiff Bay to Cemaes Bay. This is what we are looking at here. How do we define the community in Wales? Quite often it is defined by those who are outside the community and what is distinct about them as much as what is within the community. It is very territorial in Wales, so it is a difficult job, drawing boundaries. Going back to the specifics of the LCO and Matter 12.8 in particular, do you think it has been drafted broadly enough to enable the National Assembly for Wales to legislate in respect of the financial administration, staff and issues like that as well as the powers and responsibilities, because the 1972 Act is quite distinct between the constitution and indeed the powers that local councils have?

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Mr David: I think it is. A lot of work has gone into this and I think that the definitions which are provided in 12.8, for example, which specifically refers to the constitution of community councils, are sufficient. However, it is important to recognise, of course, that we are simply talking about an LCO here; we are not talking about the Measures which will follow as a consequence. I suppose, given the nature of this terrain, it is very difficult for our conversation to slip from one end to the other, but I think a lot will depend on specifically what the Assembly brings forward in terms of its fine detail in the Measures it decides to bring forward.

Q86 Albert Owen: In your first response to the Chairman, when you said one of the main principles of this LCO was to encourage people to take part in local democracy at the lowest level of government, again, are these limited changes enough to inspire people to stand for local authorities at the lowest level?

Mr David: I think it will be a contribution to that process. A great deal depends inevitably on political parties or associations of like-minded people, whether they are independent or not. We cannot pretend this will allow political parties to abrogate their responsibilities in engaging perhaps more effectively at a local level than they do at the moment. I believe nevertheless that the issues which are touched upon will help to create that re-engagement with the local community which is so important.

Q87 Albert Owen: The Aberystwyth study, as you know, highlighted the problem. We are all aware of that, but does this LCO provide enough solutions or are we waiting for the Measures to be completely different from what is in this?

Mr David: I have been studying the Aberystwyth report myself because I am one of those people who genuinely believes in the principle of subsidiarity, partly because I have been a community councillor myself. Many of the Measures which are given in the Aberystwyth report I think can be introduced voluntarily, but I think there are also Measures in there which can and should be introduced through legislation, and I think that the Assembly, by having the powers to make these Measures, will put flesh on the bones of the Aberystwyth report.

Albert Owen: To join colleagues, I declare that I was a town councillor as well. Everybody else is doing it, Chairman.

Q88 Mr David Jones: Could I turn to proposed Matter 12.10, please? This refers to the conferral on local government institutions of powers that are powers exercised by principal councils in relation to the areas of the principal councils. Can you clarify, since this relates to community councils, what actions they may currently wish to take but are unable to do so because of such a power as is contained in Matter 12.10?

Mr David: Matter 12.10 provides competence to the Assembly to extend to community councils in Wales the power to promote or improve the economic,

social and environmental wellbeing of their areas. That is often referred to as the wellbeing power and that power currently exists with regard to county councils, for example, but not with regard to community councils. I think by allowing the Assembly to introduce these Measures they could introduce incremental policies which would allow community councils for the first time to intervene effectively in their local communities regarding the communities' economic and social wellbeing.

Q89 Mr David Jones: What sorts of actions do you have in mind when discussing this draft Matter?

Mr David: It is not for me to go into what specifically they may not do and they may do.

Q90 Mr David Jones: No, I understand that. I am just trying to get an idea of what sorts of actions are covered or would be covered by this sort of power, because clearly they exist at the moment in terms of principal powers.

Ms Olley: If I can help, there is a list of specific functions for community councils at the moment and the wellbeing power, as it is expressed in relation to principal councils, is a power of first resort rather than a power of last resort. It cannot displace specific functions or the specific strengths that are attached to those functions, but it is a kind of filling the gaps power that enables you to do all sorts of things that may be innovative, provided, of course, they fit within these categories. We have not explored it in terms of any specific activities that a community council will be able to perform that it cannot currently perform but it would give it a much greater degree of flexibility about what it could do.

Q91 Mr David Jones: To what extent would this power being conferred on community councils conflict with the powers that are already vested in principal councils?

Ms Olley: I am sure that is something that will have to be addressed in the Measure and I think part of the plan, why it is expressed as "powers" rather than "power", is for there to be an incremental transfer that takes account of that boundary. It may well be limited in the Measure but this is a broad competence.

Q92 Mr David Jones: That may well be the reason that the expression "powers" is used in the plural in this particular case rather than as appears in the Local Government Act 2000?

Ms Olley: That is exactly the reason.

Q93 Albert Owen: If I may go on to Matter 12.11, grants from Welsh Ministers, it is not expressly limited to making direct grants to community councils, although that appears to be the intention of it, so what else could it cover?

Mr David: 12.11, as I understand it, would allow the Assembly, through Welsh Ministers, to make grants to community councils. I think that is the thrust of it. At the moment, of course, community councils are funded on the basis of a precept and their income is very small indeed, especially in comparison to the

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principal authorities. I think this LCO would allow the Assembly to come forward with a Measure which would enable grants to be given to community councils for a range of purposes. Going back to one of the points that was touched upon in the last question, one of the difficulties with community councils is that not only do they have very limited powers but they have very limited finance as well. This would give the facility for the Assembly to make specific grants. There is also the issue of the funding of by-elections. I suppose that comes back to what Mrs James was saying earlier. I suspect that one of the reasons why community councils often have co-options rather than by-elections is that they have not got any specific finance to fund by-elections. They have to fund by-elections from their own precepts.

Q94 Albert Owen: Do you envisage a grant to enable a community council to be the lead partner in a community on a project? Is that what you envisage is behind this?

Mr David: I think that is a matter to be addressed by the Welsh Assembly Government, but I think it would take the agenda on and allow the Welsh Assembly to consider such matters.

Q95 Albert Owen: But currently it is only the county councils that can do that, that can receive direct grants from the Welsh Assembly Government ministers?

Ms Olley: I think that is how we understand it.

Q96 Mrs James: This is a quick observation. There was a question earlier about the dissolving of community town councils and in many cases it is the precept that triggers that. It has happened in Neath, it has happened in other parts of Wales. It was the additional precept, that part of the overall rates and community charge, that would often be the target of those people who wanted to dissolve community town councils, so do you see that if there was a grant directly from the Welsh Assembly that would be most helpful for the community councils in encouraging people not to think of them as a burden but as a benefit?

