

**National Assembly for Wales**  
Legislation Committee No. 2

National Assembly for Wales (Legislative  
Competence) (Housing and Local  
Government) Order 2010

Committee Report  
January 2010



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## **Legislation Committee No. 2**

Legislation Committee No. 2 was established by the National Assembly for Wales to consider and report on legislation introduced into the Assembly, particularly by the Welsh Government. The Committee is also able to consider and report on non-government legislation, as appropriate.

### **Powers**

The Committee was established on 9 December 2008 as one of the Assembly's legislation committees. Its powers are set out in the National Assembly for Wales' Standing Orders, particularly Standing Orders 10, 22 and 23. These are available at [www.assemblywales.org](http://www.assemblywales.org)

## **List of relevant Reports published by Legislation Committees**

<i>Report title</i>	<i>Date of publication</i>
Report of the proposed Affordable Housing LCO Committee on the National Assembly for Wales (Legislative Competence) (No.5) Order 2008	April 2008
Report of the Proposed Affordable Housing LCO Committee on The National Assembly for Wales (Legislative Competence) (Housing) Order 2008	July 2008

All previous committee reports can be found at <http://www.assemblywales.org/bus-home/bus-committees/bus-committees-perm-leg.htm>

## Committee membership

<i>Committee Member</i>	<i>Party</i>	<i>Constituency or Region</i>
Val Lloyd (Chair)	Labour	Swansea East
Jeff Cuthbert (Dec 2008 – Jan 2010)	Labour	Caerphilly
Gareth Jones	Plaid Cymru	Aberconwy
Sandy Mewies (Dec 2008 – Jan 2010)	Labour	Delyn
Rhodri Morgan (from Jan 2010)	Labour	Cardiff West
Lynne Neagle (from Jan 2010)	Labour	Torfaen
Jenny Randerson	Welsh Liberal Democrats	Cardiff Central
Brynle Williams	Welsh Conservative Party	North Wales



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## **Summary of conclusions and recommendations**

Our conclusions and recommendations are listed below, in the order that they appear in this report. Please refer to the relevant pages of the report to see the supporting evidence:

### **Timing**

We strongly recommend that the Business Committee give further consideration to the deadlines it sets for reporting on legislation, in the interests of facilitating public engagement in the scrutiny of legislation and enhancing the democratic process. (Paragraph 16)

### **General principles**

We support the general principles of the proposed Order, subject to our views on the exclusion of the private rented sector from the scope of the proposed Order in relation to tenure arrangements, set out in paragraphs 63 - 66. (Paragraph 62)

#### *Private rented sector*

In view of the importance of the proposed Order in terms of delivering on the policy proposals relating to social housing and meeting the housing needs of vulnerable people in Wales, we would not wish to see its passage unduly delayed by attempts to broaden its scope to provide for the private rented sector. (Paragraph 65)

We do, however, believe this to be a very important policy area and we therefore recommend that the deputy Minister takes the necessary steps to bring forward a proposed Order relating to tenure arrangements in the private rented sector at the earliest possible time. (Paragraph 66)

### **Matters 11.2 and 11.3**

We are content with Matters 11.2 and 11.3 as drafted. (Paragraph 92)

### **Matter 11.4**

Subject to our views on the exclusion of the private rented sector from the scope of this Matter, we are content with Matter 11.4 as drafted. (Paragraph 111)

### **Matter 11.5**

In relation to Community Right to Buy, we note the deputy Minister's reasons for not seeking legislative competence in this area. However, we are of the view that this may complement the range of powers in relation to disposals being sought under this proposed Order and, in view of the evidence we have received, we ask the deputy Minister to give consideration to extending the scope of the proposed Order to include Community Right to Buy relating to social housing. (Paragraph 137)

Subject to our comments on Community Right to Buy, we are content with Matter 11.5 as drafted. (Paragraph 138)

### **Matter 11.6**

We are content with Matter 11.6 as drafted. (Paragraph 163)

### **Matter 11.7**

We are content with Matter 11.7 as drafted. (Paragraph 184)

### **Matter 11.8**

We are content with Matter 11.8 as drafted. (Paragraph 210)

### **Matter 12.18**

We are content with Matter 12.18 as drafted. (Paragraph 230)

### **Exceptions to legislative competence**

We note the evidence from the deputy Minister in relation to exceptions to legislative competence. (Paragraph 236)

### **Interpretation provisions**

We are content with the interpretation provisions as drafted. (Paragraph 253)

### **Resources**

We believe the question of resources to be a matter more appropriately considered as part of future Measures in this area, and we trust that full consideration will be given to this by the deputy Minister at the appropriate time. (Paragraph 258)

## **Cross border issues**

We note the evidence from the deputy Minister in relation to cross border issues arising out of the proposed Order. (Paragraph 263)



# 1. Introduction

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## *Background*

1. In November 2007, in pursuit of a *One Wales* commitment in relation to the Right to Buy, the Welsh Government laid the proposed Affordable Housing Legislative Competence Order (the ‘original proposed Order’). That proposed Order was considered and reported on by an Assembly committee and the Welsh Affairs Select Committee in the House of Commons. A draft Affordable Housing Order was subsequently laid, in amended form, and approved by the National Assembly.

2. Following concerns raised about the legality of one aspect of the final text of the draft Order<sup>1</sup>, the Welsh Government announced plans for a new housing Order. The draft Affordable Housing Order did not, therefore, complete its legislative passage through Parliament.

3. On 30 November 2009, Jocelyn Davies AM, the deputy Minister for Housing, laid the proposed *National Assembly for Wales (Legislative Competence) (Housing and Local Government) Order 2010*<sup>2</sup> (‘the proposed Order’) and Explanatory Memorandum<sup>3</sup>, in accordance with Standing Orders 22.13 – 22.14.

4. On 1 December 2009, the Business Committee agreed to refer the proposed Order to Legislation Committee No.2 for detailed consideration, in accordance with Standing Order 22.16, and agreed a reporting deadline of 29 January 2010.

## *Scope of the Committee’s scrutiny*

5. At our first meeting on 3 December 2009, we agreed the scope of our scrutiny, as set out below:

To consider —

- (i) the general principles of the proposed LCO and whether legislative competence in the areas identified in Matters 11.2 – 11.8 and 12.18 should be conferred on the Assembly; and

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<sup>1</sup> See House of Lords, House of Commons Joint Committee on Statutory Instruments, Seventh Report of Session 2008-09

<sup>2</sup> <http://www.assemblywales.org/lco-ld7808-e.pdf>

<sup>3</sup> <http://www.assemblywales.org/lco-ld7808-em-e.pdf>

- (ii) whether the proposed Order provides an appropriate framework for the delivery of the policy proposals relating to social housing and meeting the housing needs of vulnerable people. In particular, to consider whether the terms of the proposed Order are too broadly or too narrowly defined.

### *Evidence*

6. We issued a general call for evidence and invited key organisations with a subject area interest to submit written evidence to inform our work. A list of those who submitted written evidence is available at the end of this report.

7. We also took oral evidence from a number of witnesses, details of which are attached at the end of this report.

8. We had to conduct our scrutiny in a very short time and are grateful to all those who provided written submissions and gave oral evidence, particularly at short notice. Their contribution to our consideration of the proposed Order has been invaluable.

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

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

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

11. The following report represents the conclusions we have reached based on the evidence received during the course of our work.

### *Timing*

12. This committee has previously drawn attention to the short deadlines provided by the Business Committee for considering and reporting on legislation.<sup>4</sup>

13. We wish to make the point again in this case. The reporting deadline of 29 January 2010 set by the Business Committee allowed just five sitting weeks for the completion of our scrutiny of the proposed Order. This is the shortest timeframe we have been provided with to date and meant we were only able to undertake a 5 week consultation exercise, over the Christmas period.

14. We believe this put unacceptable pressure on witnesses in terms of responding to our call for written evidence and in providing us with oral evidence.

15. We also feel that this deadline restricted the time available to us to consider key issues for our report arising from the evidence we received, and to discuss and agree our report. Despite this, we have been able to produce a full report.

**16. We strongly recommend that the Business Committee give further consideration to the deadlines it sets for reporting on legislation, in the interests of facilitating public engagement in the scrutiny of legislation and enhancing the democratic process.**

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<sup>4</sup> See Legislation Committee No.2 report on the Proposed Children and Families (Wales) Measure, June 2009

## 2. Principle of the proposed Order

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### *Background*

17. The purpose of the proposed Order is to amend Part 1 of Schedule 5 to the Government of Wales Act 2006 ('the 2006 Act') to confer legislative competence on the Assembly in relation to housing and local government in Wales by inserting new matters under Field 11 (housing) and Field 12 (local government) relating to —

#### Matter 11.2

Social housing providers.

#### Matter 11.3

Relevant social housing bodies.

#### Matter 11.4

Tenure of rented social housing and other arrangements under which social housing is provided.

#### Matter 11.5

Disposals of—

- (a) social housing,
  - (b) land held or used for the purposes of, or in connection with, social housing, and
  - (c) land to which a provision of any of the following enactments applies—
    - (i) Part 2 of the Housing Act 1985(a);
    - (ii) Part 5 of the Housing Act 1985;
    - (iii) Chapter 2 of Part 1 of the Housing Act 1996(b);
    - (iv) Chapter 4 of Part 1 of the Housing Act 1996;
    - (v) Chapter 4 of Part 2 of the Housing and Regeneration Act 2008(c)
- (insofar as the disposal does not fall within paragraph (a) or (b) of this matter).

#### Matter 11.6

Provision of advice and non-financial assistance to individuals in respect of their obtaining, and living in, housing.

This matter includes, in particular, advice and non-financial assistance in respect of skills that are relevant to the ability to live independently, or more independently, in housing.

Matter 11.7

Provision by local authorities of caravan sites for use by gypsies and travellers.

Matter 11.8

Homelessness.

Interpretation of this field

In this field—

“caravan site” means—

- (a) land on which a caravan or other mobile accommodation (apart from a tent) is stationed for the purposes of human habitation, and
- (b) land which is used in conjunction with land falling within paragraph (a) of this definition;

“local authority” means a county council or a county borough council in Wales;

“relevant social housing body” means a person (if, or insofar as, it is not a social housing provider) which has functions relating to—

- (a) social housing providers, or
- (b) social housing;

but if the person has some functions that do not relate to social housing providers or social housing, the person is a relevant social housing body only insofar as its functions relate to social housing providers or social housing;

“social housing” means any housing provided by a social housing provider;

“social housing provider” means—

- (a) a local authority, and
- (b) a person (other than a local authority) providing housing to people whose needs are not adequately served by the commercial housing market (whether or not it also provides

housing to other people and whether or not it also has functions in addition to providing housing);

but, if a local authority or other person has some functions that do not relate to the provision or allocation of housing, the authority or other person is a social housing provider only insofar as its functions relate to the provision and allocation of housing.”

