



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

**Pwyllgor Deddfwriaeth Rhif 5  
Legislation Committee No. 5**

**Dydd Mawrth, 24 Chwefror 2009  
Tuesday, 24 February 2009**

**Cynnwys**  
**Contents**

- 3 Cyflwyniad, Ymddiheuriadau a Dirprwyon  
Introduction, Apologies and Substitutions
- 4 Gorchymyn Arfaethedig Cynulliad Cenedlaethol Cymru (Cymhwysedd  
Deddfwriaethol) (Yr Iaith Gymraeg) 2009  
The Proposed National Assembly for Wales (Legislative Competence) (Welsh  
Language) 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. Mae hon yn fersiwn ddrafft o'r cofnod. Cyhoeddir fersiwn derfynol ymhen pum diwrnod gwaith.

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. This is a draft version of the record. The final version will be published within five working days.

**Aelodau'r pwyllgor yn bresennol**  
**Committee members in attendance**

Mick Bates	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
Alun Davies	Llafur Labour
Lesley Griffiths	Llafur Labour
Mark Isherwood	Ceidwadwyr Cymreig (Cadeirydd y Pwyllgor) Welsh Conservatives (Committee Chair)
Darren Millar	Ceidwadwyr Cymreig Welsh Conservatives
Leanne Wood	Plaid Cymru The Party of Wales

**Eraill yn bresennol**  
**Others in attendance**

Nerys Arch	Adran Gwasanaethau Cyfreithiol, Llywodraeth Cynulliad Cymru Legal Services Department, Welsh Assembly Government
Alun Ffred Jones	Aelod Cynulliad, Plaid Cymru (y Gweinidog dros Treftadaeth) Assembly Member, The Party of Wales (The Minister for Heritage)
Dr Huw Onllwyn Jones	Pennaeth Uned yr Iaith Gymraeg a Pholisi Cyfryngau, Llywodraeth Cynulliad Cymru Head of Welsh Language and Media Policy Unit, Welsh Assembly Government

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

Anna Daniel	Clerc Clerk
Olga Lewis	Deputy Clerc Dirprwy Glerc

*Dechreuodd y cyfarfod am 9.31 a.m.*

*The meeting began at 9.31 a.m.*

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

[1] **Mark Isherwood:** Bore da a chroeso—good morning, and welcome. I will start with some housekeeping announcements. In the event of a fire alarm, Members should leave the room by the marked fire exits and follow instructions from the ushers and staff. All mobile phones, pagers and BlackBerrys should be switched off, because they interfere with the broadcasting equipment. The National Assembly for Wales operates through the media of Welsh and English. Using the headphones provided, you can hear a simultaneous translation from Welsh on channel 1. If any of you are hard of hearing, the headsets can also be used to amplify sound via channel 0. No apologies have been received, and I understand that Alun Davies will be joining us shortly.

9.32 a.m.

**Gorchymyn Arfaethedig Cynulliad Cenedlaethol Cymru (Cymhwysedd  
Deddfwriaethol) (Yr Iaith Gymraeg) 2009**  
**The Proposed National Assembly for Wales (Legislative Competence) (Welsh  
Language) Order 2009**

[2] **Mark Isherwood:** The purpose of today's meeting is to take oral evidence in connection with the proposed National Assembly for Wales (Legislative Competence) (Welsh Language) Order 2009. You will recall that, at our meeting on 10 February, the committee agreed the terms of reference for its pre-legislative scrutiny of the proposed Order: to consider its general principles—whether legislative competence in the areas identified in matters 20.1 and 20.2 should be conferred on the Assembly—and whether the terms of the proposed Order are too broadly or narrowly defined. A general call for evidence was issued last week, over the February half-term recess, and key stakeholders have been invited to submit their views to assist the committee in its scrutiny process. The deadline for the submission of consultation responses is 20 March. Today's meeting is the first oral evidence session to inform the committee's work, and I welcome Alun Ffred Jones, the Minister for Heritage, who is responsible for introducing this proposed Order. I call upon Alun Ffred to introduce his officials for the record.

[3] **The Minister for Heritage (Alun Ffred Jones):** On my right—this is like *University Challenge*—is Nerys Arch from the legal services department, and Huw Onllwyn Jones, from the Welsh language unit, is on my left.

[4] **Mark Isherwood:** You are all welcome.

[5] **Alun Ffred Jones:** I am Alun Ffred. [*Laughter.*]

[6] **Mark Isherwood:** Yes—Alun Ffred Jones, the Minister for Heritage.

[7] We will move directly to questions. At the end, you will have the opportunity to add any comments that you may feel you have not been able to make in the course of the discussion. I will start with some background questions from the beginning of our paper, looking at pre-legislative work undertaken with stakeholders to arrive at these consultations. What analysis has been undertaken to assess whether the public wish to move beyond the current provisions in the Welsh Language Act 1993?

[8] **Alun Ffred Jones:** You will be pleased to learn that Welsh Ministers, including the First Minister, the Deputy First Minister and myself, have been actively engaged in the process and in discussions with key stakeholders. Early discussions have been held with a wide range of bodies, including the Welsh Language Board, the Confederation of British Industry, the Energy Retail Association, public affairs professionals, BT, the Federation of Small Businesses, the Welsh Local Government Association, the Wales Council for Voluntary Action, the Royal National Institute of Blind People, members of Mudiadau Dathlu'r Gymraeg—of which there are 17 member organisations—and Cymdeithas yr Iaith Gymraeg. Obviously, we are at the very first stage of discussing the principle of conferring competence on the National Assembly, and there is plenty of time for interested parties to present evidence and for us to discuss our intentions.

[9] With regard to gauging the public view of whether this is necessary, I think that there is a general demand for better quality services in Welsh and a more responsive range of enforcement actions, should the commitments in the language schemes be broken. That demand has been voiced by the Welsh Language Board and, specifically, by many of the

members of Mudiadau Dathlu'r Gymraeg. Of course, there is also cross-party support in the National Assembly for the principle that the Assembly should have the competence to legislate in the field of the Welsh language.

[10] **Mark Isherwood:** What difference do you believe would be made to the lives of the people of Wales as a result of using the powers being sought in the proposed Order?

[11] **Alun Ffred Jones:** It is important to differentiate between the proposed LCO and any Measure that would follow. The proposed Order itself will not have a direct impact on the people of Wales, since it simply concerns the mechanism for conferring competence. However, obviously, I believe that a subsequent Measure would have important consequences and would certainly improve the level of services provided through the medium of Welsh. No doubt I will be repeating this throughout the morning, but there are three promises in 'One Wales' regarding equality of status, improved services for Welsh speakers and establishing a commissioner for the Welsh language. Those would certainly have an impact on the level of services and, it is to be hoped, on attitudes towards the Welsh language.

[12] **Mark Isherwood:** Thank you. What issues regarding the Welsh language are not considered by the proposed Order?

[13] **Alun Ffred Jones:** Most of the private sector is excluded from the scope of the proposed LCO. The issue of the Welsh language in the courts is not included, reflecting the exception in Schedule 7 to the Government of Wales Act 2006. Those are the two main areas not covered.

[14] **Mark Isherwood:** Would it be right to say that, under Schedule 7 to the Government of Wales Act 2006, the only exception is the use of the Welsh language in the courts?

[15] **Alun Ffred Jones:** Yes, and that is reflected in the proposed LCO.

[16] **Mick Bates:** As you have already stated, this proposed LCO would confer competence on the National Assembly for Wales to revisit and update the existing legislative framework under the Welsh Language Act 1993. Welsh Ministers already have powers under that Act to, for example, amend the list of bodies covered by the Act. What will the Welsh Assembly Government be able to do through a Measure or Measures using the powers that would be provided by the proposed LCO that it cannot achieve with existing powers?

[17] **Alun Ffred Jones:** The most important issue here is that, under the 1993 Act, the Assembly has no powers to legislate in the field of the Welsh language. That is what we are asking for. With regard to what we can or cannot do, 'One Wales' makes commitments on status, rights and establishing a commissioner, and that cannot be achieved under the 1993 Act, so that is why we are asking for that competence.

9.40 a.m.

[18] There are also anomalies. I think that it is important that we have a level playing field in terms of certain areas that are specified under the 1993 Act. One example is the rail sector, where certain sectors of the industry come under the competence of the 1993 Act, while other sectors are excluded. The same can be said of some of the power companies, such as gas providers. Therefore, in order to produce a level playing field so that there is general understanding of what rights people have, I think that it is right and proper that we seek to remove those anomalies.

[19] There is also the issue of whether the Welsh language schemes, as defined in the 1993 Act, are the best means of achieving the desired end result, which is a better service for

Welsh speakers. Those schemes are specific means of achieving that end under the 1993 Act and I think that it is right and proper that we should revisit that. I am not advocating changing the schemes specifically, but I think that it is right and proper that we should be looking at the best means of achieving the end result of improving services and getting more people to use them. Again, I would suggest that getting the competence to look at that is important.

