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Welsh Affairs Committee

Work of the Committee Session 2007–08

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Report, together with formal minutes

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The Welsh Affairs Committee

The Welsh Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Office of the Secretary of State for Wales (including relations with the National Assembly for Wales).

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The committee is one of the Departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the Internet via www.parliament.uk.

Publications

The reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the internet at www.parliament.uk/parliamentary_committees/welsh_affairs_committee.cfm.

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1 Introduction

1. This Report is the eighth annual report from the Welsh Affairs Committee to the House and covers the work of the Committee during the 2007-08 Session. At the beginning of the current session the Liaison Committee agreed that Committees should in future report on their work by session rather than by calendar year as had previously been the practice. Parts of this Report will therefore replicate information published in the third Report from the Committee *Work of the Committee in 2007*, HC 325, Session 2007-08.

2. In May 2002 the House agreed a resolution setting out “illustrative tasks” for select committees. In June 2002 the Chairman of the Liaison Committee wrote to all committees setting out guidance on committee objectives and core tasks, with the intention that those core tasks be reflected in committees’ annual reports. Since 2003, a number of committees have set out their achievements against those common objectives and core tasks in tabular form. The Liaison Committee welcomed that approach and encouraged other committees to adopt that practice. We therefore set out our work in this session below, assigning it broadly to the core tasks.

Table 3 Core tasks of Select Committees (In this Table, entries under Department refer to Government Departments scrutinised by the Committee and are not restricted to the Wales Office)

	To examine Government and EU Policy Proposals	Examination of emerging policy, or deficiencies	Draft Legislation	Examine departmental output	Expenditure	Public Service Agreements	Associated Public Bodies	Major Appointments	Implementation of Legislation	Evidence from Minister
Energy in Wales: follow-up inquiry	✓	✓		✓						✓
The proposed Legislative Competence Order in Council on additional learning needs	✓	✓	✓							✓
The proposed National Assembly for Wales (Legislative Competence) Order in the Field of social welfare 2008	✓	✓	✓							✓
Work of the Wales Office	✓	✓		✓	✓					✓
The proposed draft National Assembly for Wales (Legislative Competence) (social welfare and other fields) Order 2008	✓	✓	✓							✓

The provision of cross-border services for Wales	✓	✓		✓	✓					✓
The proposed draft National Assembly for Wales (Legislative Competence) (Housing) Order 2008	✓	✓	✓							✓
Wales Office Annual Report 2008	✓	✓		✓	✓				✓	✓
Globalisation and its impact on Wales	✓	✓		✓						

3. The Welsh Affairs Committee's role differs from that of many departmental select committees. While our role is to scrutinise the Wales Office, that Department does not carry out similar functions to those of most departments of state. As the Secretary of State said in evidence to the Committee "we are not a spending department".¹ Rather, the Secretary of State for Wales is the key Government figure liaising with the devolved administration in Wales and represents Wales's interests in the Cabinet and in Parliament.² Therefore many of the core tasks are not directly applicable to the Welsh Affairs Committee. For example, the Wales Office does not have responsibility for any public bodies or agencies, it does not oversee major appointments and its public service agreements come under the Ministry of Justice.

4. However, the Committee does have a very important role to play in providing a link between the UK Government and the National Assembly for Wales. That role is reflected in the words of Standing Order Number 152 which, in addition to the usual paragraph requiring it to scrutinise the expenditure, administration and policy of the Wales Office, adds the duty of establishing and maintaining relations with the National Assembly for Wales on behalf of the House of Commons.³ The Committee's role in the pre-legislative scrutiny of Welsh Assembly Government proposed Legislative Competence Orders in Council has been significant during the session. The Committee's work in this area is considered in more detail later in this Report.

Policy scrutiny

5. Scrutiny of Government policy is a core task of select committees. During the 2007-08 session the Committee was involved in eight inquiries, published seven Reports and two transcripts of evidence sessions held with the Secretary of State. The inquiries were: Energy in Wales: follow-up inquiry; the proposed Legislative Competence Order in Council on additional learning needs; Globalisation and its impact on Wales; the proposed Legislative Competence Order in the Field of social welfare 2008; The proposed draft National Assembly for Wales (Legislative Competence) (social welfare and other fields) Order 2008;

¹ Evidence to the Welsh Affairs Committee on the Wales Office Annual Report, 24 July 2007, Q 6, HC 1017-I, Session 2006-07

² www.walesoffice.gov.uk

³ Standing Order 152

the proposed National Assembly For Wales (Legislature Competence) (Housing) Order 2008; and the provision of cross-border public services for Wales.

