



Cynulliad Cenedlaethol Cymru
The National Assembly for Wales

Pwylgor Deddfwriaeth Rhif 4
Legislation Committee No. 4

Dydd Iau, 1 Hydref 2009
Thursday, 1 October 2009

Cynnwys
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Cofnodir y trafodion hyn yn yr iaith y llefarwyd hwy ynndi yn y pwyllgor. Yn ogystal,
cynhwysir cyfieithiad Saesneg o gyfraniadau yn y Gymraeg.

These proceedings are reported in the language in which they were spoken in the committee.
In addition, an English translation of Welsh speeches is included.

Aelodau'r pwyllgor yn bresennol
Committee members in attendance

Lorraine Barrett	Llafur Labour
Peter Black	Democratiaid Rhyddfrydol Cymru (Cadeirydd y Pwyllgor dros dro) Welsh Liberal Democrats (Temporary Committee Chair)
Bethan Jenkins	Plaid Cymru The Party of Wales
Jonathan Morgan	Ceidwadwyr Cymreig Welsh Conservatives

Eraill yn bresennol
Others in attendance

Chris Delaney	Cadeirydd, Cyngor Archaeoleg Brydeinig Cymru Chair, Council of British Archaeology Wales
Debbie Johns	Prif Ymgynghorydd, Y Gymdeithas Rhagoriaeth mewn Gwasanaeth Cyhoeddus Principal Advisor, Association of Public Service Excellence
John Maitland Evans	Prif Weithredwr, Cyngor Sir Bro Morgannwg Chief Executive, Vale of Glamorgan County Council
John Pearse	Y Gymdeithas Rhagoriaeth mewn Gwasanaethau Cyhoeddus Association of Public Service Excellence

Swyddogion Cynulliad Cenedlaethol Cymru yn bresennol
National Assembly for Wales officials in attendance

Neil Cox	Gwasanaeth Ymchwil yr Aelodau Members' Research Service
Stephen Davies	Cynghorydd Cyfreithiol Legal Adviser
Owain Roberts	Dirprwy Glerc Deputy Clerk
Gareth Williams	Clerc Clerk

Dechreuodd y cyfarfod am 9.15 a.m.
The meeting began at 9.15 a.m.

Ethol Cadeirydd Dros Dro
Election of Temporary Chair

[1] **Mr Williams:** In the absence of Mike German, the committee Chair, the first item on today's agenda is the election of a temporary Chair. Therefore under Standing Order No. 10.19, I call for nominations.

[2] **Jonathan Morgan:** I nominate Peter Black.

[3] **Mr Williams:** Are there any other nominations? I see that there are none, and so Peter Black has been elected temporary Chair of the committee.

Penodwyd Peter Black yn gadeirydd dros dro.

Peter Black was appointed temporary chair.

9.15 a.m.

**Cyflwyniad, Ymddiheuriadau a Dirprwyon
Introduction, Apologies and Substitutions**

[4] **Peter Black:** Good morning. Apologies have been received from Mike German, Kirsty Williams and Joyce Watson, and Lorraine Barrett will be a few minutes late. We will hopefully have enough Members to sustain the meeting for the two hours. As usual, I remind you that the National Assembly for Wales operates through the media of Welsh and English, and headphones are provided through which simultaneous translation may be received. If anyone is hard of hearing, the headphones may also be used to amplify sound. Interpretation is on channel 1, and the verbatim feed can be heard on channel 0. In the event of a fire alarm, please leave the room by the marked exit and follow instructions from the ushers and staff; naturally, we will lead the way. All mobile phones, pagers and BlackBerrys should be switched off as they interfere with the broadcasting equipment.

[5] We have received additional written evidence from the Arts Council of Wales following its appearance before the committee last week. Copies have been circulated to Members and published on the internet.

9.16 a.m.

**Gorchymyn Arfaethedig Cynulliad Cenedlaethol Cymru (Cymhwysedd
Deddfwriaethol) (Diwylliant a Meysydd Eraill) 2009
The Proposed National Assembly for Wales (Legislative Competence) (Culture
and other fields) Order 2009**

[6] **Peter Black:** The purpose of today's meeting is to take further oral evidence in connection with the Assembly Government's proposed Order. I welcome Chris Delaney, the chair of the Council of British Archaeology Wales. We have received your written evidence, and if it is okay with you, we will take it as read and go straight into questions. I will begin by asking you to state for the record whether you are in favour of the proposal to confer legislative competence on the Assembly as set out in this proposed Order.

[7] **Mr Delaney:** Indeed, yes. CBA Wales is rather excited by the project, and I can confirm our acceptance of the proposed Order.

[8] **Peter Black:** What do you think this duty might achieve that could not be achieved by other means?

[9] **Mr Delaney:** There are a couple of issues. The first is the draft heritage protection Bill, which failed to find time for consideration in the UK Parliament. In that sense, legislation from the Welsh Assembly Government or the National Assembly for Wales will underpin that, at the very least. It is important that local authorities have a role in archaeology. At present, their role is weak, and it is important that it is improved and that they are made aware of that role. The other important point is that there is a museum strategy out for consultation, and there are indications in that strategy that museums could be placed under the statutory responsibility of local authorities. From what I understand, this would be the first step in enabling the Welsh Government to bring forward Measures to take that forward. So, it is particularly important from a museum point of view.

[10] **Peter Black:** Jonathan Morgan has the next set of questions.

[11] **Jonathan Morgan:** In the evidence that we received from both the Society of Local Authority Chief Executives and Senior Managers and the Association of Public Service Excellence, it was suggested that certain aspects of the proposed LCO in matter 2.1 currently fall outside the core services, competences and resources of local authorities—for example, the aspects relating to archaeological remains, places of historical or architectural interest, and historic wrecks. Could you explain briefly the role of the four archaeological trusts in Wales? What is your view of the implications of matter 2.1 for local authorities?

[12] **Mr Delaney:** Solace obviously has a point there, because the legislation is implemented by Cadw for the protection of a lot of these areas—a lot of these would be scheduled monuments, listed buildings, and so on. What is important is that local authorities recognise the role that they have within the historic environment, and with the care and protection of monuments. Local authorities are substantial landowners, and will be the owners of many historic monuments. They are also obviously the planning authority, and therefore they have a role in the historic environment, and they need to understand that.