#### Matter 12.18

Council tax payable in respect of dwellings that are not the main residence of an individual.

#### *Explanatory Memorandum*

18. The Explanatory Memorandum accompanying the proposed Order states:

“The primary purpose of the [proposed] LCO is to provide the National Assembly with the competence in relation to two main themes, namely social housing and meeting the housing needs of vulnerable people.”<sup>5</sup>

19. The Explanatory Memorandum clarifies that these are devolved policy areas where Welsh Ministers have extensive executive functions; however the National Assembly does not have the corresponding legislative competence.<sup>6</sup>

20. It goes on to say:

“The LCO will assist the Welsh Assembly Government to deliver on its ambitions, set out in *One Wales*... of ensuring that housing need is met and that there is improved access to housing.”<sup>7</sup>

21. The Explanatory Memorandum explains that the aims in *One Wales* are supported by key strategic documents in the policy areas: the new National Housing Strategy; the Report to the Deputy Minister for Housing by the Affordable Housing Task and Finish Group (“the Essex Review”); the Ten Year Homelessness Plan; the draft *Supporting People*

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<sup>5</sup> Explanatory Memorandum para 21

<sup>6</sup> *Ibid.*

<sup>7</sup> Explanatory Memorandum para 22

housing related support strategy; and the draft Gypsy Traveller Strategy, *A Road Less Travelled*.<sup>8</sup>

*Evidence from consultees*

22. All consultees, in both written and oral evidence, agreed broadly with the general principle that legislative competence in Matters 11.2 – 11.8 and Matter 12.18 be conferred on the Assembly.

23. In their evidence, the Welsh Local Government Association (WLGA) noted that, in light of the continuing process of implementing the Essex Review's<sup>9</sup> recommendations on affordable housing, and development of the draft National Housing Strategy, as well as a number of independent reviews of housing policy (including housing finance, rent policy, and housing related support) it was:

“(...) therefore appropriate and timely that the Assembly has the necessary legislative competence to take forward their vision for housing in Wales.”<sup>10</sup>

24. They said that their concerns about the original proposed Order had been addressed by this broader Order, which they felt would “provide the Assembly with the flexibility and agility to respond not only to current housing challenges, but also those that may emerge in the short to medium term future.”<sup>11</sup>

25. Community Housing Cymru (CHC) welcomed the proposed Order, stating that it was important in their view that “the National Assembly for Wales is equipped so that it can react to such circumstances that might impact on the future quality and supply of affordable housing in Wales.”<sup>12</sup>

26. They also noted that the proposed Order is significantly broader in scope than the original proposed Order, and “welcome[d] the intention to cover wider areas of competence and not just disposals of land by social landlords”.<sup>13</sup>

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<sup>8</sup> Explanatory Memorandum para 5-9 and para 23

<sup>9</sup> Sue Essex et al, *Affordable Housing in Wales – An Independent Report to the Deputy Minister for Housing*, June 2008

<sup>10</sup> HLG6

<sup>11</sup> HLG6 and RoP, para 13, 13 January 2010, Legislation Committee No.2

<sup>12</sup> HLG5

<sup>13</sup> *Ibid.*

27. The Chartered Institute of Housing (CIH) Cymru was equally supportive of further housing powers being devolved, and noted that:

“We feel (...) that it is timely, particularly in relation to our growing capacity and confidence, to look at what we can do to intervene in ways that are appropriate to housing in Wales. This legislative competence Order offers a very good opportunity to take that forward.”<sup>14</sup>

28. Cymorth Cymru expressed support for the proposed Order, stating that the further devolution of power in this policy area would:

“(...) provide [the Assembly] with the ability to be more responsive, flexible and inclusive in their development of policy which meets the specific needs of vulnerable people and the communities in which they live. Moreover, it will facilitate specific policy decisions to be taken at the most appropriate tier of government (...).”<sup>15</sup>

29. The Welsh Tenants Federation and Shelter Cymru were also broadly supportive of the proposed Order, with the former arguing that it would “enable the Welsh Assembly Government to take forward a more rounded approach in developing and delivering housing policy in line with the Beecham agenda and on that reflect the approach the housing community has taken in consideration of the Essex review recommendations.”<sup>16</sup>

30. Shelter Cymru noted that, whilst the Welsh Government had been able to tackle individual issues, such as expanding the categories of applicant treated as being in priority need under homelessness legislation, “in order to enable Wales to fully act in the interest of people facing homelessness and housing need, the Assembly should have the legislative powers to achieve the policy aims it has set both in terms of homelessness, housing supply and allocation as well as the regulation of social housing providers.”<sup>17</sup>

31. They went on to say that the proposed Order would “enable the [Welsh] Government to pursue a coherent and long-term policy in terms of housing and homelessness”<sup>18</sup> and highlighted the “huge

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<sup>14</sup> Record of Proceedings (RoP), para 5, 20 January 2010, Legislation Committee No.2

<sup>15</sup> HLG2

<sup>16</sup> HLG7

<sup>17</sup> HLG1

<sup>18</sup> *Ibid.*

consensus [amongst housing sector partners] about how the new [housing] agenda should be taken forward in Wales, and that centres very much on that list of matters in the proposed LCO.”<sup>19</sup>

32. Stonewall Cymru endorsed the proposed Order, stating in particular that it would permit a more holistic approach to “tackling the crucial challenges in relation to social housing, which has wide-ranging positive implications for [lesbian, gay and bisexual] people in Wales.”<sup>20</sup>

### ***The private rented sector***

33. Despite the broad support amongst consultees for the general principles of the proposed Order, one issue that was raised by a number of organisations was the exclusion of the private rented sector from the scope of the proposed Order in relation to tenure arrangements under Matter 11.4.

34. The WLGA noted in their evidence that “this sector plays an important role in the housing market for those who are unable to access owner occupation or social housing, however it is the housing sector where standards are poorest, rents highest and security most limited.”<sup>21</sup>

35. They strongly recommended that the proposed Order should provide for both the social housing sector and the private rented sector as “it would make it much easier to look at the housing market as a whole because, as time goes on, the view is that the private rented sector will probably play a more important role in meeting housing need across Wales.”<sup>22</sup>

36. They did, however, note that if attempting to broaden the scope of the proposed Order to include the private rented sector would mean that its passage could not be completed in an appropriate time, they would like to see that competence form the subject of a future Order.<sup>23</sup>

37. Shelter Cymru, the Tenants Participation Advisory Service (TPAS) Cymru and the Welsh Tenant s Federation all echoed some of the

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<sup>19</sup> RoP, para 90, 13 January 2010, Legislation Committee No.2

<sup>20</sup> HLG4

<sup>21</sup> HLG6

<sup>22</sup> RoP, para 15, 13 January 2010, Legislation Committee No.2

<sup>23</sup> RoP, para 25, 13 January 2010, Legislation Committee No.2

concerns expressed by the WLGA in relation to the omission of the private rented sector from the scope of the proposed Order.

38. TPAS Cymru stated in their written evidence that they would like to see the proposed Order make provision for the private rented sector, as more use it being made of this sector as a result of problems with the supply of social housing and difficulties in the owner occupation sector.<sup>24</sup>

39. They said:

“Issues of security of tenure, standards of accommodation and affordability of this sector could be addressed with improved legislative powers for the Assembly within this area.”<sup>25</sup>

40. Shelter Cymru stated that, in their view, the private rented sector was important in terms of assisting in the prevention of homelessness, and would play an important role in tackling homelessness in the medium term.<sup>26</sup>

41. They went on:

“As a key means of delivering homes to people in Wales – and therefore a key competent of any Government and local authority strategy to address housing needs – it is important that the Assembly is able to consider and implement any reforms in [the private rented sector] as part of its overall housing strategy.”<sup>27</sup>

42. As part of their written evidence, Shelter Cymru stated that it was their belief that the Welsh Government should consider requesting competence in this area in the future. However, in giving oral evidence, they revised this view slightly, saying that if it were possible for the scope of the proposed Order to be extended, that would be something they would welcome.<sup>28</sup>

43. Cymorth Cymru shared this view, saying that if it were feasible to extend the scope of the proposed Order, they would support this, but if doing so meant that the progress of the proposed Order would be

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<sup>24</sup> HLG9

<sup>25</sup> *Ibid.*

<sup>26</sup> HLG1

<sup>27</sup> *Ibid.*

<sup>28</sup> RoP, para 105, 13 January 2010, Legislation Committee No.2

impeded, they would prefer the private rented sector to be the subject of a future Order.<sup>29</sup>

44. CIH Cymru also recognised the significant role played by the private rented sector but suggested that, although there were good reasons to approach the issue of the private rented sector, the lack of policy work in this area meant it would be better to return to this matter in a future Order.<sup>30</sup>

45. This was a view shared by the Welsh Tenants Federation. In their oral evidence, they argued that although legislation was needed in relation to the private sector as “tenants should demand the same rights and have the same responsibilities regardless of the sector in which they are renting”, they were cautious as to whether the policy in this area was significantly mature to enable it to be included in the proposed Order. They suggested this could be a matter for a future Order, “provided it is not too far down the line.”<sup>31</sup>

46. They also advocated the introduction of a compulsory registration scheme for all private sector tenants in Wales, in place of the current voluntary scheme.<sup>32</sup>

### ***Financing of council housing in Wales***

47. In their evidence, the WLGA argued that the scope of the proposed Order should provide the Assembly with “sufficient powers to take forward any recommendations of the Review of the financing arrangements for council housing in Wales.”<sup>33</sup>

48. They noted that a similar review had taken place in England, which recommended that Local Authorities be given the freedom to operate as housing businesses, and they stated that “if this legislative competence Order goes through in its current form, the Assembly would not have the legislative powers to take forward any recommendations from that review.”<sup>34</sup>

49. They argued:

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<sup>29</sup> RoP, para 107, 13 January 2010, Legislation Committee No.2

<sup>30</sup> RoP, para 21, 20 January 2010, Legislation Committee No.2

<sup>31</sup> RoP, para 125, 129, 20 January 2010, Legislation Committee No.2

<sup>32</sup> RoP, para 125, 20 January 2010, Legislation Committee No.2

<sup>33</sup> HLG6

<sup>34</sup> HLG6 and RoP, para 32, 13 January 2010, Legislation Committee No.2

“(…) our view is that it is important that the competence lies in Wales to address the problems in relation to council house financing in Wales.”<sup>35</sup>

*Evidence from the deputy Minister*

50. As part of her opening evidence, the deputy Minister said that, although Welsh Ministers had specific functions in relation to housing, the Assembly had no legislative competence in this area at all.<sup>36</sup>