Mr David: Yes. I think that this could be one way of demonstrating the relevance of community councils to their respective community. It is difficult to make generalisations but certainly where there have been instances of local communities voting to do away with their community councils it has been because they do not see the relevance of those councils. They see them as almost a set of appointed individuals who somehow suck away public resources not for the good of the community, and I think that gap between leaders and led at a local level can to some extent be bridged by the proposals which are before us today.

Q97 Mark Williams: Can I ask you about relationships between different councils? Do you believe that the proposed LCO, and in particular Matter 12.12, will be sufficient to encourage collaboration between community councils

themselves or between community councils and principal councils, or would a more clear voluntary route be more effective?

Mr David: You are right: 12.12 is about introducing Measures to encourage productive relations and collaboration between community councils and between principal councils. I think that that is something which is very desirable. Perhaps I could just highlight that, for example, in my own case one of the frustrations I found when I was a community councillor was that we would often make suggestions to the borough council. We had an intimate knowledge of our community and those suggestions were dismissed out of hand. It is not necessarily saying that county councils have to follow what community councils say, that is clearly not realistic, but nevertheless I think there should be some mechanism, some sort of partnership, to ensure that the voice of local representatives is fully taken into account by the principal authority. I think that is something which is generally welcomed and I think the Welsh Local Government Association recognises the worth of that kind of participation and that partnership. It is one of the reasons why One Voice Wales, which is the umbrella organisation for community councils in Wales, strongly supports these proposals as well.

Q98 Mark Williams: That is an admission that the voluntary route has not really worked to date and that there have been tensions sometimes between different authorities and why the relationship route therefore is preferred?

Mr David: Progress has been made on a voluntary basis, I think that is true, but we are basically talking about a potential power for the Assembly to have and if they feel that there is a need to introduce a law to ensure the kind of partnership takes place that they want to see, then so be it. That would help to concentrate the minds. As I say, at the end of the day I think that we need a concept of democracy which is about partnership and which is about taking fully into account the articulated views of local communities by the communities themselves.

Q99 Mr David Jones: Could I turn to draft Matter 12.13, please, which is schemes for the accreditation of quality in local government for communities? I take it that this Matter would empower the establishment of an accrediting body.

Mr David: One of the issues that does need to be looked at is how you can help to facilitate improvements by having quality marks. That is a thing which has been done quite successfully in England with regard to parish councils and I think it is something which could be looked at.

Q100 Mr David Jones: But is it your understanding that this Matter would empower the establishment of an accrediting body?

Mr David: It is something that the Assembly could look at. It would have the power to do so.

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Q101 Mr David Jones: You mentioned the accreditation scheme in England. According to the note we have got from the Welsh Assembly Government, this is the Quality Parish and Town Council Scheme, which the note says is a national programme with standards set by stakeholders to the scheme. Some members of this Committee do not like the expression “stakeholders”. How is that scheme established? Is that established pursuant to statute or is it voluntary?

Ms Olley: It only applies to England. It does not apply to Wales, and I am sorry; I am ignorant of the ways in which it is set up.

Q102 Mr David Jones: From the note it looks, on the face of it, as if this has been set up by the councils themselves. I am wondering why the councils themselves cannot set up some sort of quality scheme now.

Ms Olley: I suspect it was not set up by them but they may well contribute to the performance indicators that are used. I am sure there is some engagement with them.

Q103 Mr David Jones: Is there anything to prevent Welsh community councils setting up such a scheme?

Ms Olley: Voluntarily, no, of course not, but I think it is meant to encourage and to make it consistent across Wales.

Q104 Mr Jones: I would be interested to find out how that English scheme has been established. Perhaps we could have a note on that.

Ms Olley: Okay.¹

Mr Stevens: We can certainly provide that but, as with the collaboration power on Matter 12.12, I know that Matter 12.13 is what the Welsh Minister concedes as a reserve power to be used if it cannot be brought about by natural collaboration.

Mr Jones: It is clearly preferable for people to do things voluntarily rather than to have things imposed upon them.

Q105 Hywel Williams: Turning to Matter 12.14, the requirement to advertise co-option opportunities, I suppose I should say that I am a former member of Llanystumdwy council, initially co-opted and then returned unopposed, to my amazement.

Mr David: I am sure to many people’s amazement!

Q106 Hywel Williams: Matter 12.14 is drafted more broadly than is required just to fulfil the particular function of requiring advertisements; also, I understand, allowing increasing public awareness arrangements for community councils, so why is the Matter drafted more broadly?

Mr David: I think it is important to focus to a large extent on community councils, but in a sense this comes back to the initial part of our discussion, looking at ways to empower communities more generally. I think that community meetings, for example, are an important means by which to articulate the views of local communities, especially

in those areas where community councils do not exist. I think of Cardiff, for example. There have been recent examples of community meetings in Cardiff to discuss car parking and school reorganisation proposals. Some of you might think that those meetings have not been particularly successful or otherwise, but nevertheless they have been important in helping to articulate what are local needs, especially where community councils do not exist, so I think this aspect of the LCO is important in being able to reinforce that process of local participation.

Q107 Hywel Williams: Turning to Matter 12.15 regarding information to the public concerning local government, why is not the Local Government Measure of 2009 sufficient to provide for the provision of additional information to the public by councils?

Mr David: Matter 12.15 would enable the Assembly to legislate to encourage greater accountability in local government by way of the information provided by principal and community councils about activities to local people. Generally, it is felt that the current legislation does not provide a sufficient legal base for that to happen. The Assembly could, for example, legislate to require councillors to publish an annual report. I know many councillors do, many councils do, but I think that would be a very effective way if that was published on the websites. I think we need to look at a whole host of imaginative ways to ensure that a councillor is able to relate as effectively as possible to the local community, and I think that by giving this facility to the Assembly without being overly prescriptive about what it might or might not do nevertheless will take the debate onwards a step, and I think is a critical aspect of making democracy work, so that we have the means in place to ensure that public representatives relate not just at elections but on a regular basis to the public they purport to represent.

Q108 Hywel Williams: I suppose this is just an observation really, but with the decline of local newspapers and their reports on councils I imagine this is even more important.

