



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

**Pwyllgor Deddfwriaeth Rhif 4
Legislation Committee No. 4**

**Dydd Mercher, 8 Gorffennaf 2009
Wednesday, 8 July 2009**

Cynnwys
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Deddfwriaethol) (Diwylliant a Meysydd Eraill) 2009
The Proposed National Assembly for Wales (Legislative Competence) (Culture and
Other Fields) 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

Lorraine Barrett	Llafur Labour
Michael German	Democratiaid Rhyddfrydol Cymru (Cadeirydd y Pwyllgor) Welsh Liberal Democrats (Committee Chair)
Bethan Jenkins	Plaid Cymru The Party of Wales
Jonathan Morgan	Ceidwadwyr Cymreig Welsh Conservatives
Joyce Watson	Llafur Labour
Kirsty Williams	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats

Eraill yn bresennol
Others in attendance

Mike Bailey	Adran Gwasanaethau Cyfreithiol, Llywodraeth Cynulliad Cymru Legal Services Department, Welsh Assembly Government
Alun Ffred Jones	Aelod y Cynulliad, Plaid Cymru (Y Weinidog dros Dreftadaeth) Assembly Member, Plaid Cymru (The Minister for Heritage)
Lyn Summers	Rheolwr Prosiect Dyletswydd Diwylliant, Llywodraeth Cynulliad Cymru Culture Duty Project Manager, Welsh Assembly Government

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 9.30 a.m.
The meeting began at 9.30 a.m.

Cyflwyniad ac Ymddiheuriadau
Introduction and Apologies

[1] **Michael German:** Good morning, everyone and welcome to this meeting of Legislation Committee No.4, which is discussing the National Assembly for Wales (Legislative Competence) (Culture and other Fields) Order 2009. I have not received any apologies; all Members are present today.

[2] We operate through the media of English and Welsh. Headphones are available for simultaneous translation, which is on channel 1, and proceedings can be heard verbatim on

channel 0, which provides amplification. In the event of a fire alarm sounding—a test is not forecast for today—please follow the instructions of the ushers and staff. Please switch off all electronic equipment—BlackBerrys, pagers, mobile phones and so on—as they interfere with the broadcasting equipment.

**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**

[3] I welcome the Minister for Heritage, Alun Ffred Jones, and his officials to the committee meeting this morning. The purpose of our meeting today is to take evidence from the Minister regarding the proposed culture LCO, which was laid before the Assembly by the Welsh Government on 15 June 2009. The proposed Order has been referred to this legislation committee for scrutiny by the Business Committee, and we have been set a reporting deadline of 6 November 2009. You will recall that, at our 1 July meeting, we agreed our terms of reference, which are:

[4] ‘to consider the general principles of the proposed Order and whether legislative competence in the area identified in matters 2.1, 3.1 and 16.4 should be conferred on the Assembly, and, secondly, to consider whether the terms of the proposed Order are too broadly or too narrowly defined’.

[5] I welcome Alun Ffred Jones and Lyn Summers, who I believe is the culture duty project manager.

[6] **Ms Summers:** That is right.

[7] **Michael German:** We have received your paper, Alun Ffred. Do you want to make any introductory remarks?

[8] **The Minister for Heritage (Alun Ffred Jones):** I do not think so. We can start straight away.

[9] **Michael German:** Okay, we will move to questions. I will ask a broad opening question. What benefits do you think that Welsh Ministers and the National Assembly for Wales will derive from this bid for powers?

[10] **Alun Ffred Jones:** You could argue that the benefits should accrue for the people, or the citizens, of Wales rather than to the Assembly itself. The Government believes that the current framework has resulted in great variation within local authorities and between local authorities in respect of cultural provision, and believes that, to address that, an LCO is needed that would confer powers on the Government to enable it to promote cultural activities in local authorities with a greater degree of vigour.

[11] **Michael German:** This relates to your ‘One Wales’ commitment to improving the delivery of high-quality cultural experiences across Wales. Is the proposed LCO a result of focusing directly on that policy objective, or other policy objectives, or is it simply a matter of principle that Wales should have legislative competence in its cultural activities?

[12] **Alun Ffred Jones:** It is certainly not a case of taking competence for its own sake. The purpose is to take powers to enable us to implement the ‘One Wales’ commitment.

[13] **Michael German:** I suppose that what falls out of that, and the question that you

have to ask about all legislation, is: is this the most appropriate means of addressing the problem, or the issue, or could you have done it through guidance or other forms of subordinate legislation?

[14] **Alun Ffred Jones:** The gentleman who has just come in is a member of my legal back-up team, who I believe was caught in traffic. Is that right?

[15] **Mr Bailey:** Yes, on the M4. I apologise for that.

[16] **Alun Ffred Jones:** You asked whether the same could have been achieved through other means, through guidance, as you suggested. It is possible to try to achieve this aim through more general guidance, but we believe that the current situation has created a variance between local authorities and that having these powers will enable us to pursue this aim with greater vigour and to greater effect.

[17] The Government of Wales Act 2006 contains wide powers for the Welsh Ministers to do anything that they consider appropriate to support the relevant areas listed under that section. However, the powers do not include powers to legislate. We believe that statutory guidance would not be sufficient to achieve the aim.

[18] **Michael German:** So, the current section 61 that you just mentioned, which says that they may do anything they consider appropriate, does not give you sufficient power to act.

[19] **Alun Ffred Jones:** The current position is that we have the power to encourage and to guide, but not to legislate. We believe that legislation in this field will create a more uniform quality of provision across Wales.

[20] **Michael German:** That is very clear.

[21] **Lorraine Barrett:** The explanatory memorandum sets out the reasons and the policy objectives for seeking this legislative competence. How do you think this proposed LCO will enable you to achieve those policy objectives?

[22] **Alun Ffred Jones:** The answer may seem facile; it will give us the competence to create a Measure and will create a statutory duty aimed at achieving these policy objectives. I know that that sounds facile, but that is what it will do.