[20] There is also the issue of the rights of people to use the Welsh language with each other. Lawyers tell me that that right does exist but that it is not specified in law, therefore this proposed LCO will allow us to specify that people have that right, although there will be some limits on their rights. That is another issue that will be covered by the proposed LCO. I do not know whether I have left something out, Huw.

[21] **Mr Onllwyn Jones:** Another issue is the limited enforcement powers that were available to the Welsh Language Board and Ministers, and possibly the inflexibility of the enforcement regime. Again, similar to what the Minister was saying about language schemes, this would give us an opportunity to look at the range of enforcement powers that are available to deal with different situations, where bodies that are under a duty are alleged to have failed to comply with that duty. That, again, is another issue that the proposed LCO will enable us to look at.

[22] **Mick Bates:** Minister, which specific sectors and key services currently fall outside the scope of the Welsh Language Act 1993?

[23] **Alun Ffred Jones:** The 1993 Act does not enable Welsh Ministers to specify all service providers in certain sectors and I mentioned railway services as an example of that anomaly. As I understand it, Arriva Trains, for example, does fall under the 1993 Act although I do not know whether it is one of the specified bodies—

[24] **Ms Arch:** It is not at the moment.

[25] **Alun Ffred Jones:** It is not a specified body at the moment, but it probably does fall under the compass of the 1993 Act. In the rail sector, the ticketing service does not fall under the Act, for example, yet the ticketing service is probably the main area where the public comes into contact with the sector. That is the type of anomaly or irregularity that this proposed legislative competence Order will allow us to remove, so that we can have not only a level playing field for companies in certain areas, but also within certain industries. That is one example. I am not sure whether I have answered your question.

[26] **Mick Bates:** That was one example. The question was: what specific sectors and areas will you now be able to legislate on that you could not legislate on under the 1993 Act?

[27] **Alun Ffred Jones:** I do not think that it would be useful to reel off a long list of organisations that may or may not be included. By and large, the proposed Order attempts to identify categories of bodies. Not all the bodies that come under those categories will fall within the scope of any subsequent Measures, but the proposed Order would allow us to categorise certain areas in which we may wish to legislate. It is a form of future proofing. If you produce a list of bodies and organisations, changes will happen, and some areas will be privatised, as has happened since 1993, and that may mean that some of those listed will fall out of the scope of the legislation. The purpose of this approach is to future-proof this area to deal with whatever happens to public services, be they privatised or not, and to cover any new bodies that are formed in certain public service areas.

[28] **Mick Bates:** With the banks being nationalised, it will be interesting to see what powers we will take over them.

[29] **Alun Ffred Jones:** It is an interesting discussion, Mick.

[30] **Mick Bates:** You mentioned Measures a few times. Would the implementation of any Measures under the proposed LCO be conditional on Measure-making powers being in place under other matters, such as local government or education?

[31] **Alun Ffred Jones:** The detail is a matter for a Measure. The proposed LCO would enable the National Assembly to legislate in order to implement the commitments in 'One Wales', and they have been identified. I cannot elaborate on that. You can ask me again, if you want.

[32] **Mick Bates:** When we look at local government, for example, you will have to seek Measure-making powers under another matter to achieve the principles of the proposed LCO—or is that incorrect?

[33] **Alun Ffred Jones:** Local government will certainly fall within the scope of the proposed LCO, as will all public bodies.

[34] **Mick Bates:** You do not need to take any further powers under any other matters, then?

[35] **Alun Ffred Jones:** It depends on what you want to achieve. We have identified the three areas in which we wish to legislate, and that is our intention at the moment, without specifying any further intentions. There are, no doubt, areas within local government in which somebody may decide in future that they want to legislate, and if it is related to the Welsh language then this proposed LCO would allow that somebody to do that. I am not quite sure what you are getting at.

[36] **Mick Bates:** Take education, for example.

[37] **Alun Ffred Jones:** The Assembly already has powers that allow it to legislate in the field of education. We do not need to specify that within the proposed LCO.

[38] **Mick Bates:** Fine. I am happy with that.

[39] **Alun Ffred Jones:** The same applies equally to other fields.

[40] **Alun Davies:** Deallaf pam y mae'n well gennyh restru'r math o fusnesau, cwmnïau neu sefydliadau a fyddai'n dod o dan y ddeddfwriaeth hon, yn hytrach na rhestru pob un, gan nad ydym yn trafod unrhyw Fesurau eto, ond a ydych yn cytuno mai drwy drafod busnesau neu gwmnïau unigol yn unig y down i ddeall pa mor bell y mae'r pwerau hyn yn mynd? Onid drwy drafod pa sefydliadau sy'n dod o dan y ddeddfwriaeth, neu ba rai nad ydynt yn dod oddi tani, y cawn ddeall lle mae ei ffiniau?

**Alun Davies:** I understand why you prefer to list the types of businesses, companies and institutions that would be affected by this legislation, rather than list each and every one, given that we are not dealing with any Measures yet, but do you not agree that it is only by discussing individual businesses or companies that we can see how far these powers reach? Is it not through discussing which bodies come under this legislation, or which of them remain unaffected by it, that we can determine its parameters?

9.50 a.m.

[41] **Alun Ffred Jones:** At ei gilydd, mae'r Gorchymyn arfaethedig yn adeiladu ar Ddeddf yr Iaith Gymraeg 1993, a bydd

**Alun Fred Jones:** Ultimately, the proposed Order builds on the Welsh Language Act 1993, and everything within the scope of that

popeth a ddaw o dan y Ddeddf honno o fewn cwmpas y Gorchymyn arfaethedig hwn hefyd. Gwnaethpwyd ymdrech o dan fater 20.1 i ddiffinio categorïau. Yn hytrach na chynnwys y corff hwn a'r llall, mae'n cynnwys categorïau sy'n cynnwys y cyrff hynny, sy'n golygu y gellid o bosibl ehangu nifer y cyrff sydd o fewn cwmpas y Gorchymyn arfaethedig, pe bai'r Cynulliad yn dymuno gwneud hynny; soniais fod *future proofing* yn bwysig. Felly, nid oes dim yn cael ei guddio yn y Gorchymyn arfaethedig, felly mae'r diffiniadau o dan (h), sydd yn nodi gwahanol gategorïau o gyrrff neu gwmmnïau, yn eithaf penodol, er nad ydynt yn cael eu henwi. Golyga hynny os caiff cwmni newydd ei ffurfio i gynhyrchu a gwerthu trydan, bydd yn dod o fewn cwmpas y Gorchymyn arfaethedig heb i ni orfod ei adnabod fel corff penodol. Dyna yw cryfder y Gorchymyn arfaethedig hwn. Mae'n rhoi eglurder ynglŷn â'r math o gwmmnïau a ddaw o fewn cwmpas y Gorchymyn arfaethedig, ond ni fydd pob corff a gwmpesir gan y diffiniad yn briodol, am ba bynnag reswm, a bydd hynny'n fater i'r Cynulliad maes o law.

[42] **Alun Davies:** Nid wyf yn awgrymu eich bod yn ceisio cuddio unrhyw beth, ond bydd un o'r trafodaethau a gawn yn ymwneud â'r ffiniau—a ydynt yn mynd yn ddigon pell neu'n rhy bell, a ble maent yn gorwedd ar hyn o bryd? Hoffwn ddeall eich barn yn well, Weinidog, am ble bydd y ffiniau. Yr wyf yn deall yr hyn a ddywedwch am ddefnyddio categorïau, ac nid wyf yn anghytuno â hynny. Fodd bynnag, yr wyf am ddeall sut yr ydych yn gweld y ffiniau a nodir yn Neddf yr Iaith Gymraeg 1993 yn symud. Pan drafodwyd hyn yn y Cyfarfod Llawn, bu ichi ddweud bod 'uneven playing field', a'ch bod am gael mwy o eglurder o ran y ffiniau ar hyn o bryd a ble byddant yn y dyfodol. A ydych yn meddwl bod y Gorchymyn arfaethedig fel ag y mae yn gwneud hynny?

[43] **Alun Ffred Jones:** Ydw, yr wyf yn credu ei fod. O safbwynt y Ddeddf bresennol, ystyriwch, fel enghraifft, gwmmni sy'n cyflenwi nwy i gartrefi pobl. Daw un rhan o'r diwydiant o dan Ddeddf 1993, sef y rhan sydd yn edrych ar ôl y pibellau, am fod dyletswyddau statudol ar y cwmnïau hynny mewn perthynas â'r gwasanaeth y maent yn

Act will come under the scope of this proposed Order. An attempt has been made under matter 20.1 to define categories. Rather than including this body or that body, it includes categories that encompass those bodies, which means that the number of bodies within the scope of the proposed Order could be increased, were that the Assembly's wish; I mentioned that future proofing is important. Therefore, nothing is hidden in the proposed Order, so the definitions under (h), which identify different categories of bodies or companies, are relatively specific, although they are not named. It means that if a new company is established to produce and sell electricity, it will come within the scope of the proposed Order without our needing to identify it as a specific body. That is the strength of this proposed Order. It provides clarity as to the types of companies that will come within the scope of the proposed Order, but not every body that comes under the definition will be appropriate, for whatever reason, and that will be a matter for the Assembly in due course.