Mr David: I think it is. Currently there is no legislative basis for a code of practice, for example, which would ensure that this kind of relationship is always the case. We all know good councillors and we all know not so good councillors.

Q109 Chairman: And administrations.

Mr David: One of the hallmarks of a good councillor is the way he or she relates to the local community. It is perhaps not rocket science, but being in touch with people’s concerns is a vital aspect of being an effective public representative. Some councillors are; some councillors are not. I think having a code of practice, for example, would help to raise the standard to a higher level than currently exists.

¹ Ev 29

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Q110 Mr David Jones: Can we turn to draft Matter 12.16, please, which relates to salaries, allowances, pensions and other payments for councillors? The independent panel on the remuneration of councillors is due to report in December, as you probably know. Why has the Assembly Government brought forward this draft Matter at this time? Are they not anticipating the conclusions of the independent panel?

Mr David: I do not think they are so much anticipating the conclusions but they are anticipating, as you say, the publication of the report. The independent remuneration panel has already called in initial reports for the Assembly to be given competence in this area. This LCO is based essentially on three reports and this is one of the key reports that this LCO is focusing on, so, although we are not in any way anticipating what the remuneration panel will suggest, nevertheless I think it is sensible for them to be in a place to act appropriately when that panel reports.

Q111 Mrs James: Turning to Matter 12.17, which would enable legislation to require authorities to provide better support and working conditions for councillors, what evidence do you have that inadequate support and working conditions are the chief reason why a wider range of people is not attracted to stand for election?

Mr David: There are a number of reasons why people are not attracted to stand for election and I think that no-one would suggest that this LCO and this particular Matter would solve the situation. The Assembly Government's expert panel has considered the recommendation of the UK Government's Councillors Commission on recruiting and retaining councillors. That report has recently been published and I think that its proposals will certainly be one of the ways in which we can look at the whole issue of recruitment and retention of local councillors. This is a complex issue but I think this is one element of helping to improve the situation.

Q112 Mr David Jones: Could you explain, Minister, why this particular Matter, 12.17, has to be dealt with at a Welsh rather than a national level?

Mr David: Broadly speaking, I think local government is recognised for what it is and that is the responsibility for devolved government, and I think it makes sense, therefore, for this Matter, as indeed, the other Matters we have referred to, to be included in this LCO so that the responsibility for local government generally is part of the Welsh Assembly's responsibility.

Q113 Mr David Jones: I understand that, but it does seem to me that these particular issues transcend devolution. These are national concerns. The promotion and support of members of councils surely is something that is a concern of national government and not simply of a devolved administration.

Mr David: It is certainly for national government, as you say, but it is also a particular concern of the Welsh Assembly.

Q114 Mr David Jones: But is it not just a general issue rather than a specifically Welsh issue?

Mr David: It is a general issue but devolution is all about allowing parts of the United Kingdom, in this case Wales, to introduce specific measures with regard to their areas of competence in a distinctively Welsh way.

Q115 Mr David Jones: I understand that, but this does seem to me to be a very general issue and an issue of national concern and I am just wondering why it has to be dealt with in that way.

Mr David: It is a general issue. The issues that we have been talking about this morning encompass all parts of the United Kingdom but I think that devolution is essentially about not just identifying the problems and having a uniform solution but allowing Wales in this particular case to adopt policies which are specific to Welsh circumstances.

Q116 Alun Michael: As everybody is revealing their past can I say that as a city councillor, in particular when I was Chair of Planning and Development in Cardiff, I spent a lot of time seeking to nurture community councils, as I did when I was Secretary of State for Wales. One Voice Wales commented that the Legislative Competence Order which we are considering now is likely to promote cross-border working between local government institutions. I think the basis of that is that One Voice Wales is one of the partners in the Wales/West Midlands Cross Border Memorandum of Understanding, and the joint meetings that they have been holding between parish councils and community councils along the border seem a particularly good example of communicating at that very local level, but why do you think this Legislative Competence Order would make any difference to that? Is there anything that they cannot do at the moment that they would be able to do in terms of co-operation following the enactment of this Order?

Mr David: I think the examples you have cited at the start of your contribution are particularly important and often at a local level what I observe is that there is quite a strong relationship between different communities and different community councils. I think that is something to be welcomed and I think that the relationship with the West Midlands is particularly important, as you say. I do not think there is anything specific in this LCO which will in any way interrupt that important relationship.

Q117 Alun Michael: Sorry, One Voice Wales was saying that they thought it would help to promote that sort of cross-border engagement. I am not quite clear what was meant by that.

Mr David: I have not seen the comments regarding One Voice Wales but I would imagine one of the things they are concerned about is ensuring there is continuing co-operation between community councils on both sides of Offa's Dyke. At one level I

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do not see any way in which this Measure will interrupt that and I also think that giving greater coherence to it is one of the things that the Assembly Government may want to positively promote, and I also think that positive promotion is something which could be looked at in some way or other in terms of any Measures which might come forward. I think the issue of cross-border co-operation is something which is vitally important. I have to say it is one of the issues which this Committee, to its credit, has constantly raised, and I think that the penny is beginning to drop but we should not just be looking at all-Wales solutions. In fact, touching

upon the previous answer, I think many of these issues are relevant to the whole of the United Kingdom and therefore it is incumbent on us to have a strong relationship whenever issues of mutual concern are considered. One of the issues which can be raised by the All Wales Association is this issue of cross-border co-operation and I think the model of the West Midlands is one which can be replicated elsewhere.

Chairman: Thank you very much for your evidence this morning. It has been a most illuminating session, not least to discover that so many of my colleagues and yourself have such wide experience of community councils.

Written evidence

Letter from Rt Hon Peter Hain MP, Secretary of State, Wales Office, to the Chairman

**PRE-LEGISLATIVE SCRUTINY OF THE PROPOSED NATIONAL ASSEMBLY FOR WALES
(LEGISLATIVE COMPETENCE) (LOCAL GOVERNMENT) ORDER 2009**

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

I have today laid the Order along with the accompanying Explanatory Memorandum before Parliament in the form of a Command Paper (Cm 7680) and I have issued a written ministerial statement drawing the Command Paper to the attention of Members. I have also written specifically to Welsh Members and Members who speak regularly on Welsh matters.