[23] **Lorraine Barrett:** Okay. Could you give us some examples of ways in which the current cultural provision is lacking in relation to the way that local authorities promote and enable participation and engage in partnership working in their cultural activities? I have been trying to get my head around this. Given that each local authority is unique and their communities are unique—all have different needs and ambitions—could you give us some examples with regard to how some of them may be lacking?

[24] **Alun Ffred Jones:** I will not give specific examples, but the aim is to bring the poorer performing authorities up to the standard of the best. Perhaps we will return to this later. We have surveyed the situation and there is a great deal of information out there about what is available. While we have not gone into great detail to try to pinpoint the weak, or the weaker, authorities, there is great variance. That is the issue. After all, if we believe that this is an entitlement and that it is important for citizens to access cultural provision, which includes a broad spectrum of activity, then we need some means of trying to encourage this in a rather more effective way than is being done at present. I would like to stress, once again, that there is a great deal of good practice out there. It is not a case of having to reinvent the wheel.

[25] **Michael German:** Jonathan wanted to ask a supplementary question to that, if that is okay.

[26] **Lorraine Barrett:** Yes.

[27] **Jonathan Morgan:** Thank you, Chair. Minister, you made reference to ‘poorer performing’ local authorities. Those were your exact words. How have you reached that judgment? On what basis have you decided that some local authorities are ‘poorer performing’ local authorities. What is it about their performance that makes them poor in comparison with other local authorities? Presumably, local authorities set their priorities, decide how to spend their budgets and, in some cases, decide to spend money on prioritising one area of delivery over another. What qualifies them as being ‘poorer performing’ local authorities?

9.40 a.m.

[28] **Alun Ffred Jones:** Perhaps I should be more careful about my choice of words. What I said was that there was a great variance at the beginning and we believe that access to the provision of cultural activity is important to all sections of society and in all areas. In order to ensure that that happens throughout Wales, we need this power to confer this duty on local authorities. How that is to be achieved is more difficult and will have to be tackled in the proposed Measure, but that variance suggests that there is a need for some local authorities to prioritise differently. There is no current statutory duty on local authorities to provide this, so it might easily be squeezed out, if there were pressure on spending.

[29] **Jonathan Morgan:** For the record, and bearing in mind that this is a legislation committee and that whatever you say is taken as evidence, perhaps you would like to reflect on your statement, ‘poorer performing’ local authorities. Is that the right way of describing them? Do you want to withdraw that? Otherwise, it will give the impression that you have been in a position to make a judgment based on an examination of the performance of local authorities. If that is the case, I would be keen to see the evidence, but if that is not the case and if this is about varying performance, then it may be more helpful to withdraw that comment.

[30] **Alun Ffred Jones:** I would accept that as a better description of the situation. However, I am right in saying that we have collected evidence, therefore we have a good picture of what goes on throughout Wales and that is the true picture—there is a great variety between local authorities and, as a result, it is important to get this power in order to try to rectify that situation.

[31] **Ms Summers:** There are statistics on how much local authorities spend on culture, for example. So, they could be used as one indicator. There is a lot of information that could be considered.

[32] **Michael German:** Kirsty wants to ask a question and perhaps Joyce could look at her question and consider whether that has been covered. All of these questions are relevant to this discussion and I would like to conclude it.

[33] **Kirsty Williams:** My question relates to the issue that Jonathan raised on how the Minister has made a judgment that this is necessary. Earlier, the Minister stated clearly that this LCO was not being proposed merely for the sake of proposing an LCO to draw down more powers; he clearly stated that it was to achieve specific policy objectives. Jonathan asked what assessment had been made to identify an issue that needed to be addressed and, with all due respect, the Minister did not demonstrate a clear understanding of what assessment had been made. The Minister may want to talk about poorer performing local

authorities or a difference in performance across the piece, but I would still like to know what factors have been taken into consideration to identify the need for this piece of legislation, given the Minister's earlier statement that this is not just about drawing down powers because of the principle that we should have these powers—this is about a specific policy objective.

[34] **Alun Ffred Jones:** My officials undertook a scoping exercise as part of the development work on the range of existing local authorities' cultural provision in order to get a clearer picture across Wales. The outcome of that work was not formally published, but I am sure that the information that has been gathered can be made available to this committee so that you can make your own judgments.

[35] Again, the purpose of collecting information was not to identify the areas left wanting, but it does highlight the great variance across Wales. I intend to develop this work further as part of developing the statutory duty because that is when detailed issues relating to variance will need to be considered.

[36] **Michael German:** It is kind of you to offer that information; it will be helpful. Perhaps we can return to ask questions about it in the session that we are going to have with you to wrap up this report, towards the middle of the autumn session.

[37] **Alun Ffred Jones:** Certainly.

[38] **Michael German:** Jonathan, I do not know whether that covers the point that you were going to ask.

[39] **Jonathan Morgan:** It does.

[40] **Michael German:** Bethan, do you want to ask your question? I think that that is relevant here.

[41] **Bethan Jenkins:** Yr ydych wedi dweud o'r blaen nad oes bwriad i greu hawliau cenedlaethol a bod angen sefydlu cydbwysedd er mwyn rhoi rhyddid i gynghorau lleol. A ydych yn credu bod y pwerau hyn yn caniatáu i chi sefydlu cydbwysedd clir rhwng goblygiadau deddfwriaethol a'r angen i roi hyblygrwydd i'r cynghorau er mwyn iddynt allu ymateb i anghenion sy'n codi? Fel y crybwyllodd Jonathan, er enghraifft, gallai fod angen iddynt roi arian i wasanaethau eraill yn lle diwylliant pe bai pwysau ariannol arnynt.

Bethan Jenkins: You have said before that there is no intention to create national rights and that there is a need to strike a balance to allow local authorities their freedom. Do you think that these powers will allow you to establish a clear balance between statutory duties and the need to enable local authorities to have sufficient flexibility to be able to respond to needs that may arise? As Jonathan said, for example, they may need to divert money to other services instead of culture, when facing economic pressures.

