



**Cynulliad Cenedlaethol Cymru
The National Assembly for Wales**

**Pwyllgor Deddfwriaeth Rhif 3
Legislation Committee No. 3**

**Dydd Mercher, 28 Ionawr 2009
Wednesday, 28 January 2009**

Cynnwys
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The National Assembly for Wales (Legislative Competence) (Social Welfare) Order
2009

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

Peter Black	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
Alun Cairns	Ceidwadwyr Cymreig Welsh Conservatives
Christine Chapman	Llafur Labour
Janice Gregory	Llafur Labour
Helen Mary Jones	Plaid Cymru The Party of Wales
David Lloyd	Plaid Cymru (Cadeirydd y Pwyllgor) The Party of Wales (Committee Chair)

Eraill yn bresennol
Others in attendance

John Carter	Pennaeth y Tîm Oedolion Agored i Niwed a Gofalwyr, yr Adran Iechyd a Gwasanaethau Cymdeithasol, Llywodraeth Cynulliad Cymru Head of Vulnerable Adult and Carers Team, Department for Health and Social Services, Welsh Assembly Government
Huw Rowlands	Cyfreithiwr, Adran Gwasanaethau Cyfreithiol, Llywodraeth Cynulliad Cymru Lawyer, Legal Services Department, Welsh Assembly Government
Gwenda Thomas	Aelod Cynulliad, Llafur (y Dirprwy Weinidog dros Iechyd a Gwasanaethau Cymdeithasol) Assembly Member, Labour (the Deputy Minister for Health and Social Services)

Swyddogion Gwasanaeth Seneddol y Cynulliad yn bresennol
Assembly Parliamentary Service officials in attendance

Fay Bowen	Clerc Clerk
Ruth Hatton	Dirprwy Glerc Deputy Clerk
Joanest Jackson	Uwch-gynghorydd Cyfreithiol Senior Legal Adviser
Gareth Williams	Clerc Clerk

Dechreuodd y cyfarfod am 9.14 a.m.
The meeting began at 9.14 a.m.

Cyflwyniad, Ymddiheuriadau a Dirprwyon
Introduction, Apologies and Substitutions

[1] **David Lloyd:** Trefn. Croesawaf **David Lloyd:** Order. I welcome you all and bawb a'r Dirprwy Weinidog i'r cyfarfod, ond the Deputy Minister to the meeting, but we

clywn fwy am hynny yn nes ymlaen. Mae gennyf ychydig o gyhoeddiadau cadw tŷ, fel petai, i ddechrau.

will hear more about that later on. I have a few housekeeping announcements, as it were, to make at the outset.

[2] Os bydd larwm tân, dylai Aelodau adael yr ystafell drwy'r allanfydd tân penodol a dilyn cyfarwyddiadau'r tywyswyr a'r staff. Nid ydym yn disgwyl prawf y bore yma. Dylai pawb ddifodd eu ffonau symudol, galwyr a'u 'mwyar duon', neu unrhyw offer electronig arall, gan eu bod yn amharu ar yr offer darlledu.

If there is a fire alarm, Members should leave the room through the designated fire exits and follow the directions of the ushers and staff. We do not expect a drill this morning. Everyone should switch off their mobile phones, pagers and BlackBerrys, or any other electronic equipment, as they interfere with the broadcasting system.

[3] Mae Cynulliad Cenedlaethol Cymru yn gweithredu'n ddwyieithog, ac mae clustffonau ar gael i dderbyn cyfieithiad ar y pryd a gellir addasu lefelau'r sain os ydych yn drwm eich clyw. Ni ddylid cyffwrdd ag unrhyw ran o'r meicroffonau gan y gall hynny ddiffodd y system, a dylid sicrhau bod y golau coch ymlaen cyn dechrau siarad. Yn olaf, mae'r cyfieithiad ar y pryd ar gael ar sianel 1 a'r darllediad gair am air, sy'n eich galluogi i glywed y sain yn well, ar gael ar sianel 0.

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9.15 a.m.

Gorchymyn Arfaethedig Cynulliad Cenedlaethol Cymru (Cymhwysedd Deddfwriaethol) (Lles Cymdeithasol) 2009
The National Assembly for Wales (Legislative Competence) (Social Welfare) Order 2009

[4] **David Lloyd:** Diben y cyfarfod hwn yw clywed tystiolaeth lafar ar y Gorchymyn arfaethedig ynghylch gofalwyr. I'r perwyl hwnnw, croesawaf Gwenda Thomas, y Dirprwy Weinidog dros Wasanaethau Cymdeithasol, a'i swyddogion, John Carter, pennaeth y gangen oedolion agored i niwed a gofalwyr a Huw Rowlands, o'r Adran Gwasanaethau Cyfreithiol. Croeso i chi i gyd. Mae gennym restr o gwestiynau wedi eu paratoi, felly, os ydych yn gytûn, Ddirprwy Weinidog, awn yn syth atynt.

David Lloyd: The aim of this meeting is to take oral evidence on the proposed Order on carers. To that end, I welcome Gwenda Thomas, the Deputy Minister for Social Services, and her officials, John Carter, head of the vulnerable adults and carers branch and Huw Rowlands, from the Legal Services Department. Welcome to you all. We have a list of prepared questions, so, if you are content with that, Deputy Minister, we will move immediately to those questions.

[5] **Y Dirprwy Weinidog dros Wasanaethau Cymdeithasol (Gwenda Thomas):** Diolch yn fawr am y croeso ac am gydweithrediad y pwyllgor hefyd.

The Deputy Minister for Social Services (Gwenda Thomas): Thank you for the welcome and also for the co-operation of the committee.

[6] **David Lloyd:** Dechreuaf â'r cwestiwn cyntaf, sydd yn un cyffredinol. Fel y crybwyllwyd eisoes, bwriad y Gorchymyn

David Lloyd: I will kick off with the first question, which is a general one. As has already been mentioned, the aim of this

cymhwysedd deddfwriaethol arfaethedig hwn yw rhoi'r grym i'r Cynulliad i ddeddfu i gefnogi darpariaeth gofal gan ofalwyr ac i hyrwyddo lles gofalwyr. I'r perwyl hwnnw, a allwch olrhain y rhesymau dros fynd ar ôl cymhwysedd deddfwriaethol ar gyfer cefnogi gofalwyr a hyrwyddo lles gofalwyr?

proposed legislative competence Order is to give the Assembly the power to legislate to support the provision of care by carers and the wellbeing of carers. To that end, can you set out the reasons for pursuing an LCO for the support of carers and the promotion of the wellbeing of carers?

[7] **Gwenda Thomas:** Pan fu inni drafod y Gorchymyn arfaethedig hwn mewn Cyfarfod Llawn ym mis Rhagfyr a, chyn hynny, cynnig Helen Mary ar gyfer Gorchymyn o ran gofalwyr, yr oedd cytundeb a chefnogaeth gref ar draws y pleidiau. Yr oedd cytundeb bod angen gwelliannau a bod angen gwneud hyn cyn gynted â phosibl. Carwn gymryd y cyfle hwn i ddiolch unwaith eto i Helen Mary am ei chyfraniad yn datblygu'r Gorchymyn arfaethedig sydd gerbron heddiw.