6. These inquiries also covered the work of the Department for Business, Enterprise and Regulatory Reform, the Department for Work and Pensions, the Border and Immigration Agency, the Department of Health and the Department for Innovation, Universities and Skills.

2 The work of the Committee

Legislative Competence Orders in Council

7. The Government of Wales Act 2006 allows the National Assembly for Wales to seek to enhance its legislative powers by way of Legislative Competence Orders in Council (LCOs). It was envisaged at the start of the process that the Welsh Affairs Committee would play a key role in these procedures.

8. The Orders do not themselves change the general law for Wales—they pave the way to subsequent changes in the law applying to Wales within the devolved areas of legislative competence. They do this by adding new "Matters" to the "Fields" of legislative competence set out in Schedule 5 of the Government of Wales Act 2006.

9. These proposals for draft Orders may be introduced by the Welsh Assembly Government, by committees of the National Assembly, or by individual Assembly Members. They are subject to pre-legislative scrutiny by committees of the Assembly appointed for this purpose and, potentially, by committees of the House of Commons and the House of Lords. Whitehall agreement ("clearance") is a necessary pre-requisite before a proposed Order is referred by the Secretary of State for Wales to each House at this pre-legislative scrutiny stage.

10. Following the pre-legislative scrutiny stage, the National Assembly may agree an actual draft Order. This may take account of committee recommendations (from either its own committees or Westminster) following pre-legislative scrutiny. The draft Order must then be laid before Parliament by the Secretary of State for Wales—and he or she may still decline to do so at this stage. If the draft Order is laid, it is considered by both Houses of Parliament, and may be debated by them. Draft Orders at this stage are not amendable and can only be approved or rejected. If approved by both Houses, and once it is given Royal Assent in the Privy Council, direct law-making powers are devolved to the Assembly within the scope of the Order in Council. The Assembly then makes those laws in the form of Assembly Measures, which must be passed by the National Assembly but which require no further approval by either Whitehall or the UK Parliament.

The Committee's role in the Legislative Competence Order process

11. During this session we scrutinised four draft Legislative Competence Orders, and we thought it would be helpful to examine the timescale in which we completed our scrutiny of those Orders. This timescale is illustrated in the table on the following page.

Draft Order	Received by Welsh Affairs Committee	Welsh Affairs Committee agreed to conduct scrutiny	Press notice issued	Evidence session(s)	Report published
Proposed Legislative Competence Order in Council on additional learning needs	26 July 2007	27 July 2007	31 July 2007	7 November and 21 November 2007	21 December 2007
Proposed Legislative Competence Order in Council in the Field of social welfare	26 November 2007	27 November 2008	13 December 2007	31 January 2008	5 March 2008
Proposed Legislative Competence Order in Council on social welfare and other fields	19 March 2008	31 March 2008	3 April 2008	15 May 2008	26 June 2008
Proposed Legislative Competence Order in Council on housing	13 May 2008	20 May 2008	22 May 2008	23 June and 1 July 2008	14 October 2008

12. Everyone involved in the LCO process has acknowledged that there have been difficulties during this first year. This Committee was given the additional task of looking at all draft Legislative Competence Orders in Council—a responsibility we have taken extremely seriously. We are proud of the work that we have done, and as illustrated by the timetable above, we have dealt with the draft Legislative Competence Orders in Council referred to us in what we believe was a timely manner.

13. We recognise that the process is complex and that thorough scrutiny takes time: this is only to be expected if draft legislation is to be properly scrutinised. It has been inevitable that there have been difficulties in co-ordinating busy diaries when arranging evidence sessions with Ministers from the Wales Office and the Welsh Assembly, in either Cardiff or Westminster, and formal or informal meetings with the Assembly committees appointed to scrutinise draft Orders. However we hope that all involved will have learnt from the experiences of this first year, and that the system will work smoothly in forthcoming sessions.

Secretary of State's review of the Legislative Competence Order in Council process

14. The Secretary of State undertook a review of the procedure relating to proposed LCOs in the summer of 2008, and we took that opportunity to review our work on the process, and submitted a memorandum to the Secretary of State for his consideration.⁴ We concluded that the select committee was the most effective option for the pre-legislative scrutiny of proposed LCOs, and indeed recommended that all proposed Orders continued to be referred to this Committee for pre-legislative scrutiny as we were committed to making the process work as effectively as possible.