[13] If I can go back to your question about the four archaeological trusts, they were established back in about 1975 and are independent charities, limited companies by guarantee, and that sort of thing; they have trustees. There are four spread out across the regions of Wales—north, south, east and west—and they receive core funding from Cadw and the Royal Commission on the Ancient and Historic Monuments of Wales. They provide local authorities with development control information about historic assets in their areas.

9.20 a.m.

[14] We do not want to see the role of the archaeological trusts undermined; we would like to see that role strengthened and, indeed, the relationship between local authorities and the archaeological trusts strengthened, which is what this legislation will have to do. The majority of the development control work that is done for local authorities by those trusts is done for free. Some local authorities make a donation towards the archaeological trusts in helping to maintain what is called the historic environment record. The core funding for it comes from the Welsh Assembly Government through the royal commission. The Pembrokeshire Coast National Park has a service level agreement with the Dyfed Archaeological Trust to provide archaeological evidence to help in planning. I can see that there is a role there, which is the role that we are looking for. I do not think that anyone would like to see the trust structure, which is a very successful structure, unpicked. We would not want to see local authorities having to find extra resources to establish excavation units, or anything like that, but it is about strengthening the role and raising awareness with local authorities.

[15] **Jonathan Morgan:** You have already mentioned that one of the reasons why the historic environment needs to be included is the planning function of a local authority. Are there any other consequences of not including the historic environment? What might happen and what is the scenario that you could see if it was not included, and you have mentioned planning as a distinct reason for why it should be included?

[16] **Mr Delaney:** The ‘One Wales’ document considers joined-up thinking, economic regeneration and the role that heritage, for example, plays in regeneration, which is important. The role of local authorities and of heritage in local identity is also important, which, again, fits in with the ‘One Wales’ document. If local authorities are unaware of heritage or their historic environment, and they just see it in planning terms, they need to be able to see it in social development and economic regeneration terms and have a sense of place and identity as well.

[17] **Bethan Jenkins:** In your evidence, you consider that it may be useful to apply

terminology that is consistent with other legislation and particularly, in this case, the draft heritage protection Bill. Is there anything in the current wording of the proposed Order, which you have obviously looked at, that you would like to see altered to reflect this—I know that the draft Bill uses terms such as ‘heritage asset’? Would that add to our proposed legislation?

[18] **Mr Delaney:** Yes, I think so. There is a need to look for synergy between the terminology used in the draft heritage protection Bill and your proposed Order, for example in the paragraph under matter 2.1. I am a little out of my depth here in terms of the legislation, but one would assume that when it comes to drafting laws, it is based on matter 2.1, and the introduction of new things at that stage may not be allowed. I honestly do not know. So, it would be useful to have words such as ‘historic asset’, ‘historic environment’ and ‘historic environment record’ inserted at this stage to avoid possible issues and conflict at a later stage. As I say, I do not know enough about the legislative process to know whether that would be an issue as you make Measures, and whether, because they are not in there, they would get excluded at that stage.

[19] **Bethan Jenkins:** Do you see any risks if the same terminology is not used in different legislation, or is it more to do with the fact that it would be confusing if the rights within that legislation were different?

[20] **Mr Delaney:** It is about not being confusing and about having consistency in terminology, which is always useful. I do not know what will happen with the draft heritage protection Bill and whether it will find parliamentary time in London. If it does, it would be inappropriate to have Welsh local legislation and national legislation using different terminology. We should get it right at this stage.

[21] **Lorraine Barrett:** You questioned whether matter 3.1 would cover historic environment records, and you consider that a statutory requirement should be placed on local authorities to support, improve and promote these records, in line with the draft heritage protection Bill. Are you suggesting that issues relating to these records should be dealt with through the proposed Order rather than the draft heritage protection Bill?

[22] **Mr Delaney:** I think that the archaeology profession has concerns that the draft heritage protection Bill will not find parliamentary time and that, with an election coming, it is not going to happen. Therefore, it is important that there is some local legislation. On matter 3.1, we feel that the penultimate phrase, ‘archives and historical records’, is really a reflection not of the historic environment record, which are the records generated by archaeologists, but in fact of what we would call family archives and business archives. Again, we are back to this question about definitions. Given the fact that it is in with archives and the historical record, one is assuming that the reference to historical records relates to the kind of material that you would see in your local record office or your local archives, not the historic environment record, which the archaeological trust holds and which has links to the national monuments record held by the Royal Commission on the Ancient and Historical Monuments of Wales.

[23] **Lorraine Barrett:** With regard to the draft heritage protection Bill, which may or may not see the light of day, do you have any concerns that that draft Bill could limit, conflict with or even duplicate any of the aims of the proposed Order?

[24] **Mr Delaney:** Basically, I see it as an opportunity for Wales to get ahead of the game, as it were, by bringing in its own legislation. Other people in this building and in Parliament will know whether the Bill will go through, but I think that it is important that we press ahead with this legislation, and with the proposed Measures, on the assumption that the Bill is not really going to go through and, therefore, there would not be any conflicts. I presume that it will not be in conflict anyway, but that there will be duplication. Again, I am out of my depth

a bit here. I notice, for example, that you have excluded libraries from this, because they are covered by the 1964 Act, which is a national Act, so I am not sure whether you would then have to rescind the legislation if the draft heritage protection Bill goes through. At this stage, we are very excited by this proposed LCO and we think that this is an opportunity for Wales to steal a march on what is happening across the border.

[25] **Peter Black:** The Minister has written to Mike German, who is the official Chair of this committee, to say that the proposals in the draft heritage protection Bill are quite different to the proposed Order, which relates to the functions of local authorities in the support, improvement and promotion of the appreciation of the historic environment. So, is that your understanding of it as well?

[26] **Mr Delaney:** I think that what would happen is that it would come in as national legislation and then policy planning guidelines would be issued to local authorities. Obviously, it is through the local authorities that it would actually be dealt with. Again, that is my limited understanding of it.