Gwenda Thomas: When we discussed this proposed LCO in Plenary in December and, before that, Helen Mary's proposal for an LCO regarding carers, there was cross-party agreement and strong support. There was agreement that improvements were needed and that this should be done as soon as possible. I would like to take this opportunity to thank Helen Mary once again for her contribution to the development of the proposed LCO that is before us today.

[8] In the explanatory memorandum that accompanies the proposed Order, I describe the existing framework of legislation and guidance, and outline a number of matters that still need to be addressed. They include concerns that carers' assessments and services for carers are patchy across Wales, and that we have not yet achieved the joined-up approach that is needed across social services and the NHS; the need for renewed effort to identify carers; the need for the wider provision of information to carers and better engagement by the NHS with carers, as partners in the provision of care. There are indications that many young carers are still carrying an inappropriate burden of care, which has a measurable impact on their health as they grow into young adulthood. There are also particular issues around inter-agency working, on the engagement of the NHS with carers, which are not covered under the existing legislative framework. Examples include the identification and signposting of carers to appropriate support services, and the full engagement of carers, as partners, in the provision of care and the provision of support for young carers. In our discussions and consultations with carers, we were told that the provision of accessible, relevant, up-to-date and timely information to carers is regarded as a clear gap. The effective provision of targeted information to carers at every point of their journey through the NHS or social services is necessary.

9.20 a.m.

[9] The Carers (Equal Opportunities) Act 2004 empowers local authorities to ask other specified authorities for assistance in planning the provision of services to carers and requires other authorities to give due consideration to such a request. However, there is no statutory duty to co-operate. There are other areas, such as carers' assessments, where statutory guidance has not resulted in the level of support that we would wish to see.

[10] Yesterday, we discussed in Plenary the latest Care and Social Services Inspectorate Wales annual report, in which the chief inspector draws attention to the significant variations in performance between individual authorities in relation to assessing and addressing carers' needs, and reflects that no year-on-year increase in services has been provided to carers in their own right. Legislative competence would, obviously, allow us to introduce Measures to help address these matters.

[11] **David Lloyd:** Diolch yn fawr, **David Lloyd:** Thank you, Deputy Minister,

Ddirprwy Weinidog, am ateb cynhwysfawr. for a comprehensive answer. The next Gofynnir y cwestiynau nesaf gan Janice questions will be asked by Janice Gregory. Gregory.

[12] **Janice Gregory:** Thank you, Deputy Minister, for such a comprehensive answer. I have written some notes on why you feel that legislative competence is needed. What are the specific characteristics and needs of carers in Wales that require legislation? Perhaps you might want to expand on what you said previously or add some new issues.

[13] **Gwenda Thomas:** As you will agree, I am sure, many of the issues affecting carers and carer services in Wales are common across the UK. These include carers having to balance work, childcare and their caring responsibilities for an ageing parent, for example. As we have discussed a great deal recently, increasing numbers of older people are often caring for their partner while also providing childcare for their grandchildren. In terms of parents of children with complex needs, who require a lifetime caring contribution from their parents, forecast demographic changes suggest that the pool of carers relating to the numbers of those who need care is steadily decreasing and will continue to do so over the medium term. The 2001 census shows that Wales has a higher proportion of carers than any region in England, at 11.7 per cent; the highest proportion of people with limiting long-term illness, at 22.3 per cent; and the level of permanent sickness and disability in the economically inactive—I do not know whether I like that phrase; I prefer to refer to them as people who do not work—in the population, aged between 16 and 74, is higher than in any region in England, at 9.2 per cent. These figures alone suggest that we need a different approach to tackle the intensity of the issue that we face in Wales.

[14] **Janice Gregory:** Thank you, Deputy Minister. The figures are quite stark. To what extent are current powers under Acts, such as the Carers and Disabled Children Act 2000, insufficient to adequately support and promote the wellbeing of carers?

[15] **Gwenda Thomas:** The 2000 Act introduced several new duties, which include empowering a carer to ask a local authority to undertake a carers' assessment for him or her in their own right, but only where the carer is aged 16 or over and is providing, or intends to provide, a substantial amount of care on a regular basis for another individual aged 18 or over. Where parent carers provide substantial and regular care for a child, similar provisions were also made for the local authority to consider the assessment and decide whether the carer has needs, whether the needs could be satisfied by services that the local authority may provide, and if so, for the local authority to consider whether or not to provide services to the carer. The limitations of that Act, therefore, include that it gives local authority considerable discretion. There is no explicit duty to provide services to carers, and the provisions of the Act do not apply to the national health service or the statutory agencies, and they do not embrace carers under the age of 16.

[16] The Carers (Equal Opportunities) Act 2004 that I mentioned empowers local authorities to ask other specified authorities for assistance in planning the provision of services to carers. It requires the other authority to give due consideration to such a request. However, it does not address the limitations of the 2000 Act; for example, there is no statutory duty to co-operate.

[17] **Janice Gregory:** You have clearly identified the serious issues that we raised, and you dealt with them in your answer. However, given the wealth of existing legislation relating to carers, have you looked at any alternative ways of addressing this, rather than further legislation?

[18] **Gwenda Thomas:** Yes, we considered whether we could achieve these improvements through further statutory guidance to local authorities under section 7(1) of the

Local Authority and Social Services Act 1970, or through further best-practice guidance. We have already issued guidance to authorities—for example, through our carers strategy; our guidance on the Carers and Disabled Children Act 2000; the carers assessment annex to our guidance on the unified assessment process; and other means, such as hosting conferences and workshops. We are providing resources through the current mental health carers grant and its predecessor schemes. However, statutory guidance under section 7(1) only applies to local authority social services functions, and does not have the same impact as a legal duty. Although it must be complied with in general terms, an authority has discretion to depart from such guidance if it believes there is good reason to do so. There is no equivalent of our section 7(1) statutory guidance that covers the NHS or other statutory agencies. Good practice guidance is weaker in status in those authorities as they only have to take it into account. Our judgment is that to provide a new impetus for further improvements to the arrangements to support carers, and to promote their wellbeing, we now require new legislative powers.

[19] **Alun Cairns:** On this point, where local authorities are not following the statutory guidance, what experience does your department have, either since you became Deputy Minister or previously, in pursuing cases with local authorities in order to set a precedent on the Government's attitude to statutory guidance? Have you demonstrated that it must be adhered to, and that very few exceptions can be allowed? If that could be achieved, it would save the need for lots of legislation. I am playing devil's advocate now.

[20] **Gwenda Thomas:** Your question is aimed at the department, and therefore perhaps at officials. As representatives of the people, we have all had casework from constituents that highlights the problems around the autonomy of local authorities. There are very good examples of statutory guidance being effective, but there are other examples of it not being so effective. To reflect back on yesterday's debate on CSSIW, the variation is unacceptable. To move to legislation would, in my opinion, create a more consistent approach to the needs of carers and how we attempt to meet them.