15. Following our experience of the first four LCOs, we highlighted the need for greater predictability of the timetable for the process, and expressed the view that limiting the number of proposed LCOs to the four or five a year originally envisaged, would enhance scrutiny and facilitate better planning.

Proposed Legislative Competence Order in Council on additional learning needs

16. The Committee's first examination of a proposed Legislative Competence Order in Council was on the subject of additional learning needs. The proposed Order expanded Field 5 of Schedule 5 of the Government of Wales Act 2006 by adding a new matter, Matter 5.17, relating to education and training for "persons who have a greater difficulty in learning than the majority of persons of the same age" and for "persons who have a disability". This was intended to include persons who have a "physical or mental impairment".⁵

17. In our Report⁶ we expressed regret that on this occasion the LCO process had not worked as anticipated as the Order was laid just before the parliamentary recess. This limited the opportunity to work jointly with the committee of the National Assembly for Wales which was also appointed to conduct pre-legislative scrutiny on this proposed Order. We also expressed our hope that in future greater clarity on the identifiable need for an Order would be provided, as well as a clearer indication of the most immediate

⁴ *Review by the Secretary of State of the procedure for Legislative Competence Orders in Council*, Memorandum by the Welsh Affairs Select Committee, July 2008 www.parliament.uk/welshcom

⁵ Explanatory note to the draft National Assembly for Wales (Legislative Competence) Order 2007 on additional learning needs

⁶ Second Report of the Welsh Affairs Committee, *The proposed Legislative Competence Order in Council on additional learning needs*, HC 44, Session 2007-08

legislative proposals (“Measures”) likely to be brought forward under the terms of the Order, if approved.

18. Nonetheless, we agreed on this occasion that a Legislative Competence Order was the most appropriate way forward for this proposal and should be proceeded with, but recommended that the proposed Order be amended to refer to the World Health Organisation’s definition of disability.

19. In his response to the Committee’s Report, the Secretary of State for Wales said that “the Committee’s recommendations have been very useful in helping the Welsh Assembly Government define the draft Order more precisely”.⁷

20. The Welsh Assembly Government removed the term “disability” from the draft Order, so that it covered “persons who have, or have had, a physical or mental impairment” and included a further class of people who have or have had a progressive health condition where it is at a stage involving no physical or mental impairment. It has also included a further class of people—persons who have, or have had, a progressive health condition where it is at a stage involving no physical or mental impairment.

21. The Welsh Assembly Government also accepted our recommendation that Matter 5.10 be amended to include provision for travel arrangements for those in higher education. The National Assembly Committee had made a similar recommendation.

22. A draft Order was approved by the National Assembly and subsequently the Secretary of State laid the draft Order before both Houses of Parliament. Members of the Committee were pleased to take part in the Sixth Delegated Legislation Committee on 18 March 2008 when the first Draft National Assembly for Wales Legislative Competence Order (renamed the Draft National Assembly for Wales (Legislative Competence) (Education and Training) Order 2008) was considered. Many speakers noted the historic aspect of that first consideration of a Legislative Competence Order by the House.⁸ The House approved the Order on 19 March 2008.

Proposed Legislative Competence Order in Council in the Field of social welfare

23. The Committee’s second examination of a proposed Legislative Competence Order in Council was on the subject of charging for non-residential social care. The proposed Order expanded Field 15 of Schedule 5 of the Government of Wales Act 2006 by adding a new matter, Matter 15.9, which would enable the Assembly to legislate in respect of charges for non-residential social care provided or secured by local authorities, and in respect of direct payments to individuals or their carers in order to secure non-residential social care.

⁷ First Special Report of Session 2007-08, *The proposed Legislative Competence Order in Council on additional learning needs: Government response to the Committee’s Second Report of Session 2007-08*, HC 377, Session 2007-08

⁸ Sixth Delegated Legislation Committee, *Draft National Assembly for Wales (Legislative Competence) (Education and Training) Order 2008*, 18 March 2008, Session 2007-08

24. On this occasion we were pleased that joint working proved possible in the pre-legislative scrutiny of the proposed Order and the Committee took evidence with the Domiciliary Care LCO Committee at the National Assembly for Wales.

25. We agreed that the proposed Order was consistent with existing Welsh Assembly Government policy and priorities, and that the use of the Legislative Competence Order in Council procedure was the most appropriate route for this to be pursued. We noted that the proposed Order would grant the National Assembly powers in certain areas for which there were no current plans to introduce legislation. We also acknowledged that the proposed Order reflected the devolution settlement. We agreed that the proposed Order should be proceeded with, with some amendments.