[27] **Jonathan Morgan:** When you look at the proposed Order and the explanatory memorandum, there is reference in the memorandum to encouraging local authorities to co-operate more. Some individuals have said in evidence that they think that that phraseology is somewhat weak and that merely encouraging local authorities to co-operate will not necessarily ensure that they will co-operate. What view do you have about the ability of legislation to get local authorities to co-operate? Do you think that there is a specific need for a co-operative approach to be included in law? What do you think the benefits might be of local authorities co-operating?

[28] **Mr Delaney:** Was it the Beecham report? I have lost the word now and cannot remember what the report was called. Anyway, 'partnership' is the buzz word in local authorities. I am retired now and working as a consultant. I am working with five local authorities in west Wales to look at partnership between museums to provide education services. The message that the Assembly Government has given local authorities about partnership is quite clear. Library services, for example, are sharing servers, databases and that kind of thing.

9.30 a.m.

[29] The message is quite strong in any case—co-operation and partnership are quite strong and have been implemented. They could be stronger and they might be more appropriate in certain areas, but we have no strong views on the issue. My understanding of how local authorities work is that, if it is expected by the Welsh Assembly Government and it has been monitored and they can demonstrate to audit and performance management that they are undertaking partnership, that is sufficient.

[30] **Peter Black:** Are there any gaps in co-operation in that regard?

[31] **Mr Delaney:** Do you mean Cadw co-operating with local authorities?

[32] **Peter Black:** Cadw saying to local authorities that they are not working properly together, particularly with regard to the historic environment.

[33] **Mr Delaney:** There will be areas relating to the historic environment, rather than to the individual scheduled monuments, which are in specific local authority areas and so there is no opportunity for co-operation and partnership. However, on the preservation of the historic environment—and special areas have been identified as important areas—such sites can cover one or more local authority areas. In that sense, Cadw should expect local

authorities to work in partnership on planning. The Black Mountains, for example, span Powys, Carmarthenshire and Neath Port Talbot, so that is an important landscape area.

[34] **Jonathan Morgan:** Your evidence notes that there has been a slow erosion of the provision in relation to museums and galleries. Could you explain why you think that erosion has taken place and how legislation can stop it or perhaps even reverse it?

[35] **Mr Delaney:** Of the 22 local authorities in Wales, 20 directly provide museum services or enable museum services. Only two local authorities do not fund museum services in any way. Museum services are non-statutory. The Public Libraries and Museums Act 1964 is just an enabling Act. There is a reference in the SOLACE report to the Local Government Act 2000, but that again just enables local authorities to spend money on museums, arts galleries, and so on. In the 20 local authorities that run or support museums, to make efficiency savings, as posts become vacant they are not filled. I can cite numerous examples. Swansea museum service has had an exemplar education service to schools, but there is a post vacant at the Glynn Vivian Art Gallery and there is about to be a post vacant at Swansea Museum, and I know that neither of them is to be filled. I was county museums officer and heritage manager for Carmarthenshire County Council but, since I left, my post has not been filled. That funding has been taken out. The development officer for Conwy County Borough Council has been moved sideways and is no longer looking after the six independent museums in the area.

[36] So, museums are non-statutory, and you would not believe the number of times I have sat around a table and heard other colleagues say 'In times of crisis, let us just focus on the statutory provision, not on non-statutory services'. I have seen what happened to libraries when they became statutory services, with standards being raised. This legislation will ensure that local authorities see museum as essential services and are statutorily obliged to provide them or support them with funding. I do not see the need for additional funds. It would be great if there were any, but I imagine that that will be the argument from SOLACE. As I said, 20 museum services are already being supported because 20 local authorities already have them. From my point of view, this is about protecting them and stopping this erosion.

[37] **Jonathan Morgan:** I am not necessarily convinced by the argument of refusing to fill posts, because, even in the statutory sector, the chief executive of a local health board could resolve the financial position by not filling nursing positions, or whatever, when they become vacant. It happens in the statutory sector as much as it does in the non-statutory sector, and so the argument that we need to look at is what it will mean for long-term provision and planning if this is put on a statutory footing. I suppose that the argument at the moment is that, if a local authority is facing a financial problem, it could have to choose between closing a leisure centre or stopping the funding for a museum in its entirety.

[38] **Mr Delaney:** We had that issue with Bangor Museum. It had a reprieve because it received additional funding from CyMAL: Museums, Archives and Libraries Wales. However, the situation in Bangor was that the whole service was being closed down. I feel that the legislation should start with that, so that there is an opportunity for that to happen. In addition, although museums are funded by local authorities, they are small cinderella services, and so, if they lose a member of staff, that might amount to 50 per cent of its complement, not just 1 per cent of its human resource.

[39] **Peter Black:** The Sports Council for Wales has suggested that it would like to see the current wording of the proposed LCO strengthened so that there is a statutory obligation on local authorities to ensure the 'provision' of sport and recreational activities, not just to 'support, improve and promote' them. Would you like to see similar wording in relation to the historic environment and its associated activities?

[40] **Mr Delaney:** We would certainly like to see matter 3.1 strengthened. The issue with the historic environment is whether it is about provision or about enabling. It is important in matter 3.1, but not necessarily in matter 2.1.

[41] **Peter Black:** Although the historic environment is already included, you could provide interpretation, for example.

[42] **Mr Delaney:** Yes, that could certainly be strengthened. It would be the role of local authorities—although I think that they already have that role for the historic environment in relation to their own monuments. Under the Ancient Monuments and Archaeological Areas Act 1979, they are supposed to interpret them and make them accessible.

[43] **Peter Black:** Are there any other questions? I see that there are none. Is there anything that you wanted to add?

[44] **Mr Delaney:** Only to thank you for the opportunity. It was a new experience, and not quite as daunting as I thought it would be.

[45] **Peter Black:** We very much appreciate that you have come along to give us evidence this morning. Thank you very much.

[46] Our next witness is John Maitland Evans, who is the chief executive of the Vale of Glamorgan County Council, but he has come along today to speak on behalf of the Society of Local Authority Chief Executives and Senior Managers. We will refer to it as SOLACE from now on. Welcome to this committee. We have received your paper and we will take it as read. If it is okay with you, we will go straight into questions.

[47] For the record, can you state whether SOLACE is in favour of the legislative proposals to confer competence on the Assembly, as set out in the proposed Order?