[21] **Janice Gregory:** You gave a comprehensive answer to my question but, for the record, could you confirm that, after discussions on this issue, you are satisfied that there is enough evidence to support a move to legislation rather than the issuing of new guidelines and policies?

9.30 a.m.

[22] **Gwenda Thomas:** It will be an ongoing process, but the Assembly Government will continue to have available a range of approaches to address carers' issues, including statutory and good practice guidance, which will not change. The issue for us is how to tackle existing legislation, which I dealt with in my response to Alun's question. It is good to reflect that we have had carers legislation in place since 1995, which has been reinforced over the years, and we have had a carers strategy since 2000. Further policy and practice guidance have also been issued over the years. However, we must deal with the inconsistency and variation, which was outlined yesterday when we debated the Care and Social Services Inspectorate Wales report. Good practice should be shared at all levels, including legislation. We have been taking a keen interest in developments elsewhere in the UK, including Scotland, and will be considering how best to apply the lessons learned from its legislation on carers information strategies to our own situation in Wales.

[23] **Janice Gregory:** You have mentioned several times, Deputy Minister, the inconsistency, which was highlighted in yesterday's debate. You will know that there are grave concerns about the provision of carers' assessments and services across Wales, which all Assembly Members will have encountered at some point in discussions with constituents. I think that I know what your answer to this question will be, but I will still ask you it for the record: do you believe that legislative competence is the only way of achieving greater

consistency, notwithstanding what you have said about best practice and everything else still being in place?

[24] **Gwenda Thomas:** Yes, I think that legislative competence is required to address the issues. As I have already said, there will be a role for other measures in complementing legislative competence, but I do not believe that the other approaches that have been mentioned would be effective, and I would much prefer to see a legal requirement on service providers.

[25] **David Lloyd:** Daw'r cwestiynau nesaf oddi wrth Helen Mary Jones.

David Lloyd: The next questions will come from Helen Mary Jones.

[26] **Helen Mary Jones:** Diolch, Gadeirydd, a diolch, Ddirprwy Weinidog, am eich geiriau caredig ynghynt. Yr wyf yn hynod o falch i weld y Gorchymyn arfaethedig hwn yn mynd rhagddo gan ei fod yn llawer ehangach na rhywbeth y byddwn i wedi gallu ei gynnig fel Aelod mainc gefn. Yr wyf yn ddiolchgar i'r Dirprwy Gweinidog am ei chydweithrediad.

Helen Mary Jones: Thank you, Chair, and thank you, Deputy Minister, for your kind words earlier. I am very happy to see this proposed Order progressing as it is much broader than what I could have put forward as a backbench Member. I am grateful to the Deputy Minister for her co-operation.

[27] Wrth sôn am y gyfraith bresennol, a oes grwpiau o gynhalwyr sy'n cael eu heithrio, ac, os felly, sut fyddai'r Gorchymyn arfaethedig hwn yn delio â'r mater gan sicrhau bod pob cynhaliwr yn cael ei gynnwys?

As regards the law as it stands, are there any groups of carers that are exempted, and, if so, how would this proposed Order deal with that issue and ensure that all carers are included?

[28] **Gwenda Thomas:** Y grŵp cyntaf sy'n dod i'r meddwl yw gofalwyr ifanc. Nid yw Deddf Gofalwyr a Phlant Anabl 2000 yn cynnwys gofalwyr ifanc na gofalwyr o dan 16 mlwydd oed, felly nid oes hawl unigol gan ofalwr o dan 16 i ofyn am asesiadau neu wasanaethau. Felly, rhaid inni feddwl yn ddifrifol am sut i gynnwys gofalwyr ifanc. Bydd y Gorchymyn cymhwysedd deddfwriaethol arfaethedig hwn yn cynnwys gofalwyr ifanc, wrth gwrs, ac ni fydd wedi'i gyfyngu i oedran penodol. Bydd hynny'n rhoi sgôp inni i sicrhau ein bod yn cynnwys pob gofalwr sydd angen gwasanaethau.

Gwenda Thomas: The first group that comes to mind is young carers. The Carers and Disabled Children Act 2000 does not refer to young carers or carers under the age of 16, so carers under the age of 16 do not have an individual right to request an assessment or services. Therefore, we must seriously consider how to include young carers. This proposed legislative competence Order will include young carers, of course, and will not be restricted to a certain age group. That will give us scope to ensure that we include all carers who need services.

[29] **Helen Mary Jones:** Diolch. Credaf, Gadeirydd, fod y Dirprwy Weinidog wedi ateb cwestiwn 8, felly fe ofynnaf gwestiwn atodol. Yr ydych yn ymwybodol, Ddirprwy Weinidog, fod trafodaethau wedi digwydd sy'n awgrymu y dylid rhoi cyfrifoldeb i sefydliadau addysg, fel colegau ac ysgolion, dros geisio adnabod gofalwyr ifanc sy'n derbyn eu haddysg ganddynt. Mae'r Gorchymyn arfaethedig yn sôn am ofal cymdeithasol, felly, pe baech am gyflwyno

Helen Mary Jones: Thank you. I believe, Chair, that the Deputy Minister has answered question 8, so I will ask a supplementary question. You will be aware, Deputy Minister, that there have been discussions that suggest that education institutions, such as colleges and schools, should be responsible for trying to recognise young carers who are being educated within those institutions. The proposed Order refers to social care, therefore, if you wanted to bring

Mesur a fyddai'n rhoi cyfrifoldeb ar ysgolion a cholegau i adnabod gofalwyr ifanc—efallai y gallent benodi athro sydd â chyfrifoldeb arbennig i weithio gyda gofalwyr ifanc, er enghraifft—a fyddai'r Gorchymyn arfaethedig, fel mae'n sefyll, yn caniatáu i chi fel Llywodraeth gynnig y math hwnnw o Fesur?

[30] **Gwenda Thomas:** Ni welaf reswm pam na fyddai hynny'n bosibl. Yr wyf yn siŵr ei bod yn iawn i ddweud y gallai gynnwys ysgolion. Mae hynny'n bwysig, a chytunaf â'r hyn yr ydych wedi'i ddweud. O ran y manylion, bydd yn rhaid inni siarad â phawb sydd â diddordeb yn y mater hwn, a bydd hynny'n cymryd amser. Fodd bynnag, ni chredaf y bydd y Gorchymyn arfaethedig yn ein hatal rhag siarad ag ysgolion.

[31] **Helen Mary Jones:** Dyna'r hyn yr oeddwn am fod yn sicr amdano. Felly, bydd y manylion am unrhyw Fesurau arfaethedig yn dod gerbron unwaith y byddwn wedi derbyn y pwerau.