51. She went on:

“Even though a range of executive powers [in relation to housing] rest with Welsh Ministers, they are generally specific powers that are constrained by primary legislation. So (…) we think that having this more coherent approach would allow us to develop policy in a different fashion. So, I think that we would be able to propose legislation in line with policy and to consider more things than just having to rely on the specific powers that any Welsh Minister might currently hold.”<sup>37</sup>

52. In relation to the original proposed Order, she said that, for her, the main difference was the definition of ‘social housing’ provided for in the proposed Order. The inclusion of this definition meant that references to specific types of landlords or Acts of Parliament that were necessary in the original proposed Order were no longer needed, making the proposed Order much simpler.<sup>38</sup>

53. She argued that this very broad definition of ‘social housing’ also meant that “any housing provided by a social housing provider would be covered by the proposed Order (…) and it allows us to be pretty confident that it covers every social housing provider that we want to cover, even if they have not yet been created.”<sup>39</sup>

54. On the question of the exclusion of the private rented sector from the scope of the proposed Order in relation to tenure arrangements, the deputy Minister said that there had been a considerable amount of policy development in Wales in relation to housing, but that the focus,

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<sup>35</sup> RoP, para 32, 13 January 2010, Legislation Committee No.2

<sup>36</sup> RoP, para 19, 10 December 2009, Legislation Committee No.2

<sup>37</sup> *Ibid.*

<sup>38</sup> RoP, para 8, 10 December 2009, Legislation Committee No.2

<sup>39</sup> RoP, para 8 & 10, 10 December 2009, Legislation Committee No.2

and the majority of the policy work, had been on the social rented sector.<sup>40</sup>

55. She went on:

“[The inclusion of the private rented sector] was not something that we considered and then rejected (...). I am not saying that there is not an awful lot of work to be done on conditions in the private rented sector, but that at the moment, we are not in a position to be able to take this on. It would be a huge area of work and we just do not have the basis on which to take on that competence. I can justify the scope within this proposed Order because of the policy work that we have done.”<sup>41</sup>

56. Reference was also made to the Rugg review<sup>42</sup> in England. The deputy Minister’s official noted that “the Rugg review recommendations included selective licensing and accreditation (...) and some of these things are already happening in Wales.”<sup>43</sup>

57. The deputy Minister stated that, on this matter, she hoped to do “something constructive on an England-and-Wales basis”.<sup>44</sup> Her official confirmed that “in any arrangements, we will ensure that there are powers for Wales to vary the policy where necessary (...) so that the specific circumstances of Wales can be taken into account.”<sup>45</sup>

58. On the question of financing of council housing in Wales, we asked the deputy Minister to clarify whether the proposed Order would provide the Assembly with competence to legislate on this matter in the future. In her letter of 18 January 2010, she confirmed that it would not. She stated:

“The Review of The Housing Revenue Account and Housing Revenue Account Subsidy Regimes in Wales is currently being undertaken. The review will take into account the implications for Wales arising from the Review of Council Housing Finance in England. It will set out options for reform in Wales, set in the context of the current and future financial arrangements between the Welsh Assembly Government and HM Treasury.

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<sup>40</sup> RoP, para 50, 10 December 2009, Legislation Committee No.2

<sup>41</sup> RoP, para 53, 10 December 2009, Legislation Committee No.2

<sup>42</sup> <http://www.york.ac.uk/inst/chp/Projects/PRSreview.htm>

<sup>43</sup> RoP, para 51, 10 December 2009, Legislation Committee No.2

<sup>44</sup> RoP, para 50, 10 December 2009, Legislation Committee No.2

<sup>45</sup> RoP, para 51, 10 December 2009, Legislation Committee No.2

Any future proposals for legislative change will need to be developed taking into account the role of HM Treasury.”

*Our view*

**General**

59. We note the broad support expressed by all consultees for the general principles of the proposed Order.

60. We recognise the importance of the proposed Order in providing the Assembly with legislative competence relating to social housing and meeting the housing needs of vulnerable people, by allowing delivery of policy commitments set out in documents including ‘*One Wales*’, the Essex Review on affordable housing and the National Housing Strategy.

61. We note the evidence from consultees welcoming the breadth of scope of the proposed Order compared to the original proposed Order and we, too, welcome that.

**62. We support the general principles of the proposed Order, subject to our views on the exclusion of the private rented sector from the scope of the proposed Order in relation to tenure arrangements, set out in paragraphs 63 - 66.**

**Private rented sector**

63. We acknowledge the evidence we have received from consultees about the exclusion of the private rented sector from the scope of the proposed Order in relation to tenure arrangements under Matter 11.4.

64. We recognise the important role this sector plays in the housing market in terms of providing accommodation for people in housing need and assisting in the prevention of homelessness. We also recognise that greater use is being made of the private rented sector to alleviate pressure on social housing and as a result of difficulties relating to affordability of owner occupation. As such, we are disappointed that the private rented sector is not within the scope of the proposed Order.

**65. In view of the importance of the proposed Order in terms of delivering on the policy proposals relating to social housing and meeting the housing needs of vulnerable people in Wales, we**

would not wish to see its passage unduly delayed by attempts to broaden its scope to provide for the private rented sector.

66. We do, however, believe this to be a very important policy area and we therefore recommend that the deputy Minister takes the necessary steps to bring forward a proposed Order relating to tenure arrangements in the private rented sector at the earliest possible time.

### **Council house financing**

67. We acknowledge the evidence we have received in relation to the ongoing review of council house financing in Wales, and the need for the proposed Order to provide the Assembly with legislative competence in this area.

68. However, we accept the deputy Minister's evidence that any proposals for legislative change in this area will need to be developed taking into account of the role of HM Treasury. On this basis, we are content that this is a matter to be considered in the future, following the outcome of the review.

### 3. Scope of the proposed Order

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#### Matters 11.2 and 11.3

##### *Background*

69. Matter 11.2 would give the Assembly competence to legislate regarding social housing providers.<sup>46</sup>

70. Matter 11.3 would give the Assembly competence to legislate regarding relevant social housing bodies.<sup>47</sup>

71. Taken together, Matters 11.2 and 11.3 would confer competence on the Assembly to legislate in respect of the regulation of social housing providers and relevant social housing bodies, and to legislate in respect of the allocation of social housing.<sup>48</sup>

##### *Evidence from consultees*

72. All consultees who commented on Matters 11.2 and 11.3 expressed broad support for the transfer of competence in these areas.

73. Community Housing Cymru welcomed the introduction of a new definition of social housing that “encompasses all social housing providers in Wales.” They said they “accept that the definition is meant to be wide to cover anyone operating within social housing now or in the future”, and argued that the proposed competence:

“(…) would enable the National Assembly to consider legislation to implement a comprehensive regulatory regime, developed in partnership between the Assembly Government and the Housing Sector in Wales.”<sup>49</sup>

74. The WLGA expressed their support for Matters 11.2 and 11.3, saying “it will allow the vision for housing in Wales that has emerged through recent national policy discussions to be taken forward”.<sup>50</sup>

75. They echoed the views of Community Housing Cymru in welcoming the broad definitions of ‘social housing providers’ and ‘social housing

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<sup>46</sup> Explanatory Memorandum para 49

<sup>47</sup> Explanatory Memorandum para 50

<sup>48</sup> Explanatory Memorandum para 51

<sup>49</sup> HLG5

<sup>50</sup> HLG6

bodies’, arguing that this would enable legislative competence to be ‘future proofed’ in relation to any new housing vehicles that may be developed in Wales.<sup>51</sup> The Welsh Tenants Federation and CIH Cymru both made similar points in their written evidence.<sup>52</sup>

76. The WLGA also welcomed the Matters in so far as they would allow Welsh Ministers to regulate housing association properties in Wales that are owned by English registered landlords.<sup>53</sup>

77. Shelter Cymru supported the transfer of competence under these Matters, stating that gaining powers over the allocation of housing was necessary and would:

“(…) enable the Assembly and Welsh Government to wholly consider the allocation system and how providers - including housing associations - prioritise allocation.”<sup>54</sup>

78. Shelter Cymru also made reference in their evidence to community land trusts, saying they hoped there was scope within the proposed Order to support the development of these trusts:

“(…) our argument has always been that we should make it as easy as possible to develop community land trusts as long as, of course, communities actually want community land trust developments to go ahead. If there are ways in which that can be assisted through the legislative process, then we would welcome that.”<sup>55</sup>

79. Further to this, they suggested that a Welsh definition of ‘community land trust’ was required to “make it easier to understand what it is, the regulations that support it, and how it would access funds, and so on.”<sup>56</sup>

80. The Welsh Tenants Federation also supported the community land trust model, saying that in rural areas, there were opportunities, covered by the definition of ‘social landlords’ to be able to define social landlords in a broader context, such as community ownership.<sup>57</sup>

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<sup>51</sup> HLG6

<sup>52</sup> HLG7, HLG8

<sup>53</sup> HLG6

<sup>54</sup> HLG1

<sup>55</sup> RoP, para 109, 13 January 2010, Legislation Committee No.2

<sup>56</sup> *Ibid.*

<sup>57</sup> RoP, para 150, 20 January 2010, Legislation Committee No.2

*Evidence from the deputy Minister*

81. In relation to Matter 11.2, the deputy Minister said:

“(...) the Welsh Assembly Government is the regulator for housing associations in Wales, and shortly after I became Deputy Minister, the sector itself requested a review of the regulatory regime, which had not been updated for a number of years, and that is why we had the Essex review. Early intervention powers are identified as being lacking at present, and we would hope to get those powers, which would complete the powers in relation to the regulation of registered social landlords.”<sup>58</sup>

82. The deputy Minister confirmed that allocations of social housing would be covered in the scope of Matter 11.2. Her official said:

“Allocations are a statutory function of local authorities and there are also nominations in conjunction with registered social landlords at the moment. (...) In addition, the definition of a social housing provider refers specifically to allocations, so it puts it beyond doubt that it is in the frame.”<sup>59</sup>

83. In relation to Matter 11.3, the deputy Minister said:

“[The Matter] is as broad as we could possibly make it (...). Local authorities are obviously mentioned, but any body that provides social housing, under that very broad definition of social housing, would be covered by this”.<sup>60</sup>

84. She went on to say:

“(...) we could legislate in the future to define a social housing provider in a different way in the legislation that we pass. It would not necessarily apply to every body over which we have competence; any legislation that we passed could apply to a narrower group. However, we wanted to ensure that we covered everyone who operates in this fashion, and anyone who might operate in this fashion in the future.”<sup>61</sup>

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<sup>58</sup> RoP, para 34, 10 December 2009, Legislation Committee No.2

<sup>59</sup> RoP, para 40-41, 10 December 2009, Legislation Committee No.2

<sup>60</sup> RoP, para 44, 10 December 2009, Legislation Committee No.2

<sup>61</sup> *Ibid.*

85. In relation to community land trusts, we asked the deputy Minister to confirm whether the term ‘social housing provider’ was intended to cover community land trusts, and whether it allowed for a definition of ‘community land trust’ to be provided for in future legislation.