[42] **Alun Ffred Jones:** Cymeraf mai calon eich cwestiwn yw hwn: a fydd Mesur arfaethedig, maes o law, yn rhoi hyblygrwydd i awdurdodau lleol? Yr ateb i'ch cwestiwn yw mai'r bwriad yw caniatáu yr hyblygrwydd hwnnw. Dywedasoeh hefyd fy mod wedi dweud—yr wyf yn cymryd eich bod yn golygu yn ystod fy araith yn y Siambr—nad oeddem yn credu mewn gosod hawliau—yr wyf yn credu mai'r gair yr ydym wedi ei ddefnyddio yn Saesneg yw

Alun Ffred Jones: I take it that this is what is at the heart of your question: will the proposed Measure, in due course, give local authorities flexibility? The answer to your question is that the intention is to provide for that flexibility. You also said that I had said—I take it that you mean during my speech in the Chamber—that we did not believe in creating entitlements and the reason for that is that there is a danger in doing so. If you create such entitlements, you

'entitlements'—a'r rheswm am hynny yw bod perygl wrth wneud hynny. Os ydych yn gosod hawliau o'r fath, mae'n rhaid ichi fod yn barod i gael ffordd o orfodi'r hawliau hynny ac yr wyf yn credu byddai hynny yn mynd â ni i dir peryglus ac anodd iawn. Y bwriad yw sicrhau y bydd y Mesur arfaethedig maes o law yn gosod dyletswyddau ar lywodraeth leol i gyflwyno gwasanaethau diwylliannol ar draws sbectwm eang o weithgaredd, ond y bydd hefyd yn sicrhau hyblygrwydd i awdurdodau wneud hynny yn ôl y gofynion lleol, fel y maent hwy yn eu gweld nhw.

must be prepared to find a way of enforcing those entitlements and I believe that that would pose some danger and difficulties. The intention is to ensure that the proposed Measure will, in due course, place duties on local government to introduce or deliver cultural services across a wide spectrum of activities, but which will also ensure that local authorities have the flexibility to do that according to local needs as they see them.

[43] **Michael German:** Lorraine, we interrupted your flow. Do you want to go back?

[44] **Lorraine Barrett:** Could the Minister give us a flavour of what difference this proposed LCO would make to people's lives in Wales? You have touched on the fact that it will give people equal opportunity to access cultural activities. Is there any more to say at this moment?

[45] **Alun Ffred Jones:** We are getting into the realms of discussing proposed Measures, when all we should be doing now is assessing whether we need to draw down the powers. On a basic level, I think that it is becoming accepted that cultural activity is at the heart of any healthy community. It is acknowledged now to be an essential component of the regeneration of any community that has seen its fortunes dip and deteriorate. If we believe that, I think that there is a strong case to be made for local authorities, alongside their partners of course—not just on their own—to take this matter as seriously as we believe that it should be taken. Therefore, that is why we are doing this. You asked what difference it will make. I think that that is an impossible question to answer. What I am saying is that, in the Government's view, cultural activities—we define culture very broadly, of course—are essential components and everybody should be able to access them, irrespective of where they live and the kind of community in which they happen to live. It is a tall order, but I think that it is something that is worth while.

[46] **Michael German:** I think that that brings us quite neatly to Jonathan's next question.

[47] **Jonathan Morgan:** Is that question 15?

[48] **Michael German:** No, question 8.

[49] **Jonathan Morgan:** I am sorry; you want to return to question 8. That is fine. I thought that part of that had been covered, but I am more than happy to pursue it because I do think that there is an issue there. The memorandum refers to partnerships and, in addition, references have been made in the past to key stakeholders. Who do you consider to be the key stakeholders and partnerships relevant to this legislative competence Order?

9.50 a.m.

[50] **Alun Ffred Jones:** Obviously, the key stakeholders would be the local authorities, the Welsh Local Government Association and citizens. That is who a Measure would be aimed at. If you look at the work of local authorities in this area, you will see that they already co-operate with a whole range of other partners, be that the Arts Council of Wales, the Sports Council for Wales and other departments within the Government. Hopefully, everyone will be

influenced by the eventual Measure.

[51] **Jonathan Morgan:** In a paper that submitted to the Communities and Culture Committee in June 2008, the then Minister for Heritage noted that,

[52] ‘The WLGA, local authorities and other key stakeholders will continue to be closely involved in the development of the new statutory duty.’

[53] Could you explain to us what pre-legislative work you have undertaken and which key stakeholders have been involved in the development of these proposals?

[54] **Alun Ffred Jones:** Officials have been working with the Welsh Local Government Association and local authorities, and I have met them on a few occasions to discuss this proposed legislative competence Order. Obviously, these discussions will be ongoing as the proposed LCO goes through its processes and eventually before Measures are, hopefully, put in place.

[55] **Jonathan Morgan:** Therefore, what pre-legislative work has been undertaken? Has it been in the form of a series of meetings, conversations, or correspondence?

[56] **Alun Ffred Jones:** Perhaps Lyn would like to respond on that.

[57] **Ms Summers:** I am happy to answer that question. I went on a tour of Wales and met with a large number of individual local authorities. I have been to any organisation that has asked me to go to speak about the proposals for this. They have included quite a wide range of arts-based and sports-based local organisations. I have spoken to the Wales Council for Voluntary Action, various local authority officers, the National Association of Local Government Arts Officers, chief officers, the leisure officers—whose quarterly meetings I attend—the arts council and the sports council. It is a wide variety. The work has taken the form of attending meetings, correspondence and all sorts, and the discussions have focused on what this ‘One Wales’ commitment meant to the organisations, how they saw it being implemented, definitions of culture—because culture means different things to different people—and we have taken all of that and used it to get where we are.

