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Y Dirprwy Weinidog dros Wasanaethau Cymdeithasol
Deputy Minister for Social Services



Llywodraeth Cynulliad Cymru
Welsh Assembly Government

Eich cyf/Your ref
Ein cyf/Our ref: LF/GT/0007/07
Karen Sinclair
Chair, Vulnerable Children and
Child Poverty LCO Committee
National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA

5 November 2007

Dear Karen,

The Proposed Legislative Competence Order (LCO) Vulnerable Children and Child Poverty

At the meeting of the LCO Committee on the proposed LCO for Vulnerable Children and Child Poverty, I undertook to write to you to clarify a number of technical points that required further legal clarification.

I attach a list of the issues raised and my response. I have also provided examples of elements not covered by the LCO, which I trust members will find helpful. I am afraid that at this point I am unable to clarify the position regarding the scope of the LCO in respect of reasonable chastisement. I hope to be in a position to confirm this shortly and will write separately.

At the committee meeting David Melding suggested that the Chair might wish to consider the potential for officials, or lawyers to support me at future meetings where questions have a legal or technical nature. I feel this would be practical and assist the process and I should therefore be grateful if you would confirm your preferred arrangements on this.

I would like to thank you and other Committee members for providing me with an opportunity to come and clarify issues on the LCO and look forward to attending future meetings. I am committed to ensure that the whole process is transparent and helpful and appreciate member's contributions to ensure thorough scrutiny and commitment to this very important agenda. I believe that the LCO for Vulnerable Children and Child Poverty will be central to providing the National Assembly for Wales with broad powers to delivery a distinct agenda for vulnerable children in Wales and to meeting Welsh priorities and timescales.

Yours sincerely

Gwenda Thomas

cc. Sarah Beasley Committee Clerk

The Proposed Vulnerable Children LCO Committee

The Deputy Minister for Health and Social Services - clarification of questions raised at the Committee on 25 October 2007

Wales's provisions in the Department for Education, Schools & Families – Children and Young Persons Bill 2007

Point 36 Will we have framework power in the DCSF Bill?

1. The Bill does not contain framework powers for Wales. The powers we are seeking in the Bill will be joint provisions for England and Wales that will give Welsh Ministers (with very limited exception in areas that are non-devolved) powers to commence the provisions in Wales. Under the powers Welsh Ministers will also be able to make regulations to bring the provisions into effect.

Definitions

Point 43-59 - 'Harm and Neglect'

2. As I stated at Committee *harm and neglect* are not mutually exclusive, and below I have set out why we have chosen to use the term.

3. The word pair 'harm and neglect' with 'and' is used in other enactments. For example the word pair in this form appears in the following provisions:

- section 1 of the Children Act 2006 (general duties of a local authority in England in relation to the well-being of children);
- Section 10 of the Children Act 2006 (co-operation to improve the well-being of children in England)
- section 25 of the Children Act 2006 (co-operation to improve the well-being of children in Wales);
- Section 507B of the Education Act 1996 (functions of LEAs in England in respect of leisure time activities).

4. In each of these cases the expression is not intended to mean that both harm and neglect need to be demonstrated before the relevant provisions operate. The expression is used as a portmanteau term in respect of a multiple subject, and this linguistic and legislative context to the expression indicates that both terms do not need to be satisfied in order for the connected provisions to have effect.

5. In the case of section 25 of the Children Act 2004 the subject is the arrangements that must be made to further the object of improving the well-being of children in a local authority area. It would not really make sense if only arrangements in respect of children who have suffered both harm and neglect were to be covered, albeit that in many cases both will be present. The provision is intended to cover many types of arrangement, and so in this sense the arrangements are a multiple subject.

6. In the case of the LCO matter 'safeguarding children from harm and neglect' it is specifying a broad topic about which the Assembly may make laws. It could not reasonably be interpreted as meaning that the Assembly could only make laws about safeguarding children who suffer, or might suffer, both harm and neglect. It will be able to make laws safeguarding children from both or either. The multiple subject here is the range of provisions the Assembly could make by way of Measure.