86. She confirmed that competence under Matter 11.2 would only cover community housing trusts to the extent that such trusts carry out functions of providing housing to people whose needs are not adequately served by the commercial housing market. She also made it clear that Matter 11.2 would not cover current community land trusts if their activities were restricted to the acquisition and management of land, rather than the provision of housing.<sup>62</sup>

87. On the question of a future definition of ‘community land trust’, the deputy Minister confirmed that the proposed Order would confer competence to define this term on the basis that such trusts were providers of social housing or had functions relation to social housing providers or social housing. She said that, were a community land trust to be established in order to acquire or hold land for the purposes of providing social housing, such a trust would be caught by competence under the proposed Order. However, any definition of community land trust would be limited to trusts carrying out functions connected with social housing, rather than furthering the social, economic and environmental interests of a community.<sup>63</sup>

#### *Our view*

88. We note the broad support expressed by stakeholders for the transfer of competence in relation to Matters 11.2 and 11.3, which would enable the Assembly to legislate in respect of the regulation of social housing providers, relevant social housing bodies and in respect of the allocation of social housing.

89. We welcome these Matters as a means of enabling implementation of significant policy initiatives in respect of social housing in Wales, and we encourage the continuation of close working between the Welsh Government and the housing sector in Wales in order to achieve this.

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<sup>62</sup> [Letter from deputy Minister for Housing and Regeneration, 18 January 2010](#)

<sup>63</sup> *Ibid.*

90. We also welcome the broad definitions attached to Matters 11.2 and 11.3, and their importance in ‘future-proofing’ the legislative competence.

91. We note and are content with the deputy Minister’s evidence that the proposed Order does provide for community land trusts but only to the extent that such trusts carry out the functions of providing housing to persons whose housing needs are not adequately served by the commercial housing market and where the activities of the trust are involved in the provision of housing only.

**92. We are content with Matters 11.2 and 11.3 as drafted.**

## **Matter 11.4**

### *Background*

93. Matter 11.4 relates to tenure arrangements for rented social housing, including the secure and assured tenancy regime for tenants of local authorities and Registered Social Landlords respectively.<sup>64</sup>

94. The Law Commission’s report *Renting Homes* (2006) recommended, amongst other things, a simplified system of secure and standard contracts in place of the existing multiplicity of tenancy and license types. This Matter would give the Assembly legislative competence to take forward this recommendation.

95. Competence under this Matter would not extend to private sector tenancies outside social housing.<sup>65</sup>

### *Evidence from consultees*

96. There was a consensus of opinion amongst consultees that the reform of tenure law, particularly in relation to social housing, would be a positive and necessary development.

97. Community Housing Cymru stated in their evidence that:

“Reform is necessary in order to ensure that there is a unitary set of social tenure rights in Wales and to avoid the scope for confusion. One specific issue [which is] important to draw upon is stock transfer and the effect of switching between the two

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<sup>64</sup> Explanatory Memorandum para 52

<sup>65</sup> *Ibid.*

types of tenancies when transferring from a local authority to a RSL [registered social landlord].”<sup>66</sup>

98. They went on:

“If you are a tenant of a local authority you have slightly different rights than if you were a tenant of a housing association and it has been difficult to justify the differences. There is a need to set out clear rights and simple arrangements- therefore we support the idea of creating a tenancy that is just for the social rented sector.”<sup>67</sup>

99. These concerns were articulated from the tenants’ perspective by the Welsh Tenants Federation, which welcomed the “long awaited” development of a single secure social housing tenancy in Wales as a means of “equalising and standardising rights and responsibilities across the sector.”<sup>68</sup>

100. The WLGA, Shelter Cymru, CIH Cymru and Cymorth Cymru all made reference in their written evidence to the potential for a new form of tenure designed specifically for supported accommodation.

101. The WLGA welcomed the prospect of a single social housing tenancy as a means of providing “greater clarity for tenants and prospective tenants (...) and [introducing] a long overdue consistent pattern of rights and obligations for all social landlords and tenants.” CIH Cymru was of a similar view.<sup>69</sup>

102. The WLGA re-enforced this point in their oral evidence stating:

“I would see it as a logical conclusion to the focus that we have in Wales of putting the citizen at the centre of the services that we provide. If you look at it from the point of view of a tenant, there should be uniform obligations and rights across the two sectors.”<sup>70</sup>

103. Shelter Cymru noted that there was a degree of uncertainty within the supported housing sector at present in relation to tenure and it was “apparent that providers are not currently clear about their powers and responsibilities in this area of tenure, while it is also the

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<sup>66</sup> HLG5

<sup>67</sup> *Ibid.*

<sup>68</sup> HLG7

<sup>69</sup> RoP, para 50, 20 January 2010, Legislation Committee No.2

<sup>70</sup> RoP, para 41, 13 January 2010, Legislation Committee No.2

case that the current situation does not enable them to act flexibly to protect residents and staff.” They argued that the powers under Matter 11.4 would provide an opportunity to clarify current practices and procedures in this area.<sup>71</sup>

104. A number of consultees referred to the exclusion of the private rented sector from Matter 11.4. We discuss this matter in more detail in Chapter 2 of our report, paragraphs 33 - 46.

*Evidence from the deputy Minister*

105. In her oral evidence, the deputy Minister said:

“Members will know that if you are a tenant of a local authority, you have slightly different rights than if you were a tenant of a housing association. Most of the time, that does not bother people at all, but, during debates on stock transfer, when tenants think that their rights could be different, even if they are staying with the same landlord, it has been difficult to justify the differences, especially today. In those cases, normally the local authority guarantees that its current tenants will keep all of their current rights, but that does not apply to any new tenants.”<sup>72</sup>

106. She stated that this was something that had been raised with her by tenants’ representatives and argued that “we would have universal support for creating a tenancy that is just for the social rented sector.”<sup>73</sup>

*Our view*

107. We note the strong support expressed by consultees for the transfer of legislative competence in relation to Matter 11.4.

108. We recognise the importance of this Matter in providing the Assembly with the competence to legislate to reform tenure law in Wales relating to social housing, in order to provide clarity and certainty of tenure for current and prospective social housing tenants and for providers of social housing.

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<sup>71</sup> HLG1

<sup>72</sup> RoP, para 47, 10 December 2009, Legislation Committee No.2

<sup>73</sup> RoP, para 48, 10 December 2009, Legislation Committee No.2

109. We further recognise that competence in this area will allow concerns that have been expressed regarding current tenure arrangements in the supported housing sector to be addressed.

110. We refer the deputy Minister to our conclusions regarding tenancy arrangements in the private rented sector, paragraphs 63 - 66.

**111. Subject to our views on the exclusion of the private rented sector from the scope of this Matter, we are content with Matter 11.4 as drafted.**

## **Matter 11.5**

### *Background*

112. Matter 11.5 relates to disposals of land and would enable the Assembly to legislate regarding the Right to Buy, Preserved Right to Buy or Right to Acquire for tenants of local authorities and Registered Social Landlords. Competence under this Matter would also extend to voluntary transfers, including stock transfers.<sup>74</sup>

113. This Matter is broadly similar in scope to the original proposed Order.

### *Evidence from consultees*

114. There was broad support amongst consultees for the transfer of legislative competence under this Matter.

115. In their written evidence, Shelter Cymru stated:

“As Wales will be considering the development of a new system to prevent homelessness, exploring innovative ways of providing access to homes to rent and buy and the means of making the best use of the existing housing stock, it is essential that the Assembly is able to consider all aspects relating to supply and issues which could impact on the stock in the future e.g. the sale of social housing.”<sup>75</sup>

116. They went on:

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<sup>74</sup> Explanatory Memorandum para 53

<sup>75</sup> HLG1

“In this respect, it is important that the Assembly is able to take measures to enable local authorities and housing providers to protect the housing stock (and any new stock) where necessary, whilst developing strategies to increase the provision of suitable homes and empowering households to access home ownership through cost effective and sustainable routes.”<sup>76</sup>

117. They echoed these points in their oral evidence, but drew attention to the need for any future suspension of the Right to Buy in areas of social housing pressure to be “accompanied by a plan”. They stated that consideration needed to be given to how more affordable housing would be made available during any period of suspension.<sup>77</sup>

118. Community Housing Cymru noted that Welsh Ministers had already used powers to reduce the amount of discount available under the Right to Buy and Right to Acquire, and welcomed the fact that this Matter covers voluntary disposals such as stock transfer, as well as statutory disposals such as Right to Buy.<sup>78</sup>

119. In their evidence, the WLGA commented that more than fifty per cent of local authority owned housing, particularly the better stock, had already been sold under the Right to Buy since 1980. They noted that, as a result and specifically in relation to the Right to Buy, legislation in this area was unlikely to have a significant impact on the supply of social housing.<sup>79</sup>

120. They did, however, note that there were “pockets of crucial social housing”, particularly in smaller, more rural areas, which were a valuable asset to the community.<sup>80</sup>

121. They felt that, although the overall impact of legislation in this policy area was unlikely to be significant, “it could have strategic significance in some parts of Wales and we would therefore support the idea of local authorities having the power to suspend the right [to buy], to allow them to address specific issues and needs in their local community.”<sup>81</sup>

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<sup>76</sup> HLG1

<sup>77</sup> RoP, para 157, 13 January 2010, Legislation Committee No.2

<sup>78</sup> HLG5

<sup>79</sup> HLG6

<sup>80</sup> RoP, para 45, 13 January 2010, Legislation Committee No.2

<sup>81</sup> *Ibid.*

122. TPAS, the Welsh Tenants Federation and CIH Cymru all welcomed the competence being sought under this Matter, with the latter stating:

“We firmly support the aspirations of social housing tenants for homeownership, but in our view there are other products and initiatives (particularly flexible tenure) that are more fit-for-purpose in today’s housing system. (...) Suspending the Right to Buy could add to the policy tools at the disposal of local authorities and as such we feel it is appropriate that the Assembly should have the power to allow local authorities to suspend the Right to Buy in areas of housing pressure.”<sup>82</sup>

123. The Welsh Tenants Federation was also supportive of more flexible tenure arrangements that could be provided for under the proposed Order, such as shared ownership, where a tenant could purchase an equity stake in their home. They stated that current rules were weighted against shared ownership agreements as, once the owner-tenants entered into such an agreement, they became responsible for all repairs to the property.<sup>83</sup>

124. They argued:

“We need a fairer system that helps to build social mobility in our communities so that people (,,,) can buy an equity stake in their homes to use as a capital asset for later pension provision or to see them through a crisis of some sort, There would also be a benefit to the public purse, because (...) housing benefit would be reduced as a consequence.”<sup>84</sup>

125. In their written evidence, the Presbyterian Church of Wales highlighted the problems in accessing affordable housing in rural areas of Wales as a result of the Right to Buy and said that, because of this, they believed it was “vital” for the Assembly to have legislative competence in this area.<sup>85</sup> CIH Cymru was of a similar view.<sup>86</sup>

126. In their evidence, Shelter Cymru also raised the issue of Community Right to Buy. They explained that this was something that had been introduced in Scotland several years ago, and involved “a

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<sup>82</sup> HLG8

<sup>83</sup> RoP, para 158, 159, 20 January 2010, Legislation Committee No.2

<sup>84</sup> RoP, para 159, 20 January 2010, Legislation Committee No.2

<sup>85</sup> HLG12

<sup>86</sup> RoP, para 68, 20 January 2010, Legislation Committee No.2

community being able to have a first refusal, almost, on buying any land that might become available in its area.”<sup>87</sup>

127. They went on:

“This is something that has gone forward in Scotland, not entirely successfully, but there are things that we might learn from the Scottish experiment. Community right to buy works very well with, for example, the issue of community land trusts and in terms of providing more affordable and sustainable housing for people in need in local communities.”