**Alun Davies:** I am not suggesting that you are trying to hide anything, but one of the discussions that we will have surrounds where the boundaries will lie—do they go far enough or too far, and where do they currently lie? I wish to gain a better understanding of your opinion, Minister, as to where the boundaries will lie. I understand what you say about using categories, and I do not disagree with that. However, I wish to understand how you see the boundaries set out in the Welsh Language Act 1993 changing. When this was discussed in Plenary, you said that there was an uneven playing field, and that you wished to have more clarity on where the boundaries currently lie and where they will lie in future. Do you think that the proposed Order as it stands does that?

**Alun Ffred Jones:** Yes, I believe that it does. As regards the current Act, consider as an example a company that supplies gas to people's homes. One part of the industry comes under the 1993 Act, namely the part that maintains the pipes, because there is a statutory duty on those companies in relation to the service that they provide. For example,



ei ddarparu. Hynny yw, os oes arogleuon nwy neu bod rhywun yn amau bod rhywbeth wedi digwydd, mae dyletswydd statudol ar y cwmnïau perthnasol i ddod allan i wneud rhywbeth ynglŷn â'r peth. Yn rhyfedd iawn, mae'r rhan honno o'r diwydiant yn dod o fewn cwmpas Deddf 1993, ond nid yw'r rhan sy'n gwerthu'r nwy i gwsmeriaid o angenrheidrwydd yn dod o dan Ddeddf 1993—cewch fy nghywiro os wyf yn anghywir—er mai honno yw'r rhan y byddech yn disgwyl i'r cyhoedd ymdrin â hi'n amlaf, a dyna ble byddai modd iddynt ofyn am y gwasanaeth yn Gymraeg neu'n Saesneg yn ôl eu dewis. Mae hyn yn ei gwneud yn haws i ni gynnwys pob elfen o'r diwydiannau hynny o fewn cwmpas y ddeddfwriaeth.

if someone suspects a gas leak or that something else has happened, the relevant companies have a statutory duty to come out to investigate. Strangely enough, that sector of the industry falls within the scope of the 1993 Act, but the sector that sells the gas to customers does not necessarily come under the 1993 Act—correct me if I am wrong—despite the fact that that is where you would expect the public to come into contact with the industry most frequently, and where they might require the service in English or Welsh according to their preference. This makes it easier for us to include all elements of those industries within the scope of the legislation.

[44] Er nad wyf yn sicr mai dyma yr oeddech yn cyfeirio ato, enghraifft arall yw telathrebu. Yn draddodiadol, BT oedd yn darparu'r gwasanaeth hwn yn yr hen ddyddiau pan oedd dim ond ffôn yn y tŷ, a hwnnw'n sownd wrth linydd, a rhywbeth arall i lawr y lôn oedd yn gadael i chi siarad gyda phobl. Mae Deddf 1993 yn cynnwys BT. Er na chafodd BT ei enwi o fewn Deddf 1993, mae'n debyg ei fod yn dod dan Ddeddf 1993. A bod yn deg â BT, mae wedi gwneud gwaith mawr yn hyrwyddo'r Gymraeg yn ei wasanaethau. Fodd bynnag, nid oes y fath ddyletswydd ar gwmnïau eraill yn y maes hwnnw. Wrth gynnwys gwasanaethau telathrebu dan y Gorchymyn arfaethedig, yr ydym yn rhoi pawb ar yr un gwastad.

Although I am not sure that this is what you were referring to, the other example is telecommunications. Traditionally, BT provided the service back in the day, when we only had a telephone in the house, and that a landline, and something else down the road that allowed you to speak to people. The 1993 Act includes BT. Although BT was not identified in the 1993 Act, it apparently is within the scope of the 1993 Act. To be fair to BT, it has done a great deal of work in promoting the Welsh language in its services. However, no such duty is placed upon other companies in that field. By including telecommunications services within the scope of the proposed LCO, we are creating a level playing field for everyone.

[45] **Leanne Wood:** In your statement on 3 February in Plenary, you said:

[46] 'It is vital that we have an Order with rights and powers that are wide enough to be able to deal with such changes, so that we do not have to revisit this laborious process of gaining powers.'

[47] **Alun Ffred Jones:** Did I use the word 'laborious'?

[48] **Leanne Wood:** Apparently. [*Laughter.*]

[49] **Alun Ffred Jones:** Sorry.

[50] **Leanne Wood:** You went on to say,

[51] 'the Order definitely does not deal with small businesses at present'.

[52] Do think that the Welsh Assembly Government will have to revisit the process of gaining powers in relation to the Welsh language in the future?

[53] **Alun Ffred Jones:** The proposed LCO will enable the National Assembly to legislate on the Welsh language and fulfil the commitments in 'One Wales'. In theory, a Government might wish to revisit this area in future and ask for further powers, but this is fit for purpose in terms of what we wish to do with regard to providing services in the Welsh language. By and large, the Government's decision on businesses is that small businesses are excluded from the scope of the proposed LCO. We believe that the work that has been done by the Welsh Language Board is bearing fruit. There was reference recently to the fact that 150 companies have joined the voluntary scheme to produce Welsh language schemes for their organisations. I believe that that, at the moment, is the proper way forward.

[54] **Leanne Wood:** So, the situation is that the proposed LCO will not deal with small businesses, but that is okay because that is not a 'One Wales' commitment. In the longer term, should small businesses be included?

[55] **Alun Ffred Jones:** That is an irrelevant question in the sense that we are dealing with the proposed LCO as it stands and the 'One Wales' commitments, which are clearly stated. This proposed LCO is to deal with those specific issues, but it is future-proofed in the sense that, as we are categorising organisations, if there are changes or additions, or if new bodies are created that either fall within the broad parameters of public services or are in receipt of substantial sums of public money, those bodies will fall within the scope of the proposed LCO.

[56] **Leanne Wood:** You do not see the need to seek broader powers at this stage, therefore.

[57] **Alun Ffred Jones:** Not at this stage.

[58] **Lesley Griffiths:** In your statement on 3 February, you also said:

[59] 'I cannot envisage that what is proposed within the scope of this legislative competence Order will have a negative effect on any business, large or small, whether they are caught or not caught within the legislation.'

[60] However, in the absence of a regulatory impact assessment, how confident are you that what is proposed will not have a negative effect on businesses?

10.00 a.m.

[61] **Alun Ffred Jones:** There is no need for an impact assessment with regard to the proposed LCO, because it does not impose any duties on anybody to do anything. It merely asks for competence. At this stage, therefore, we do not need an impact assessment, but such an assessment will have to be made when a Measure is proposed. However, it is my view that, by and large, this will not have a negative effect on any business. I met the body that represents the power companies, the Energy Retail Association, the other day and found that it is very relaxed about the proposed LCO. The association represents all the major energy companies that operate in Wales—I think that it represents around 95 per cent of the customer base. The association is very relaxed about the proposed LCO because, by and large, the companies that it represents are already fulfilling the obligations of the 1993 Act and provide a good bilingual service to their customers. So, the association does not see any need to be alarmed. If that is the case within that industry, which is a competitive industry, I cannot for the life of me see why anyone else should be concerned, and that is not to mention the experience elsewhere in Europe, where major international companies operate in countries that have legislation to protect minority or lesser used languages.

[62] **Mark Isherwood:** We will be taking evidence from the Energy Retail Association on Saint Patrick's Day, I believe.

[63] **Darren Millar:** I accept the Minister's response that Measures arising from this would require a regulatory impact assessment, and that the proposed LCO itself perhaps does not. However, this is a very detailed proposed legislative competence Order, and its implications for the Measures that may well arise from it are pretty clear. It would be helpful for this committee's work, and for other scrutiny, if there were some sort of regulatory impact assessment of the Measures that the Minister intends to bring forward in future. He has already made it clear that the legislative competence Order is designed to achieve the commitments of the One Wales Government and therefore it would seem sensible for there to be some information about the potential impact of future regulation in this area. I think that for us not to ask for some information about the potential impact would be pretty remiss.

[64] **Alun Ffred Jones:** I do not want to be pedantic, but the proposed LCO merely asks for the powers for us to produce Measures. A regulatory impact assessment cannot be made on those Measures, because we do not know what the Measures will ask for. All that we are doing is asking for the competence to make Measures. It is not logical to ask for an assessment as to the future possible impact of a Measure, as we are not discussing Measures.

