

Gwenda Thomas AC/AM  
Dirprwy Weinidog/Deputy Minister



Llywodraeth Cynulliad Cymru  
Welsh Assembly Government

Eich cyf/Your ref  
Ein cyf/Our ref: LF/GT/0012/07

Karen Sinclair  
Chair of the Committee on  
the proposed LCO  
Vulnerable Children and  
Child Poverty Committee

17 December 2007

Dear Karen

**The Proposed Legislative Competence Order (LCO) Vulnerable Children and Child Poverty - Clarification of points from 29 November meeting.**

There are number of outstanding points from the 29 November meeting that I promised to write to you on.

These are on the attached schedule that you and Committee Members will find helpful in your final considerations of the above Legislative Competence Order.

I would like to thank you and other Committee Members for your work in this area and look forward to seeing the final report with any recommendations in late January 2008. If there are any areas that you or Members feel you need further clarification on, I will be happy to assist.

Yours sincerely

A handwritten signature in cursive script that reads "Gwenda Thomas".

**Gwenda Thomas**  
**Deputy Minister for Health and Social Services**

cc. Sarah Beasley Committee Clerk

## Proposed Vulnerable Children LCO Committee

Deputy Minister for Health and Social Service clarification of outstanding points from 29 November meeting

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### **Why it is constitutionally difficult to expressly refer to the UN Convention on the Rights of the Child in the LCO.**

The UN Convention on the Rights of the Child ("UNCRC") is open for signature to states who are members of the UN. As such the UK government has signed and ratified the convention albeit with certain declarations about the way that the convention is interpreted and certain reservations from full compliance. The treaty deals with a range of rights applying to children and young people not all of which come within the National Assembly's devolved competence. Examples of rights outside competence are rights in relation to imprisonment, access to legal assistance when accused, immigration and the age at which young persons are recruited to the armed forces. To include reference to the UNCRC in an order conferring legislative competence on the National Assembly would be confusing in relation both to those aspects which are outside competence and also to those aspects where the UK government has made reservations. It might give rise to a call from the UK government for further exceptions to be included in the order.

The National Assembly has already acknowledged the significance of the UNCRC in policy making in the plenary debate in 14 January 2004. This is an appropriate way to ensure that the values of the UNCRC are observed in policy making in this area by reinforcing its standing as a universal reference point. Express reference to UNCRC and its broad sweep of entitlements for children and young persons in an order which is seeking to express in clear language the extent of the Assembly's legislative power is likely to lead to uncertainty both for the Assembly, the Welsh Assembly Government and the UK government.

**Inform the Committee whether it would be necessary to make a Measure to increase the powers of the Children's Commissioner or whether it would be possible to amend the original legislation that created the role to achieve this.**

The committee raised the question and used the example of CAF/CASS Cymru as an example of a body whose functions are not subject to scrutiny by the Children's Commissioner. CAF/CASS Cymru is excluded by virtue of wording in the Children's Commissioner for Wales Regulations 2001 (as amended). These are regulations made by the Assembly and could be amended by the Welsh Ministers without the need to draw on competence conferred by this LCO. However, in general, the bodies and functions which the Children's Commissioner is able to review are set out in the Act so a

measure would be required to amend the powers. However, even a measure would not enable the Assembly to add to the Children's Commissioner's powers so as to take them outside the Assembly's devolved competence.

## Definition of Wellbeing – Matter 15.8

### **The possible insertion of 'play' (in addition to recreation) in the definition of well-being in 15.8**

The concept of play as currently defined is not solely connected to recreation. For example, a child's play is connected to his or her physical, mental health and emotional wellbeing, education and recreation. It is in the same conceptual category as something like reading or exercise, that is, something that is inherently relevant to "well being".

As such the view is that there is no added value or reason to include the work play that there is for exercise. Indeed if we add the work "play" the courts may seek to attach meaning to it. This may be problematic in the contrast with the use of the defined term "well-being" in other related enactments and may for example create unnecessary questions or doubt about the breadth of well being as it is used currently in section 25(2) of the Children Act 2004 where play does not feature in the similar definition of wellbeing.