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Y Dirprwy Weinidog dros Dai
Deputy Minister for Housing



Llywodraeth Cynulliad Cymru
Welsh Assembly Government

Our ref MB/JAD/0024/08

Leanne Wood AM
Chair
Proposed Affordable Housing LCO Committee
Cardiff Bay
Cardiff
CF99 1NA

31 January 2008

Dear *Leanne*

Thank you for the opportunity of presenting evidence to the Committee on the Affordable Housing LCO on 22 January.

At the meeting, I undertook to let you have a note on the meaning of "disposal" and the implications of not having a definition within the proposed Order. I attach a note for your assistance and have also added a paragraph on the definition of a 'Social Landlord' to give added clarity to Committee Members.

If you have any further queries, I would be happy to address them.

Yours Sincerely

A handwritten signature in cursive script, appearing to read 'Jocelyn'.

Jocelyn Davies AM

WELSH ASSEMBLY GOVERNMENT

Affordable Housing LCO Committee meeting on 22 January 2008: Follow up note from the Deputy Minister for Housing

At its meeting on 22 January, the Committee asked whether, in the absence of a definition of "disposal", would the LCO as drafted give the National Assembly more powers than it already has in respect of "stock transfer".

I would respond as follows:

One of the difficulties that arose during drafting the LCO has been separating out "voluntary" from "statutory" disposals. A voluntary disposal would be a disposal of land held for housing purposes by a local authority under section 32 of the Housing Act 1985. A local authority has power by these provisions to dispose of land which is held by the authority for certain housing purposes. This is without prejudice to the statutory provisions relating to the Right to Buy under Part 5 of the Housing Act 1985.

The current version of the LCO "touches upon" stock transfer in part but that is unavoidable due to the complexities involved. There is provision in the Housing and Regeneration Bill relating to stock transfers that will also apply in Wales whereby sections 34 and 43 of the Housing Act are amended.

Under section 32(1) of the Housing Act 1985 a local authority has power to dispose of land held by it for the purposes of Part 2 (Provision of Housing Accommodation). However, a disposal under section 32 must not be made without the consent of the Secretary of State (subsection (2)). The functions of the Secretary of State, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales, by the National Assembly of Wales (Transfer of Functions) Order 1999 and were transferred to the Welsh Ministers under paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

It is under section 32 (amongst others) that consent is sought by a local authority seeking to dispose of its housing stock under a stock transfer. In a stock transfer, consent may be given to a disposal of land held for housing purposes by the Welsh Ministers under section 32 and/or a disposal by a local authority of a house which has not been acquired or appropriated by the authority for housing purposes under section 43 of the Housing Act 1985.

A secure tenant of a local authority has rights in respect of a "dwelling-house" and an assured tenant of a registered social landlord has rights in respect of a "dwelling", hence the references in the LCO to dwelling-houses and dwellings.

"Land" let together with a dwelling-house is to be treated as part of a dwelling-house, (unless the land is agricultural land exceeding 2 acres) but not any other type of land, so it is this land that is within competence but not any other type of land.

The current draft means that all matters in Part 5 of the Housing Act 1985 and sections 16 to 17 of the Housing Act 1996 (right to acquire) are brought within competence. Disposals of dwelling-houses (within the meaning of Part 5 of the Housing Act 1985) and dwellings (within the meaning of section 63 of the Housing Act 1996) under Part II of the Housing Act 1985 and Chapter 2 of Part 1 of the Housing Act 1996 will also be within competence, but not any other type of land.

The current draft does not attempt to limit the LCO strictly to the Right to Buy and Right to Acquire schemes neither is it intended to cover all voluntary transfers and stock transfers that can be made under Part 2 of the Housing Act 1985 and Part 1 of the Housing Act 1996, but it is intended to cover the disposal under those provisions of land that would be a "dwelling house" for the purpose of Part 5 of the Housing Act 1985 or a "dwelling" for the purpose of section 63 of the Housing Act 1996.

The conclusion is that in the current draft, absence of a definition of "disposal" would not give the Assembly wider powers than it already has on stock transfer and it is not considered necessary that the inclusion of voluntary disposals in the current draft should give rise to concern. "Disposal" without definition will take its widest meaning. In this context a disposal means an alienation of the rights of the person holding the land. This can occur in a number of ways including in particular sale, lease, charge, mortgage or gift. All such disposals are included within competence. It is not considered desirable to limit the term "disposal" in the LCO, but if the concept needs to be narrowed when we come to consider the precise legal reforms required, that can be done in the Measure.

Definition of Social landlord

The Committee also asked whether a definition of "social landlord" was needed in the LCO and why couldn't this be defined in the Measure. It is necessary to define what a social landlord is for the purposes of the LCO, giving certainty as to those social landlords to whom the order applies. The definition is based upon the list of landlords contained in section 80(1) of the Housing Act 1985 and to whom Part 5 of the Housing Act 1985 and Chapter II of Part 1 of the Housing Act 1996 applies.

Jocelyn Davies AM
Deputy Minister for Housing