[58] **Bethan Jenkins:** Yr ydych eisoes wedi dweud ei bod yn bwysig ichi ddatblygu strategaeth gelfyddydol ynghyd â'r Gorchymyn arfaethedig newydd hwn. A ydych yn bwriadu cyfuno'r gwaith ar y Gorchymyn arfaethedig yn benodol gyda'r gwaith ar y strategaeth, neu a ydych yn gweld bod angen cael y Gorchymyn newydd er mwyn i'r strategaeth gelfyddydol weithio? A oes angen pwerau newydd er mwyn creu'r strategaeth gelfyddydol, neu a yw hynny'n gallu digwydd yn y sefyllfa sydd ohoni?

Bethan Jenkins: You said previously that it is important that you develop an arts strategy as well as this new proposed Order. Do you intend to combine the work on the proposed Order specifically with that on the strategy, or do you think that the new Order is needed for the arts strategy to work? Are new powers needed to create the arts strategy, or can that be done as things are at the moment?

[59] **Alun Ffred Jones:** Nid oes angen y Gorchymyn arfaethedig hwn er mwyn creu strategaeth. Mae'r pwerau gennym eisoes i greu strategaeth ddiwylliannol; felly nid oes arnom angen hwn i greu'r strategaeth. Ar y llaw arall, gyda'r gobaith ein bod yn cael y pwerau hyn, yr wyf yn ymwybodol bod angen i'r Llywodraeth ailedrych ar holl fater

Alun Ffred Jones: There is no need for this proposed Order to create a strategy. We already have the powers to create a culture strategy; so we do not need this to create the strategy. On the other hand, in the hope that we will obtain these powers, I am aware that there is a need for the Government to re-examine the whole issue of the cultural

y strategaeth ddiwylliannol a datblygu un o'r newydd. Bydd hynny'n digwydd beth bynnag. Nid yw hynny'n annibynnol o hwn, oherwydd byddai cael y pwerau hyn a'r Mesur sy'n dod ohonynt, yn amlwg wedyn yn ffurfio rhan o'r strategaeth. Fodd bynnag, nid yw'r naill na'r llall yn ddibynnol ar ei gilydd.

[60] **Bethan Jenkins:** Tybed a allwch ehangu ar hynny. Pa mor anodd ydyw i lunio strategaeth heb fanylion y Gorchymyn arfaethedig, oherwydd, gyda phob parch, bydd yn mynd drwy'r Cynulliad a San Steffan ac wedyn yn dychwelyd atom? Pa mor hir y bydd yn rhaid inni aros tan i'r strategaeth ddod allan o ystyried y bydd yn rhaid i'r Gorchymyn arfaethedig ddilyn ei gwrs?

[61] **Alun Ffred Jones:** Bydd y gwaith o ddatblygu strategaeth yn cymryd amser beth bynnag, felly yr wyf yn gweld y ddau beth yn rhedeg ochr yn ochr.

[62] **Bethan Jenkins:** Bu ichi ddechrau dweud fod diffiniad eang iawn o ddiwylliant ar gyfer y Gorchymyn arfaethedig penodol hwn. A oes sail ddeddfwriaethol ar gyfer diffinio diwylliant? Os nad oes, a allai hyn arwain at gymhlethdodau gan nad oes un diffiniad clir o ddiwylliant, fel y clywsom Lyn Summers yn ei ddweud? Mae hi wedi cwrdd â llawer o bobl sydd â barn wahanol ynglŷn â beth yw diwylliant. A wnewch ehangu ar hynny?

[63] **Alun Ffred Jones:** Mae'n deg dweud nid oes un diffiniad o'r gair 'diwylliant'. Fodd bynnag, credaf fod un o'r materion cyfreithiol yn rhywle yn cyfeirio at nifer o feysydd cyffredinol a fyddai yn dod o fewn y diffiniad. Mae'r diffiniad yn eang iawn, ac os ystyriwch gwaith llywodraeth leol yr ydych yn edrych ar y celfyddydau, chwaraeon, meysydd fel dyletswyddau llyfrgelloedd a holl faes treftadaeth—mae'r rhain i gyd yn dod o fewn cwmpawd y gair 'diwylliant'. Yr ydym yn sôn am gefnogi a hyrwyddo'r defnydd o'r pethau hyn, ac os cedwir y diffiniad yn eang byddwn yn cyflawni ein amcanion.

[64] **Mr Bailey:** The Minister is correct in saying that there is no definition of culture. The proposed Order goes wider than what we would normally associate with the word 'culture',

strategy and to develop a new one. That will happen in any case. That is not independent of this, because having these powers and the Measure that would arise from them, would obviously form part of the strategy. However, neither one nor the other are dependent upon each other.

Bethan Jenkins: I wonder whether you could expand on that. How difficult is it to draw up a strategy without the detail of the proposed Order, because, with all due respect, this will go through the Assembly and Westminster and then come back to us? How long will we have to wait for the strategy to come out considering that the proposed Order will have to run its course?

Alun Ffred Jones: The work of developing a strategy will take time in any case, so I see both things running side by side.

Bethan Jenkins: You started to say that there is a very wide definition of culture for this specific proposed Order. Is there a legislative basis for defining culture? If not, could this not lead to confusion since there is no single clear definition of culture, as we heard Lyn Summers mention? She has met many people who have different opinions as to what culture is. Will you expand on that?

Alun Ffred Jones: It is fair to say that there is no single definition of the word 'culture'. However, I believe that somewhere in these legal matters there is reference to several general fields that would come under the definition. It is a very broad definition, and if you consider the work of local government you are looking at the arts, sport, fields such as library duties and the whole area of heritage—they all fall within the compass of the word 'culture'. We are talking about supporting and promoting the use of these things, and if the definition is kept as broad as possible we will achieve our objectives.

because it also includes sport and recreation. What happened was that policy officials did a lot of scoping work with local authorities and came up with a number of local authority services and activities that they felt fell within the scope of such a cultural statutory duty. We then looked at the existing legislation, particularly at section 61 of the Government of Wales Act 2006, which contains a list of certain categories. We found that every activity and service that local authorities felt should fall within this also fitted in one or more of those categories. Therefore, we have taken those categories and transferred them across; they now form the wording of the proposed matters.