[65] **Darren Millar:** I accept that, Chair—

[66] **Alun Ffred Jones:** If I may continue, the nature of what we wish to achieve in terms of status, services, and the commission or commissioner, is clearly stated in the commitments in 'One Wales', but the duties to be placed through a Measure have yet to be discussed and decided. It is only then that you can begin to discuss the likely impact, or any impact, on any organisation or company.

[67] **Darren Millar:** I accept that having the competence to produce Measures in certain areas will not necessarily have an impact initially, but, clearly, there are Measures that the Assembly Government has in mind to bring in on the back of this particular proposed LCO. I think that it would be remiss of us not to look at the potential impact of the likely future Measures during the course of scrutiny of this proposed LCO. It is quite clear what the intentions are: 'One Wales' sets them out in some detail, and the proposed LCO itself is very detailed. Therefore, I feel that we need to be able to scrutinise the likely impact of likely Measures, without necessarily going into the detail.

[68] **Alun Ffred Jones:** It is only detailed in the sense that it tries to define the areas that will be affected by the Measures. That is the only detail included in the proposed Order.

[69] **Darren Millar:** It refers to the areas that would be affected, but without information on—

[70] **Alun Ffred Jones:** How they would be affected would be a matter for the Measure. To try to address your concerns, I go back to my meeting with the Energy Retail Association, which is a body representing private companies that, as it happens, already comes under the 1993 Act. It seems to be very relaxed about the likely implications of this. As a body representing private companies in a competitive market, it does not envisage any great earthquake. We had a very amicable and civilised discussion.

[71] **Alun Davies:** Yr wyf yn falch o glywed hynny, Weinidog. Yr ydych eisoes wedi dweud sawl gwaith yn eich tystiolaeth y bore yma a phan gyflwynasoch y Gorchymyn arfaethedig i'r Cynulliad eich bod yn **Alun Davies:** I am glad to hear that, Minister. You have already said repeatedly in your evidence this morning and when you presented the proposed LCO to the Assembly that you are building on the basis of the 1993

adeiladu ar sail Deddf 1993. A ydych yn hyderus bod pob rhan sydd yn y ddeddfwriaeth bresennol o fewn sgôp y Gorchymyn arfaethedig? A oes unrhyw beth sydd yn Neddf 1993 nad yw'n gynwysedig ynddo?

[72] **Alun Ffred Jones:** Yr wyf yn credu ei fod yn gywir i ddweud mai'r unig beth oedd yn y Ddeddf nad yw'n gynwysedig yw'r llysoedd. Y rheswm am hynny, mae'n debyg, yw bod Deddf Llywodraeth Cymru 2006 yn dweud yn benodol bod y llysoedd y tu allan i'n cwmpas. Nid yw'r llysoedd wedi cael eu datganoli i'r Cynulliad beth bynnag. Felly, yr wyf yn weddol hapus fod popeth arall o fewn cwmpas Deddf 1993 yn dod o dan gwmpas y Gorchymyn arfaethedig.

[73] **Alun Davies:** Mae'r Gorchymyn arfaethedig yn cyfeirio at:

[74] 'persons providing services to the public'.

[75] Sut ydych chi'n diffinio gwasanaethau i'r cyhoedd?

[76] **Alun Ffred Jones:** Nid oes diffiniad yn y Gorchymyn arfaethedig, ond mae un yn Neddf 1993, ac nid oes her wedi bod i'r diffiniad hwnnw er 1993. Felly, mae rhyw ddealltwriaeth o beth yw gwasanaethau i'r cyhoedd wedi datblygu a chael ei dderbyn. Fodd bynnag, nid yw 'gwasanaethau i'r cyhoedd' yn ddarn o elastig y gallwch ei ymestyn i ble bynnag yr hoffwch. Mae'n derm y mae modd ei ddiffinio. Mae'n debyg pe bai rhywun eisiau ei herio yn y llys, byddai modd gwneud hynny, pe bai angen. Nid wyf yn gyfreithiwr—nid wyf wedi astudio'r gyfraith o gwbl—ond awgryma'r ffaith nad yw'r ddiffiniad wedi ei herio er 1993 fod rhyw fath o ddealltwriaeth o ei ystyr, os yw hynny'n gwneud synnwyr.

[77] **Alun Davies:** Yr wyf yn deall eich pwynt, Weinidog, ond yr oeddwn yn aelod o'r pwyllgor a oedd yn trafod y Gorchymyn arfaethedig ar dai y llynedd, ac un o'r problemau mawr a gawsom oedd y diffiniadau ynddo.

[78] Yr ydych yn diffinio ambell ymadrodd yma, megis 'public authority', 'public money', 'telecommunications

Act. Are you confident that everything that is in the current legislation is within the scope of the proposed Order? Is there anything that is in the 1993 Act that is not included in it?

**Alun Ffred Jones:** I think that I am right in saying that the only thing that was in the Act that is not included is the courts. The reason for that, apparently, is that the Government of Wales Act 2006 specifically states that the courts are outwith our scope. The courts are not devolved to the Assembly in any case. Therefore, I am fairly happy that everything else that is covered by the 1993 Act will fall within the compass of the proposed LCO.

**Alun Davies:** The proposed LCO refers to:

How do you define 'services to the public'?

**Alun Ffred Jones:** There is no definition in the proposed Order, but there is a definition in the 1993 Act and there has been no challenge to it since 1993. Therefore, some understanding of the definition of 'services to the public' has developed and been accepted. However, 'services to the public' is not a piece of elastic that you can stretch every which way. It is a term that can be defined. If anyone wished to do so, it would apparently be possible to challenge it in the courts, should it be necessary. I am not a lawyer—I have not studied the law at all—but the fact that the definition has not been challenged since 1993 suggests that there is some understanding of what it means, if that makes sense.

**Alun Davies:** I understand your point Minister, but I was on the committee that discussed the proposed Order relating to housing last year and one of the big problems that we encountered was with the definitions in it.

Here, you define some terms, such as 'public authority', 'public money', 'telecommunications services' and so forth.

services' ac ati. Pam na ddiffiniwch wasanaethau i'r cyhoedd?

Why do you not define services to the public?

10.10 a.m.

[79] **Alun Ffred Jones:** Efallai y byddaf yn troi at Nerys am hyn. Cafodd yr ymadrodd hwn ei ddefnyddio yn Neddf yr Iaith Gymraeg 1993 heb iddo gael ei herio. Felly, mae rhyw fath o ddealltwriaeth ohono. Mae'n cynnwys cyrff neu gwmnïau sy'n gweithredu ar ran cyrff cyhoeddus. Yr ydych yn derbyn bod awdurdod lleol yn gorff cyhoeddus ac felly, heb unrhyw amheuaeth, yn dod o fewn sgôp y Gorchymyn arfaethedig hwn. Mae awdurdodau lleol yn gosod contractau am waith y byddent hwy wedi ymgymryd ag ef, yn draddodiadol, o bosibl, un ai i gorff preifat neu gorff arall. Mae'r diffiniad o wasanaeth i'r cyhoedd yn dilyn y gwaith hwnnw; nid yw'n cael ei ddiffinio gan natur y corff ei hun ond yr hyn y mae'n ei gyflawni. Bydd ceisio diffinio hynny bob tro yn amhosibl, ac felly dyna pam y mae'r geiriad fel ag y mae. Efallai yr hoffai Nerys ymhelaethu ar hyn.

**Alun Ffred Jones:** Perhaps I shall turn to Nerys for this. This phrase was used in the Welsh Language Act 1993 and has not been challenged. Therefore there is some level of understanding of its meaning. It includes organisations or companies operating on behalf of public bodies. You would accept that a local authority is a public body and therefore, without any doubt, would come within the scope of this proposed Order. Local authorities let contracts either to a private organisation or to other bodies for work that, traditionally, they may have done themselves. The definition of services to the public follows that work; it is not defined by the nature of the organisation itself but by what it is delivering. Trying to define that each time would be impossible, which is why the phrase is included as it is. Perhaps Nerys would like to elaborate on that.

[80] **Ms Arch:** Mewn llawer o achosion, bydd yn hollol amlwg pwy sy'n cynnig gwasanaeth i'r cyhoedd. Credaf mai dyna'r profiad o weithredu Deddf 1993. Mewn achosion eraill, bydd yn anos penderfynu ond bydd yn bosibl gwneud. Bydd rhaid edrych ar y dystiolaeth o'r hyn yn union y mae corff yn ei wneud, i bwy y mae'n cyflenwi gwasanaeth, a phwy yw ei gynulleidfa darged, fel petai. Yn y pen draw, bydd yn bosibl penderfynu a yw'r corff y tu allan i'r grŵp neu o fewn y grŵp. Mae'r diffiniad hwnnw'n ddigon cyflawn i alluogi llys i benderfynu, maes o law, a yw person i mewn ai peidio. Fel cysyniad, mae'n sicr. Ni fydd bob amser yn hawdd i ddweud 'ie' neu 'na' ym mhob achos, ond drwy ymchwilio, bydd yn bosibl dod i benderfyniad a gall y llys benderfynu neu ystyried y penderfyniad hwnnw maes o law.