[32] Mae gennyf un cwestiwn pellach ar hawliau gofalwyr ifanc. A fyddai'r Gorchymyn arfaethedig, fel y mae heddiw, yn cynnwys y bobl sydd yn gofalu am oedolion neu bobl ifanc sydd â phroblemau o ran camddefnyddio cyffuriau neu alcohol? Mae ganddynt hwy anghenion arbennig gan eu bod yn ceisio cuddio'r broblem. A fyddai'r Gorchymyn arfaethedig hwn yn caniatáu i chi sicrhau y byddai unrhyw Fesurau yn cynnwys, er enghraifft, person ifanc sy'n gofalu am riant sydd yn camddefnyddio cyffuriau neu alcohol?

[33] **Gwenda Thomas:** Byddai. Mae'r partneriaethau diogelwch cymunedol yn ymwneud â rhai materion ynghylch camddefnyddio sylweddau, ond byddai'r Gorchymyn arfaethedig hwn yn cynnwys anghenion y gofalwyr hynny.

[34] **Christine Chapman:** I want to ask you about the impact on other bodies. Could you clarify the range of bodies that might have duties imposed upon them were the Assembly to gain the power sought by this proposed LCO? What would be the position, for example, of independent sector providers in health and social care?

[35] **Gwenda Thomas:** It is envisaged that the bodies that would have duties imposed upon them by a future Measure made under this proposed LCO would include local authorities, local education authorities, local housing authorities, and NHS trusts or bodies.

forward a Measure that would place a responsibility on schools and colleges to recognise young carers—perhaps they could appoint a teacher with special responsibility for working with young carers, for example—would the proposed Order, as it stands, allow you as the Government to propose that kind of Measure?

Gwenda Thomas: I do not see a reason why that could not be achieved. I am sure that it is right to say that it could include schools. That is important, and I agree with what you have said. In terms of the details, we will need to talk to everybody with an interest in this matter, and that will take time. However, I do not believe that the proposed Order will preclude us from talking to schools.

Helen Mary Jones: That was what I wanted to be sure about. Therefore, the details for any proposed Measure will come forward once the powers have been drawn down.

I have one further question on the rights of young carers. Would the proposed Order, as it stands, include people who care for adults or young people with problems around drug or alcohol abuse? They have special needs, because they try to hide the problem. Would the proposed Order allow you to ensure that any Measures would include, for example, a young person caring for a parent who abuses drugs or alcohol?

Gwenda Thomas: Yes. The community safety partnerships deal with some issues around substance misuse, but the proposed Order would include the needs of those carers.

However, we will have to discuss with carer stakeholders the development of future Measures and whom they should apply to before consulting widely on any formal proposals. I am sure that the proposed LCO powers could be applied to other organisations that have a key role in addressing carers' concerns, such as the profit-making sector. We will discuss with carer stakeholders the development of future Measures and who should be included in them.

[36] **Christine Chapman:** My next question is to do with those other organisations and joint working. Are you saying that the Assembly will need to seek further legislative competence in the field of local government or health and health services in order to address issues of joint working between local authorities and other agencies?

[37] **Gwenda Thomas:** No. A matter can relate to more than one field. Section 95.1 of the Government of Wales Act 2006 makes it clear that an LCO may add to Schedule 5—and I realise that this is a bit technical—a matter that relates to one or more fields. However, a matter does not need to be included in every field to which it relates. The fact that this matter may also need to be relied upon to address issues relating to local authorities and the NHS does not require it also to be inserted into the local government or health and health service fields. I know that that is technical, but in my mind I am clear about the provision of that. The fact that there is some overlap between the different fields—and there is also some overlap between matters—is a natural consequence of the way in which different areas of activity are interlinked in the real world that we live in.

9.40 a.m.

[38] **Helen Mary Jones:** A allwch chi wneud hyn yn glir i ni? A fyddai'r Gorchymyn arfaethedig yn caniatáu i'r Cynulliad ddeddfu i sicrhau bod cyfnod pontio, er enghraifft pan fydd gofalwr ifanc yn symud ymlaen? A fyddai'r Gorchymyn fel y mae yn caniatáu i chi ddeddfu i sicrhau hawliau yn y cyfnod pan fydd rhywun yn symud o fod yn blentyn i fod yn oedolyn?

Helen Mary Jones: Could you make something clear for us? Would the proposed Order allow the Assembly to legislate to ensure that there is a transition period, for example when a young carer moves on? Would the Order as it stands allow you to legislate to secure rights in the transition period when someone moves from being a child to an adult?

[39] **Gwenda Thomas:** Byddai, yn bendant. Mae'r Gorchymyn cymhwysedd deddfwriaethol arfaethedig yn cynnwys pobl ifanc wrth iddynt ddod yn oedolion. Fel y bu i mi ddweud eisoes, ni fydd y diffiniad o 'ofalwr' yn y Gorchymyn yn gyfyngedig i oedran penodol. Felly, bydd gofalwyr sydd yn y cyfnod hwn o'u bywydau yn cael eu cynnwys.

Gwenda Thomas: Yes, it definitely would. The proposed legislative competence Order includes young people as they move into adulthood. As I have already said, the definition of a 'carer' in the LCO will not be restricted to a particular age group. Therefore, carers in this stage of their lives will be included.

[40] Mae gwaith yn cael ei wneud yn barod gan grŵp cyfeirio allanol ar bontio. Bydd y grŵp yn edrych ar sut yr ydym yn ymdrin â phlant wrth iddynt ddod yn oedolion. Yr ydym wedi bod yn trafod 'plentyn' fel rhywun o dan 25 oed yng nghyd-destun y Gorchymyn arall, a gall un Gorchymyn gefnogi'r llall.

Work is already being done by an external reference group on transition. The group will look at how we deal with children as they move into adulthood. We have discussed the definition of a 'child' as being anyone under 25 in relation to the other LCO, and one LCO can support the other.

[41] **David Lloyd:** Trown yn awr yn benodol at ddiffiniadau a geirfa.

David Lloyd: We shall now turn specifically to definitions and vocabulary.

[42] **Peter Black:** Deputy Minister, as you know, LCOs draw down the powers and the Measures are there to deal with the detail of what we do with those powers. I would like to ask you, therefore, why you have included a definition of ‘carer’ in the LCO rather than seeking to reserve that definition for future Measures.

[43] **Gwenda Thomas:** We had quite a wide-ranging and stimulating discussion with the Carers Alliance group and various stakeholders, particularly with young carers. We decided that if the word ‘carer’ was not defined in this proposed LCO, then it would not be clear what was meant by a ‘carer’ for the purpose of the proposed LCO and any future Measures. As it is not intended that this proposed LCO cover carers who are subject to employment contracts or a contract as a volunteer, it was felt that a clear definition was necessary.

[44] **Peter Black:** Is there other UK legislation that makes that distinction?

[45] **Gwenda Thomas:** Not as clearly as we want to make it. There are definitions of carers for benefit purposes. We need to make it clear that the definition of ‘carer’ in this LCO is absolutely clear, so that it does not lead to problems when we move to the Measure stage.

[46] **Peter Black:** Can you clarify why the term ‘promoting’ in relation to the wellbeing of carers has been included in the proposed Order and what that means in practical terms?