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

14 July 2009

Welsh Affairs Committee Press Notice

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

CALL FOR WRITTEN SUBMISSIONS

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

At its meeting on 21 July, the Welsh Affairs Committee decided formally to accept the Secretary of State's invitation to the Committee to conduct pre-legislative scrutiny of the proposed National Assembly for Wales (Legislative Competence) (Local Government) Order 2009. The proposed Order, together with an explanatory memorandum by the Welsh Assembly Government, was published as a Command Paper by the Wales Office on 14 July (Cm 7680) and can be found on the internet at:

<http://www.official-documents.gov.uk/document/cm76/7680/7680.pdf>

The Committee asks for written submissions in accordance with the guidelines stated below by 25 September 2009.

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

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

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

Dr Hywel Francis MP
Chair, Welsh Affairs Committee

22 July 2009

Proposed Order for pre-legislative scrutiny

DRAFT STATUTORY INSTRUMENTS

2009 No.

CONSTITUTIONAL LAW

DEVOLUTION, WALES

**The National Assembly for Wales (Legislative
Competence) (Local Government) Order 2009**

Made - - - -

Coming into force in accordance with Article 1

At the Court at Buckingham Palace, the day of 2009

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) (Local Government) Order 2009 and it shall come into force on the day after the day on which it is made.

Amendments relating to the field of local government

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

(2) After matter 12.7(b) insert —

“Matter 12.8

Areas of communities and constitution, structure, and procedures of local government institutions for communities.

(a) 2006 c.32.

(b) Matters 12.1 to 12.5 were inserted by the Local Government and Public Involvement in Health Act 2007 (c.28), section 235, Schedule 17, paragraphs 1 and 2. *Matters 12.6 and 12.7 are to be inserted by framework powers in the Local Democracy, Economic Development and Construction Bill.*

Matter 12.9

Electoral arrangements for elected local government institutions for communities.

In this matter “electoral arrangement” does not include—

- (a) the local government franchise;
- (b) electoral registration and administration;
- (c) the voting system for the return of members in an election.

Matter 12.10

Conferral on local government institutions for communities of powers—

- (a) to which this matter applies,
- (b) that are exercisable in relation to their areas, and
- (c) that are powers exercisable by principal councils in relation to the areas of principal councils.

This matter applies to powers to do anything which the holder of the power considers likely to promote or improve the economic, social or environmental well-being of an area.

Matter 12.11

Grants from the Welsh Ministers to fund local government for communities.

Matter 12.12

Relations between different communities (and their local government institutions), or between communities (and their local government institutions) and principal councils.

Matter 12.13

Schemes for the accreditation of quality in local government for communities.

Matter 12.14

Public participation in local government for communities (apart from elections).

Matter 12.15

The provision of information relating to local government to the public.

For the purposes of this matter “local government” means—

- (a) local government for communities;
- (b) local government for counties and county boroughs.

Matter 12.16

Salaries, allowances, pensions and other payments for members of the following—

- (a) local government institutions for communities;
- (b) county councils and county borough councils;
- (c) National Park authorities;
- (d) fire and rescue authorities constituted by schemes under section 2 of the Fire and Rescue Services Act 2004 or schemes to which section 4 of that Act apply.

Matter 12.17

Promoting and supporting membership of the following—

- (a) local government institutions for communities;
- (b) county councils and county borough councils.

Interpretation of this field

In this field—

“communities” means separate areas for the administration of local government, each of which is wholly within the area of a county council or county borough council (but does not comprise the whole area of a county council or county borough council);

“principal councils” means county councils and county borough councils.”.

Name
Clerk of the Privy Council

EXPLANATORY NOTE

(This note is not part of the Order)

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

Article 2 inserts matters 12.8 to 12.17 and interpretation provisions into field 12 (local government) of Part 1 of Schedule 5 to the 2006 Act.

Matters 12.8 to 12.14 cover a range of topics concerning local government for communities. These topics include: areas of communities; constitution, structure and procedures of institutions; electoral arrangements; powers to promote or improve the economic, social or environmental well-being of a community area; grant funding for communities; relations between communities and relations between communities and counties and county boroughs; quality accreditation schemes for local government for communities; and public participation in local government for communities.

“Communities” are defined for the purposes of field 12 (by an amendment to that field inserted by this LCO) as separate areas for the administration of local government, each of which is wholly within the area of a county council or county borough council (but does not comprise the whole area of a county council or county borough council).

Matter 12.15 is about the provision of information to the public about local government for communities, counties and county boroughs.

Matter 12.16 is about salaries, allowances, pensions and other payments for members of local government institutions for communities, county and county borough councils, National Park authorities and fire and rescue authorities.

Matter 12.17 is about promoting and supporting membership of local government institutions for communities and county and county borough councils.

A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

Welsh Assembly Government Explanatory Memorandum

PROPOSAL FOR A LEGISLATIVE COMPETENCE ORDER RELATING TO COMMUNITY COUNCILS AND COUNCILLOR RECRUITMENT, RETENTION AND ALLOWANCES

INTRODUCTION

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

2. The attached document is a proposed Order in Council. The Order extends the legislative competence of the Assembly by inserting a number of matters into Part 1 of Schedule 5 to the 2006 Act. The Order may be made by Her Majesty in Council following approval of the draft Order by the Assembly and by both Houses of Parliament. Attached at Annex A is a copy of Schedule 5 showing legislative competence that the National Assembly has acquired to date.

3. This memorandum has been prepared by the Welsh Assembly Government (“the Assembly Government”). It explains the background to and the contents of the proposed Order in Council.

4. New legislative powers related to the specified matter will enable the Assembly to pass Measures which are based on Welsh priorities and timescales. These Measures will be subject to thorough scrutiny and approval by the Assembly.

BACKGROUND

5. The Assembly Government wishes to amend Part 1 of Schedule 5 to the 2006 Act so as to include matters under Field 12 (local government) relating to—

- local government at community level (the legislation currently in force provides for community meetings and community and town councils, generically referred to as “community councils”);
- public information about local government for communities, counties and county boroughs;
- remuneration of councillors in community, county and county borough councils and of members of National Park Authorities and fire and rescue authorities;
- promoting and supporting membership of community, county and county borough councils.

6. The context for the Assembly Government’s proposal flows from three reviews and their associated reports into the circumstances of community councils and of councillors in Wales.