**Ms Arch:** In many cases, it will be quite obvious who is offering the service to the public. I think that that is the experience from the implementation of the 1993 Act. In some other cases, it would be more difficult to decide but it would still be possible to decide. It will require looking at the evidence of what exactly the organisation is doing, to whom it offers a service, and who its target audience is, as it were. Ultimately, it will be possible to decide whether the body is in the group or out of the group. That definition is comprehensive enough to enable a court to determine, in due course, whether a person is within or outwith that. As a concept, it has certainty. It will not always be easy to say 'yes' or 'no' in each case, but following some research, it will be possible to reach a decision, and the court can determine or consider that determination in due course.

[81] **Alun Ffred Jones:** Gallwch weld paham y gofynnais i Nerys ymhelaethu.

**Alun Ffred Jones:** You can see why I asked Nerys to elaborate on that.

[82] **Alun Davies:** Gwelaf hynny'n glir, Weinidog. Efallai y byddai'n syniad da i ni gael nodyn ar hyn, os yw'n bosibl, i ddisgrifio'n union sut y gwelwch y diffiniadau hyn yn gweithio. Cofiaf hyn yn

**Alun Davies:** I see that most clearly, Minister. It might be an idea for us to have a note on this, if possible, to describe exactly how you see these definitions working in practice. I remember this causing huge

achosi problemau mawr yn ystod y drafodaeth ar dai, felly hoffwn osgoi y math hwnnw o drafodaeth ar y Gorchymyn arfaethedig hwn, os yw'n bosibl.

problems during the discussions on housing, so I would like to avoid that kind of discussion on this proposed Order, if it is possible.

[83] **Alun Ffred Jones:** Mae'n bwysig cyfeirio'n ôl at Ddeddf 1993 a'r ffaith bod y diffiniad yn y Ddeddf honno, gan nad oes neb wedi ei herio, a gobeithiwn mai dyna fydd y profiad yn y dyfodol.

**Alun Ffred Jones:** It is important to refer back to the 1993 Act and to the fact that the definition is included in that Act, given that it has not been challenged, and we hope that that will be the experience in future.

[84] **Alun Davies:** Byddai'n dda inni gael nodyn ar gofnod am y diffiniad a ddefnyddiwyd o ddeddfwriaeth 1993.

**Alun Davies:** It would be good for us to have a note on record on the definition that you will use from the 1993 legislation.

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

**Alun Ffred Jones:** Fine.

[86] **Leanne Wood:** Public authorities are defined in the proposed legislative competence Order to include,

[87] 'each public authority within the meaning of...the Human Rights Act 1998'.

[88] Why has the definition from the Human Rights Act been chosen rather than, for example, the Freedom of Information Act 2000?

[89] **Alun Ffred Jones:** Apparently, this is a tried and tested definition that has been used in several UK statutes, including the Anti-terrorism, Crime and Security Act 2001—and I am reading from a list, in case you think that I know these things—the Climate Change and Sustainable Energy Act 2006, and the Identity Cards Act 2006, which I know is close to your heart, Leanne. [*Laughter.*] Most pertinently, the same definition has already been used in the National Assembly for Wales (Legislative Competence) (Social Welfare and Other Fields) Order 2008. The fact that it is being used in other bits of legislation means that there is a certainty about it. I think that that is how the legal world carries on its business. If it is clearly defined, is defined elsewhere and it has been accepted, you can use the same phrase.

[90] **Leanne Wood:** Why have you gone for the definition that is clearly defined in the Human Rights Act as opposed to that clearly defined in the Freedom of Information Act?

[91] **Ms Arch:** The principle behind the definition of 'public authority' is somewhat similar to that behind what you referred to earlier, on services to the public. It is capable of definition, and the courts have produced much case law on who or what is a public authority for the purposes of the Human Rights Act. In addition, as new bodies are created, the definition will allow for them to fall either within or without the 'public authority' definition. The definition has been used widely and encompasses a certain type of organisation, such as local authorities, local health boards and so on. Therefore, it is, as the Minister has said, a tried and tested means of referring to those organisations, and it also provides some future-proofing for the onward use of the definition.

[92] **Leanne Wood:** So, is it a more solid definition than that used in the Freedom of Information Act definition?

[93] **Ms Arch:** It is a very widely used definition.

[94] **Lesley Griffiths:** Minister, I would like to turn to the category of persons providing services to the public who receive public money amounting to £200,000 or more in a financial

year. Has the Welsh Assembly Government identified the service providers that will be captured within the £200,000 threshold?

[95] **Alun Ffred Jones:** The explanatory memorandum explains that bodies such as the Wales Millennium Centre and the National Botanic Garden of Wales would fall within the competence of the proposed Order. So, they are examples, and there may be other bodies that fall within this competence in the future. Nerys can correct me if I am wrong, but I believe that there was discussion on whether ‘substantial public moneys’ would be a more useful phrase to use but, apparently, in legal terms, that is not acceptable. Therefore, it was deemed important to include a definite sum of money. It also makes it clear that companies or organisations in receipt of smaller sums of money in any given year would not suddenly be caught by this. That is not the intention of this; this is an attempt to provide organisations with some clarity so that they know whether they fall within or without this competence.

[96] **Lesley Griffiths:** I understand what you are saying about requiring a specific sum, but how did you reach the figure of £200,000?

[97] **Alun Ffred Jones:** I said that the word ‘substantial’ could not be used, but that was the feeling, namely that only bodies in receipt of substantial public funds should come within the scope of this legislation. I am sure that this will be a talking point, but £200,000 seems to us to be a reasonable bar to use to judge whether a body should be included. It is a fairly hefty sum of money, and so you are not likely to be caught by this if you happen to be in receipt of a grant one year but not in another. The whole idea behind the legislation is to provide certainty and to build over a long time with organisations the idea of equality of service through Welsh and English. It is therefore not the intention to catch somebody one year and let them fall out the next year. By placing the bar fairly high, you are talking about organisations that are here for the long term.

[98] **Lesley Griffiths:** Is that why you decided to have a monetary threshold?

[99] **Alun Ffred Jones:** It was to provide clarity on the fact that it was not the intention of the proposed Order to try to catch people unawares because they happened to be in receipt of money one year. Anyone receiving that sort of money is a substantial player, obviously, and, therefore, we think that it would be apt for them to come under the competence of the proposed Order.

10.20 a.m.

[100] **Lesley Griffiths:** Given that the effect of inflation will be to include an increasing number of service providers over time, would it be appropriate to include a monetary value in the proposed LCO or in a subsequent Measure, so that it could be adjusted by Ministers via regulation?

[101] **Alun Ffred Jones:** I am told that the Assembly would, through a Measure, be able to vary the threshold above the amount provided for in the proposed LCO but not go below it. That would be a much simpler process. We certainly would not need to pass another LCO to change that figure. A Measure can be introduced to change that figure, if, for example, over a period of time, the situation here resembled that in Zimbabwe.

[102] **Lesley Griffiths:** The threshold is in pounds, but what would happen if services were provided in another currency?

[103] **Alun Ffred Jones:** I do not think that it makes a difference whether that figure is in pounds or in euros.

[104] **Alun Davies:** Hoffwn ofyn cwestiwn ychwanegol. Ni ddeallaf sut y mae Mesur Cynulliad yn gallu newid Deddf 2006.

**Alun Davies:** I would like to ask a supplementary question. I do not understand how an Assembly Measure could amend the 2006 Act.

[105] **Alun Ffred Jones:** Ni fyddai'r Mesur yn newid Deddf 2006; byddai'n newid y swm penodol a nodir yn y fan hyn.

**Alun Ffred Jones:** The Measure would not change the 2006 Act; it would change the specific sum noted here.

[106] **Alun Davies:** Bydd y Gorchymyn arfaethedig hwn yn dod yn rhan o ddeddfwriaeth 2006 pan gaiff ei gymeradwyo gan y Senedd. Yr ydych yn dweud y byddwn yn gallu newid yr hyn sydd ym mater 20.1 ar ôl iddo gael ei gymeradwyo gan y Senedd.

**Alun Davies:** This proposed Order will form part of the 2006 legislation once it is approved by Parliament. You are saying that we will be able to amend what is included in matter 20.1 after it has been approved by Parliament.

[107] **Alun Ffred Jones:** Trof at Nerys.