[47] **Gwenda Thomas:** This question has flummoxed me a little bit—or perhaps ‘flummox’ is not the right word. The term ‘promoting’ in relation to the wellbeing of carers has been included in this proposed Order. With regard to your question as to what this means in practical terms, to me, ‘promotion’ in this context is intended to convey a clear message of improvement for carers across the board. We know from the Welsh health survey and the living in Wales survey that there are particular issues around the wellbeing of carers, particularly the mental health of young adult carers. These are representative surveys and so it is possible, with care, to generalise the findings to the population as a whole. These are clearly matters of concern and an area where we should be looking for improvement and intention so that we facilitate the introduction of a Measure that will help to move things forward and in the right direction.

[48] **Peter Black:** What consideration did you give to alternative terms, such as, for example, ‘supporting’? Would that not have been a more appropriate word, or, perhaps, both could have been put in?

[49] **Gwenda Thomas:** I take your point, but we have used the term ‘promoting’ in the context of the provision of care by carers because it was felt that this relates to the provision of physical help and other forms of support to meet the carer’s assessed needs. I do not think that there is an absolute and clear difference between the words ‘supporting’ and ‘promoting’.

[50] **David Lloyd:** Helen Mary, a oes gennyh gwestiwn atodol ar y mater? **David Lloyd:** Helen Mary, do you have a supplementary question on this issue?

[51] **Helen Mary Jones:** Yes. I seem to recall our having some discussions—it might have been with the Assembly’s lawyers—about the use of the word ‘promoting’, which is used in the context of equality legislation to place duties on, for example, local authorities and the National Assembly. The suggestion is that the use of the word ‘promoting’ conveys a responsibility to be proactive. For example, if a local authority has to promote the wellbeing of carers, in legal terms, there is a suggestion that it is similar to the duty to promote equality of opportunity in our legislation. There was some intention to capture that idea—that we would not just be waiting for carers to come forward to be supported, but asking bodies to be active in promoting wellbeing.

[52] **Gwenda Thomas:** We are trying to capture the essence of a whole range of issues, from support for the individual carer, based on their assessed needs, to promoting the wellbeing of carers as a whole within the local authority area or across Wales. That is the thinking behind this.

[53] **Peter Black:** Can you qualify what is meant by the term ‘substantial care’ in proposed matter 15.9? Would this include, for example, caring for someone living away from home?

[54] **Gwenda Thomas:** With regard to matter 15.9 in the proposed legislative competence Order, which defines carers, we need to provide a substantial amount of care on a regular basis. Everything has grown out of that concept of providing care, and the proposed reference in matter 15.9 is to a substantial amount of care on a regular basis. It is appropriate to consider the wording as a whole.

[55] **Peter Black:** Therefore, if you had a relative living nearby for whom you were caring, even though they were living separately from you, would that situation be covered by the term ‘substantial care’?

[56] **Gwenda Thomas:** Yes, I think that it would. Without using the words ‘substantial care on a regular basis’, the scope of the proposed LCO would not be as wide as we want and intend it to be.

[57] **Peter Black:** How do you quantify ‘substantial’? Will there be guidance on that?

[58] **Gwenda Thomas:** I think that any judgment as to whether care is substantial and regular must recognise that it is not only the time spent caring that has an impact on the carer. There are many different sorts of caring roles, involving many different sorts of impacts on the carers. Any assessment of a carer’s need for support must consider the whole caring situation and should focus on the outcome that the carer would want to see to help them in their caring role and to maintain their health and wellbeing, so we are really talking about the impact on carers as well. We cannot look only at the needs of the person being looked after; we also need to look at the impact on the lives and the wellbeing of carers themselves.

[59] **Peter Black:** So would your intention be to deal with the more detailed definition in Measures?

[60] **Gwenda Thomas:** That could be the case, but I am more than ready and willing to listen to what the committee has to say on this. It is important that we are clear about how we look at the care that carers provide. I will bring in the officials in case I am missing something here. That might be helpful to the committee.

[61] **Peter Black:** Yes, that would be helpful.

[62] **Mr Carter:** The Deputy Minister has already covered this in part. The impact on carers is the important thing. We tended not to use a prescriptive definition in terms of a number of hours, the type of condition and so on. The impact assessment is a judgment assessment that must be undertaken at the time. We already have guidance issued on the Carers and Disabled Children Act 2000, which operates on exactly the same principle, and this wording is a reflection of that used in that Act. Carers are defined for different purposes in different legislations such as those we have already mentioned in terms of benefits, for example. Some use a 35 hours a week definition in the identification of a carer. The more we become prescriptive, the more difficult it will be, because you then start to exclude a whole range of carers.

9.50 a.m.

[63] **Peter Black:** That is helpful, because the whole thrust of these questions is to try to avoid prescriptive terms and to try to establish whether the terms used are too prescriptive and whether we are aiming for the widest possible draw-down of powers. You have reassured me that that is your intention, which is why I seek clarification on these definitions.

[64] My last question is on the words 'regular basis' in the definitions. What does that mean in practical terms?

[65] **Gwenda Thomas:** It is meant to have the same scope as 'a substantial amount of care'. I think that we have to take the sentence as a whole:

[66] 'a substantial amount of care on a regular basis...'

[67] That is the definition that we would like to consider with the committee. The scope provided by putting those words together means that this is the best possible definition that we have been able to arrive at.

[68] **Peter Black:** Do you think that in defining carers you are going too far to try to define the scope of the care when that might be better left to the Measures, having drawn down the powers for carers per se? Do you need to go that far, or could that be left for Measures?

[69] **Gwenda Thomas:** I think that that might be leaving too much to the Measure, but you might not share that view. Establishing that a carer needs to be supported, when he or she provides substantial care on a regular basis, has been what has been raised with me by carers' organisations and young carers. I think that that wording will facilitate the development of a Measure.

[70] **Peter Black:** Do you envisage having difficulties with the Welsh Affairs Select Committee if you do not include those sorts of definitions?

[71] **Gwenda Thomas:** We will deal with that committee on another day. *[Laughter.]* On the other part of your question, on caring for people away from home, the LCO will cover that. Whether the carer undertakes the caring role in his or her own home or away from it should be a relevant matter for the assessment, but the key issue would be the impact of that caring role on the individual carer, wherever the caring is undertaken.

[72] **David Lloyd:** Symudwn ymlaen. **David Lloyd:** We will move on. Alun Cairns has the next question.

[73] **Alun Cairns:** The LCO that is probably closest in parallel to this is the LCO on additional learning needs. I was a member of the Proposed Additional Learning Needs LCO Committee and we discussed the definitions at length and the limitations that could ensue. Therefore, could you clarify what is meant by physical impairment, as referred to in the proposed matter 15.9? Does that include long-term and chronic illnesses and why is it being used in the proposed Order?

[74] **Gwenda Thomas:** Physical impairment is a condition, according to the definition here, which affects someone's physical body and it would include long-term illness. The term has been used in the proposed Order because many children with a physical impairment would likely need a substantial amount of care on a regular basis.