[65] In terms of defining those categories, they have the same meaning as section 61, but they are not defined in section 61 of the Government of Wales 2006, so we have given them their ordinary meaning. The reason why they were not defined, I believe, was to enable a wide discretion or a wide flexibility as to what could fall within those very general areas. That is where the definition of culture for the purposes of this proposed LCO has come from. We feel that it would be counter-productive to try to define it tighter, because as you include some specific things you risk excluding others by implication. So, it is best to leave it general. It has worked very well with section 61, and the consistency between section 61, the powers of Welsh Ministers, the new matters and the powers of the National Assembly for Wales, if the proposed LCO goes through, would be consistent, and they would match up nicely.

10.00 a.m.

[66] **Bethan Jenkins:** A oes ardaloedd y tu allan i'r ddeddfwriaeth benodol hon, er enghraifft, yr iaith Gymraeg? Yr ydym yn gwybod bod y Gorchymyn Cynulliad Cenedlaethol Cymru (Cymhwysedd Deddfwriaethol) (Yr Iaith Gymraeg) 2009 arfaethedig yn mynd trwyddo ar hynny, felly a fydd y Gorchymyn arfaethedig hwnnw yn gymwys i ddelio â'r mater penodol hwnnw neu, er enghraifft, strategaethau twristiaeth leol?

Bethan Jenkins: Are there areas outside of this specific legislation, for example, the Welsh language? We know that the proposed National Assembly for Wales (Legislative Competence) (Welsh Language) Order 2009 is going through on that, therefore, will that proposed LCO be able to deal with that specific matter, or, for example, local tourism strategies?

[67] **Alun Ffred Jones:** Nid yw'r iaith Gymraeg wedi ei chynnwys yn benodol, gan fod Gorchymyn arfaethedig arall sydd yn benodol am yr iaith Gymraeg yn mynd drwy'r broses ar hyn o bryd. Nid ydym am ddrysu'r ddau faes. Byddai gweithgareddau Cymraeg a hyrwyddo'r iaith Gymraeg, yn naturiol, yn cael ei ystyried yn faes perthnasol i ddiwylliant. Fodd bynnag, nid ydym am ddrysu'r ddau beth ym maes y Gorchymyn arfaethedig hwn.

Alun Ffred Jones: The Welsh language has not been included specifically, because another proposed Order that is specifically about the Welsh language that is progressing at present. We do not want to confuse the two areas. Welsh-language activities and promotion would naturally be considered an area relevant to culture. However, we do not want to confuse the two issues in relation to this proposed Order.

[68] **Jonathan Morgan:** Will the implementation of any Measures as a result of the proposed LCO be conditional on Measure-making powers being in place under any other matters, for example, the planning function of a local authority through the Proposed Playing Fields (Community Involvement in Disposal Decisions) Measure? Is this completely stand-alone, or does any part of it rely on Measure-making powers being available elsewhere?

[69] **Alun Ffred Jones:** The answer to that is that it is a stand-alone proposed Order, but, when we come to make a Measure, other fields of legislation may come into play. We will not know until we come to make the Measure. I will ask Mike for further guidance on that.

[70] **Mr Bailey:** As the Minister said, it is designed to stand alone. We believe that the additional powers that the Assembly would need to meet the 'One Wales' commitment are contained in the proposed LCO. When it comes to the National Assembly's powers, you do not look at the matters in isolation, instead, you look at the sum total of the matters in Schedule 5. As the Minister said, until the exact nature of the statutory duty is decided upon, we are not certain whether we might want to call in competences from other areas, for example, matter 12.4 in field 12, the local government field, which deals with local authority strategies. If there is a desire to pursue this via a strategy, matter 12.4, as well as the new matters, will be relevant. We looked at the competence of the National Assembly at present and we framed the proposed LCO to give the extra competence necessary to be able to implement a range of options for the statutory duty.

[71] **Joyce Watson:** Good morning, Minister. You have stated that the proposed LCO is specifically linked to three elements of local authority cultural provision, namely, support, improvement and promotion. What do you consider support, improvement and promotion to mean in practice?

[72] **Alun Ffred Jones:** Those terms have been used to link specifically with local authority functions, such as planning, consultation, collaboration, co-operation and promotion of arts and other cultural activities. That is what local authorities do, and it has been drafted in such a way as to ensure that the competence provided will enable the policy aims of the One Wales Government to be achieved.

[73] **Joyce Watson:** Sections 2(2), 2(3) and 2(4) of the proposed Order refer to the functions of local authorities. Again, we would like some clarification on what you mean by functions.

[74] **Alun Ffred Jones:** I will read my answer: 'function' is a term defined in section 158(1) of the Government of Wales Act 2006 as meaning 'power or duty'.

[75] Whether that answers your question or not, I am not quite sure. You might want to come back on that.

[76] **Joyce Watson:** I will accept that answer. Why are there no definitions contained in the proposed Order? I have just asked for some definitions; and there are no definitions that we can see contained in the proposed Order.

[77] **Alun Ffred Jones:** Definitions of what?

[78] **Joyce Watson:** To define exactly what you mean. You have just read out your definition of 'function'.

[79] **Alun Ffred Jones:** Are you referring to definitions in relation to—

[80] **Joyce Watson:** Definitions of the functions, the support, the improvement and the promotion.

[81] **Alun Ffred Jones:** I would have thought that 'support, promote and improve' falls within what local authorities already do. That is, it is defined by the provision that they already make for whatever it may be, in a sports hall or a theatre, support for a voluntary group or by means of an arts officer. That is done by providing grants. That is what local authorities do already and what we want to encourage. We are not asking them to do anything that they have not, by and large, been doing already. The aim is to ensure that that good

practice is consistent across the board, that sufficient provision of those services is made, and that citizens have access to, and are aware of, the provision that is available. That is what I mean by ‘support, promote and improve’. I do not know whether that helps you in any way.