**Alun Ffred Jones:** I turn to Nerys.

[108] **Ms Arch:** Bydd y Mesur yn galluogi'r Cynulliad i amrywio'r trothwy mewn Mesur neu mewn rheoliadau i fod uwchben y £200,000 hwnnw. Felly, y cyrff hynny sy'n derbyn mwy na £200,000 sy'n parhau i ddod o fewn cwmpas y Gorchymyn arfaethedig, ond maes o law, drwy Fesur, bydd y Cynulliad yn rhydd i benderfynu ar drothwy uwch. Nid yw'n newid y cymhwysedd; mae'n dweud y gall y Cynulliad roi dyletswydd ar unrhyw gorff sy'n cael mwy na £200,000. Dyna'r cyrff sydd o fewn sgôp yr hyn y gallwch ddeddfu arno, ond nid yw'n golygu na allwch benderfynu, fel Cynulliad, roi trothwy uwch ar gyfer pa Fesur bynnag yr ydych yn delio ag ef.

**Ms Arch:** The Measure will enable the Assembly to vary the threshold in a Measure or in regulations to be above that £200,000. Therefore, the organisations that fall within the scope of the proposed LCO will still be those that receive more than £200,000, but in due course, through a Measure, the Assembly will be free to determine a higher threshold. It does not change the competence; it says that you can place a duty, as an Assembly, on any body that is in receipt of more than £200,000. Those are the organisations that come within the scope of what you can legislate on, but that does not mean that you cannot, as an Assembly, decide to set a higher threshold for whichever Measure you are dealing with.

[109] **Alun Davies:** Felly, mae'r geiriau 'or more' yn y Gorchymyn arfaethedig yn trosglwyddo pwerau i'r Cynulliad i ddweud 'receive public money amounting to £300,000'.

**Alun Davies:** Therefore, the words 'or more' in the proposed Order transfer powers to the Assembly to say, for example, 'receive public money amounting to £300,000'.

[110] **Ms Arch:** Gallwch fynd unrhyw le uwchben y £200,000.

**Ms Arch:** You can go anywhere above the £200,000.

[111] **Darren Millar:** Minister, you just indicated that you do not intend any Measures to catch any individuals or private businesses that receive public money amounting to more than £200,000 in a single year if they receive it only in that year—as a one-off grant, for example. If that is the case, why not specify that on the face of the legislation? Why not specifically exclude organisations that receive more than £200,000 in a single year and never again?

[112] **Alun Ffred Jones:** I am not quite sure what you are asking me. The proposed Order defines categories of organisations and companies that will come within its scope, because you have to define them. There is no point noting all those who are not to be included.



[113] **Darren Millar:** I accept that, but you indicated that it was not your intention to catch any organisations that received a one-off grant in a single year.

[114] **Alun Ffred Jones:** Yes, but the whole point of this is to be proactive and to say that these are the categories that we believe should come within the scope of the LCO. Trying to define those that would not be covered would be counter-productive and a very peculiar way of going about it. All I said was that, by stating the threshold of £200,000, you would be excluding a whole host of people who may be concerned that they might be caught.

[115] **Darren Millar:** With respect, Minister, the proposed Order refers to bodies in receipt in a single financial year of £200,000—

[116] **Alun Ffred Jones:** Or more—

[117] **Darren Millar:** Yes, or more, within a single financial year. However, you said that you are not designing anything to catch bodies in receipt of a one-off grant in a single financial year, so why not specify that?

[118] **Alun Ffred Jones:** That is what the phrase does, is it not?

[119] **Darren Millar:** No, it does not, does it? It suggests that anyone in receipt of £200,000 or more in a single financial year could be caught by a future Measure arising from this proposed LCO.

[120] **Alun Ffred Jones:** That is a matter for a Measure.

[121] **Darren Millar:** I understand that, but why not specifically exclude bodies in receipt of grants in the proposed LCO? An explicit exception could be written for organisations in receipt of a one-off grant of £200,000 or more within a single financial year.

[122] **Alun Ffred Jones:** All we are saying is that anyone in receipt of £200,000 or more in a single financial year can be included in the scope of the proposed LCO. It is a matter for any Measure that follows to decide who would be covered. That is a discussion for a Measure. This is merely an attempt to draw a line in the sand with regard to those who would be excluded from the scope. I see what you are getting at, and perhaps I should not have said that. [*Laughter.*]

[123] **Darren Millar:** Would any duties placed on organisations be duties in perpetuity or would they arise only in the years in which they received £200,000 or more?

[124] **Alun Ffred Jones:** The easy answer is that that is a matter for a Measure. However, let us be clear that what we are about here is creating services to the public in the long term. Perhaps perpetuity would be too long, but we are talking about building up a level of service within certain organisations or companies so that members of the public can be assured that they can receive a bilingual service. That obviously entails a development over a number of years.

[125] **Darren Millar:** If an organisation received £200,000 for a specific project to be delivered as a public service over, say, a three-year period, would that organisation then have a duty placed upon it for an indeterminate period in the future, despite the fact that that project may have come to an end?

[126] **Alun Ffred Jones:** I think that the answer to that specific question is ‘no’, but we are talking here about imponderables. We cannot envisage what the exact circumstances might be, but with regard to what is defined in the proposed Order, unless the body or organisation

concerned also falls into one of the other categories, if we are talking specifically about the momentary limit, the duties will be limited to the period of the grant or moneys received.

[127] **Mark Isherwood:** We have only half an hour left and there is a great deal of ground still to cover, so will all Members try to keep their questions as concise as possible please?

[128] **Darren Millar:** The definition of ‘public money’ in the proposed Order is very broad. It refers to different sources of cash being made available, directly or indirectly, to different organisations. Why was such a broad definition chosen?

[129] **Alun Ffred Jones:** It is clearly defined, is it not? The proposed Order states that ‘public money’ means

[130] ‘moneys made available directly or indirectly by’

[131] the six sources listed.

[132] **Darren Millar:** What does ‘indirectly’ mean, for example?

[133] **Alun Ffred Jones:** Presumably money given by a grant-giving body, for example. The Government will hand over money to the Arts Council of Wales, which hands over money to another organisation. That is public money, presented through the arts council that ends up somewhere else. I suppose that that could be interpreted as being indirect. Am I right?

10.30 a.m.

[134] **Darren Millar:** You also mention that the £200,000 could be made up from a number of different sources, for example, a UK Government department, the Welsh Assembly Government or the EU. How do you intend to monitor that? For example, if a UK Government department was giving cash to an organisation based in Wales to deliver a service, how would you be able to identify that? What arrangements would need to be in place for information sharing and so on?

[135] **Alun Ffred Jones:** I am not sure whether you are going up a blind alley here, in a sense. Any body in receipt of cash—you can ask how it will be monitored if it comes from different sources—would be a body providing some sort of public service or carrying out a public function over a period of time. They would have to do so in order for us to be interested in the way in which they work. So, they would be permanent organisations in the sense that they would be carrying out duties year in, year out, and you would be developing a relationship with them, through the Welsh Language Board or whatever means is determined in the future. Therefore, it is wrong to see these bodies as falling in and out of classification. These would be permanent bodies carrying out a public service or public function and, therefore, the scenario that you described would be unlikely.

[136] **Darren Millar:** Are you confident that there would be sufficient information to identify easily those organisations that would be in or out of its scope?

[137] **Alun Ffred Jones:** Yes, I am, because all public money is monitored and accounted for.

[138] **Darren Millar:** I am in no doubt that you could have your finger on the pulse with regard to money from the Assembly Government, but what about public money coming from the EU or the UK Government?

[139] **Alun Ffred Jones:** If it comes from the EU, it will come through the Assembly Government.

[140] **Darren Millar:** Does the phrase, 'Providing public services to the public' include services to the public that are located in Wales even if the provider of those services is located elsewhere? For example, UK banking services were mentioned earlier.

[141] **Alun Ffred Jones:** I am not sure about UK banking, but in terms of those providing services whose headquarters are located outside Wales, yes it does.

[142] **Darren Millar:** So, if, for example, Northern Rock or another bank in which the UK Government has a greater than 50 per cent share was providing services in Wales, a service that engages with the public, is that a public service that would fall within the scope of the proposed LCO?

[143] **Alun Ffred Jones:** If this is a geographical question regarding whether or not a company or an organisation providing a public service in Wales has its headquarters outside Wales, the answer is that it can be within the scope of the proposed LCO. I would prefer not to go into a discussion about Northern Rock or any other—

[144] **Darren Millar:** Could banking services potentially fall within it?

[145] **Alun Ffred Jones:** Potentially, but this is an area that is of great interest at the moment because of the current situation.

[146] **Darren Millar:** Would the Welsh language requirements apply to a subsidiary organisation receiving public funding that is above the threshold? So, if a parent company or organisation is receiving cash and has duties placed upon it, would that lead to duties being placed upon those other organisations that it might contract with, even if the amount that they were receiving was less than £200,000?