[75] **Alun Cairns:** Going back to the additional learning needs LCO, that committee called for communication impairment to be included in the definition. The Minister's justification, which I supported, was that the more prescriptive you become, the more limited the scope of the LCO, and of the Measure thereafter, if there are conditions that could be considered to be outside physical impairment and they are not therefore listed. Do you feel that the reference to physical impairment is sufficiently broad in terms of the requirements that you want? Do you not run a risk of listing the sorts of conditions that would be eligible?

[76] **Gwenda Thomas:** To the best of my understanding, the additional learning needs LCO covers all children because it relates to the provision of education. This proposed LCO covers carers for people under the age of 18 who have both physical and mental impairments. The children would need to have a physical impairment, a mental impairment, or both, for the care to qualify.

[77] **Alun Cairns:** I accept that and I may come on to that in a moment. However, I remember specifically, in relation to the proposed additional learning needs LCO, that the committee called for physical, mental or communication impairments to be considered. Some organisations wanted 'communication' to be included in the definition of impairment. Ultimately, it was not included, because it was considered that in doing so we would be running the risk of beginning to list the sorts of conditions that would be eligible or ineligible, as the case may be. It was felt that the definition was sufficiently broad without including 'communication'. Do you feel that the definition that you have—'physical or mental impairment'—is sufficiently broad not to run the risk of providing a list of conditions? I appreciate that the LCOs are very different, but there are strong parallels between the definitions.

[78] **David Lloyd:** Cyn i chi ateb, **David Lloyd:** Before you answer, Deputy Ddirprwy Weinidog, mae cwestiwn atodol Minister, Helen Mary has a supplementary gan Helen Mary ar y pwynt hwnnw. question on that point.

[79] **Helen Mary Jones:** This may help to clarify to point. Are these not the definitions that are used in the Disability Discrimination Act 1995, where case law has established that, for example, a physical impairment would include deafness and blindness because they are communication difficulties that are caused by a physical problem? There is a similar situation with communication difficulties that are caused by a mental impairment—what we would have called a learning disability, for example. If someone has difficulty speaking because of a mental impairment, case law has established that that is included in the definition. So, I think that that is a kind of off-the-shelf definition that would also be acceptable at Westminster, because it falls out of that. That was something that came in when we were discussing my proposal for an LCO, which was much narrower in scope. The Deputy Minister and her officials may need to say something else on that.

[80] **Gwenda Thomas:** My view is that 'physical or mental impairment' would cover communication impairments. If we were to add any more specifics, would we be restricting rather than enhancing the scope of the LCO? I feel that relying on 'physical or mental impairment' to cover all impairments might be a better way of ensuring that we have as wide a scope as possible.

[81] **Alun Cairns:** That is precisely the point that I wanted to make. The purpose of pursuing that point here was so that if we were to receive evidence from another organisation calling for communication impairment to be included, it would be on record that the definition is broad enough and that it covers it.

[82] **Gwenda Thomas:** I think that John would like to come in.

[83] **Mr Carter:** ‘Mental impairment’ is well understood and Helen Mary Jones is right that, in terms of case law, it goes beyond mental illness, as we would understand it, and includes intellectual impairments. ‘Problems associated with the functioning of the mind’ is the sort of description that is usually given to it. That definition would embrace learning disabilities, Down’s syndrome, and a whole host of other conditions outside the traditionally understood mental health ones.

[84] **Alun Cairns:** That is precisely the point that I was getting at. I have no doubt that when we receive other evidence, there will be calls for it to be more specific, but there is a good reason not to be more specific in that it would run the risk of excluding other conditions.

[85] **Mr Carter:** Absolutely.

[86] **David Lloyd:** Mae gan Peter Black **David Lloyd:** Peter Black has a supplementary question.

[87] **Peter Black:** With the proposed additional learning needs LCO, the Assembly Government amended the definition and also referred to,

[88] ‘a progressive health condition (such as cancer, multiple sclerosis or HIV infection) where it is at a stage involving no physical or mental impairment’.

[89] That partly brings it in line with the Disability Discrimination Act. However, that wording is not in this LCO. Would it not make sense to have a synchronicity in terms of definitions between the two LCOs?

[90] **Gwenda Thomas:** I will ask Huw to respond on that.

[91] **Mr Rowlands:** Each LCO stands on its own, so we need to be happy that the definitions in a particular LCO achieve the broad sense of what we want to happen in a Measure. It is not just a case of taking from or following the definitions of other LCOs if we do not consider them to be appropriate.

10.00 a.m.

[92] **Peter Black:** The exemptions in this proposed LCO are in line with previous LCOs. Having synchronised the exemptions, why do you not synchronise the definitions?

[93] **Mr Rowlands:** The exemptions are totally different. It is a tidying-up exercise and has nothing to do with the wording or—

[94] **Peter Black:** But the principle is the same for definitions, is it not? If you synchronise the exemptions, why not synchronise the definitions to make them as wide as possible? The definition is in line with the Disability Discrimination Act 1995, but you do not have it in this proposed LCO.

[95] **Gwenda Thomas:** Definitions put things into an LCO, while exemptions take things out.

[96] **Peter Black:** I understand that.

[97] **Gwenda Thomas:** We need to be specific about what is included.

[98] **Mr Rowlands:** It just happens that the opportunity was taken to clear up the technical exemptions all in one place. The wording expressing what we want to achieve in each LCO

has to stand on its own, and it does stand on its own, and I do not see any need to change it as you suggest or tinker with it in any way.

[99] **Peter Black:** Would someone who had a progressive health condition that had not reached the stage of physical or mental impairment be covered by this proposed LCO?

[100] **Mr Rowlands:** Sorry, could you repeat that?

[101] **Peter Black:** If you were caring for someone who had a progressive health condition that had not reached the stage of a physical or mental impairment, would that be covered by this LCO?

[102] **Mr Rowlands:** It would have to be a physical or mental impairment. If there is no physical or mental impairment, then, no, it would not come under the definitions.

[103] **Gwenda Thomas:** Can you envisage somebody being in that position?

[104] **Peter Black:** I am just asking, because that is the definition that is in the National Assembly for Wales (Legislative Competence) Order 2007 on additional learning needs, but not in this proposed LCO. You seem to be saying that the former applies to someone who has a progressive health condition that is not yet at a stage that involves physical and mental impairment, but someone who is caring for such a person is not covered by this proposed LCO.

[105] **Gwenda Thomas:** I would have thought that somebody with a progressive illness who needs care will be covered by it.

[106] **Peter Black:** That is my question. So, the answer is ‘Yes, they are covered by this’.

[107] **Gwenda Thomas:** If that person needs care, yes, I would think so.