7. Firstly, the study undertaken in 2003 by the University of Wales, Aberystwyth: Institute of Geography and Earth Sciences into community councils in Wales [“Research Study into the Role, Functions and Future Potential of Community and Town Councils in Wales” (the “Aberystwyth Report”)] presented a comprehensive review of the activities undertaken by community councils across Wales. The Aberystwyth Report identified the constraints which community councils believed they faced and set out a number of proposals for enhancing the role of community councils, should a council wish to take on additional responsibilities. The Aberystwyth Report also concluded that the existing procedures for establishing a community council were too restrictive and those for dissolving a community council were too lax. The Aberystwyth Report further recommended that the Assembly Government should examine possible alternative mechanisms for directly funding community and town councils, and providing additional funding through the use of direct grants. In its formal response to the Aberystwyth Report (in 2004), the Assembly Government gave a commitment to seek legislation to address issues identified in the review, with a view to putting in place arrangements to develop and strengthen the role of community councils and enabling them to deliver a wider range of services and actions locally. This would also serve to increase the effectiveness of community councils’ representational role and their ability to work in partnership with other bodies.

8. Secondly, in December 2007 the Report of the Councillors Commission “Representing the Future” (“the 2007 Report”) was presented to the UK Government’s Department for Communities and Local Government. The 2007 Report included numerous proposals designed to assist in the recruitment of a greater number of candidates for local government and to assist with the retention of councillors once elected. In March 2008 the Assembly Government established the Councillor Commission Expert Panel Wales (“the Expert Panel”) to consider the recommendations of the 2007 Report and their applicability to Wales and to look at wider issues connected to the recruitment and retention of councillors. That Panel is due to report to the Assembly Government shortly, but has already indicated informally that it considers that there is need for concerted action by the Assembly Government to improve: diversity monitoring of councillors and candidates; the training and development of serving councillors; flexible working for councillors; administrative support for councillors; and public accountability of councillors.

9. Thirdly, the report of the Independent Remuneration Panel for Wales (“the Independent Panel”) is due toward the end of 2009. The Independent Panel is reviewing the remuneration structure of councillors in Wales, including salaries, allowances and pensions payable to councillors. The initial report of the Independent Panel (July 2008) and its supplementary report (December 2008) made various recommendations for future reform, and notably the seeking of legislative competence over councillors’ remuneration.

10. The Assembly Government has resolved to bring forward the attached Legislative Competence Order seeking to confer powers on the Assembly to legislate in relation to the areas identified by the reviews.

CURRENT LEGISLATIVE FRAMEWORK

11. The Local Government Act 1972 (“the 1972 Act”) established the current system of local government in England and Wales and makes provisions with respect to the organisation and functions of local authorities in England and Wales including a system of communities in Wales. These were the areas that were formerly the boroughs, urban districts and rural parishes in Wales, and certain divided parts of former urban districts as at 1 April 1974. The functions of the Secretary of State under the 1972 Act insofar as exercisable in Wales have been transferred, with certain exceptions, to the National Assembly for Wales and are now vested in the Welsh Ministers. Local government was further reorganised under the Local Government (Wales) Act 1994. Other statutes relating to the issues addressed by the proposed Order include the Local Government and Housing Act 1989, the Local Government Acts 2000 and 2003 and the Representation of the People Acts 1983 and 1985. The Welsh Ministers have executive functions under the Local Government Act 2000 and 2003. The functions of the Secretary of State pursuant to the Representation of the People Acts have not been transferred to the Welsh Ministers.

12. The National Assembly for Wales already has legislative competence in relation to many aspects of local government, as set out in field 12 of Schedule 5 to the 2006 Act. The legislative competence conferred by this Order confers legislative competence on the Assembly that is wider than the current subordinate legislative power of the Welsh Ministers. Neither the Assembly nor the Welsh Ministers have power at present to legislate for significant changes to the law covering the following topics: community councils (constitution, structure, procedures and responsibilities), community reviews, relations between tiers of local government, councillor allowances (including the functions of the Independent Remuneration Panel, which is limited by regulations made in 2007) and the recruitment and retention of councillors. The legislative competence that would be conferred by the proposed Order would enable the Assembly to make changes to the law in these areas by way of Measure. More detailed analyses are provided in the paragraphs below, which set out the specific proposals.

SCOPE

13. It is proposed that ten Matters be inserted under Field 12: Local Government in Schedule 5 to the Government of Wales Act 2006 to enable the Assembly to legislate on the issues covered by the Matters by way of Assembly Measure.

14. Article 2(2) would insert Matters 12.8 to 12.17 into Field 12. The following paragraphs describe each Matter in turn.

15. *Matter 12.8* would give the Assembly competence over the constitution, structure and procedures of community councils and for community meetings. It would also give competence over arrangements in respect of community reviews, in so far as they relate to the areas of communities. The current provisions relating to these activities are set out in Part II and Part IV of the 1972 Act. Sections 27–29 of the 1972 Act set out the procedures for holding community meetings and the stages for the establishment and dissolution of community councils. Welsh Ministers have no regulation-making powers to enable them to alter the rules for calling community meetings or for the staging of community polls. Section 55(2) of the 1972 Act places a duty on each principal council in Wales to keep the whole of their area under review for the purpose of considering whether or not to make recommendations to the Local Government Boundary Commission for Wales with respect to the constitution, abolition or alteration of their community areas. The Matter would also give the Assembly competence over the co-option of members and youth representatives.

16. *Matter 12.9* would give the Assembly competence over the electoral arrangements for community councils. This includes issues such as the number of councillors that may be returned; whether or not community councils should be divided into wards for electoral purposes; and reviews of these arrangements. The Matter excludes the local government franchise, the arrangements for electoral registration and electoral administration, including the conduct of elections, and the voting system used at community council elections in Wales.

17. *Matter 12.10* would provide competence for the Assembly to extend to community councils in Wales the power to promote or improve the economic, social or environmental well-being of their areas. Part I of the Local Government Act 2000 provides a power for local authorities to do anything which they consider

is likely to achieve the promotion or improvement of the economic, social or environmental well-being of their area. The local authorities on which the well-being power in section 2(1) of the 2000 Act is conferred are, in relation to Wales, county councils and country borough councils only.