26. We noted that the Order as drafted would enable the National Assembly to abolish charges made by local authorities for the provision of non-residential care services. We acknowledged that the Welsh Assembly Government made clear that it did not intend to do so, but concluded that the power to do so would be conferred under the terms of this Order.

27. The proposed Order also included the power to require local authorities to charge for the provision of non-residential social care services to children, though Welsh Assembly Government does not intend to exercise this power. We noted that there would be potential significant financial implications with any Measure which may be brought forward under the powers devolved by the proposed Order.⁹

28. More generally we concluded that would be helpful if each proposed Order were to include for ease of reference definitions of the terms used, either in the proposed Order itself or as part of the accompanying Explanatory Memorandum.

29. We also noted that at that time the failure on the part of the Welsh Assembly Government to follow the anticipated procedures for these proposals created significant problems in the scrutiny of the proposed Orders, and recommended that the Wales Office, the Welsh Assembly Government and the National Assembly for Wales should seek to coordinate the procedures more effectively in future.

30. In his response to the Committee's Report, the Secretary of State for Wales said that he was "delighted to see members of the Welsh Affairs Committee take part in a joint scrutiny session with the ad hoc Committee in the National Assembly for Wales to consider this Order," commenting "I believe this has provided a sound basis for joint scrutiny work in the future between your Committee and the National Assembly."¹⁰

31. As explained in the Secretary of State's response, the definitions and exceptions required to interpret the matter in the proposed Domiciliary Care Order had not been included on the Order itself, but in another proposed Order relating to vulnerable children

⁹ Fourth Report of the Welsh Affairs Committee, *The proposed National Assembly for Wales (Legislative Competence) Order in the Field of social welfare 2008*, HC 257, Session 2007-08

¹⁰ Third Special Report of Session 2007-08, *The proposed National Assembly for Wales (Legislative Competence) Order in the Field of social welfare 2008: Government response to the Committee's Second Report of Session 2007-08*, HC 715, Session 2007-08

(see below). Many of the recommendations made by us and the Assembly committee were accepted and amendments were made to this Order.

32. In particular, both committees recommended that the draft Order should refer to 'needs' rather than 'particular needs' as it was felt that this would make the term more wide-ranging. This change was made in the draft Order.

33. The Welsh Assembly Government laid a draft Order before the National Assembly which was approved, subsequently the Secretary of State laid the draft Order before both Houses of Parliament.

34. Members of the Committee were again pleased to take part in the Delegated Legislation Committee when the Draft National Assembly for Wales (Legislative Competence) (Social Welfare) Order was considered on 30 June 2008. Members took the opportunity to comment on the Legislative Competence Order in Council process, and considered the appropriateness of provision of powers by framework powers in Westminster Acts where practical.¹¹ The House approved the Order on 1 July 2008.

Proposed Legislative Competence Order in Council on social welfare and other fields

35. The Committee's third examination of a proposed Legislative Competence Order in Council related to vulnerable children.

36. This proposed Order was laid before the National Assembly and the Proposed Vulnerable Children LCO Committee in the National Assembly for Wales published its first report on this Order before Whitehall clearance had been reached. Following agreement with Whitehall Departments, the Secretary of State for Wales invited the Welsh Affairs Committee to undertake pre-legislative scrutiny, and we agreed to do so.

37. The process of Whitehall clearance had led to some substantial revision of the proposed Order as first published and laid before the Assembly, which meant that the Assembly Committee had undertaken considerable work in scrutinising and reporting on a very different proposed Order to that which was referred to the Welsh Affairs Committee. It also substantially reduced opportunities for formal joint working between the two committees.

38. In our Report we stated that "We do not believe that the process for the scrutiny of this proposed Order has been satisfactory, or that it has worked as intended. We would again urge the Welsh Assembly Government to synchronise the publication and referral of a proposed Order to an Assembly committee with its referral to Parliament by the Secretary of State. Failure to do so represents the single biggest obstacle to the effective scrutiny of proposed Orders and, coming as it does at the very beginning of the process, it adversely affects all subsequent arrangements".¹²

¹¹ Third Delegated Legislation Committee, *Draft National Assembly for Wales (Legislative Competence) (Social Welfare) Order 2008*, 30 June 2008, Session 2007-08

¹² Fifth Report of the Welsh Affairs Committee, *The proposed draft National Assembly for Wales (Legislative Competence) (social welfare and other fields) Order 2008*, HC 576, Session 2007-08

39. The proposed Order conferred enhanced legislative competence on the Assembly to reform the law in relation to vulnerable children and child poverty. We agreed that the Legislative Competence Order in Council procedure was the appropriate route for the Welsh Assembly Government to pursue in this case, and that the proposed Order was consistent with established Welsh Assembly Government policy and existing commitments.