[108] **Mr Carter:** Within this context, we are not, as such, looking at the condition of the person being cared for; it is the input of the carer that is important. The condition of the individual certainly has a bearing on the matter, but this looks at the other side, to assess the impact on the individual doing the caring. At the early stages of a progressive disease, the caring role, as envisaged in this proposed LCO, may not require intervention by a service. As the condition deteriorates, however, intervention may then be required, although, if you are talking about a man with a progressive condition who has a wife and five children, the impact will be different, and that is why, within this proposed LCO, we look at a situation in light of its impact.

[109] **Peter Black:** You have included the definition of the type of people being cared for in the proposed LCO, so you must have had that intention.

[110] **Mr Carter:** That is right, but, in the context of what we are discussing, ‘physical and mental impairment’ is well understood. It is not intended to exclude in that sense. If you start excluding, you have to start defining below that. If clarification is required, that could be done in guidance rather than in legislation. However, we will consider this as we start developing proposals.

[111] **Gwenda Thomas:** We have established the criteria for providing substantial care regularly, which supports our ability to look effectively at the impact on the carer.

[112] **Alun Cairns:** With your permission, Cadeirydd, I want to pursue the matter. We do not have to have an answer now if it is not possible; a written answer will do. What if

someone is profoundly deaf? Is that a physical or a mental impairment?

[113] **Gwenda Thomas:** In a previous post, I worked in a benefits agency, and the issue of profound deafness was dealt with as a benefits issue. The impact of caring for a person who is profoundly deaf could be as significant as it would be if it was some other impairment. We must focus on the impact on the carer, because the profoundly deaf person would need help.

[114] **Alun Cairns:** That is the point that I am getting at. Does the proposed LCO give us the legislative competence to do that? Is 'physical or mental impairment' sufficiently broad to meet the needs of someone who is profoundly deaf, for example?

[115] **Gwenda Thomas:** I would think so.

[116] **Mr Carter:** Yes, that would be covered within the physical definition, as would 'blind' and a host of other conditions that relate to sensory disability. However, in the real world, people have a range of quite complex conditions that may fall within both definitions.

[117] **Helen Mary Jones:** One issue around the importance of language is to do with the social model of disability. A person may have an impairment but the disability is caused by society's inability to cope with that person's impairment. So, if a person is profoundly deaf, their impairment is deafness, but their disability may be caused by the fact that some organisations cannot provide signage for them. For example, if you are caring for a child who is profoundly deaf, they will have problems interacting socially, and that is where the disability aspect comes in. We used to talk about it as a disability, but we now talk about the impairment as being the condition of the person, and the disability being caused by society's inability to cope with that impairment. People get confused about the communications issue, which is what happened during the last process.

[118] **Alun Cairns:** That is the type of thing to which the committee and the Deputy Minister must give consideration, to ensure that these conditions slot into the proposed LCO. Peter raised conditions such as myalgic encephalopathy. Would that be addressed by 'physical or mental impairment'?

[119] **Helen Mary Jones:** When ME has reached the point of preventing you from physically being able to do things, it becomes a physical impairment.

[120] **Peter Black:** Could we have an answer from the Deputy Minister on that—although I know that you want to be a Minister?

[121] **Helen Mary Jones:** No, I do not.

[122] **Gwenda Thomas:** We must keep the focus on the impact on the carer of people with physical or mental impairments, whatever they may be.

[123] **Alun Cairns:** Fine. Moving on, can you tell us what is meant by the term 'an individual aged 18 or over' and how it is wider than the definition 'an individual aged 18 or over with a physical or mental impairment'?

[124] **Gwenda Thomas:** The phrase 'an individual aged 18 or over' means a person, male or female, who is 18 years of age or older. That is a wider definition than 'an individual aged 18 or over with a physical or mental impairment', as it includes every person aged 18 or over, and it is not restricted to those aged 18 or older who have a physical or mental impairment. There is a difference between a child with a physical or mental impairment and an individual aged 18 or over with a physical or mental impairment, because, as I tried to explain earlier, the proposed LCO covers carers and persons cared for of any age. However, in the case of

persons caring for children, it covers only children with a physical and mental impairment.

[125] **Alun Cairns:** Okay. The LCO on additional learning needs applies the physical and mental impairment criterion to all persons, children and adults, but this proposed LCO applies it to children only. What issues, if any, does that raise, and why has it been limited to such a degree?

[126] **Gwenda Thomas:** I do not think that it raises any issues. The fact that the LCO on additional learning needs applied the criterion of physical or mental impairment to all persons and that it is applied as a criterion only in relation to children in this proposed LCO is irrelevant. Each LCO has a different legislative intention and will use various terms and concepts in different ways. In the LCO on additional learning needs, the intention was that the criterion of physical and mental impairment be applied to all persons, as that would be essential to obtain additional learning and training. In this proposed LCO, the criterion of physical and mental impairment applies only in relation to children to ensure that the typical average parent does not fall within the definition of carers.

10.10 a.m.

[127] **Alun Cairns:** It is not necessarily that I disagree with what you have said, Deputy Minister, but I would question what you said about each LCO having a different legislative intention—and maybe the committee will want to consider that. The purpose of an LCO is to confer competence on the Assembly. Intentions that we do not even know about may well come up in 10 years' time, and so we should make it as broad as possible. We would not want to make it too restrictive so that it prevented future legislation.

[128] **Gwenda Thomas:** I accept and respect that.

[129] **Peter Black:** Following on from that, the common intention of all LCOs is to draw down powers, but the different legislative intentions come within Measures. Is that not the difference? Are you not confusing the two?

[130] **Gwenda Thomas:** The intention of an LCO is to give us legislative competence, and Measures allow us to bring down—

[131] **Peter Black:** That is a common factor among all LCOs. Therefore, arguing that there should be differences between LCOs because you want to do different things in the Measures defeats the purpose rather.

[132] **Gwenda Thomas:** I do not think so, but perhaps Huw can come in on this.

[133] **Mr Rowlands:** We draft each proposed LCO based on what we want to achieve in it. They are generally broadly drafted to ensure that they achieve what we want them to, but we do not go so far as to draft them so broadly that they cover every imaginable or unimaginable eventuality for the next 20 years.

[134] **Peter Black:** Why not? [*Laughter.*]

[135] **Mr Rowlands:** One reason is because you would have problems with Westminster scrutiny; another is drafting certainty, given that the intention of the draftsman at the time has to be certain. We cannot just go off on a limb without a reason.

[136] **Peter Black:** That is the answer that I was looking for.

[137] **Alun Cairns:** With the greatest respect, the Assembly or any future Minister does not

want to have to go back to Westminster with a new proposal for an LCO every time they have some new legislation in mind. Is it not better to make it broad in the first instance?

[138] **Mr Rowlands:** Exactly, but that does not mean that we have to take anything from the LCO on additional learning needs, which was the question. We do what we think is broadly necessary, but we look at each proposed LCO individually; we do not just take things from each and every LCO, just because similar terms are used in different ways.

[139] **David Lloyd:** Symudwn ymlaen at **David Lloyd:** We will move on to question gwestiwn 21, sydd i'w ofyn gan Janice 21, which will be asked by Janice Gregory. Gregory.