[147] **Alun Ffred Jones:** If the parent and subsidiary company are different legal entities, then the duties can be imposed by the Assembly only on the company legally in receipt of the public moneys. So, it does not extend by association to another part of the organisation.

[148] **Darren Millar:** Can you clarify that? If the cash goes to a parent organisation—an umbrella organisation, say—and is then carved up and passed on to other organisations, the duty is upon all of the organisations in receipt of the cash from the parent, or is it just upon the parent?

[149] **Alun Ffred Jones:** It depends on who is providing the public service or the service of a public nature within Wales. The legal duties would be imposed on that arm of the company. Can you give me an example?

[150] **Darren Millar:** For example, if there were a large charitable organisation with small branches throughout Wales, which in themselves would not receive in excess of £200,000 in order to deliver a service to the public, would duties be imposed on those individual branches in different parts of Wales?

[151] **Alun Ffred Jones:** I think that that would be a matter for a Measure, although I am not quite sure of the scenario that you are describing.

[152] **Darren Millar:** There is an example in the Members' research service brief. Arriva Bus and Coach Ltd is a subsidiary of Arriva plc, and Arriva plc has duties placed upon it already under the 1993 Act. Would that duty then extend to its bus and coach services?

[153] **Alun Ffred Jones:** Arriva Trains, because it holds the Wales and borders franchise, will come under the scope of the proposed LCO. The bus services will not necessarily come under the scope of the LCO by association.

[154] **Mick Bates:** That is interesting, Minister. I will move on to paragraph (h) of the proposed matter 20.1. It would enable the Assembly to legislate and to impose duties on persons providing the public in Wales with several listed services, as well as related services. In the explanatory memorandum, in paragraph 40, it says that it,

[155] ‘covers key services provided to the public as well as incidental services’.

[156] That is a slightly different wording and you may wish to comment on that. Within that, there is an important caveat in relation to paragraph (h) that proposes to limit the Assembly’s competence in this context—the Assembly would only be able to legislate to impose duties on service providers in respect of the services mentioned. How did you determine which sectors of service provision should be included under paragraph (h)?

[157] **Alun Ffred Jones:** By and large, they are already under the competence of the 1993 Act and have been defined as such. However, telecommunications has been added. I think that we are trying to limit the anomalies within certain service sectors, but most of these areas were part of the public sector, such as the utilities.

[158] **Mick Bates:** Take, for instance, paragraph (h)(vi), which is ‘railway services’, and we have already heard you mention twice in previous answers that the railway service under Arriva Trains will be subject to this competence—and the ticketing services too—but not the bus service. Why has that service been left out?

[159] **Alun Ffred Jones:** Obviously, this has been a subject of discussion, but, again, there is a Wales and borders franchise in terms of the rail service and, therefore, it is easily definable. Bus services are fragmented in all kinds of directions, so it would be contrary to the spirit of the proposed Order to specify that Arriva should carry out duties under a Measure unless all bus services were included. It was decided not to include those because of the fragmented nature of the service. However, it could be that certain bus companies might come under the competence of the proposed Order in relation to some of the other definitions.

[160] **Mick Bates:** Take, for example, the Government’s policy on concessionary fares, which amounts to paying substantial sums to companies, although I do not have the figures to hand that would say which companies would receive in excess of £200,000. Would that mechanism count?

[161] **Alun Ffred Jones:** In theory, I suppose that it could. However, in general terms, it is not the current intention of the Government to go after individual bus companies because of the fragmented nature of the service. That does not mean that certain bus companies might not come under the competence if that was deemed to be necessary or—

10.40 a.m.

[162] **Mick Bates:** On that point, Chair, I would like some clarity about the concessionary fares, because it is a substantial part of the budget. Presumably, that would be considered a public service. Would it not?

[163] **Alun Ffred Jones:** There is no doubt that the concessionary fares use public money that goes to a company or organisation, but there could be difficulties, because certain fairly large bus companies might fall within this category, while the smaller operators would not.

Having a fragmented service in which duties are imposed on some but not on others could result in difficulties with regard to service users' expectations. That is the thinking behind not including the bus companies.

[164] **Mick Bates:** I will not pursue this point, but it is important, Chair, that we have a better understanding of where the money for concessionary fares goes and of what companies are affected by that. It is obviously public money for a public service, and it would be useful for us to have the information so that we can scrutinise how that money is used in bringing more equality in the use of the Welsh language.

[165] **Alun Ffred Jones:** Well, you can scrutinise how the money is used, but that is not a matter for the proposed LCO.

[166] **Mick Bates:** It is not a matter for you, but it is a fact that we are talking about a limit, and wherever you impose limits, there will automatically be what you call fragmentation with regard to bus services, but the same applies to the small businesses that we discussed earlier. Wherever you draw a line, there will be an impact. In this particular case, it seems that it will be on railway services, while bus services are omitted.

[167] Moving on to a further question on this matter, for the sake of clarification, under 20.1(h)(v), where we have education and training, would the current ReAct scheme be subject to this legislation?

[168] **Alun Ffred Jones:** In theory, it could be, because it uses public money, but that would be a matter for any Measures proposed.

[169] **Mick Bates:** Absolutely, but let us say that someone receives over £200,000 under one of these schemes who was previously not subject to one of the categories under 20.1. Would they become liable?

[170] **Alun Ffred Jones:** Are you talking about the organisation providing the service?

[171] **Mick Bates:** Well, yes.

[172] **Alun Ffred Jones:** Are you talking about a service to the public?

[173] **Mick Bates:** The one who is providing a service to the public. In this case, it would be Careers Wales.

[174] **Alun Ffred Jones:** We are talking about the training here, are we not?

[175] **Mick Bates:** Yes, the training element.

[176] **Alun Ffred Jones:** The body that is providing that service might be required to have duties imposed upon it.

[177] **Mick Bates:** 'Might be required'? So, would Careers Wales, which provides the ReAct support, be subject to the legislation?

[178] **Alun Ffred Jones:** Careers Wales would certainly come under the scope of the proposed LCO.

[179] **Mick Bates:** So, if it were to provide over £200,000 under one of the ReAct scheme's predecessors, would the company in receipt of that funding automatically come under the powers of this proposed LCO as well?

[180] **Alun Ffred Jones:** Careers Wales would certainly—

[181] **Mick Bates:** Sorry, would the company in receipt of the funding—the public money, and let us say that it was in excess of the limit of £200,000—automatically be subject to this proposed LCO?

[182] **Alun Ffred Jones:** It would certainly come within the scope of the proposed LCO, but it would be a matter for a Measure and any duties imposed on the body or any expectations of it.

[183] **Mick Bates:** I understand that, but we are talking about the principle here. As I understand what you have just told me, if, under one of these schemes, a sum in excess of £200,000 is awarded to a company, that company will be subject to the regulations under 20.1.

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

[185] **Mark Isherwood:** We only have quarter of an hour left, so I ask the Minister and the Members to be as brief as possible and to avoid questions to which we already have the answers.

[186] **Lesley Griffiths:** In the list that Mick referred to in category (h), sewerage services are included. Do you intend to capture one-man-band businesses that empty cesspits?

[187] **Mick Bates:** [*Inaudible.*]

[188] **Alun Ffred Jones:** Would you like to answer it as well, Mick? [*Laughter.*]

[189] Water and sewerage services are within the scope of the 1993 Act anyway. The technical answer is that it is a matter for any Measures that follow. However, I think that ‘no’ is the answer.

[190] **Lesley Griffiths:** Thank you. Can you explain why postal services are defined in the way proposed?

[191] **Alun Ffred Jones:** Apparently, the definition of postal services is taken from section 125 of the Postal Services Act 2000, as you probably know.

[192] **Lesley Griffiths:** Of course. [*Laughter.*]

[193] **Alun Ffred Jones:** The use of these definitions provides consistency with the definition and description of postal services in recent major enactment dealings with the sector. So, again, it is a matter of using phrases that have already been used to define the service.

[194] **Lesley Griffiths:** Thank you.

[195] **Leanne Wood:** The definition of telecommunications services includes systems wholly or partly in the United Kingdom or elsewhere. Why are telecommunications services defined in that way, and can you tell us what it means in layman’s terms?

[196] **Alun Ffred Jones:** Probably not. Again, the definition of a telecommunications service is taken from two definitions that appear in the Regulation of Investigatory Powers Act 2000, although I am not going to read them out. It is a phrase that has been used in other

regulations and legislation, and it is understood to include the whole gambit of the services provided, which have been expanded significantly over the past few years and will no doubt expand further in future. Therefore, it is an attempt to future-proof the legislation.

[197] **Leanne Wood:** How will you deal with the telecommunication services providers based outside of the UK to ensure that they comply with the powers under the proposed LCO?