128. They suggested that Community Right to Buy was something that should be considered in relation to the proposed Order, as “(...) like all good law, (...) you do not have to use it all the time, you just need to know that it is there (...)”<sup>88</sup>

129. They did, however, say that they would not want to see the passage of the proposed Order delayed because of this.<sup>89</sup>

*Evidence from the deputy Minister*

130. In the Explanatory Memorandum, the deputy Minister stated, “since the introduction of the Right to Buy (...) over 140,000 dwellings have been purchased by tenants in Wales. This has substantially reduced the amount of social housing available for rent by people in housing need”.<sup>90</sup>

131. She went on to say that that Welsh Ministers have used their executive powers to make secondary legislation to “develop a distinctive approach” for Wales, but that the proposed Order would provide the Assembly with legislative competence for the housing policy area as a whole, addressing the “piecemeal nature of executive powers, improv[ing] the clarity of the devolution settlement and ensur[ing] that the National Assembly has the flexibility to improve on current arrangements. (...) It also ensures that the Welsh Assembly Government could also adopt a more joined-up approach to policy development in line with (...) policy aims.”<sup>91</sup>

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<sup>87</sup> RoP, para 119, 13 January 2010, Legislation Committee No.2

<sup>88</sup> RoP, para 120, 13 January 2010, Legislation Committee No.2

<sup>89</sup> RoP, para 101, 13 January 2010, Legislation Committee No.2

<sup>90</sup> Explanatory Memorandum, para 34

<sup>91</sup> Explanatory Memorandum, para 37

132. As part of her oral evidence, the deputy Minister expanded on the information provided in the Explanatory Memorandum as to the scope and effect of Matter 11.5:

“Members will recognise Matter 11.5 as the scope of the previous proposed Order, so this is a general power over the disposals of registered social landlords. This covers stock transfer, the right to buy, the preserved right to buy and the right to acquire. So, it covers all of those statutory and voluntary disposals.”<sup>92</sup>

133. We asked the deputy Minister why she had felt it necessary to insert the list of enactments in Matter 11.5(c). Her official explained:

“Although most housing will be held by social housing providers, there may be certain parcels of land that are not. That is the reason, notwithstanding the breadth of paragraphs (a) and (b), for the inclusion of the enactments in paragraph (c). (...) It is rather complicated, admittedly, but it is there for the avoidance of doubt, to ensure that all land that is or should be treated as land that is connected to social housing is covered.”<sup>93</sup>

134. We asked the deputy Minister whether the proposed Order extended to Community Right to Buy. She confirmed that it did not, saying:

“I understand the Community Right to Buy was developed [in Scotland] to address issues involving small communities situated on large private estates (...) where the landlord was often absent. As far as I am aware, we do not have such estates in Wales. Neither have I received any representations to introduce a similar right in Wales.”<sup>94</sup>

### *Our view*

135. We note the broad support expressed by consultees for the legislative competence as provided for in Matter 11.5.

136. We welcome this Matter as a means of acquiring legislative competence for the Assembly in a policy area where a range of piecemeal executive powers already exist. We recognise the important

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<sup>92</sup> RoP, para 62, 10 December 2009, Legislation Committee No.2

<sup>93</sup> RoP, para 64 - 68, 10 December 2009, Legislation Committee No.2

<sup>94</sup> [Letter from deputy Minister for Housing and Regeneration, 18 January 2010](#)

democratic function this will enable the Assembly to fulfil in the development of a comprehensive housing policy for Wales.

**137. In relation to Community Right to Buy, we note the deputy Minister's reasons for not seeking legislative competence in this area. However, we are of the view that this may complement the range of powers in relation to disposals being sought under this proposed Order and, in view of the evidence we have received, we ask the deputy Minister to give consideration to extending the scope of the proposed Order to include Community Right to Buy relating to social housing.**

**138. Subject to our comments on Community Right to Buy, we are content with Matter 11.5 as drafted.**

## **Matter 11.6**

### *Background*

139. Matter 11.6 relates to the delivery of housing-related support to those who need help to maintain or to develop the ability to occupy their home. This Matter includes the provision of advice and non-financial assistance to persons in respect of skills that are relevant to their ability to live independently or more independently than they otherwise might.<sup>95</sup>

### *Evidence from consultees*

140. Once again, there was broad support for the transfer of legislative competence under this Matter.

141. We were informed by consultees that housing-related support is funded primarily through the Supporting People programme, launched in 2003. Prior to the introduction of that programme, "organisations would see themselves as mental health organisations that did housing, learning disability organisations that did housing or older people organisations that did housing; now a sector has been created through the single funding stream and everyone is coming together."<sup>96</sup>

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<sup>95</sup> Explanatory Memorandum para 54

<sup>96</sup> RoP, para 159, 13 January 2010, Legislation Committee No.2

142. In December 2009, the deputy Minister announced her intention to commission an independent review of housing related support.<sup>97</sup>

143. In expressing their support for the Matter, Cymorth Cymru noted that housing-related support was closely linked to other policy areas such as social care. They said they believed the proposed Order could provide:

“(…) an opportunity to strengthen links across these two areas of policy so that the needs of vulnerable people are better met within our community.”<sup>98</sup>

144. The Welsh Tenants Federation, Community Housing Cymru and TPAS Cymru were all similarly concerned with the support provided to vulnerable people.<sup>99</sup>

145. Cymorth Cymru also highlighted policy developments in relation to specific client groups, such as older vulnerable people, stating that the proposed Order would enable them to “ensure housing and support services maximise their contribution to helping older people remain as independent as possible.”<sup>100</sup>

146. Darran Daye, the Supporting People Manager for Rhondda Cynon Taff County Borough Council, stated in his evidence that he thought that Matter 11.6 would “help ensure the continued provision of housing relating support within a clear statutory framework.” He argued that this was particularly important in the current financial climate, and that without such a framework setting out the requirements of local authorities to provide appropriate support, “the future direction of the [Supporting People] programme may be at risk.”<sup>101</sup>

147. In their evidence, however, the National Supporting People Network (SPIN) said “whilst the majority of the network would welcome the widening of the Assembly’s powers in relation to housing related support, (…) there are certain concerns within some authorities in

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<sup>97</sup> Welsh Government, Jocelyn Davies (deputy Minister for Housing), *Review of Housing Related Support*, Cabinet Written Statement, 2 December 2009

<sup>98</sup> HLG2

<sup>99</sup> HLG7, HLG5, HLG9 respectively

<sup>100</sup> HLG2

<sup>101</sup> HLG3

relation to any legislation which has an impact on Supporting People.”<sup>102</sup>

148. They went on:

“(…) one of the great benefits of Supporting People services is that they currently sit outside the statutory framework. This allows services to be flexible, to be delivered to those people who often ‘fall through the gaps’ of other provision and are easily accessible without the need for the individual to undergo lengthy assessment / eligibility criteria.”<sup>103</sup>

149. They said that some of their members would not wish to see these current strengths threatened by being drawn into a legal process which could result in people being excluded from services.<sup>104</sup>

150. Many consultees made reference in their evidence to the independent review commissioned by the deputy Minister, including CIH Cymru, who “strongly welcomed” the review into housing related support, saying that, in their view, it was “important that the Assembly has the appropriate power to be able to implement any recommendations and proposals generated by this review when it reports back later this year.”<sup>105</sup>

151. This view was echoed by Cymorth Cymru, who felt that policy divergence in England and Scotland in relation to housing-related support meant that it was important for the Assembly to have the powers to implement the recommendations of the review.<sup>106</sup>

152. The WLGA, however, said they were not clear of the need for legislation in this area, and suggested the adoption of a commissioning framework<sup>107</sup> as a way of ensuring consistent standards in housing related support.

153. However, in their oral evidence, they acknowledged that, as it would not be possible to predict the recommendations of the housing related support review, and “(…) as a fail-safe, it might be appropriate

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<sup>102</sup> HLG11

<sup>103</sup> *Ibid.*

<sup>104</sup> *Ibid.*

<sup>105</sup> HLG8

<sup>106</sup> RoP, para 160, 13 January 2010, Legislation Committee No.2

<sup>107</sup> The WLGA cite the *Fulfilled Lives, Support Communities*’ commissioning framework for social care services, currently out to consultation.

to have these powers, even though we might not be clear at this point in time what those recommendations might be.”<sup>108</sup>

*Evidence from the deputy Minister*

154. In the Explanatory Memorandum, the deputy Minister sets out that legislative competence in relation to Matter 11.6 would “enable coherent legislation to be developed to take forward the Assembly Government’s policy direction for housing-related support (...) provided to those who need help to maintain, or develop the ability to occupy their home.”<sup>109</sup>

155. It goes on to explain that Welsh Ministers currently use general welfare-related powers to provide grants in this area, via the Supporting People programmes, to local authorities and the voluntary sector. This housing-related support is provided to enable people to live independently, or more independently, than they otherwise might.