[48] **Mr Evans:** It is a simple question, but there is not a simple answer. The society recognises the value of these fields of activity and it offers its support, but that support is qualified by concern about the resources that would be available to do the job, by a worry about the performance management, audit and inspection implications of any new duty, as we do not want to end up with the costs of those factors outweighing the costs of the service, and by the suggestion of an alternative approach, which you may want to explore later, based on outcome agreements. Put simply, our support is qualified.

[49] **Peter Black:** So, you can see that there is a need for it, but you would rather do it in a different way. Is that right?

[50] **Mr Evans:** That is probably it, in a nutshell. The explanatory memorandum outlines the value of these areas of activity quite fairly, and the society recognises that value.

[51] **Lorraine Barrett:** In your paper, you raised concerns about the implications of the current economic climate for creating a cultural duty. Is your concern that the current economic climate is an issue to take into account concerning the timing of subsequent Measures rather than the proposed Order, because this deals only with acquiring powers that subsequent Measures would use?

[52] **Mr Evans:** It is the latter. The issue for everyone, whatever your background, is the current climate. I have heard people who know a lot more about the subject than I do talk about probably five to 10 years of difficulties in the public sector and of up to 30 per cent cuts in services. Against that background, it is perhaps not the most appropriate time to be looking not so much at the proposed Order itself, but at consequent proposed Measures, which might

impose some responsibilities on local government, and it might find them extremely difficult to fund and to deliver.

9.40 a.m.

[53] **Lorraine Barrett:** I suppose that this links to the first question. You suggest that a cultural duty would impose an additional burden on local authorities when you may be struggling to meet your existing statutory requirement. How do you respond to the argument that that implies that the non-statutory provision will be cut back and that a statutory cultural duty would be necessary for local authorities to preserve valued cultural activities at these times of financial pressure?

[54] **Mr Evans:** It is not so much about the statutory or non-statutory definition, but about the difficult job that authorities face. We are big business, but we are very varied businesses, and one of the real difficulties that we have—and it is a difficulty that chief executives face—is in advising elected members on where the priorities for investment lie. It is fair to say that the areas of activity covered by this proposed Order are valuable areas of activity, and that they proportionately incur less expenditure than some of the bigger areas of activity. Some areas of activity have a part in the overall service provision that we make, but times are difficult and resources are scarce. That involves government, whether local or national, having to make difficult choices and having to identify its priorities. From the viewpoint of the council, we would have regard for the views of the local population and of the Assembly as the body that provides the bulk of our funding. So, whether we are talking about statutory or non-statutory provision, there will be difficulties. We will have problems with funding some statutory services in the future. Given that around 70 per cent of our budget goes on education and social services, there is not much left for other areas of activity.

[55] **Lorraine Barrett:** You refer in your paper to local authorities' extensive existing powers to provide cultural services and activities. Do you think that local authorities are fully responding to the needs of their citizens in this regard, given that you already have relevant powers, or do you think that there are some relatively poor performers? We do not expect you to name names, but how might we ensure a better consistency of service across all local authorities in Wales without making further legislation, if you think that you already have those powers?

[56] **Mr Evans:** Mentioning that is quite funny because, as I was coming in, I saw a group of people from the Welsh Local Government Association and the data unit who were here for just that purpose, namely to flag up the good and best performers across a variety of services. This probably reflects the issue of performance and how that is affected by whether a service is statutory or non-statutory. If it was just on the basis of a service being statutory, we would not need to worry about social services, for example, which is a statutory service.

[57] Measuring performance is complicated—and I will not go into the benefits and disbenefits of some of the performance indicators that we have to deal with. From my perspective, I suppose that this is about asking what the consequences or risks of bad performance are, and what the rewards and incentives for good performance are. The difficulty for many authorities is that there are performance issues with some of the bigger, core services, reflecting a variety of factors, not just money, such as the capacity and capability of service managers and, indeed, of corporate managers like me. The real difficulty is that the issues with some of the bigger services can act as a magnet for resources and investment. That is probably the context in which you need to consider this sort of issue.

[58] **Jonathan Morgan:** One question that is often asked by the Welsh Affairs Committee, when the proposed Order gets that far, is 'What does this proposed Order seek to achieve that cannot be done by other means?'. That is probably a fair question for the

committee to ask, because we are asking Parliament to relinquish powers and it does not often like doing that. However, when it is asked to do so, it responds with that very basic question. Is there a way of encouraging local authorities to do what the Assembly Government thinks ought to be done without going down a legislative route? Are we using a sledgehammer to crack a nut?

[59] **Mr Evans:** In general, I am in favour of appropriate powers being devolved from Westminster to the Assembly, so I have no basic problem with the principle of that. It is the reasons why you are doing it. I do not want to appear to be overly sensitive, but it may be interpreted—not the proposed Order itself but what may follow the proposed Order—as a lack of confidence in local government to deliver what you aspire towards. As I said at the beginning, most of local government, certainly SOLACE, shares the value that you attach to such activity, but the concern relates to the practical problems that we face in delivering, improving and making a difference in these areas at a time when resources are limited. If it is an issue of getting the powers from Westminster, then that is fine. The issue for me then is the detail of how they are developed and how that affects the relationship between central and local government. These are areas of activity where local government is an important provider, but there are plenty of national bodies and organisations—which, I assume, are directly controlled by the Assembly Government—that would make a big impact. So, from my perspective, it is a question of looking at the area generally: what is being done, how it is being resourced, and perhaps how we can work together better and more effectively to improve what is being delivered for citizens.

[60] **Bethan Jenkins:** You have briefly touched upon alternatives to legislation. One thing that has come up in your evidence and that of others before you is the example of what has happened in Scotland, namely the creation of framework for outcome agreements as opposed to legislation. Could you explain how this approach might work in Wales, how outcomes would be agreed, and the implications for local authorities to deliver on that particular agenda?