18. *Matter 12.11* would provide the Assembly with competence for the Welsh Ministers to make grants to community councils. The bulk of community council income is received by means of a council tax precept under section 41 of the Local Government Finance Act 1992. The developing role of community councils may create new demands on their finances and the Aberystwyth report recommended that the Assembly Government should consider providing additional funding through the use of direct grants.

19. *Matter 12.12* would provide a competence for the Assembly to legislate to encourage productive relations and collaboration between community councils and between community councils and principal councils (ie county and county borough councils). In July 2008, the Assembly Government published *A Shared Community—Relationship building and charters for unitary authorities and community and town councils*. This document provides guidance to encourage collaborative arrangements through which the two tiers of government would work together in a mutually supportive and co-operative way for the benefit of their communities. The development and adoption of collaboration arrangements is currently voluntary, though strongly encouraged by the Assembly Government.

20. *Matter 12.13* would provide a competence for the Assembly to put in place measures to raise the competence of community councils. There is currently no national programme to assess the competence of community councils in Wales, unlike in England which has the Quality Parish and Town Council Scheme, a national programme with standards set by stakeholders to the scheme.

21. *Matter 12.14* would provide competence for the Assembly to legislate to encourage transparency and wider participation in the proceedings of community councils. Section 21(2)(a) of the Representation of the People Act 1985 provides that where, at an ordinary election of community councillors, an insufficient number of persons are or remain validly nominated to fill the vacancies, the new council may co-opt any person or persons to fill any remaining vacancies. It is accepted good practice that opportunities for co-optation are advertised openly within the local community. This avoids the perception of community councils being “closed shops” and provides opportunities for greater participation by under-represented groups. There is no requirement at present, however, for the advertising of vacancies.

22. *Matter 12.15* would provide competence for the Assembly to legislate to encourage greater accountability in local government by way of the information provided by principal and community councils about their activities to local people.

23. *Matter 12.16* would provide competence over issues relating to salaries, allowances, pensions and other payments to members of county and county borough councils, national park authorities, community councils and fire and rescue authorities in Wales. Legislative provisions for the remuneration of councillors are contained within section 18 of the 1989 Local Government and Housing Act, section 100 of the Local Government Act 2000 and supporting regulations. The Independent Remuneration Panel has raised the need for reform in relation to allowances, pensions and gratuities for councillors but the Panel has not yet completed its consideration of all the issues and its conclusions will not be presented until it reports in December 2009.

24. *Matter 12.17* would provide competence for the Assembly to require principal councils and community councils to provide better support and working conditions for serving councillors with a view to assisting in the recruitment of greater numbers of candidates for local government and in the retention of councillors once elected. The Assembly Government’s “Expert Panel” has considered the recommendations of the UK Government’s Councillors’ Commission on recruiting and retaining councillors and is due to report shortly. This competence would enable the Assembly to respond to that report as appropriate.

GEOGRAPHICAL LIMITS OF ANY ASSEMBLY MEASURE

25. The proposed LCO would permit the Assembly to legislate by Measure in relation to Wales. There is no provision within the proposed LCO that would enable the Assembly to legislate in relation to English local authority functions.

MINISTER OF THE CROWN FUNCTIONS

26. By virtue of Part 2 of Schedule 5 to the 2006 Act, an Assembly Measure cannot confer or impose any function on a Minister of the Crown. This proposed LCO does not seek to disapply this restriction. By virtue of Parts 2 and 3 of Schedule 5 of the 2006 Act, the Assembly may not by Measure remove or modify any functions of a Minister of the Crown without the consent of the Secretary of State and this would be sought if applicable pursuant to any Measure flowing from this proposed LCO.

CONCLUSION

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

Dr Brian Gibbons
Welsh Assembly Government

July 2009

Written evidence from Bridgend County Borough Council

SUMMARY

In summary, Bridgend County Borough Council supports the proposed Legislative Competence Order but recognises that the way in which the National Assembly for Wales uses the new powers is yet to be determined.

The Committee sought responses to the following specific questions:

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

1.1 Yes. Bridgend County Borough Council believes that the proposed Legislative Competence Order is consistent with the spirit and scope of the devolution settlement. It is entirely appropriate and sensible that the National Assembly for Wales should be able to legislate on the matters specific to Wales that are subject to the LCO. This would provide greater transparency and accountability, and should promote arrangements that are responsive to circumstances and needs in Wales.

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

2.1 Yes. The Government of Wales Act 2006 empowers Her Majesty, by Order in Council, to confer continuing legislative competence on the National Assembly for Wales to legislate by Assembly Measures on specified matters. This proposed use of the LCO mechanism, ie to insert a number of matters into Part 1 of Schedule 5 to the 2006 Act, is therefore in accordance with that Act.

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

3.1 We note WAG's intention to strengthen the statutory basis for the activities of community councils. However it is important to recognise that town and community councils across Wales are a large diverse group of "like" organisations that function at different levels. Some deliver quite a number of services and manage significant budgets but some are quite small and passive in service delivery terms. Addressing this issue is likely to present real challenges.

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

4.1 We are not aware of any cross-border issues relating to the LCO.

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

5.1 The LCO is clearly drafted and is unambiguous.

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

6.1 The LCO in itself does not increase the regulatory burden on the private or public sectors. Any increase in the burden will depend on any Assembly Measures brought forward in relation to these Matters, which would be hypothetical at this stage.

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

7.1 The proposed LCO does not itself necessitate the formation or abolition of Welsh institutions and structures. Any such formation or abolition would depend on any Assembly Measures brought forward in relation to these Matters, which would be hypothetical at this stage.

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

8.1 The Council would not wish to comment on which mechanism would be most appropriate. Whichever mechanism is used, our interest is in the outcome.

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

9.1 The Council would not wish to comment on this issue.

October 2009

Written evidence from One Voice Wales

1. One Voice Wales is recognised by the Welsh Assembly Government as the national representative body for community and town councils in Wales. It represents the sector on the Local Government Partnership Council and 70% of the 735 community and town councils are in membership. As well as our representative role, we also provide support and advice to councils on an individual basis and have recently launched, with Welsh Assembly Government support, a modular training programme for councillors. We believe strongly that community councils are well-placed to develop the economic, social and environmental well-being of the areas they serve. For more information on the organisation, please see our website: www.onevoicewales.org.uk

2. The National Executive Committee of One Voice Wales considered the proposed LCO at its meeting on 11 September and gave the Order its unqualified support. The Order is seen as critical to both implementing outstanding actions and promoting new developments which will enhance local democracy and community engagement in Wales.