156. Finally, it states:

“Competence in this area would complement the legislative competence relating to regulation, homelessness and social housing tenancies.”<sup>110</sup>

157. The deputy Minister expanded on the points made in the Explanatory Memorandum in her oral evidence, saying:

“This [Matter] is about support to help people to stay independent, and (...) most of us would identify that with Supporting People, although it does go somewhat wider than that. Members will know that significant resources are given to Supporting People every year. Currently, it is £140 million. It is a large sum, and when a Government gives money out in grant, you can put conditions on it, but it is far better and more transparent if we consider that there could be legislation in this area.”<sup>111</sup>

158. In light of concerns raised by this committee and other legislation committees about the drafting of previous Orders, we

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<sup>108</sup> RoP, para 51, 13 January 2010, Legislation Committee No.2

<sup>109</sup> Explanatory Memorandum, para 31

<sup>110</sup> *Ibid.*

<sup>111</sup> RoP, para 83, 10 December 2009, Legislation Committee No.2

asked the deputy Minister to clarify the meaning of the words ‘includes, in particular’, used in the Matter. Her official informed us:

“There is a legal maxim (...) that states that where you express one thing, it excludes another. The concern has been raised in relation to the drafting of previous LCOs that if you say ‘includes’, the list could exclude other items, even though you have said ‘includes’. In effect, it is a drafting device that the Office of the Welsh Legislative Counsel uses to overcome that. Therefore, although it [the Matter] refers to advice and non-financial assistance, it does not just refer to that; it can include other matters.”<sup>112</sup>

159. The Deputy Minister went on to say:

“I think that it is to have legal certainty that this list is not exhaustive. In ordinary, everyday language, if I said ‘includes’ to you, you would know that it means other things, but lawyers prefer to say ‘in particular’ to make something absolutely legally certain that other things are also included.”<sup>113</sup>

#### *Our view*

160. We note that, despite some reservations expressed by a minority, there was broad support amongst consultees for the transfer of legislative competence in relation to Matter 11.6.

161. We recognise that Matter 11.6 complements other Matters included in this proposed Order and is part of a suite of housing-related legislative powers being sought for the Assembly.

162. We welcome this Matter as means of allowing valuable housing-related support to be provided to persons to enable them to live independently or more independently than they otherwise might.

**163. We are content with Matter 11.6 as drafted.**

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<sup>112</sup> RoP, para 72, 10 December 2009, Legislation Committee No.2

<sup>113</sup> RoP, para 73, 10 December 2009, Legislation Committee No.2

## Matter 11.7

### *Background*

164. Matter 11.7 would provide the Assembly with legislative competence over the provision of caravan sites, by local authorities, for Gypsies and Travellers.<sup>114</sup>

### *Evidence from consultees*

165. There was broad support amongst consultees for the inclusion of this Matter in the proposed Order.

166. The Welsh Tenants Federation, in supporting the approach taken to legislate in this area, noted that approximately ten per cent of Gypsies and Travellers in Wales do not have accommodation sites.<sup>115</sup>

167. CiH Cymru and Community Housing Cymru<sup>116</sup> both expressed their support for the inclusion of this provision in the proposed Order, with CiH Cymru saying:

“We were pleased to see the Gypsy and Traveller Strategy (currently out for consultation) set out a proposed policy framework and incentives to aid local authorities to deliver appropriate sites, however we also feel it is important that the Assembly has the power to legislate in this area should this be required in the future.”<sup>117</sup>

168. In their oral evidence, CiH Cymru noted that local authorities often faced difficulties when assessing the accommodation needs of the Gypsy and Traveller community as the identification of suitable sites was a contentious issue.<sup>118</sup>

169. They went on to say:

“As it is a contentious issue, it often depends on the softer brokering, but we believe that there sometimes needs to be a stick involved in this process (...).”<sup>119</sup>

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<sup>114</sup> Explanatory Memorandum para 55

<sup>115</sup> HLG7

<sup>116</sup> HLG5 & HLG8

<sup>117</sup> HLG8

<sup>118</sup> RoP, para 76, 20 January 2010, Legislation Committee No.2

<sup>119</sup> *Ibid.*

170. These views were echoed by the Welsh Tenants Federation, who noted that some local authorities have been “deemed to be dragging their feet in terms of the provision of sites.”<sup>120</sup> They said:

“It is important for the National Assembly for Wales to have a stick to wave to concentrate minds to provide those facilities (...).”<sup>121</sup>

171. Shelter Cymru also agreed that the competence being sought in relation to this Matter was appropriate.

172. They said that, whilst they believed the best way to deliver support and the provision of suitable sites for the Gypsy and Traveller community was through a partnership approach with local authorities:

“(...) it seems appropriate that we should also have in Wales the powers to enforce that if necessary.”<sup>122</sup>

173. In expressing their support for this Matter, however, a number of consultees highlighted current difficulties which might influence the effectiveness of this Matter.

174. Although generally supportive of the introduction of legislative competence in this area, the WLGA stated in their written evidence that work in this area “ continues to present local government with a real community leadership challenge.”<sup>123</sup>

175. They expanded on this in their oral evidence, saying:

“There are examples of local authorities trying to develop new sites, and it is the feedback and concerns raised by the local community that have prevented some of them from being developed.”<sup>124</sup>

176. Although they supported the points made by Shelter Cymru about the importance of a partnership approach to the provision of sites for Gypsies and Travellers, they did, however, note that:

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<sup>120</sup> RoP, para 168, 20 January 2010, Legislation Committee No.2

<sup>121</sup> *Ibid.*

<sup>122</sup> RoP, para 172-173, 13 January 2010, Legislation Committee No.2

<sup>123</sup> HLG6

<sup>124</sup> RoP, para 54, 13 January 2010, Legislation Committee No.2

“(…) we appreciate that local authorities are making progress on this issue but it is slow, and further progress needs to be made.”

177. Also commenting on the difficulties which have arisen in developing policy in this area, the Welsh Tenants Federation said that, whilst they supported the principle of community engagement in planning decisions:

“(…) NIMBYism [Not In My Back Yard] should not override the National Assembly for Wales’ duty in respect of equality, fairness and social justice and its role to ensure provisions are made under the [Local Development Plans].”<sup>125</sup>

*Evidence from the deputy Minister*

178. In her evidence, the deputy Minister said:

“The Gypsy and Traveller strategy has been developed, and financial incentives are in place for local authorities. This is a provision that I hope the National Assembly will never need to legislate under, but the very fact that there are powers that could relate to local authorities’ provision of sites means that those sites, where there is an identified need, will exist without the need to resort to legislation.”<sup>126</sup>

179. She went on to say:

“(…) this really is a clear signal that these powers... could be used by a future Assembly or Government if the strategy and the incentives that are in place do not produce the sites that have been assessed to be needed.”<sup>127</sup>

180. The deputy Minister also said that local authorities would welcome this new requirement to provide sites, suggesting that:

“(…) the fact that we will be able to legislate might crystallise local authorities’ minds in identifying suitable sites.”<sup>128</sup>

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<sup>125</sup> HLG7

<sup>126</sup> RoP, para 78, 10 December 2009, Legislation Committee No.2

<sup>127</sup> *Ibid.*

<sup>128</sup> RoP, para 81, 10 December 2009, Legislation Committee No.2

### *Our view*

181. We note that broad support exists amongst consultees for the transfer of legislative competence in this area to the Assembly.

182. We acknowledge the evidence received from consultees advocating a partnership approach between community groups, relevant organisations and local authorities as the preferable way by which to secure appropriate sites for Gypsies and Travellers.

183. However we also note the broad support for the Assembly acquiring legislative competence under this Matter as a means of providing a legislative safeguard in the event that a non-statutory approach does not deliver the aim of securing appropriate sites for the Gypsy and Traveller community.

184. **We are content with Matter 11.7 as drafted.**

## **Matter 11.8**

### *Background*

185. Matter 11.8 would provide the National Assembly with legislative competence in relation to homelessness.<sup>129</sup>

### *Evidence from consultees*

186. Community Housing Cymru and CiH Cymru both expressed support for the inclusion of this Matter in the proposed Order and for the principle of devolving legislative competence relating to homelessness to the National Assembly.<sup>130</sup>

187. In their written evidence, Community Housing Cymru said:

“CHC supports the broad definition of homelessness which would allow complete reform of the regulatory framework for homelessness-functions currently held are not necessarily cohesive to develop the relevant policy.”<sup>131</sup>

188. They reiterated these points in their oral evidence, saying:

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<sup>129</sup> Explanatory Memorandum para 56

<sup>130</sup> HLG5 & HLG8

<sup>131</sup> HLG5

“(…) the [homelessness] prevention agenda would be greatly bolstered by the Assembly gaining legislative competence through this broadly scoped proposed legislative competence Order.”<sup>132</sup>

189. CiH Cymru felt that, in Wales, there was a “(…) positive precedent in developing a homelessness policy that is specific to Wales.”<sup>133</sup>

190. Whilst noting the significance of the Welsh government’s 10 year homelessness plan, they argued that it was important for the Assembly to have legislative competence in this area in order to follow that plan through.<sup>134</sup>

191. They went on to say:

“Prevention is a significant part of that area: we would support [Community Housing Cymru’s] view that prevention is better than cure.”<sup>135</sup>

192. In their evidence, the Welsh Tenants Federation also noted the importance of the Welsh government’s 10 year homelessness plan, arguing that it was important to legislate in this area in order to specifically address the issues of prevention and intervention.<sup>136</sup>

193. The Presbyterian Church of Wales also welcomed the intention of the proposed Order to enable Welsh Ministers to do more to prevent homelessness, saying:

“There is no doubt that a better definition of homelessness is needed and we are in favour of the broader definition that is suggested.”<sup>137</sup>

194. In their written evidence, Shelter Cymru offered their full support for this Matter and noted their dissatisfaction with current legislation. They said:

“The powers in the [proposed] Order will enable the Assembly to take a coherent and comprehensive approach required to questions of supply, advice and support, and homelessness

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<sup>132</sup> RoP, para 91, 20 January 2010, Legislation Committee No.2

<sup>133</sup> RoP, para 86, 20 January 2010, Legislation Committee No.2

<sup>134</sup> *Ibid.*

<sup>135</sup> *Ibid.*

<sup>136</sup> RoP, para 170, 20 January 2010, Legislation Committee No.2

<sup>137</sup> HLG12

prevention and lead on a new approach to homelessness in Wales focusing on helping more people avoid homelessness and when homelessness occurs reduce repeat/generational homelessness.”<sup>138</sup>

195. They expanded on this in their oral evidence, arguing that legislation (developed in the 1970s) was no longer appropriate and suggesting that the ‘built-in barriers’, i.e. the issues surrounding priority need and intentionality, meant current legislation did not assist homeless people.<sup>139</sup> Cymorth Cymru agreed with these views.<sup>140</sup>