[61] **Mr Evans:** The concept of the outcome agreement follows from the earlier policy and the current improvement agreements. In the summer, a document called ‘A New Understanding between the Assembly Government and Local Government’ was sent to the Welsh Local Government Association by Brian Gibbons. It is a draft policy in development. If you do not mind, I could do no better than to read out paragraphs 13 and 14. I will be brief. These paragraphs set out an approach that could be followed. The section is titled ‘Focusing on Outcomes’. It says that a clear, robust and well-articulated strategic vision underpins excellent services and that this vision may relate to the country or the locality. It goes on to say that ‘One Wales’ sets out national priorities and these will be further explained through a set of strategic statements, which, in turn, will be supported by a framework of outcome-focused indicators and measures, forming the basis for a new approach to performance measurement through outcome agreements. It says that local authorities continually strive to improve services and the Assembly Government has incentivised this by means of improvement agreements and that outcome agreements will retain the local focus of improvement agreements, but they will provide a framework to incentivise improvement, reduce bureaucracy and deliver efficiency savings.

9.50 a.m.

[62] Attached to this document is a two-and-a-half page note on a model for outcome agreements and a series of outcome objectives, one of which, SF16, is that culture and sport thrive in Wales. I do not think that anyone would argue with that. The issue here is how that is developed so that there is a clear framework and a clear understanding between national and local government in terms of how we can work together in these difficult times to ensure that culture and sport will thrive in Wales. That is how I see it. We are in the very early stages as

yet and there will be much better brains than mine working on the detail of this. However, it is an alternative approach and, irrespective of what happens with the Order, I think that it will continue anyway across the whole spectrum of local government services.

[63] **Peter Black:** In Scotland, local authorities have had a statutory duty since 1982 in terms of the provision of culture. So, presumably, they are using this outcome-based approach in conjunction with that. Do you envisage the same sort of thing happening in Wales or do you think that we could do without the statutory duty and just go with the outcome-based approach?

[64] **Mr Evans:** I suppose that it is about what works best in the principality. I am afraid that I am not too familiar with the Scottish example, but like a lot of things, it is about what works best in Wales.

[65] **Bethan Jenkins:** In your paper you suggest that the proposed LCO is not broad enough in its scope. Can you expand on the facilities and activities that you think should be added to the proposed Order? I think that you are suggesting that there is not enough emphasis on things like contemporary arts and theatres, and that there is too much emphasis on the historical aspect of the Order.

[66] **Mr Evans:** I think that that is probably it—put simply. There are issues. As with anything, if you are looking to promote areas of activity, it helps if you have a clear idea or definition of the areas that are covered. I suppose it is issues like theatres, contemporary and performing arts—I do not know whether cinemas come into that area of activity—cultural events and the issue about things like cultural tourism, which are important areas of activity. I am not here to say that you need to look at specific areas, but as a committee, as you scrutinise this Order, perhaps you need to give thought to the general areas covered and perhaps what should come in and what need not come in.

[67] **Bethan Jenkins:** The only confusion that I am finding is that you have already indicated that you are in favour of it in principle, but that the Measures that may result from this may put more pressure on local authorities. So, are you in favour of us expanding on the proposed Order because you think that those areas are not covered and you want to be able to say that the Welsh Assembly Government should have statutory duties in relation to those areas, or are you saying, ‘To be fair, we also need to include all these aspects as a matter of principle’?

[68] **Mr Evans:** I think that it is probably the latter—as a matter of principle. On how you take the proposed Order further, I think that you will inevitably have to prioritise areas of activity that you may feel are more important than others. I think that it is about being fairly comprehensive in principle at the start of the process, which is the latter of your suggestions.

[69] **Jonathan Morgan:** Some of the respondents to the consultation have suggested that the phrase ‘supporting, improving and promotion’, which is used in the matters, is unclear. What is your view and the view of SOLACE with regard to the use of that phraseology?

[70] **Mr Evans:** From my perspective, I think that whatever phrase is used, there needs to be simplicity and clarity in terms of how they are defined so that, ultimately, if there is a statutory duty on councils, it is clear what is expected of us. To support, improve and promote seems to be reasonably clear. There are other areas of activity, I suppose, such as ‘encourage’ and ‘participate’, but I think that it is important, however it is phrased, that there is clarity in terms of the definitions, so that, from the council’s viewpoint, we know what areas are covered and what is expected of us—to use a pun, so that there is a level playing field for everyone.

[71] **Jonathan Morgan:** The Arts Council of Wales suggested amending the wording from ‘supporting, improving and promotion’ to ‘the encouragement of the participation in the activities of’. In the oral evidence that the arts council gave, it added quite a considerable list of what would be regarded as activities. I think that it covered everything from computer games to wicker-basket making. It was quite a considerable list and I was quite surprised to find computer games on it, to be frank. Do you think that there is a danger that, in effect, a duty could be placed on local authorities to promote, support and encourage participation in or provision of an almost endless list of activities?

[72] **Mr Evans:** Yes. You have to exercise discipline in what you are looking to do, and all-embracing lists serve no real or useful purpose.

[73] **Jonathan Morgan:** You raise concerns in the written evidence that some aspects of the proposed LCO in matter 2.1 currently fall outside the core services, competencies and resources of local authorities. Could you expand on your concerns about how matter 2.1 is drafted?

[74] **Mr Evans:** It covers the area of archaeological remains, ancient monuments and this sort of activity. There is some expertise in local government, but a lot of the expertise for this sort of activity lies outside local government. The comment here is included as an example, but it focuses on these areas of activity.

[75] **Peter Black:** The Sports Council for Wales has suggested that it would like to see the current wording strengthened, so that there would be a statutory obligation on local authorities to ensure provision of sport and recreational activities, rather than an obligation just to support, improve and promote them. Do you consider that the provision of cultural facilities and activities should be included in the wording of the proposed Order? Do you agree with the sports council?

[76] **Mr Evans:** A requirement to provide something depends very much on the resources that are available to do so. From the perspective of authorities, I would be reluctant—as, I am sure, my colleagues from SOLACE would be—to have something as specific as that without a clear understanding of what the resources would be.

[77] The other thing that you need to bear in mind is that certain areas of cultural activity probably reflect issues of socioeconomic geography more than they would the powers or competencies of local government.