40. In both oral and written evidence we were told that one justification for this proposed Order was the consolidation and rationalisation of existing legislation, and we agreed that this would do much to advance clarity and understanding of the current situation, as well as to help reduce gaps in service provision. We also agreed with the Welsh Assembly Government that while child poverty was a central theme, that the inclusion of terms such as “reducing inequalities” were clearer and more appropriate.

41. We noted with concern the Welsh Deputy Children’s Commissioner’s evidence that the split in responsibilities between England and Wales for safeguarding and promoting the well-being of children and young people had resulted in vulnerable children not receiving the services they need, and recommended that in the absence of an over-arching legal framework for England and Wales the proposed Order be expanded to include reference to other bodies which work with vulnerable children, including the UK Border Agency.

42. In his response to our Report, the Secretary of State for Wales thanked us for undertaking a thorough and comprehensive scrutiny of the proposed Order and also noted that the Committee was “right to point to the need to better enable complementary working by the Welsh Affairs Committee and the relevant committee of the National Assembly”.¹³

43. One of the issues to emerge from our pre-legislative scrutiny of the proposed Order was the possibility that it might allow for a ban on smacking to be introduced in Wales. The Secretary of State agreed the need to make clear to Parliament that the proposed Order does not enable the National Assembly to legislate to remove the defence of “reasonable chastisement” relating to the punishment of children, and noted that the Welsh Assembly Government had strengthened the wording of the Explanatory Memorandum to make clear that a smacking ban was not within the scope of the proposed Order. He also advised that forthcoming legislation would affect the role of the UK Border Agency in relation to the safety and welfare of children, and noted that it was therefore inappropriate to include provision in this Order.

44. The Welsh Assembly Government was unable to accept our recommendation that the proposed Order be amended to make clear that it would do nothing to weaken the Children’s Commissioner’s existing powers in relation to “whistleblowing”, as it felt any specific reference to the Commissioner’s existing powers on “whistleblowing” could restrict the National Assembly’s ability to legislate in future on the Commissioner’s role.

¹³ Third Special Report of Session 2007-08, *The proposed National Assembly for Wales (Legislative Competence) Order in the Field of social welfare 2008: Government response to the Committee’s Second Report of Session 2007-08*, HC 715, Session 2007-08

45. The Welsh Assembly Government laid a draft Order before the National Assembly which was approved, and the Secretary of State laid the draft Order before both Houses of Parliament.

46. Members of the Committee again played a part in the scrutiny of this Order in the Delegated Legislation Committee on 12 November 2008 when the Draft National Assembly for Wales (Legislative Competence) (Social Welfare and Other Fields) Order 2008 was considered.¹⁴ That Committee considered in some depth the Legislative Competence Order in Council process which had been followed in the case of this Order. The House approved the draft Order on 17 November 2008.

Proposed Legislative Competence Order in Council on housing

47. Our final examination of a proposed Legislative Competence Order in the session related to social housing. The proposed Order expanded Field 11 (housing) of Schedule 5 of the Government of Wales Act 2006 by adding a new Matter with the principal purpose of improving the availability of “affordable housing” in Wales.¹⁵ The Explanatory Memorandum explained that the proposed Order would:

...enable the Assembly to legislate so as to permit the suspension of the Right to buy/Preserved Right to Buy and the Right to Acquire in certain areas and for certain periods and to define the circumstances or conditions which would have to be met in order for such a suspension to be considered or permitted.¹⁶

48. We concluded that the purpose of the proposed legislation which the Welsh Assembly Government intended to make under this extended competence was clear, and that the scope of the proposed Order was consistent with Welsh Assembly Government policy, and its existing powers.

49. However, we also concluded that the Order could allow the Welsh Assembly Government to suspend the right to buy for an unlimited period, effectively amounting to abolition, although this is not their policy. We concluded that the proposed Order should be drafted so as to transfer only those powers which are required and for which a clear purpose had been identified, and that there should be a limit on the period of suspension, with a requirement for periodic review of any such suspension.