196. In their written submission, Stonewall Cymru stated that:

“Many lesbian, gay and bisexual people have been told by housing providers that they have made themselves intentionally homeless, if they are unwilling to explain the reasons behind their housing need, as they are often afraid of further discrimination (...)”<sup>141</sup>

197. They said they supported the proposal for legislative competence in this area and were encouraged by this Matter, which would allow the Assembly to develop legislation in relation to the prevention of homelessness and issues of intentionality.<sup>142</sup>

198. The National Homelessness Network also welcomed the transfer of legislative competence regarding homelessness, but raised some concerns. They said that local authorities in Wales had worked successfully in recent years to reduce homelessness figures and that any legislative powers obtained “(...) should be used to continue this effective work.”<sup>143</sup>

199. They suggested that new legislative powers could be used to allow Councils to house the homeless in accommodation provided by the private sector, while also changing the current allocation policies to avoid the “perverse incentive” for people to declare themselves homeless in order to receive priority status.<sup>144</sup>

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<sup>138</sup> HLG1

<sup>139</sup> RoP, para 176-177, 13 January 2010, Legislation Committee No.2

<sup>140</sup> RoP, para 184, 13 January 2010, Legislation Committee No.2

<sup>141</sup> HLG4

<sup>142</sup> *Ibid.*

<sup>143</sup> HLG10

<sup>144</sup> *Ibid.*

200. The WLGA welcomed the legislative competence under this Matter in the hope that it would provide maximum flexibility in developing an effective policy response.<sup>145</sup>

201. They did, however, raise some concerns regarding the problems experienced in Scotland as a consequence of reviewing homelessness legislation.<sup>146</sup> They noted that, in Scotland, the Scottish Government sought to increase the rights of homeless people, ensuring that all persons in housing need had access to social housing. They said that this had led to an increase in demand for social housing and had resulted in many people making themselves homeless in order to ensure they received priority access to housing.<sup>147</sup>

202. They went on:

“(...) we are concerned (...) that any proposals that are brought forward have a clear rationale behind them and require a full impact assessment to be carried out before changes are made so that we do not have the unintended consequences that we have seen in Scotland.”<sup>148</sup>

*Evidence from the deputy Minister*

203. In her evidence, the deputy Minister confirmed that Matter 11.8 would provide the Assembly with powers to completely reform current homelessness legislation. She said:

“This is one of those areas in which Welsh Ministers hold specific functions, and because they are specific, they might not necessarily join together in a coherent bundle, if you like, that would allow one to develop policy in a comprehensive way. It is therefore important that this is an area where we have that.”<sup>149</sup>

204. She added:

“Our focus is on prevention. The current legislation is about dealing with people once they become homeless. We are trying to have policies that talk about prevention, using powers that

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<sup>145</sup> HLG6

<sup>146</sup> RoP, para 59, 13 January 2010, Legislation Committee No.2

<sup>147</sup> RoP, para 28-29, 13 January 2010, Legislation Committee No.2

<sup>148</sup> RoP, para 59, 13 January 2010, Legislation Committee No.2

<sup>149</sup> RoP, para 85, 10 December 2009, Legislation Committee No.2

are focused on what you do when someone becomes homeless.”<sup>150</sup>

205. She went on to say:

“There are also currently no powers for the National Assembly in this respect, just with the Welsh Ministers. So, I feel that it is about time that we are able to propose legislation in this area that better matches what we are trying to do and which will be more democratic in as much as it will be open and transparent and that it will be legislation.”<sup>151</sup>

*Our view*

206. We note the broad support that exists for the transfer of competence as provided for under Matter 11.8, and believe the potential for greater flexibility in developing effective policy in relation to homelessness is to be welcomed and encouraged.

207. We note that many consultees are encouraged by this Matter in that it will allow the Assembly to develop legislation in relation to the prevention of homelessness and issues of intentionality.

208. We note the evidence from consultees regarding the reform of homelessness legislation in Scotland and the subsequent issues which arose in relation to social housing, and feel there are lessons to be learned.

209. We are in agreement with consultees that the prevention of homelessness is more beneficial and of greater strategic significance than methods deployed to support persons once they become homeless, and therefore welcome the intention of the proposed Order to enable Welsh Ministers to do more to prevent homelessness.

**210. We are content with Matter 11.8 as drafted.**

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<sup>150</sup> RoP, para 85, 10 December 2009, Legislation Committee No.2

<sup>151</sup> *Ibid.*

## Matter 12.18

### *Background*

211. Matter 12.18 would enable the Assembly to pass legislation relating to the Council Tax charges on dwellings that are not the main residence of an individual.<sup>152</sup>

### *Evidence from consultees*

212. In their written evidence, CIH Cymru noted:

“At least 26,000 homes in Wales have been empty for over 6 months (...). There is a need to ensure that owners are both encouraged, and where appropriate, required to unlock the potential of this wasted resource.”<sup>153</sup>

213. They argued that the ability of local authorities to charge higher council tax on empty properties, afforded by this provision in the proposed Order, would:

“(...) increase the range of powers available to local authorities in bringing empty homes back in to occupation and would help them to make better use of the housing stock in their area.”<sup>154</sup>

214. They went on to say that additional income as a result of increased council tax charges on empty or second homes should be used for the provision of additional affordable housing.<sup>155</sup>

215. In their oral evidence, Community Housing Cymru said that with regard to dealing with the issues of empty homes they felt that the proposed Order was “(...) perfectly fit for purpose.”<sup>156</sup>

216. The WLGA also supported the transfer of legislative competence in this area and suggested that it was an appropriate way to tackle issues surrounding second homes and empty homes.<sup>157</sup>

217. They said:

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<sup>152</sup> Explanatory Memorandum para 57

<sup>153</sup> HLG8

<sup>154</sup> *Ibid.*

<sup>155</sup> *Ibid.*

<sup>156</sup> RoP, para 99, 20 January 2010, Legislation Committee No.2

<sup>157</sup> RoP, para 62, 13 January 2010, Legislation Committee No.2

“The latest figures show that there are somewhere in the region of 18,000 empty homes across Wales, and obviously, that is a huge potential resource.”<sup>158</sup>

218. Commenting on the “double benefit” which could be achieved through the power for local authorities to vary council tax charges, the WLGA said:

“It would act as a positive incentive to encourage those who were perhaps inclined through inertia to leave a property empty to do something with it (...) [whilst also creating] a potential source of income to allow local authorities to better resource this area of activity (...)”<sup>159</sup>

219. Shelter Cymru also noted the importance of the Assembly being able to give local authorities powers that would encourage owners to make better use of empty homes.<sup>160</sup>

220. In their oral evidence, they said:

“(...) if the Assembly were to acquire powers over empty homes, it could simplify [current powers] and make it easier and more accessible for local authorities to use.”<sup>161</sup>

221. Community Housing Cymru also argued that local authorities required more flexible powers to deal with issues surrounding empty and second homes, suggesting that this would reflect their strategic housing function.<sup>162</sup>

222. In their oral evidence, the Welsh Tenants Federation said:

“It is estimated that between 4,000 and 5,000 new social housing properties need to be developed per year (...). We feel that those needs could be met by having the power to legislate in the area of empty homes.”<sup>163</sup>

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<sup>158</sup> RoP, para 66, 13 January 2010, Legislation Committee No.2

<sup>159</sup> RoP, para 68, 13 January 2010, Legislation Committee No.2

<sup>160</sup> HLG1

<sup>161</sup> RoP, para 188, 13 January 2010, Legislation Committee No.2

<sup>162</sup> HLG5

<sup>163</sup> RoP, para 173, 20 January 2010, Legislation Committee No.2

223. The Welsh Tenants Federation also felt the proposed powers which would enable local authorities to vary council tax charges were to be welcomed.<sup>164</sup>

224. The Presbyterian Church in Wales made similar comments and said they supported the intention to give more flexibility to local authorities in relation to housing strategies. They went on to say:

“It is important to ensure that the proposed powers enable councils to tackle problems such as that of summer homes/second homes in Wales. This is a big problem in rural areas.”<sup>165</sup>

*Evidence from the deputy Minister*

225. In her evidence, the deputy Minister said that this Matter would give local authorities greater flexibility in varying council tax on a residence that was not the main dwelling. She said:

“Even though there are considerable executive powers in relation to council tax, it cannot be varied above the statutory limit and they are just executive functions that rest with the Ministers. This [Matter] would allow us to make legislation in that area.”<sup>166</sup>

226. The deputy Minister’s official added:

“The council tax dimension [of this Matter is] (...) an attempt at discretionary power for local authorities (...). It offers the potential to generate funds that could be invested in affordable housing to try to offset the effects of second homes in some parts of Wales.”<sup>167</sup>

227. The deputy Minister went on to say:

“Members will probably remember the Joseph Rowntree Foundation report into housing in rural Wales, which suggested that the council tax system would be able to yield resources that the local authority would have at its disposal and use them for affordable housing, and that it might be a more practical way forward than using a system that could be unenforceable

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<sup>164</sup> RoP, para 175, 20 January 2010, Legislation Committee No.2

<sup>165</sup> HLG12

<sup>166</sup> RoP, para 90-91, 10 December 2009, Legislation Committee No.2

<sup>167</sup> RoP, para 93, 10 December 2009, Legislation Committee No.2

and from which we would get no benefit. That is the reason why we have gone for this.”<sup>168</sup>

### *Our view*

228. We acknowledge the support that exists amongst consultees for the conferral of legislative competence in this area.

229. We welcome this Matter as an appropriate way of tackling issues surrounding second homes, and note that consultees have attributed significant importance to the Assembly being able to give local authorities powers to encourage owners to make better use of empty homes.

230. **We are content with Matter 12.18 as drafted.**

## **Exceptions to legislative competence**

### *Background*

231. The proposed Order does not set out any exceptions to the competence which it would confer<sup>169</sup>.

### *Evidence from consultees*

232. We received no evidence from consultees on the question of exceptions to competence.

### *Evidence from the deputy Minister*

233. The Explanatory Memorandum sets out that there are no exceptions to the competence to be conferred on the Assembly by the proposed Order. However, it states:

“(...) that competence would need to be considered against the general exceptions set out in paragraph A1 of Part 2 of Schedule 5 to the 2006 Act (which was inserted by the National Assembly for Wales (Legislative Competence) (Exceptions to Matters) Order 2009). This means that social security, including Housing Benefit and Council Tax Benefit, is an exception which applies to all matters, including those in this proposed LCO.”<sup>170</sup>

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<sup>168</sup> RoP, para 94, 10 December 2009, Legislation Committee No.2

<sup>169</sup> Explanatory memorandum para 58

<sup>170</sup> *Ibid.*

234. The deputy Minister expanded on this in her oral evidence, saying:

“When we were looking at the proposed Order as it was developing, we did not want to have exceptions if possible. There could have been an exception in terms of housing benefit, but I draw Members’ attention to matter 11.6, which refers to non-financial assistance. Therefore, there was no need to put in an exception about housing benefits. So, it is just worded in a way that does not require an exception.”