[78] **Jonathan Morgan:** I can understand the nervousness about including the word ‘provision’ in its pure sense, but if there was a way of amending the proposed Order so that it went something along the lines of ‘securing the provision of’, would that alleviate some of the concerns? That would not mean that we expect local authorities to physically provide the service, but to secure the provision. It was Lorraine, actually, in a previous oral evidence-taking session, who suggested that that could be made through the charitable sector, the voluntary sector, and even the private sector.

[79] **Mr Evans:** The memorandum does refer to the need for authorities to co-operate with each other and with other agencies. Everyone is aware of the dangers and difficulties regarding the potential loss of sporting facilities, which, from a personal perspective, I would see as regrettable. I suppose that it is about getting a wording that shows the commitment and the general intention of the Assembly without imposing requirements and liabilities that councils would, perhaps, find difficult to meet. Obviously, that wording is more constructive than the wording used by the sports council.

[80] **Peter Black:** Is there anything that you would like to add to your evidence?

[81] **Mr Evans:** No, no; it has been a pleasure. I have seen the building from outside, but I never thought that I would have the privilege of coming here to give evidence.

[82] **Peter Black:** Thank you for coming. It has been our privilege as well. Please enjoy the rest of the building before you leave.

[83] **Mr Evans:** With pleasure. Best of luck with the rest of your evidence.

[84] **Peter Black:** Thank you.

10.00 a.m.

**Y Gymdeithas Rhagoriaeth mewn Gwasanaeth Cyhoeddus
The Association for Public Service Excellence**

[85] **Peter Black:** I welcome Debbie Johns and John Pearse from the Association for Public Service Excellence. Debbie Johns is the principal adviser for the association and John Pearse is the operational manager for the culture, leisure and parks department for Cardiff Council, but he is here representing APSE. We have received and read your evidence, so we will go straight into questions if you are happy to do so.

[86] In response to the question on the general principle that legislative competence in the areas identified in matters 2.1, 3.1 and 16.4 be conferred on the Assembly, your members agreed that legislative competence should be conferred in relation to matters 2.1 and 3.1, but provided mixed responses in relation to matter 16.4. Could you explain the reasons for those mixed responses in relation to sport and recreational activities?

[87] **Ms Johns:** The comments that we received about matter 16.4 related to the fact that there should be a role for other sporting bodies as well as for the local authority and local health boards.

[88] **Mr Pearse:** Debbie is right in what she says; on the role of the local health board, you must ask what your outcomes will be for the population. As far as health is concerned, you need to have resources from a number of different agencies to enable anything to happen at a local level.

[89] **Peter Black:** Local authorities work very closely with local health boards on these issues, and they have duties in relation to public health and the promotion of sport and wellbeing, and so on. Does that not fit in with that particular duty?

[90] **Mr Pearse:** It does, but over recent years we have formed many joint working partnerships with various bodies such as crime and disorder reduction partnerships, which have enabled us to work better with the police and the resultant crime figures. If it is enhanced where local authorities are required to work with health agencies to produce a stipulated outcome for the benefit of the population in relation to fitness or obesity, for example, then that is a way in which the objectives can be achieved.

[91] **Bethan Jenkins:** Your submission suggests that many of the aims of the proposed Order could be achieved in other ways as opposed to legislating—you probably heard earlier about the framework agreements that exist in Scotland. What are your concerns about imposing a duty on local authorities as opposed to using other means that you suggest, such as grants, and so forth?

[92] **Ms Johns:** I do not think that it was a concern as such—it was more of an issue of

whether legislation was needed, whether it was more of a funding issue or whether directly focused grants could achieve those aims. On the legislation, APSE is not against placing a statutory duty on local authorities, but we believe that the definition would need to be broad enough to preserve the ability of local authorities to provide services that are relevant to their local circumstances.

[93] **Mr Pearce:** Whether you have legislation that stipulates the minimum requirement or minimum level of facilities, or whether you stipulate an outcome that you want to see from the population, it leaves a lot of flexibility for local authorities. Local authorities already provide many facilities free of charge such as parks, GP referral schemes, skateboard parks and even free swimming initiatives, which the Welsh Assembly Government provides free at the point of delivery. So, there is a lot happening at the moment, but it could be enshrined in the type of outcome-based result that you want.

[94] **Bethan Jenkins:** Did your members specify any particular areas where alternatives to legislation could be used? You mentioned that grants could perform the role and that legislation might not be needed because the grant system would be able to provide the services that may not exist at the moment. However, are there specific areas in which you think that that could be done?

[95] **Ms Johns:** There were no specific areas on which we received comments saying that a particular area should be legislated on and that another area should not. As I said before, a broad duty or legislative approach would be favourable from APSE's perspective and we would support that rather than being rigid and stipulating the areas on which local authorities needed to deliver.

[96] **Bethan Jenkins:** It has also been suggested by other organisations such as the Sports Council for Wales that, if a statutory duty is not enshrined in law, cultural activities, as we heard earlier, could be the first to go when there are cutbacks in local authorities, because they are non-statutory. What is your view on that?

[97] **Ms Johns:** APSE is of the view that culture and leisure are crucial to quality of life, health and wellbeing, social inclusion, community cohesion and a variety of agendas. Therefore, we recognise the importance that a statutory duty would place on the services, which is why we would welcome a broad duty.

[98] **Jonathan Morgan:** In your evidence, some of your members consider that the scope of the proposed Order may be too narrow, and that it should interface better with broader objectives such as health and wellbeing. Conversely, you also indicate that some of your members take what would appear to be a different view, and suggest that the proposed Order is too broad in the range of disciplines that it is trying to cover, particularly as these address different outcomes. Can you expand on and perhaps explain these views further?

[99] **Ms Johns:** On the definition being too narrow, some of the members wanted to see other areas such as children's play and physical activity being included in the definition of sport and recreation, so that it does not just cover sport but the wider physical activity agenda, fitting in with the wider health and wellbeing agenda and objectives. Some members thought that it was too broad because of the different outcomes that these matters are trying to achieve. Matter 2.1 on ancient monuments and archaeology will probably have different outcomes to the health and wellbeing and sport and leisure matters. It was not a conflict, as such; it was more about the fact that we thought that the sport and recreation matter could be widened to fit in more with the health and wellbeing agenda and that the three matters were hitting different objectives and different outcomes.