[82] **Joyce Watson:** It does, but you have already said that there is wide variation. What we are trying to get at is that if we are trying to pin people down in new legislation to fulfil the functions, as described by you—you are clearly committed to that cause—why are there no definitions, to make sure that we do not end up with the same situation writ large yet again? We might get some powers, but if the functions are not clearly defined, we could still have different outcomes.

[83] **Alun Ffred Jones:** If you are talking about flexibility for local authorities, then yes, I suppose that you could argue that there will not be uniform provision for everything. However, that is, I think, the wisest course of action at the moment. Although it probably leaves, not a grey area exactly, but certainly flexibility, that is just the nature of the beast. I believe that, in placing a statutory duty on local authorities to provide and support and promote cultural activities, we will eventually improve the lot of the citizens of Wales.

[84] **Michael German:** We are also looking at definitions of other things, such as what might constitute archaeological remains, so are we absolutely clear—just for the record—that what you are relying on for the purposes of definition is section 61 of the Government of Wales Act 2006?

[85] **Alun Ffred Jones:** Yes.

[86] **Mr Bailey:** Could I add to something that the Minister just said? For the same reason that we have not tried to define what ‘culture’ is, we have kept to the normal meaning of the words ‘support’, ‘improvement’ and ‘promotion’, as that allows flexibility to look at which local authority functions are functions that support, promote or improve the various cultural areas. If we were to try to specify exactly which functions, we would narrow the powers to such an extent that, if we wanted to bring a local authority function that we had not previously picked up within the competence, we would be precluded from doing so because it had not been included within the definition. That is why we have not defined those three words. As the Minister said, functions are defined already in section 158(1)—the interpretation section—of the Government of Wales Act. That definition will apply to Schedule 5 as well.

[87] **Joyce Watson:** This is my final question. ‘Local authorities’ has the same meaning as in field 15, which excludes community councils from the definition. Minister, why does the competence being sought not extend to community councils?

[88] **Alun Ffred Jones:** Again, at a very superficial level, that is not defined in the ‘One Wales’ commitment, which refers to local authorities. By and large, it is local authorities that carry out the main functions in this area. That does not preclude community councils from doing anything, of course. They have the powers to do a great many things, actually.

[89] **Joyce Watson:** Okay; that is fine.

10.10 a.m.

[90] **Michael German:** Just to be absolutely clear, is there a legislative reason for not including community councils, or is it a policy reason?

[91] **Alun Ffred Jones:** I could not answer that now; I will have to get back to you on that.

[92] **Michael German:** Perhaps you could provide us with an answer, so that we are clear about that.

[93] **Alun Ffred Jones:** Our main partners in this area would be the county councils, the local authorities.

[94] **Michael German:** The majority of the work of community councils would be what is described in section 61 of the Government of Wales Act 2006, to do with parks, leisure facilities, community activities and so on. So, they have a function that might be encompassed by this Act, do they not?

[95] **Alun Ffred Jones:** I will seek guidance on that. I would have thought that it would be impractical to try to guide all of the community councils throughout Wales—however many there are. Of course, there are also areas of Wales that do not have community councils, so I suppose that that could create a further imbalance.

[96] **Kirsty Williams:** Local authorities already have absolute duties in key areas of cultural provision, namely library services, archive services and access to public monuments. Are these absolute duties outside the scope of this legislative competence?

[97] **Alun Ffred Jones:** You are referring to the exemptions. The reason for the exemptions is that we see no reason to weaken or enable the removal of existing rights of, for example, public access to historic monuments, buildings and so on under local authority control in order to achieve the aim of the ‘One Wales’ commitments. So, the exemption is to protect the statutory obligation, while at the same time enabling improvement in the public appreciation of the historic environment under local authority control. So, those three exemptions are there because there are statutory duties already in place, and we do not want to weaken those, create the potential for weakening those or even give a signal that they might be weakened in any way.

[98] **Kirsty Williams:** I understand your reasons for doing so, but do you foresee any potential implications of not seeking competence in those areas? For example, are there any ways in which the proposed duty might complement existing legislation? Conversely, might existing legislation have an impact on or limit those duties? I appreciate that there is already quite a clear commitment in those particular areas, and you would not want to signal any potential weakening of that. However, could exempting those from the proposed LCO give rise later to other difficulties if, for example, you wanted to address those services?

[99] **Alun Ffred Jones:** We do not believe so. I will seek further guidance on this, but, if I am correct, there are already statutory duties in those three areas for local authorities to carry out certain functions. I think that I am right in saying that that would not preclude local authorities or the Government from placing duties on local authorities to promote and support activities even in those areas, despite the exemptions. Perhaps you can answer that question in more detail, Lyn.

[100] **Ms Summers:** I think that Mike and I could. My understanding is that, yes, they will be able to improve in all of those areas and move them forward, but there will be no right to take away from those. For example, if you take the right to library services as an example, you could not say ‘You can’t have a library service any more’; you could make it better or different or more efficient, but you could not say that there would be no library service.

[101] **Kirsty Williams:** I understand. So, the issue is that you are primarily using the proposed LCO to place a statutory duty on local authorities; that statutory duty already exists in relation to these excepted areas, so there is no need to include them in the proposed Order, because the provision exists in legislation, but other aspects of the proposed LCO would

apply to those services. Is that correct?

[102] **Alun Ffred Jones:** I think so, yes.

[103] **Kirsty Williams:** If you do not know, I do not know how you expect us to know.

[104] **Ms Summers:** The lawyer does know.

[105] **Michael German:** The lawyer was nodding, so that is on the record as a 'yes'.