[198] **Alun Ffred Jones:** I stand to be corrected, but most of these companies will have a base in the UK and therefore will come under the scope of the proposed LCO. If they are operating in Wales, they are providing a service to the people of Wales.

[199] **Leanne Wood:** Will internet service providers be covered?

[200] **Alun Ffred Jones:** Yes, it will be in the competence of the proposed Order, but whether it will be included in a Measure is for discussion.

[201] **Darren Millar:** May I clarify that? The Minister has answered the question about internet service providers, but what about telecommunications systems such as Skype and other voice-over-internet-protocol facilities? Will they be required to comply in order to operate within Wales?

[202] **Alun Ffred Jones:** I think that I am right in saying that they come under the scope of the proposed Order. Again, it is a matter for a Measure as to any duties that might be imposed on such providers. It is an interesting area, because these services are a central part of the way in which we live these days, and that is why they have been included. It is also interesting that the UK Government, through the statement made by Lord Carter, has made it clear that it believes that it is such an important issue that every home in the UK should have a broadband connection within a few years. That is why it is almost a public service, and that is how it is being interpreted, as far as I can see. We wanted to include this because the Welsh language, if it is to survive and prosper in the future, must be part of the lives of young people, who are the greatest users of new means of communication, in contrast with others that I could name, such as myself. It is important that the Welsh language is part of this new, exciting and developing world, and that is why these providers will come under the scope of the proposed LCO. However, what duties might be imposed is a matter for a Measure that will follow.

10.50 a.m.

[203] **Leanne Wood:** I look forward to seeing Google and Facebook in Welsh, Minister. Railway services are included, and we have already discussed bus services. Cardiff International Airport and international ferry services are not included. Can you explain why that is the case?

[204] **Alun Ffred Jones:** The simplest way to answer that is to say that there is political agreement on the categories that have been defined. I am not saying that there were political disagreements about anything else, but these are the areas that we defined as being most important.

[205] **Leanne Wood:** Finally, are there any powers with regard to the Welsh language that are not covered by either this proposed LCO or existing powers? I ask the question specifically in relation to education and training.

[206] **Alun Ffred Jones:** We believe that, with regard to education, all the powers that are needed—in terms of any changes that might be deemed necessary—already lie with the Assembly. That is why, by and large, we have not included education within the scope of the

proposed LCO.

[207] **Darren Millar:** Minister, what does ‘the basis of equality’ mean? It is a phrase used in matter 20.1:

[208] ‘Promoting or facilitating the use of the Welsh language; and the treatment of the Welsh and English languages on the basis of equality’.

[209] **Alun Ffred Jones:** I may turn to my learned friend on my right in a minute. If I have understood it correctly, what we are talking about, with regard to getting the competence and, eventually, Measures, is providing and bringing the levels of services in the Welsh language up to the level of those already provided in English, and not imposing duties that would mean having to legislate for English and Welsh at the same time, all of the time. This phrase, apparently, would allow you to do certain things in relation to the Welsh language without having to make reference to English-language services. Therefore, it is the ability to differentiate between the two, and that is why it is phrased in that way.

[210] **Ms Arch:** Each time a future Assembly legislates to provide for a service in the Welsh language, whether it considers it appropriate or not, there is no doubt that it also legislates in respect of the English language at the same time. This legislation allows for the same outcomes to be reached for services in both languages without the necessity, for example, to legislate in respect of the English language. So, it puts it beyond doubt that the Assembly has to do that each time it legislates in respect of the Welsh language.

[211] **Darren Millar:** May I just clarify this? In terms of competence, the proposed LCO does not devolve competence to recognise English as an official language, or does it? Will it protect the rights, for example, of English speakers in predominantly Welsh-speaking areas, where they may feel that they are disadvantaged in terms of the quality of the services that they might receive?

[212] **Alun Ffred Jones:** I think that the phrase ‘official language’ would mean treating English and Welsh on the basis of equality. The phrase that you have referred to merely makes it possible, if it is deemed necessary or desirable, to make specific reference to services through the Welsh language, without having to make the same provision for English-language services, which, presumably, more often than not, are already in place. Am I right—

[213] **Darren Millar:** There are some who feel that it may be necessary to legislate for the protection of English-only speakers in areas where Welsh is the predominantly spoken language.

[214] **Alun Ffred Jones:** Are there any—

[215] **Dr Onllwyn Jones:** There are examples. Under the Welsh Language Act 1993, community councils in predominantly Welsh-speaking areas, which, until recently, had prepared the minutes of their meetings in Welsh only, needed to prepare a Welsh-language scheme approved by the Welsh Language Board and, as a result of that, now have to prepare those minutes in both languages. So, it is possible at times to improve services for English speakers, which is under the terms of the 1993 Act, but I would think that the same would be possible—

[216] **Darren Millar:** So those provisions will be assumed, if you like, within this and built upon, which you mentioned earlier.

[217] **Dr Onllwyn Jones:** Yes, the intention is to build on the 1993 Act.



[218] **Mark Isherwood:** Leanne, can you take just two minutes over your group of questions?

[219] **Leanne Wood:** The questions are short, Chair, but I do not have control over the length of the answers. Matter 20.2 includes:

[220] ‘Provision about or in connection with the freedom of persons wishing to use the Welsh language to do so with one another (including any limitations upon it).’

[221] Can you tell us what limitations might be invoked?

[222] **Alun Ffred Jones:** That is a matter for the Measure.

[223] **Leanne Wood:** Okay, that was a brief answer.

[224] **Alun Ffred Jones:** However, if pressed—[*Laughter.*]

[225] **Leanne Wood:** Go on, then.

[226] **Alun Ffred Jones:** An example would be health and safety in certain circumstances.

[227] **Leanne Wood:** Would the use of the word ‘limitations’ confer power on Ministers to restrict or prohibit the use of the Welsh language?

[228] **Alun Ffred Jones:** To prohibit or restrict the use of the Welsh language? The whole purpose of this section, as I understand it—I will be careful here—is to reaffirm the right of people to speak Welsh to one another. There are certain situations where, no doubt, that may be limited. I am not competent to discuss that at the moment. There are limitations and I have expressed an example of where there might be limitations in certain circumstances.

[229] **Leanne Wood:** Okay. I will move on, then. Can you tell us what the territorial limitation of matter 20.2 is? For example, would it allow Welsh prisoners incarcerated in English prisons the freedom to use Welsh?

[230] **Alun Ffred Jones:** I am right in saying that the scope of the Order is specific to Wales, by and large. The issue of prisons is interesting and that may be a subject for discussion in the future, but not in terms of the proposed LCO itself. I am right in saying that the scope of the proposed LCO limits the legislation to Wales territorially, does it not?

[231] **Dr Onllwyn Jones:** Provisions in relation to Wales.

[232] **Ms Arch:** The Government of Wales Act 2006 requires the provisions of future Assembly Measures to be in relation to Wales, therefore you would have to assess whether any future provision was in relation to Wales. As you said, by and large, that will mean that it is within the territory of Wales, but that is not to say that it cannot sometimes apply elsewhere, but it would very much depend on the nature of the individual provision that you will consider in due course.

[233] **Alun Ffred Jones:** If there were no such provision in Wales for whatever you are talking about—

[234] **Leanne Wood:** Young offenders institutes, for example.

[235] **Alun Ffred Jones:** I am talking in general, without referring to prisons. If there were no provision in Wales and it was provided over the border, I presume that that could be

challenged somewhere, but, by and large, we are talking about the territory of Wales.

[236] **Mark Isherwood:** That could have led us to questions about the consent of UK Ministers, but, unfortunately, the clock is against us.

[237] **Alun Ffred Jones:** I am very sorry about that.

[238] **Mark Isherwood:** Are you agreeable to us writing to you with the small number of outstanding, probing and excellently drafted questions for your response, alongside the other small number of notes that we have requested during the meeting? We would be grateful if you could provide us with a note as soon as possible.

[239] Minister, do you wish to raise any issues that you did not have the opportunity to cover in your answers or do you have any closing remarks?

11.00 a.m.

[240] **Alun Ffred Jones:** No. Obviously, if you think that it is useful for me to return to the committee, I am sure that we could discuss that. If you feel that matters arise in the course of your deliberations and evidence-gathering that it would be worth me returning to discuss, then I will certainly do so.

[241] **Mark Isherwood:** We are grateful for that, and I can confirm that we will be inviting you back after we have had the opportunity to take evidence from external organisations. We can explore matters further at that point.

[242] The clerk will send you a draft transcript of proceedings for correction before it is finalised. I thank you and your officials for your contributions. The next meeting is on 3 March, and the Welsh Language Board has confirmed that it will send representatives. It is possible that Mentrau Iaith Cymru will also be with us. If Members have no further points to make, I declare the meeting closed.

*Daeth y cyfarfod i ben am 11.01 a.m.  
The meeting ended at 11.01 a.m.*