50. We recommended that the proposed Order be revised so that the power to abolish the Right to Buy/Right to Acquire was specifically excluded from its scope, as we were concerned that the proposed Order would enable a Welsh Assembly Government in future to suspend the Right to Buy/Right to Acquire across a whole local authority area or across the whole of Wales. We also recommended that it be amended so as to apply only in areas of extreme housing pressure, better to reflect the underlying policy intention.

¹⁴ Sixth Delegated Legislation Committee, *Draft National Assembly for Wales (Legislative Competence) (Social Welfare and other fields) Order 2008*, 12 November 2008, Session 2007-08

¹⁵ Cm 7379, p9 para 21

¹⁶ *Ibid*, p9 para 20

51. We welcomed the Parliamentary Under-Secretary of State's agreement that it would be helpful if in future an explanation for the legislative constraints which underlie the request for a Legislative Competence Order were to be set out in the accompanying Explanatory Memorandum.

52. The Government's response to our Seventh Report was published on 3 February 2009. In his response, the Secretary of State for Wales thanked the Committee for its "thorough and effective inquiry into the proposed Order".¹⁷

Policy Inquiries

Energy in Wales: follow-up inquiry

53. Following our major inquiry of 2005-06 into the energy mix in Wales, we undertook a short follow-up inquiry which examined the future for coal production in Wales and its economic, social and environmental impact, together with the development of sustainable technologies and measures to encourage microgeneration.¹⁸

54. We concluded that there is a good future for the coal mining industry in Wales given the remaining large reserves of coal and the supply of highly skilled labour, and that it is sensible to ensure a diversity in the source of the supply of coal to the generating sector.

55. We were not convinced that alternative technologies would be able to produce sufficient electricity to fill an anticipated power generation gap in the UK of about 22 gigawatts by 2015. We expressed our belief that coal-fired power generation will continue to play a valuable and significant role and that Welsh coal has a critically important role to play in this process.

56. The Committee reaffirmed its earlier support for renewable and sustainable energy technologies. We urged the Government to review the level of financial support it gives to the Centre for Alternative Technology's WISE project (Wales Institute for Sustainable Education), which provides information and training on all aspects of sustainable living, with the aim of providing additional resources. We welcomed the Government's announcement of a further detailed study of the Severn Barrage proposal, but urged that the most careful assessment is made of the environmental impact which such a project could have.¹⁹ We note the terms of reference for the Feasibility Study on the Severn Barrage proposal, and will follow developments with interest, and look forward to playing our part in the development of the project, should the outcome of the feasibility study result in a decision to proceed.²⁰

57. In its response to our Report, the Government recognised that coal makes an important contribution to the UK's energy system, and believes it can continue to do so provided its

¹⁷ First Special Report of Session 2008-09, *The proposed draft National Assembly for Wales (Legislative Competence) (Housing) Order 2008: Government response to the Committee's Seventh Report of Session 2007-08*, HC 200, Session 2008-09

¹⁸ First Report of the Welsh Affairs Committee, *Energy in Wales: follow-up inquiry*, HC 177, Session 2007-08

¹⁹ "John Hutton calls for open minds on the future of the Severn barrage", Department for Business, Enterprise and Regulatory Reform press release 2007/064, 25 September 2007

²⁰ HC Deb 22 January 2008 c 45WS

environmental impact can be managed effectively. The Government noted that the availability of locally mined coal adds to the security, flexibility and affordability of the contribution coal-fired power stations make to the UK's electricity supplies, particularly in South Wales.²¹

58. We are pleased to note that the Government believes that there will be a continuing role for coal in the energy mix, subject to the management of the environmental impact. This should ensure a continuing role for locally produced Welsh coal to supply a proportion of energy requirements.

59. We were disappointed that the Government felt it is “not in a position to provide additional support” to the Centre for Alternative Technology's WISE project.

Globalisation and its impact on Wales

60. During the session we continued our major inquiry into globalisation and its impact on Wales, covering four main aspects:

Employment—including the relocation of jobs; the implications of EU enlargement for employment prospects in Wales; the impact of eastern and southern Asia on manufacturing and service industries in Wales; skills shortages and how these can be addressed, both internally and externally.

Population and population movement—including demographic change in Wales and its implications for the personal care of senior citizens; the balance between urban and rural communities in the context of the Wales Spatial Plan, and migration flows.

Food production and supply—including food production; the role of the major supermarkets, their supply chains and the operation of the voluntary code of practice; public sector food procurement, and local sourcing.

Broadcasting and the creative industries—including the changing nature of public service and independent broadcasting in Wales; the end of analogue; the growth of local radio stations; Welsh language and other minority language provision; coverage; changes to viewing and listening patterns; employment in the creative industries, and lessons from other parts of the world.