3. Responses to specific questions asked:

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

4. One Voice Wales believes that, since community and town councils represent the grass roots of local government in Wales, it is very much in keeping with the devolution settlement that the National Assembly for Wales is given competence over the matters set out in the proposed Order. For example, the recently enacted Local Government Assembly Measure has made community and town councils statutory partners in the development and implementation of Community Strategies. This LCO would facilitate further development of the joint working envisaged under that Measure.

5. Furthermore, we believe that bringing the legislative process closer to the communities and institutions affected will make it easier for councils and communities to be informed about and influence such legislation. One Voice Wales has already been involved in providing evidence to Assembly Committees and found it to be an effective process. Overall, then, it is felt that the LCO would allow a more holistic approach to be taken to the development of legislation pertaining to local government in Wales.

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

6. We believe that the use of the LCO mechanism is in accordance with the Act.

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

7. There is a strong demand for legislation on the matters in question. The outstanding actions mentioned above arise principally from the independent research study into the role and potential of community and town councils carried out by Aberystwyth University in 2003. A total of 76 recommendations were made by the report, many of which were adopted to a greater or lesser extent by the Welsh Assembly Government in its response, published in 2004. Many of the agreed recommendations could be implemented without recourse to legislation but for some a change in primary legislation was required.

8. In total, 10 changes to primary legislation were required to implement the agreed recommendations, of which only three have been implemented to date (and two of these were as a result of wider changes being made). The outstanding recommendations relate to: making it easier to form and more difficult to dissolve councils; establishing “charter” agreements between the two tiers of local government; implementing an accreditation scheme for councils; the ability to provide direct grants to councils (eg to fund the cost of by-elections—often seen as prohibitive to local democracy); requiring the advertising of co-option opportunities; and enabling the co-option of two non-voting representatives of young people. It is recognised that there have been attempts by the Assembly Government to make faster progress but it is felt that these have been frustrated primarily by failing to secure a slot in the busy Westminster timetable. However, we are now five years on from the publication of the Assembly Government’s response to the study and there is a significant degree of frustration at the delay in the implementation of these recommendations. Indeed, a motion was passed at our 2008 AGM pressing for their introduction. We are aware that, subject to the approval of this LCO, the Assembly Government plans to introduce a Measure to give effect to the recommendations.

9. One Voice Wales was also represented on the Councillors Commission Expert Panel for Wales and so is familiar with, and wholeheartedly supports, the recommendations arising from the Panel, in particular those relating to collaboration in the training and development of councillors.

10. We are also keen to see the extension of the Power of Wellbeing to community and town councils, a power already available to the parish sector in England. One Voice Wales views the power as being very positive and enabling, sending a strong message to councils regarding their role in supporting the broad-based development of their communities. It will also enhance the collaborative working envisaged under Making the Connections by facilitating the involvement of community and town councils in the planning and delivery of public services.

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

11. We are not aware of any such issues. If anything, the LCO is likely to promote improved cross-border working (One Voice Wales is a partner under the Wales/West Midlands Cross Border Memorandum of Understanding and organises joint meetings between parish councils and community councils along the border).

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

12. One Voice Wales is content that the purpose, scope, terms and definitions are clearly defined. It is understood that “local government institutions for communities” refers to community meetings as well as community council meetings, as set out under the 1972 Local Government Act.

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

13. This is not seen as a significant issue since the measures envisaged under the Order have the broad support of the sector and other partner organisations.

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

14. We do not believe that the formation or abolition of new institutions and structures are necessitated by the LCO.

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

15. One Voice Wales believes that the LCO is the most appropriate way to confer competence on the Assembly, not least because of the difficulties encountered to date with trying to secure this competence through other routes.

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

16. We do not believe that the actions envisaged under this LCO could be implemented other than by primary legislation. Many of the Aberystwyth recommendations have already been implemented via guidance or other actions but there are significant recommendations outstanding which can only be implemented via primary legislation. One Voice Wales has co-operated closely in the implementation of the recommendations to date and is committed to working with the Assembly and Assembly Government in order to achieve full implementation.

September 2009

Written evidence from the Welsh Local Government Association (WLGA)

1. The WLGA welcomes the opportunity to respond to the Consultation on the proposed Local Government LCO.

2. The Assembly Government has, during recent years, consistently articulated its policy ambitions around community and town councils and the empowerment and support for councillors in their community leadership role. These policy intentions were included in the local government policy statement “A Shared Responsibility” in 2007.

3. However, the WLGA notes that this consultation relates only to the general principles of the proposed LCO and that it would be inappropriate therefore to consider possible policy implications or Measures that might arise out of this proposed Order.

4. The WLGA will therefore comment only on the principles relating to the proposed LCO.

5. Given the proposed Local Government LCO relates to community and town councils and local democracy related issues, in principle it would be appropriate and advantageous that such powers are transferred to the Assembly. This would enable policies to be co-produced in Wales by local government, the Assembly Government and the wider National Assembly, and ensure that they are set in the wider strategic context of local government and governance arrangements, powers over which largely currently reside within the Assembly’s competence.

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

6. The WLGA broadly supports the proposed Local Government LCO in principle as it is within the spirit and scope of the devolution settlement.

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

7. In the opinion of the WLGA, the use of the LCO mechanism is in accordance with the Government of Wales Act 2006.

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

8. The Assembly Government has, during recent years, consistently articulated its policy ambitions around community and town councils and the empowerment and support for councillors in their community leadership role. These policy intentions were included in the local government policy statement “A Shared Responsibility” in 2007.

9. The majority of the Matters covered in the proposed LCO relate to community and town council functions, and the WLGA is aware that there has been consistent support for such powers from One Voice Wales, the representative organisation for community and town councils in Wales.

10. As noted in paragraph 5 above, given the proposed Local Government LCO relates to community and town councils and local democracy related issues, in principle it would be appropriate and advantageous that such powers reside with the Assembly. This would enable policies to be co-produced in Wales by local government, the Assembly Government and the wider National Assembly, and ensure that they are set in the wider strategic context of local government and governance arrangements, powers over which largely currently reside within the Assembly’s competence.