235. Her legal adviser went on:

“The exceptions Order adds floating exceptions to fields 10 and 15 of Schedule 5. The ones that we thought would be of most relevance were the independent living funds and social security exceptions, but, as the Deputy Minister said, we feel that that is covered by the reference to non-financial assistance in matter 11.6.”

*Our view*

**236. We note the evidence from the deputy Minister in relation to exceptions to legislative competence.**

## **4. Interpretation provisions in the proposed Order**

### *Background*

237. The proposed Order includes interpretation provisions which will apply to Field 11 as a whole. The following provisions are included:

“caravan site” means—

- (a) land on which a caravan or other mobile accommodation (apart from a tent) is stationed for the purposes of human habitation, and
- (b) land which is used in conjunction with land falling within paragraph (a) of this definition;

“local authority” means a county council or a county borough council in Wales;

“relevant social housing body” means a person (if, or insofar as, it is not a social housing provider) which has functions relating to—

- (a) social housing providers, or
- (b) social housing;

but if the person has some functions that do not relate to social housing providers or social housing, the person is a relevant social housing body only insofar as its functions relate to social housing providers or social housing;

“social housing” means any housing provided by a social housing provider;

“social housing provider” means—

- (a) a local authority, and
- (b) a person (other than a local authority) providing housing to people whose needs are not adequately served by the commercial housing market (whether or not it also provides housing to other people and whether or not it also has functions in addition to providing housing);

but, if a local authority or other person has some functions that do not relate to the provision or allocation of housing, the authority or other person is a social housing provider only insofar as its functions relate to the provision and allocation of housing.

### *Evidence from consultees*

238. We did not receive any evidence to suggest that the interpretation provisions were not a welcome inclusion in the proposed Order, or that the definitions included were inappropriate.

239. In their oral evidence, Cymorth Cymru stated that they did not believe the interpretation provisions posed any problems and that the provisions appeared to be clear.<sup>171</sup> Shelter Cymru agreed with these views.<sup>172</sup>

240. Both CIH Cymru and TPAS Cymru<sup>173</sup> commented that the definitions included in the ‘Interpretation of this field’ paragraph were clear, while Community Housing Cymru suggested that “definition by function makes it clearer than the approach that was adopted previously [in the 2008 proposed Order relating to Affordable Housing<sup>174</sup>].”<sup>175</sup>

241. Community Housing Cymru said:

“The definition of ‘social housing provider’ is sufficiently flexible to allow for new bodies to be brought in the future.”<sup>176</sup>

242. The Welsh Tenants Federation made a similar point, saying that the proposed definition of social housing “fits” the current broad nature of social housing.<sup>177</sup>

243. The WLGA noted that they were content with the definitions in the proposed Order, adding that were:

“(…) particularly pleased that the approach being taken is to have a flexible approach to the term ‘social landlord’, because we very much support the direction of travel of the national housing strategy.”<sup>178</sup>

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<sup>171</sup> RoP, para 198, 13 January 2010, Legislation Committee No.2

<sup>172</sup> RoP, para 199, 13 January 2010, Legislation Committee No.2

<sup>173</sup> HLG8 & HLG9

<sup>174</sup> Proposed National Assembly for Wales (Legislative Competence) (No.5) Order 2008

<sup>175</sup> HLG5

<sup>176</sup> *Ibid.*

<sup>177</sup> RoP, para 181, 20 January 2010, Legislation Committee No.2

<sup>178</sup> RoP, para 74, 13 January 2010, Legislation Committee No.2

*Evidence from the deputy Minister*

244. When asked to explain the interpretation provisions included in the proposed Order, the deputy Minister said:

“This is the broadest and simplest that we can get it, using the natural interpretation of those words. Some of (...) [the terms are] legalistic because of the requirement of being certain.”<sup>179</sup>

245. Her official added that the terms that are defined are “(...) the ones that we considered would not be sufficiently clear from the context in the proposed LCO.”<sup>180</sup>

246. With regard to the terms ‘social housing providers’ and ‘relevant social housing bodies’, the deputy Minister’s official said:

“(...) the intention was to move away from the construction that was adopted in the affordable housing LCO, which made a specific reference to bodies by way of legislation. The problem with that was that if the enactment cited changed, you would need to look at changing the wording in the LCO. So, giving it a definition by virtue of describing the functions made it clearer than the approach that was adopted previously.”<sup>181</sup>

247. He went on to say:

“Another point that is worth making is that the definition of ‘social housing provider’ is sufficiently flexible to allow for new bodies to be brought in future. We also wanted to ensure that it was future-proofed.”<sup>182</sup>

248. With regard to the interpretation of ‘caravan sites’ and the exclusion of tents, the deputy Minister clarified that the Matter referred to the provision of sites and not the management of sites and that they have tried to preserve the ongoing statutory definition contained in the Caravan Sites and Control of Development Act 1960.<sup>183</sup>

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<sup>179</sup> RoP, para 101, 10 December 2009, Legislation Committee No.2

<sup>180</sup> RoP, para 100, 10 December 2009, Legislation Committee No.2

<sup>181</sup> RoP, para 101, 10 December 2009, Legislation Committee No.2

<sup>182</sup> RoP, para 102, 10 December 2009, Legislation Committee No.2

<sup>183</sup> RoP, para 106-107, 10 December 2009, Legislation Committee No.2

249. The deputy Minister's official confirmed there were no interpretation provisions included in other proposed Orders or UK Bills currently in progress that applied to the proposed Order.<sup>184</sup>

*Our view*

250. We note there is broad support for the inclusion of the interpretation provisions on the face of the proposed Order.

251. We also note the comments made by consultees that the definitions included in the proposed Order are clear and appropriate.

252. We recognise that concerns regarding the definition of social housing provider were raised by consultees during scrutiny of the original proposed Order relating to housing<sup>185</sup>, and welcome the fact that the deputy Minister has addressed these concerns in this proposed Order.

**253. We are content with the interpretation provisions as drafted.**

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<sup>184</sup> RoP, para 109, 10 December 2009, Legislation Committee No.2

<sup>185</sup> Proposed National Assembly for Wales (Legislative Competence) (No.5) Order 2008

## 5. Other issues

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### Resources

#### *Evidence from consultees*

254. In their written evidence, the WLGA drew our attention to the question of resources, stating:

“It is essential that any proposal to introduce new housing legislation or measures under a new competence order is founded on a well developed rationale, a detailed impact assessment and assurances that resources will be made available to address any additional burdens that are created.”

255. They expanded on this point in oral evidence, arguing that any new proposals needed to be accompanied by discussions around possible financial implications, although they did acknowledge that any changes to existing practices presented an opportunity to look at efficiencies.<sup>186</sup>

256. CIH Cymru made a similar point in relation to Matter 11.8 (homelessness), saying:

“Any legislative changes in this area should not be introduced without a proper impact assessment that is properly thought through.”<sup>187</sup>

#### *Our view*

257. We note the evidence from some consultees about future resource implications as a result of the proposed Order.

**258. We believe the question of resources to be a matter more appropriately considered as part of future Measures in this area, and we trust that full consideration will be given to this by the deputy Minister at the appropriate time.**

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<sup>186</sup> RoP, para 82, 13 January 2010, Legislation Committee No.2

<sup>187</sup> RoP, para 86, 20 January 2010, Legislation Committee No.2

## Cross border issues

### *Background*

259. The Explanatory Memorandum states:

“The proposed LCO would permit the National Assembly to legislate by Assembly Measure in relation to Wales only. In practice, this would be likely to mean that a Measure could make provision in relation to local authorities and other social housing providers based in Wales, housing located in Wales, and the housing needs of people in Wales.”<sup>188</sup>

### *Evidence from consultees*

260. We received no evidence to suggest consultees were concerned with cross border issues as a result of this proposed Order.

### *Evidence from the deputy Minister*

261. In her evidence, the deputy Minister addressed the question of cross-border issues that may arise out of the proposed Order:

“(...) we are aware that there are English housing associations that have tenants in Wales, and that there are Welsh housing associations that have tenants in England. It does not affect many people, but it does affect some.”<sup>189</sup>

262. The Deputy Minister’s official went on:

“There are a few issues on different performance standards in England and self-assessment arrangements for registered social landlords. We are in very close contact with the Department of Communities and Local Government and the Tenant Services Authority in England. There is discussion on clarity in these issues. Both are going in the same direction, but, as the Deputy Minister says, there are a small number of tenants either side of the border that it affects.”<sup>190</sup>

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<sup>188</sup> Explanatory Memorandum para 59

<sup>189</sup> RoP, para 31, 10 December 2009, Legislation Committee No.2

<sup>190</sup> *Ibid.*

*Our view*

**263. We note the evidence from the deputy Minister in relation to cross border issues arising out of the proposed Order.**

## Witnesses

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The following witnesses provided oral evidence to the Committee on the dates noted below. Transcripts of all oral evidence sessions can be viewed in full at <http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-legislative-competence-orders/bus-legislation-lco-2009-hlg-2.htm>

### *10 December 09*

Jocelyn Davies AM	Deputy Minister for Housing, Welsh Assembly Government
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### *13 January 10*

Naomi Alleyne	Welsh Local Government Association
Sue Finch	Welsh Local Government Association
John Puzey	Shelter Cymru
Joy Kent	Cymorth Cymru

### *20 January 10*

Steve Clarke	Welsh Tenants Federation
Gail McFee	Welsh Tenants Federation
Vikki Hiscocks	Chartered Institute of Housing Cymru
Keith Edwards	Chartered Institute of Housing Cymru
Nick Bennet	Community Housing Cymru
Peter Cahill	Community Housing Cymru

## List of written evidence

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The following people and organisations provided written evidence to the Committee. All written evidence can be viewed in full at <http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-legislative-competence-orders/bus-legislation-lco-2009-hlg-2.htm>

<i>Organisation</i>	<i>Reference</i>
Shelter Cymru	HLG1
Cymorth Cymru	HLG2
Darran Daye, Supporting People Manager, Rhondda Cynon Taf County Council	HLG3
Stonewall Cymru	HLG4
Community Housing Cymru	HLG5
Welsh Local Government Association	HLG6
Welsh Tenants Federation	HLG7
Chartered Institute of Housing (CIH) Cymru	HLG8
TPAS Cymru	HLG9
National Homelessness Network	HLG10
National Supporting People Network (SPIN)	HLG11
The Presbyterian Church of Wales	HLG12