[140] **Janice Gregory:** Staying with definitions and terminology, the definition of 'social care services' given is any of the following provided in connection with the wellbeing of any person: non-residential care services, information, advice, counselling or advocacy services or any other assistance. Do you think that that is too wide a definition?

[141] **Gwenda Thomas:** My view is that that is the right definition of 'social care services', and that it can include all the issues that you have mentioned. I did not quite catch whether you said 'information', but we are adding it to that definition, which is the point that Helen Mary made in relation to her Member proposed LCO on carers, namely the need to make information available. However, we do not consider it to be too wide—or too narrow—a definition. It is intentionally wide to ensure that future Measures are not precluded from achieving their aims simply because the LCO does not give broad enough legislative competence, which is the point that Peter and Alun were making earlier.

[142] **Helen Mary Jones:** To turn to the exceptions, which is the reverse of what we were talking about before, do you consider, Deputy Minister, that any excepted matters in field 15 would have implications for the effectiveness of any future proposed Measures brought forward under matter 15.9?

[143] **Gwenda Thomas:** The various exceptions in field 15 make it clear that they are excluded from competence because they are the responsibility of the United Kingdom Government. The proposed Order therefore reflects the general devolution statement. The exceptions that significantly impact on carers are likely to be those relating to social security, mainly pensions and benefits, and the reform of the UK benefits system, which will have major implications for many carers in Wales.

[144] I welcome the commitments given by the UK Government in the UK carers strategy and in the recent White Paper on welfare reform and I think, to the best of my recollection and knowledge, that this is the first time that we have seen this. It states that, by 2018, carers will be supported so that they are not forced into financial hardship by their caring role. The Department for Work and Pensions will not move carers from income support until it is clear and until a detailed plan is set as to how to reform the benefits system over the longer term. I am not saying that it is something to jump up and down about but it is there and it just shows the impact that pensions and benefits can have on carers. To answer your question more clearly, perhaps, they are exempt issues in regard to this proposed legislative competence Order.

[145] **Helen Mary Jones:** Therefore, I assume that there is nothing in the exceptions that would give you any concerns, Deputy Minister, about being able to legislate in future, about matters that are within the Assembly's competence. I assume that nothing is excluded about the matters that are within the Assembly's competence.

[146] **Gwenda Thomas:** No.

[147] **David Lloyd:** Os ydych yn hapus, **David Lloyd:** If you are content, we will proceed to the next question, which is from Peter Black.

[148] **Peter Black:** The explanatory memorandum states in paragraph 19 that:

[149] ‘The proposed Order also makes technical amendments to Section 94 and Schedule 5 of the 2006 Act...The effect of the technical amendments...is to apply those same exceptions to all matters in Part 1 of Schedule 5’.

[150] It then states:

[151] ‘This achieves more surely the objective that these exceptions should apply in all cases where they are relevant and makes Schedule 5 clearer and easier to understand by applying these exceptions to all matters listed in it’.

[152] Could you confirm that you are satisfied that the presentational change to Schedule 5 achieves this clarity?

[153] **Gwenda Thomas:** I am satisfied that this change will make Schedule 5 easier to read. I explained some of this when I presented the LCO in the Chamber. I am also satisfied that it will have no effect on the substance of the LCO.

[154] **Mr Rowlands:** It is just a technical clarifying exercise to have all of the exemptions in one place; before, they would be floating with the different LCOs. For the normal person, or anyone who looks at it, it is just much clearer and everything is all together in one place. It does not affect the intentions of this LCO in any way. This change happens in this LCO because it came along at this time. It could have happened in another LCO but it just happened to come at this moment in time.

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

[156] **David Lloyd:** Os ydych yn hapus, **David Lloyd:** If you are content, we will proceed to the next question, which is from Alun.

[157] **Alun Cairns:** The table in Schedule 5 applies the exemptions and the matters to which they refer in different columns—columns 1 and 2. Applying the exceptions across the entire field appears to have a future effect of applying the exceptions to matters to which they do not currently apply. Can you clarify whether this is the case?

[158] **Gwenda Thomas:** Yes. This means that the exceptions listed will apply to all matters in Part 1 of Schedule 5. This change will have no adverse implications for the existing matters in the schedule and although the exceptions, if the changes are made, will apply to all matters, the exceptions will only have practical effect where they are relevant to a matter. For example, the road traffic offences exceptions will not affect the Assembly’s existing competence under field 15, which is social welfare.

[159] **Alun Cairns:** That is fine.

[160] **David Lloyd:** Os ydych yn hapus, **David Lloyd:** If you are content, we will proceed to the final question, which is from Christine, who will refer to the connections with any other legislation.

[161] **Christine Chapman:** Recommendation 4 of the Proposed Mental Health Services LCO Committee report on the National Assembly for Wales (Legislative Competence) (No.6) Order 2008 highlighted the particularly important role played by those caring for people with mental health disorders. The committee's report recommended that support for carers of persons with mental health disorders be taken into account in the development of legislation regarding the needs and rights of carers. Could you provide us with details of whether, and how, this recommendation has been considered in the development of the proposed Order?

10.20 a.m.

[162] **Gwenda Thomas:** The Proposed Mental Health Services LCO Committee, rightly in my view, highlighted evidence on the particularly important role played by those caring for people with mental health disorders. That committee recommended that support for carers of persons with mental health disorders be taken into account in the development of legislation on the needs and rights of carers. It considered that that was beyond the scope of the proposed mental health services Order.

[163] Support for carers of people with mental health disorders is a key element of the Assembly Government's carers strategy and when we introduced the mental health carers grant in 2006, when Brian Gibbons was the Minister for Health and Social Services, he said,

[164] 'we know from our constituents that those who care for people with mental health problems and, especially, dementia sufferers, are often those who most need support'.

[165] Around half of the current carers grant goes towards supporting the carers of people who have a mental illness, so I am pleased to confirm that the proposed LCO will encompass this important group of carers.

<p>[166] David Lloyd: A oes unrhyw gwestiynau atodol eraill? Gwelaf nad oes. Felly, dyna ddiwedd y cyfarfod. Diolchaf i'r Dirprwy Weinidog a'i swyddogion am eu cyfraniadau.</p>	<p>David Lloyd: Are there any further supplementary questions? I see that there are not. Therefore, that is the end of the meeting. I thank the Deputy Minister and her officials for their contributions.</p>
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<p>[167] Cynhelir y cyfarfod nesaf ar ddydd Mercher nesaf, 4 Chwefror, pan fydd y pwyllgor yn clywed tystiolaeth gan Gymdeithas Llywodraeth Leol Cymru.</p>	<p>The next meeting will be next Wednesday, 4 February, when the committee will hear evidence from the Welsh Local Government Association.</p>
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<p>[168] Mae'r cyfarfod ar ben. Diolch am eich presenoldeb, a diolch am y cyfieithu.</p>	<p>That brings the meeting to an end. Thank you for your attendance, and thank you for the translation.</p>
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*Daeth y cyfarfod i ben am 10.21 a.m.
The meeting ended at 10.21 a.m.*