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

11. There do not appear to be any cross-border issues relating to the LCO.

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

12. The purpose and scope of the LCO is clearly defined.

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

13. The LCO could potentially have an impact on the regulatory burden on the public sector. In particular:

13.1 *Matter 12.11—competence to make grants to community councils.* If implemented, grants provided directly from the Assembly Government to community councils would inevitably require appropriate audit arrangements, which may well be additional to current arrangements.

13.2 *Matter 12.13—Schemes for the accreditation of quality in local government for communities.* Although it is not clear what the subsequent policy proposals around this matter would be, whether it would be voluntary accreditation and managed by the sector itself, it could be assumed that the “accreditation” could potentially require an element of independent validation and/or regulation, particularly if grant award was dependent on appropriate accreditation.

13.3 Other Matters seek to “encourage” or “require” principal councils to carry out particular activities (as outlined in the LCO’s accompanying Memorandum, such as Matters 12.11, 12.15, and 12.17) and are therefore likely to place additional administrative and financial burdens on authorities. Subsequently, additional regulatory requirements can be anticipated, particularly where new duties are placed on authorities.

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

14. The proposed LCO does not necessitate the formation or abolition of Welsh institutions and structures, however seeks the transfer of existing powers which allow the Welsh public to establish or abolish community and town councils in their communities.

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

15. The WLGA does not have a strong view on this issue, however, it is noted that the Assembly Government is concurrently seeking additional local government competences through the Local Democracy, Economic Development and Construction Bill.

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

16. The transfer of Matters as outlined in the proposed LCO would provide greater clarity around the legislative competencies of the Assembly regarding local democracy and local government. It therefore would provide clearer legislative processes and more comprehensive scope for advancing developing and supporting local democracy within the Welsh context in future.

October 2009

Letter from Wayne David MP, Parliamentary Under Secretary of State, Wales Office, to the Chairman

When I gave evidence on the proposed Local Government LCO on 26 November I undertook to write giving further details about the Quality Parish and Town Council Scheme in England.

The Quality Parish and Town Council Scheme was launched in 2003 following the Government's Rural White Paper and revised last year. The aim of the Scheme is to benchmark minimum performance standards for parish and town councils in England. This voluntary scheme is supported by the Commission for Rural Communities, the Department for Communities and Local Government, the Department for the Environment, Food and Rural Affairs, the Local Government Association, the National Association of Local Councils and the Society of Local Council Clerks.

As I explained, there is currently no national programme to assess the competence of community councils in Wales. Matter 12.13 in the proposed Local Government LCO could enable the National Assembly to put in place measures to improve the skills and effectiveness of community councils in Wales. This could cover a variety of schemes that benchmark councils and assess competence.

Conferral of legislative competence does not of course rule out voluntary arrangements operating in parallel. The Welsh Minister for Social Justice and Local Government, Dr Brian Gibbons AM, has said he envisages accreditation moving forward on a largely voluntary basis, but with the statutory power in reserve to support the development of a scheme if need be.

30 November 2009

Letter from Dr Brian Gibbons AM, Minister for Social Justice and Local Government, Welsh Assembly Government, to the Chairman

When I appeared before the Welsh Affairs Committee on 24 November to present evidence on the Local Government Legislative Competence Order (LCO), I undertook to send the Committee a note setting out our reasons for including in the LCO a definition of the term "communities".

The interpretation provision in the proposed LCO defines "communities" for the purpose of Field 12 (local government) as meaning "separate areas for the administration of local government, each of which is wholly within the area of a county council or county borough council (but does not comprise the whole area of a county council or county borough council)."

The expression "communities" is often used in different contexts conveying different meanings and is commonly used to describe organisations or social groups which share (i) a locality; (ii) a sense of common identity and characteristics; or (iii) the quality of holding something in common as in community of interests. The concept of "communities" does not therefore necessarily imply geographical limitations.

There is no definition of the term "communities" in local government legislation. The Local Government Act 1972 (the 1972 Act) established the current system of local government in England and Wales and makes provision with respect to the organisation and functions of local authorities in England and Wales including a system of local government communities in Wales. The communities established by the 1972 Act were the areas that were formerly the boroughs, rural parishes and certain urban districts or divided parts of former urban districts in Wales. Local government was further reorganised under the Local Government (Wales) Act 1994 and provided that the community councils in existence on 1 April 1996 were to continue in existence after that date.

References to community councils in the 1972 Act do not encompass community meetings and separate provision is made for certain community councils to resolve that the community has the status of a town.

The purpose in the LCO of identifying an area called a "community" is to provide clarity for the administration of local government below the level of county and county borough. The definition stipulates that a community has to fall within the area of a single county or county borough. This is consistent with the current legislative framework for community councils, community town councils and community meetings.

The LCO also contains references to “local government institutions for communities” (in Matters 12.8, 12.9, 12.10, 12.16 and 12.17). The expression is not defined because the meaning is unequivocal in that an “institution” means an organisation of some kind directed to a particular purpose. The purpose is specified as being “local government”. The term “communities” is defined and this obviates any potential ambiguity about the nature of the local government institution.

Our lawyers considered that there could not be any real doubt that community meetings, community councils and town councils are institutions concerned with local government. On that basis, the drafting works without a definition of “local government institutions”. Examples would serve only to narrow the generality of the expression.

This contrasts with the need for a definition of “communities” in the proposed LCO given the scope for interpreting what “communities” might mean without setting it in a particular context.

I also promised to send you a copy of the list of legal powers of community and town councils. The list is attached; it is extracted from *The Good Councillor’s Guide for Community and Town Councillors* published by the Welsh Assembly Government in 2004. While the list is not comprehensive, it will give the Committee members a feel for the range of powers currently available to community and town councils.¹

I hope that this is of assistance.

30 November 2009

Evidence from Llangunllo Community Council

Llangunllo Community Council wish to add its name supporting the approval of the LCO and endorsing Simon White of One Voice Wales’ response regarding the implementation of the outstanding recommendations from the Aberystwyth study, the extension of the power of wellbeing and other important developments for the sector on 22 October 2009.

October 2009

¹ Not printed.