[106] **Kirsty Williams:** I just want a clear understanding in my mind that that is the reason behind the exemptions.

[107] **Mr Bailey:** The exception in relation to public rights of access relates solely to the removal of public rights of access, as does the exception in relation to the library service—it simply prevents the removal of the existing duty.

[108] On local authority records, the proposed LCO precludes a Measure-making provision for the arrangements for the care, preservation and management of local authority records—this is the archives point. It is to do with the care of documents and ensuring that they are preserved and managed properly. It would not preclude a duty covering the promotion of archive services or improvement.

[109] **Alun Ffred Jones:** It would not preclude improvement of access to them.

[110] **Kirsty Williams:** I understand.

[111] **Mr Bailey:** That is except where allowing access to a document would compromise the care and preservation of that document.

[112] **Kirsty Williams:** I will now turn to matter 2.1. I am sure that there is a perfectly logical explanation for this, but why does matter 2.1 contain the words,

[113] 'of the appreciation by the public',

[114] after the words, 'support, improvement and promotion', when matter 3.1 does not? There seems to be an inconsistency.

[115] **Alun Ffred Jones:** Perhaps you could tackle this one, Mike. It seems to be a technical point.

[116] **Mr Bailey:** Yes. It is to differentiate in this area between the regulatory functions of local authorities with regard to historical monuments, for example, the listing of buildings, planning and so on, and the functions that we are trying to capture, which are related to appreciation by the public of these things. It would be odd to allow the Assembly to have functions to improve historic monuments.

[117] **Kirsty Williams:** The exceptions in matter 2.1 refer to 'enactment', which is defined as including any future enactment. Why does the Assembly Government feel it necessary to include this exception, and is the consequence of that a limit on the future competence of the Assembly?

[118] **Alun Ffred Jones:** Not as I understand it, but again I will be led by the lawyer—he looks almost as bemused as me.

[119] **Mr Bailey:** The definition of 'enactment' relates only to the exception in matter 2.1. The word 'enactment' was inserted to make it clear that this relates only to statutory public rights of access. It was deemed necessary to include the words 'future enactments' because we are talking about legislative, statutory duties. They could potentially be removed at some point in the future or replaced with something different in a future piece of legislation. I am aware that, potentially, the heritage protection Bill will touch on this area. That Bill deals quite heavily with the Ancient Monuments and Archaeological Areas Act 1979 and, if it goes ahead, it could remove that right of access and re-enact it itself, and this protection would be lost unless the definition of 'enactment' includes future enactments. This also links in with the proposed Welsh language LCO, in which 'enactment' is defined in the same manner.

[120] **Kirsty Williams:** I think that the committee just needs to be clear that nothing here precludes us from doing something at a later stage, unless there is a very good reason for it and there seems to be a logical reason.

[121] **Alun Ffred Jones:** This is a technical matter that I am not really competent to answer this morning. We can send you a note to clarify the situation and if that is not sufficient, we will have to return to it at a future date.

10.20 a.m.

[122] **Michael German:** You will have a second bite at the cherry, Minister, towards the end.

[123] **Alun Ffred Jones:** I am sure that we will. If that is perceived as a serious issue or weakness, obviously we will have to address it.

[124] **Kirsty Williams:** The Minister has been very generous with his offer.

[125] **Michael German:** I will turn to another area, that of the new lexicon of Welsh legislative competence. Article 3 of the proposed LCO refers to 'floating exceptions'.

[126] **Alun Ffred Jones:** Thank you. [*Laughter.*]

[127] **Michael German:** I have a very general question. Do any of those floating exceptions apply to matters in fields in which the National Assembly for Wales does not already have competence? Again, it is a technical question, but it relates to an issue that has come up in this committee before, namely of floating exceptions being applied to matters over which the National Assembly had not yet applied for legislative competence. I want to be clear, and to have it on record, that these floating exceptions, of which there are five, apply only to matters and fields in which the National Assembly for Wales has already sought, and already has, competence.

[128] **Kirsty Williams:** It is a good job that the traffic on the M4 was not any worse. [*Laughter.*]

[129] **Alun Ffred Jones:** You would have a lot of notes.

[130] **Mr Bailey:** The issue of floating exceptions, as you are aware, is being dealt with in the National Assembly for Wales (Legislative Competence) (Exceptions to Matters) Order 2009, which is also currently going through. That changes the position in Schedule 5, so that the floating exceptions apply not only to the field to which they relate, but across Schedule 5. As new matters are put into Schedule 5, the exceptions will apply to those matters.

[131] **Michael German:** So, those exceptions will apply to matters in any future LCOs that

we may want to propose in other fields.

[132] **Mr Bailey:** Yes.

[133] **Michael German:** So, in areas where we have not already applied for legislative competence.

[134] **Alun Ffred Jones:** Yes.

[135] **Mr Bailey:** The particular floating exceptions in this proposed LCO mirror the Schedule 7 floating exceptions. So, if a referendum—

[136] **Michael German:** You predicted my second question, which was about a referendum and whether this would fetter any choices that would be available to the Welsh people as a result.

[137] **Mr Bailey:** No, it would not.

[138] **Michael German:** Why? I ask just so that we have it on record.

[139] **Mr Bailey:** This will not affect Schedule 7 at all. The exceptions go no further than Schedule 7. So, if a referendum occurs and we get Part 4 of the Government of Wales Act 2006, the exceptions will also apply in relation to Schedule 7.

[140] **Michael German:** The committee lawyer is indicating that he is also content with that. On this particular matter, could you explain why the floating exceptions have been included? In relation to the proposed LCO, what would be the practical implications in terms of scope of the laws that the Assembly cannot pass laws in future? Will that have an impact on the proposed LCO?

[141] **Alun Ffred Jones:** The objective of the proposed LCO is to obtain legislative competence in relation to the functions of local authorities in respect of cultural provision. It was not intended that competence would impinge on the non-devolved areas covered by the floating exceptions, hence their inclusion in the proposed LCO. I do not know, Mike, whether you can add to that.