[100] **Jonathan Morgan:** Looking at matters 2.1, 3.1 and 16.4, do you think that there

needs to be consistency in the nature of the duty placed on local authorities with regard to those three matters or do you think that the legislative competence Order should be more specific and target one matter more than the others? If so, which one?

[101] **Mr Pearse:** On sport and leisure, which is my remit. I can see that there are social benefits and health benefits in that area. That is the main reason why we want to be more specific in that area and try to address those agendas through what we do at the moment. Local authorities are not well placed to deal with archaeological standards and the like.

[102] **Ms Johns:** If I may also come in there, the point that you just made on matter 2.1 is right. Some authorities expressed concerns in that some have expertise in this area, but not others, and that other organisations might be better placed to deal with matter 2.1. That is the feedback that we received.

10.10 a.m.

[103] **Jonathan Morgan:** You also note that the functions listed in the proposed Order may not cover all of the benefits identified in paragraph 7 of the explanatory memorandum, such as the creative industries and cultural tourism. Could you explain your concerns and how you would like to see the proposed Order amended as a result?

[104] **Ms Johns:** Paragraph 7 is very much focused on outcomes around health and wellbeing, community regeneration, education and development of children and contribution to adult skills development. Our point was similar to the point that I just mentioned on widening the definition to include play, parks and other areas, and the fact that there are other activities and services provided by authorities that fit those agendas, such as children's play, that could be included within the definition.

[105] **Jonathan Morgan:** So, in effect, the definition used in the proposed Order needs to be more closely aligned to the aspirations of the explanatory memorandum.

[106] **Ms Johns:** Yes.

[107] **Jonathan Morgan:** You also raised concerns about paragraph 8 of the explanatory memorandum's reference to widening participation rather than increasing participation. In what ways does this current wording create concern?

[108] **Ms Johns:** It was a concern about whether the Assembly means widening participation to ensure that all minority groups are included and that there is provision for all, which we would absolutely support, or whether an additional word, namely 'increase', should be included so that it is about not only widening participation, which is crucial, but also increasing levels of participation by the community as a whole.

[109] **Jonathan Morgan:** From your perspective, is it far better for a local authority to increase the absolute number of people participating in a sporting activity, whatever it might be, as opposed to perhaps providing different types of sporting activities?

[110] **Ms Johns:** No. I am sorry; I did not mean that—I meant that we think that widening participation is crucial. We do not think that anyone in a community should be excluded from the provision of sports and recreational facilities. It is also important to increase participation in general.

[111] **Mr Pearse:** Cardiff has been a good example over recent years of widening and increasing participation. We have been quite lucky in Cardiff to have good leisure facilities over a number of years, which has led to a proliferation of private sector involvement because

they can see a ready-made market. While we look at it as a whole entity, we have people that are willing to move through our facilities and go to the private sector and pay and play while we can concentrate on the wider aspects, looking at the minority sports and the people who want to participate in something that is probably not profitable for the private sector to provide. It is also about complementary facilities in an area.

[112] **Ms Johns:** To clarify, it is about both, really. Local authorities have a key role to play in ensuring that people who cannot afford to pay £100 per month to join a leisure centre have the same opportunity for physical activity, sport and recreation as everyone else.

[113] **Lorraine Barrett:** Could you explain some of your concerns regarding matter 2.1 and the inclusion of references to ancient monuments and archaeological remains, for example, because I think that you feel that those issues are largely the responsibility of the archaeological trusts?

[114] **Ms Johns:** Yes. That is correct. We had some feedback on matter 2.1 stating that local authorities had expressed concerns that archaeology is largely the responsibility of the archaeological trusts, and that some areas may be beyond the expertise of some local authorities. As I said before, there is some expertise, but there are other bodies that also have expertise.

[115] **Lorraine Barrett:** So, you just feel that it should be made a little more explicit.

[116] **Ms Johns:** Yes.

[117] **Lorraine Barrett:** You have said that matters 3.1 and 16.4 need greater clarity on what they include, and you have used play and parks, and theatres, as examples. Can you elaborate on your concerns regarding the need for greater clarity in those definitions?

[118] **Ms Johns:** It goes back to the definition of sports and recreation, to be fair, and whether that is inclusive of children's play, physical activity and other such areas. So, it is really a matter of ensuring that the definition is not focused solely on sport, in the traditional meaning of sport, and includes a wider physical activity agenda. One of our concerns was that if you exclude certain activities or services from the definition, they are then given less importance than those that are included, although those services may provide equally valuable cultural activities, for example, theatres.

[119] **Lorraine Barrett:** Have you given any thought to how the proposed Order might be amended as a result of those concerns?

[120] **Ms Johns:** We thought about focusing specifically on the outcome, so that if we are looking at a statutory duty to improve health and wellbeing and physical activity, that would not then include certain activities or services at the expense of others, and it would be a more inclusive and a broader definition.

[121] **Mr Pearce:** It is worth looking back at the history of provision. Most swimming pools and leisure centres came about through the industrial revolution and the need for cleanliness in industrial towns. The provision was made to address a public health problem. We now have an opportunity to address another public health problem through the provision of physical activity, and that is obesity and the diseases that go with it. It is about trying to hit those buttons. Local authorities, over the years, have tried to be a jack of all trades, and we have certainly tried to address the elite sport agenda through the provision of facilities such as 50m pools. Perhaps that is not our role and should be left to the Sports Council for Wales, governing bodies and such entities, leaving us to concentrate on the public health perception and the participation that is needed to increase the health of the nation.

[122] **Lorraine Barrett:** That is useful, thank you. In relation to the exclusions and exceptions, you note that there were mixed views in relation to article 3. Can you explain to us the nature of those mixed views?

[123] **Ms Johns:** The feedback that was received was around the need for this to be a standard for everyone to follow, rather than having different exceptions for different areas. So it was a general concern around the standards being different for different areas within culture.

[124] **Lorraine Barrett:** So, it was about a minimum standard, then?

[125] **Ms Johns:** Yes.

[126] **Peter Black:** Can you elaborate on your uncertainty regarding the phrase ‘supporting, improving and promotion’ used in the matters?