61. We published this Report in February 2009. The inquiry has been lengthy but worthwhile, highlighting significant issues in all four areas under consideration.

The provision of cross-border public services for Wales

62. We decided to undertake an inquiry into the provision cross-border public services for Wales, because we were concerned that policy makers in Cardiff and London were failing to consider the impact of diverging policies on the natural flow of people and services

²¹ Second Special Report of Session 2007-08, *Energy in Wales – follow-up inquiry: Government response to the Committee's first Report of Session 2007-08*, HC 435, Session 2007-08

across the Welsh-English border. We decided to focus on three main areas of cross-border services: health; further and higher education; and transport.

Health

63. we looked first at health issues, because we were concerned that discrepancies between health policy developed by the Department of Health and by the Welsh Assembly Government should not inhibit the long-standing, natural and inevitable cross-border access to health services for patients in Wales (and indeed in England).

64. Our Report *The provision of cross-border health services for Wales: interim Report* was published in July 2008,²² and highlighted four key criteria for cross-border health policy:

That the provision of health services as close to home as possible enhances clinical effectiveness and means in some cases Welsh and English patients will receive treatment on the other side of the Welsh-English border. This should be accepted by policy-makers in England and Wales who should ensure necessary funding arrangements are in place to provide a seamless service to patients according to need.

That policy developed in England and Wales should be “border proofed” in order to ensure that policy developed within one jurisdiction does not have unintended consequences for patients in another. Policy and practice must consider the east-west as opposed to the north-south direction of travel that characterises Welsh life, particularly in North and Mid Wales. Policy development should also be based on research and data that has been commissioned with cross-border issues in mind.

That more should be done to ensure that citizen engagement is delivered in practice. Where services are accessed by patients outside the administrative boundary, avenues for engagement must be clearly outlined and accessible for citizens; they should not be faced with a complex web of cross-border bureaucracy.

That there must be transparent and accountable co-operation between policy makers at local, regional and national levels. While divergence is inherent in devolution, its impact should not be felt in a negative manner by patients receiving treatment from a UK-wide National Health Service. In reviewing and developing the structure and future of the NHS in England and Wales, consideration must be given to the extent to which patients flow across the border to access their health care.

65. By publishing an interim Report we intended to contribute to the discussions surrounding the proposed protocol between the Department of Health and the Welsh Assembly Government on cross-border health provision, the proposed restructuring of the NHS in Wales and its impact on cross-border health services, and Mr James Steers’ review of neurosciences services for Welsh patients. Following progress in some of these areas we

²² Sixth Report from the Welsh Affairs Committee, *The provision of cross-border health services for Wales: Interim Report*, HC 870, Session 2007-08

will be publishing our final Report on the provision of cross border health services in the New Year.

66. The Government has given an undertaking to reply to Reports from select committees within two months of publication. We were therefore extremely disappointed that the Government's response to our interim Report was published only in January 2009, six months after the publication of our Report.

Further and Higher Education

67. We decided to consider the further and higher education aspects of the provision of cross-border public services as it affects: student recruitment and retention; student finance; and research funding and the way in which further and higher education institutions engage with employers on both sides of the border.

68. We held six evidence sessions and received a considerable number of written memoranda on this aspect of the inquiry. Our Report, which was published on 16 January 2009, commented on the evidence we have received on the levels of funding for further and higher education on Wales compared to England; the effect of divergence of policies between England and Wales on students, educational institutions and employers, on both sides of the border, and the implications for research.²³

69. Evidence submitted to us showed that differences in spending priorities between the governments in Wales and England have led to a funding gap of £61million between the amount which the higher education sector in Wales receives compared to what it would receive if it were funded on the same basis as the higher education sector in England. If this disparity continues the education sector in Wales would be unable to compete effectively with institutions in the UK and other European Union nations, thereby limiting its ability to contribute to a growing economy in Wales. Welsh higher education receives a smaller share of the UK research funding than would be expected from its relative size and if this funding gap also continues to grow it will be increasingly difficult for higher education institutions in Wales to compete on an equal basis with English institutions, with the prospect of a downward spiral developing.

Transport

70. We started taking evidence on transport, the third aspect of our cross-border inquiry in November 2008. We have concentrated on road and rail links, and held five oral evidence sessions before the end of the session, and received almost 40 written memoranda. We will continue taking evidence in the New Year and aim to publish our Report into the transport aspects of its inquiry into the provision of cross-border public services for Wales in the spring.