[142] **Mr Bailey:** That all depends on the Measure that is—

[143] **Michael German:** I understand that. Again, it is a question about fettering the Minister in relation to what he or she could feel to be appropriate in the future. In other words, do the exceptions have any implications for the scope of any future Measures that a Minister may bring forward?

[144] **Alun Ffred Jones:** The answer is ‘yes’, because the exceptions are there. However, it does depend on the purpose of any proposed Measure and whether it applies to the exceptions. I am not sure whether I am choosing my words correctly here, but whether the matter is excepted is put out of the way. If the purpose of the Measure is slightly different, you may be able to act in that area, as I understand it—I am certainly no lawyer.

[145] **Michael German:** The fact that it mirrors Schedule 7 gives comfort to us all. Finally, I would like to ask you about the heritage protection Bill, Minister. Is there anything in that Bill that will either conflict with or complement this proposed LCO?

[146] **Alun Ffred Jones:** The heritage protection Bill is not before Parliament at the moment. As far as we know of the potential content of the Bill, we do not envisage any

conflict.

[147] **Michael German:** Is there anything that would complement it? Is there anything that would extend your powers? The question, really, is whether the heritage protection Bill, as a vehicle for getting more competence, would afford you opportunities to get more powers. We would then want to know whether we should do it through this proposed LCO rather than waiting for the heritage protection Bill.

[148] **Alun Ffred Jones:** It is our opinion that it is important that we go for the Order now, since the fate of the heritage protection Bill is unknown. The view is that the heritage protection Bill, if it is ever enacted, would be complementary.

[149] **Michael German:** I think that you have predicted my reason for asking the question, but if there are additional legislative powers that would pass to the National Assembly as a result of the heritage protection Bill and given, as you rightly say, its uncertainty, would it be better to put any additional powers into this proposed LCO so that you do not have the problem of uncertainty regarding whether you will get them?

[150] **Alun Ffred Jones:** I am not sure whether I am able to answer that.

[151] **Mr Bailey:** As I understand it, the heritage protection Bill has quite a different focus to the proposed LCO, which focuses on the functions of local authorities in the promotion and improvement of cultural activities, whereas the heritage protection Bill is very much a consolidation of existing legislation in relation to the regulatory side of the historic environment. It is a very large Bill and it is not limited to Wales only. The changes are across the UK.

[152] **Michael German:** I suppose that the question that needs to be addressed is: if there were to be increased competencies through that Bill, given its uncertainty, would it perhaps not be wise to consider bringing those competencies into this proposed LCO so that you have more certainty that you will get them? That was the question.

[153] **Alun Ffred Jones:** The view is that it would not.

[154] **Michael German:** Jonathan wants to ask a supplementary question.

[155] **Jonathan Morgan:** It is a brief question. Bearing in mind that the nature and structure of Bills varies, were there any discussions with Westminster and Whitehall before this proposed LCO was drafted to see whether there was a chance that framework powers could be included in the heritage protection Bill, or was it just ruled out as a non-starter?

[156] **Alun Ffred Jones:** There have certainly been discussions about the heritage protection Bill between Government departments. However, my view is that, by and large, the purpose of this proposed LCO is different, in its nature, to the heritage protection Bill. This is not a red herring, but I do not think that your question is relevant to this proposed LCO.

[157] **Jonathan Morgan:** My reading of parliamentary legislation is that sections of legislation can be exceptionally broad. I do not see, unless I am wrong, any reason why Parliament could not include framework powers in a heritage Bill—whether it is called heritage protection, promotion, support or whatever. It would not be beyond the remit or the ability of the House of Commons parliamentary draftsmen to put framework powers into a Bill that allowed the Assembly Government to legislate in the way in which you want to legislate. I am failing to understand why it was not considered.

[158] **Alun Ffred Jones:** The problem for us is that the heritage protection Bill is not

before Parliament. There is no indication that it will be before Parliament in the foreseeable future. This proposed LCO is something that we would like to see being enacted as soon as possible.

10.30 a.m.

[159] **Michael German:** Although I accept that point, there is also an explanatory memorandum and a draft Bill. By the time that we come to reconsider this, you might like to reflect on whether there are any additional powers to be gained on heritage protection, given the uncertain status of that Bill.

[160] **Alun Ffred Jones:** I will consider Jonathan's question and make some inquiries about it. I will either send you a note on that or address it at the next meeting, when I may be in a position to give you a fuller answer.

[161] **Michael German:** Thank you, Minister. The committee's intention is to be helpful and not to hinder you.

[162] **Alun Ffred Jones:** I accept that.

[163] **Ms Summers:** Could I add something? We looked at the possibility of using the heritage protection Bill, but the view was that its scope was too narrow to encompass all of the issues that we are considering; the heritage protection aspects of that Bill are not wide enough in the context of what we are considering. So, we could consider elements of that Bill, but it would not give competence on the range of local authority activities that we are talking about.

[164] **Michael German:** We understand that, but the committee's point is that things may come your way, in competence terms, from the heritage protection Bill, which, given the uncertain status of that Bill, could be drawn in to this proposed LCO in order to broaden its powers. That is the only question that we were asking. The Minister acknowledged that that may or may not be the case, but that he will come back to us with a note on that.

[165] **Alun Ffred Jones:** I will come back to you. There have been discussions with other departments in my portfolio on the heritage protection Bill and how it might apply to Wales, but I will provide you with further information either before or during the next meeting.

[166] **Michael German:** That is kind of you. I thank you and your officials for your contributions. We will hear evidence from many people who will be affected by this proposed LCO in due course. I inform Members that we have an informal meeting next week with the Welsh Affairs Committee for those who wish to attend, but the next formal meeting of this committee will be on 24 September when we will take evidence from stakeholders.

*Daeth y cyfarfod i ben am 10.32 a.m.
The meeting ended at 10.32 a.m.*