7. It is also worth noting that the expression 'harm and neglect' is not tautologous. There is a purpose in mentioning both things. Not all harm is caused by neglect and not all neglect leads to harm. They are partially overlapping concepts that together describe the totality of things we wish to be within the Assembly's competence.

8. Both of the words 'and' and 'or' may be used conjunctively or disjunctively. In the case of partially overlapping concepts of the kind under consideration here we think it is better to use 'and'. Although this may be more a matter of taste when looking purely at the syntactic merits, we think there should be a strong case for departing from the use of 'and' in this word pairing given its use in current enactments on the same topic.

Point 85

Can a Measure Provision change a definition in the LCO?

9. No, this would not be possible. The LCO sets the limits of the Assembly's power to make laws by Measure so provisions in a Measure cannot those change limits. Where the provisions of a future proposed measure were drafted to fall some way within the broad scope offered by the "Matters" as inserted into the Government of Wales Act 2006 by this LCO, then the breadth of the terms of the LCO would set the limits of any proposed amendment to the proposed measure, in the course of its passage through the Assembly.

Point 89

Why have we not mentioned or defined "vulnerable children" or "child poverty"?

10. Vulnerable children and child poverty are the main focus of the new legislative competence, but they are not the only things that intend to be

covered. They merely provide convenient labels for describing the main thrust of the proposals in discussion and explanatory material.

11. The LCO covers all children and their families who need help of some kind to ensure the well-being of those children. This help could take the form of grant funding, provision of care and other types of service, regulation of services and care providers, or advocacy and systems for dealing with complaints. The LCO includes children and families in poverty and those who are otherwise vulnerable. It also includes any family that needs the help or protection of the state, for example through the regulation of child-minding and day care; to this extent it includes all families who use such facilities in the public or private sectors.

12. The drafting approach in the LCO is to describe the types of things needed to provide help to those children and families that require assistance of some kind, rather than to describe the type of child or family. We think this better reflects to breadth of competence intended since there are many types of child and family who need help from time to time: not just those who might ordinarily be thought of as in need, vulnerable or in poverty. Including definitions of the types of child and family covered would add nothing other than a further definitional task; a task to no end since nothing really turns on the particular status of the child or family as far as the intended breadth of the LCO is concerned.

13. For the same reasons we do not think a definition of "family" is required. Nothing turns on the word or its definition and the word is not used in the LCO.

Point 99

Social Care Includes

Why have we used "includes" and not "means" in the definition of social care ?

14. "Includes" was deployed because it seemed the natural word to precede a list of things included within the defined term. It is a general practice in current legislative drafting to insert the words "in particular" after "includes" where a list of this kind is not intended to be an exhaustive list. The list of things in the definition of "social care" is intended to be exhaustive and we consider the courts would interpret it in that way.

15. "Includes" is also used in other circumstances where it is not intended to be exhaustive, such as in an expanding definition where something that would not ordinarily be thought of as included within the defined term is intended to be included; e.g., "cattle includes horses". In these cases the intended meaning is usually clear from the words in context.

16. We do not think there is any legal doubt about the intended meaning of the definition of "social care" as currently drafted, but we also do not think that

the meaning would change by the use of the word "means". We would therefore be prepared to look at this phrasing again in the light of any comments about this in the Committee's final report.

Additional Information - What the LCO can't cover

17. The meeting focused on the scope of what the LCO can cover. I though it may be helpful to Committee members if I provided examples to what the LCO **does not cover**. For example areas of children related issues **not** intended to be included are;

- court related matters in parts 4 and 5 of the Children Act 1989, for example in relation to care and supervision proceedings, care and supervision orders, emergency protection orders and powers of police protection. With the exception of the Welsh Ministers' functions in relation to Welsh family proceedings officers and welfare advice to courts, representation and provision of information, advice and other support for children ordinarily resident in Wales and their families, currently undertaken by CAF/CASS CYMRU, family law and proceedings are specifically excluded matters.

Gwenda Thomas
Deputy Minister for Health & Social Services