[127] **Ms Johns:** Local authorities are important community leaders and there is a variety of organisations that provide leisure within an area, not only directly-provided facilities and trusts, but also private and voluntary sector provision. So, the issue was to do with whether the role of local authorities in supporting, improving and promoting was around the sort of facilities and services that are under the direct management of the local authority, or whether local authorities would have a role in supporting, improving and promoting other provision as well. Due to the diverse nature of leisure and the different types of providers, it is about whether the definition would be around local authority provision only.

[128] **Peter Black:** The Arts Council of Wales has also suggested that we may want to refer to ‘encouraging participation activities’. Would that fit in with your view of how this matter should be drafted?

10.20 a.m.

[129] **Ms Johns:** You need to be careful with regard to encouraging participation, because authorities will have different targets for different areas or centres. Some centres may have low pricing to encourage people from less advantaged backgrounds to participate in sports and recreational activities, whereas others may like to see an increase in participation as a whole. So, we need to be careful with regard to the definition. This goes back to the issue of widening and increasing participation.

[130] **Peter Black:** So, your issue is around who provides the facility and whether or not the proposed legislative competence Order takes account of that in its wording.

[131] **Ms Johns:** Yes. It is around local authorities and whether it is within their control to support, improve and promote private sector facilities, for example, or whether the intention is that this be geared more towards local authority provision.

[132] **Mr Pearse:** There is also the question of whether this should be about supporting and promoting the activity to achieve fitness or better health, as opposed to supporting the physical facilities. That is, promoting the activity rather than the facility that it happens in.

[133] **Peter Black:** So, you are looking at outcomes.

[134] **Mr Pearse:** We would like to look at outcomes. If you have a park that is accessible free of charge, you might be discharging your responsibilities by encouraging the use of that park. You do not want to waste taxpayers’ money by encouraging the use of a private centre.

That centre will have its own market and its own means of doing that.

[135] **Peter Black:** That is much clearer, thank you.

[136] Your submission notes support for greater priority to be given to investment in, and maintenance of, accessible sporting and cultural facilities. The sports council suggests that the current wording be strengthened so that there is a statutory obligation on local authorities to ensure that there is provision for sport and recreational activities, and not just to support, improve and promote them. Would that fit in with your vision of how this agenda should be moved on?

[137] **Mr Pearse:** I would like to see the outcome in the health benefits and what you are trying to achieve for the population as a whole enshrined in this, rather than a statutory minimum provision of built facilities, for instance. You need results-based accountability to see whether the health of the population is improving generally rather than a minimum provision of swimming pools and badminton courts, for example.

[138] **Peter Black:** So, in a sense, the Assembly could use these powers to strengthen health and wellbeing strategies.

[139] **Mr Pearse:** Yes.

[140] **Peter Black:** The powers would still be needed.

[141] **Mr Pearse:** For example, a local authority could meet its obligation, along with the Assembly Government, by offering an enhanced free swimming scheme under which free swimming lessons would be offered to all children. You would then be meeting your obligation to provide health benefits to a wide range of people free of charge while also giving them the benefit of a skill that will enable them to participate in other sports, whether in the private or public sector. So, it would be a bit like the nursery vouchers. A child could go to a private or public leisure centre, have swimming lessons through the school or through the learn to swim programme, achieve a standard and be able to use that skill for the rest of his or her life.

[142] **Ms Johns:** The other point that we wanted to mention was that, if provision is going to be included, there will be an issue around setting minimum standards and funding and how that will be done in the current financial climate. That is a big issue for local authorities. I would like to get across the importance of leisure and the importance of investing to save, because when we invest in leisure and physical activity services, we are, ultimately, saving the NHS money. Greater collaboration with other bodies such as the NHS would be a win-win situation.

[143] **Peter Black:** I am sure that we will be able to feed in the first point, in terms of the funding, through a Measure. When the Government comes forward with specific proposals, I think that is when the funding and how this will be paid for will become particularly important. I take your point on the budget issues, and, as the budget process is about to get under way, I am sure that the Ministers will also want to take account of that.

[144] Finally, many respondents have said that there is insufficient focus on ensuring that local authorities collaborate with each other and with other organisations. How could local authorities benefit by working collaboratively to deliver this agenda?

[145] **Ms Johns:** I think that local authorities are uniquely placed to co-ordinate strategy in terms of the services that they provide, such as parks, leisure and education, for example, extended schools and so on, and to work with other agencies, such as health agencies and the

police in terms of community safety. They are uniquely placed to ensure that they work with partners to hit those agendas and to have an impact. I think that John wanted to come in on Cardiff.

[146] **Mr Pearse:** I think that you have covered what I was going to say. It is about an extension of that.

[147] **Peter Black:** Do you think that the proposed LCO would promote collaborative working?

[148] **Mr Pearse:** Yes, particularly given the trend in recent years in terms of the NHS and GP referrals and education referrals—provided that there is the funding. As Debbie has intimated, this is about investing in these facilities and then, in the long run, saving the health service money. It is difficult to quantify that, but if you wrap health facilities such as doctors' surgeries in with our type of facilities, then you might be able to provide a one-stop shop for a body MOT service, if you like, for the public.

[149] **Ms Johns:** On partnership working, there are areas where collaboration can deliver efficiencies, but we also need to provide seamless services to the public, irrespective of what department the service falls within or which agency delivers on that service. Ultimately, the public should receive a seamless service. For example, you may go to your doctor and get a prescription for a leisure activity. It is about the benefit to the community and the public.

[150] **Peter Black:** Would you like to add anything before we conclude?

[151] **Ms Johns:** I wanted to say at the beginning that APSE fully supports devolving legislative powers to the Welsh Assembly Government to achieve the outcomes that are relevant for Wales. We fully support the aim of improving cultural activities and we recognise the importance of culture to the public's quality of life. So, the main thrust of APSE's submission related to definitions and not opposing the aims of the legislation.

[152] **Peter Black:** Thank you for coming along to give evidence to us; that is much appreciated. Before we conclude, I remind Members that the committee will take evidence from the Society of Chief Librarians, the Museums Association and the Minister for Heritage on 8 October. I now declare the meeting closed.

*Daeth y cyfarfod i ben am 10.29 a.m.
The meeting ended at 10.29 a.m.*