²³ First Report from the Welsh Affairs Committee, *Cross-border provision of public services for Wales: Further and Higher education*, HC 57, Session 2008-09

Examination of the expenditure and administration of the Wales Office

71. On 11 March we took evidence from Rt Hon Paul Murphy MP, following his appointment as Secretary of State for Wales.²⁴ It was useful to hear the Secretary of State's view on the role of the Wales Office following devolution, particularly in the light of the growing divergence of policy between England and Wales and its effect on those living in cross-border areas. We also took the opportunity to discuss issues relating to the Legislative Competence Orders in Council process with the Secretary of State

72. On 9 July 2008 we took evidence from the Secretary of State for Wales and senior officials on the Wales Office Annual Report 2008.²⁵ As well as considering the policy, finance and administration of the Department, we took the opportunity to question the Secretary of State and his officials on the Barnett Formula and the Comprehensive Spending Review as they affect Wales, the Welsh economy and framework powers in UK bills.

Welsh Grand Committee

73. The Welsh Grand Committee met on 18 June 2008, and in an innovative development, considered the future of energy in Wales. The Minister for Energy attended and addressed the Committee on future energy needs. We welcome this initiative of focusing on specific policy areas, and we were pleased that two of our Reports were relevant to the discussion and tagged for debate: *Energy in Wales*, and *Energy in Wales: follow-up inquiry*.²⁶ We look forward to contributing to future Welsh Grand Committee meetings focussing on specific policy areas of significance to the people of Wales.

Future programme

74. During the early part of the new session we will continue with our inquiry into the transport aspects of the provision of cross-border public services for Wales. We look forward to taking further oral and written evidence, and hope that our report will assist in the implementation of policy in both Wales and England, where it affects citizens living in cross-border areas.

Legislation

75. A core task of select committees identified by the Liaison committee is "scrutiny of any published draft bill within the committee's responsibilities".²⁷ There were no draft bills within our remit in 2007-08, but our work on Legislative Competence Orders in Council is closely related to this task. However, we did offer a contribution to our colleagues on the

²⁴ *Work of the Wales Office*, oral and written evidence (HC 419-i, Session 2007-08)

²⁵ *Wales Office Annual Report 2008*, oral and written evidence (HC 964-i, Session 2007-08)

²⁶ Third Report from the Welsh Affairs Committee, *Energy in Wales*, HC 876-1, Session 2005-06; First Report from the Welsh Affairs Committee, *Energy in Wales: follow-up inquiry*, HC 177, Session 2007-08

²⁷ First Report from the Liaison Committee *Annual Report for 2002*, HC 558, Session 2002-03

Innovation, Universities, Science & Skills Committee as part of their pre-legislative scrutiny of the draft Apprenticeships Bill as it affects Wales.²⁸

Relations with the National Assembly for Wales

76. In 2004 the House of Commons and the National Assembly for Wales each agreed procedures to allow for formal joint working between this Committee and committees of the National Assembly on issues of mutual interest. This procedure, known as “reciprocal enlargement” allows the Committee to invite Assembly Members to attend and participate in the Committee’s proceedings (but not to vote), and for the National Assembly’s committees to invite members of the Welsh Affairs Committee to do likewise. On 13 July 2005 the House amended its Standing Orders so that joint working could be a permanent feature of our work.²⁹

77. We were pleased that the timetable followed for the scrutiny of the proposed National Assembly for Wales (Legislative Competence) Order in the Field of social welfare 2008 allowed us to undertake joint scrutiny of the proposed Order as had been anticipated when the LCO process was introduced. Members of this Committee were pleased to conduct a joint evidence session with the Proposed Domiciliary Care LCO Committee of the National Assembly for Wales in Cardiff Bay, where we took evidence from the Deputy Minister for Social Services and officials from her department. We hope that joint working, though not necessarily only in the format of joint evidence sessions, will continue to play a part in the Legislative Competence Orders in Council process.

78. We have continued to consult with our colleagues at the National Assembly in 2007-08. We took oral evidence from Welsh Assembly Ministers on four occasions as part of our scrutiny of LCOs, and from the First Minister and from Assembly Government officials on our inquiry into the provision of cross-border public services for Wales. We held an informative informal meeting with members of the Broadcasting Committee of the National Assembly, to coincide with our evidence sessions on the broadcasting and the creative industries aspects of our globalisation inquiry.

79. We look forward to continuing constructive working relationships with Ministers, Committees and individual Assembly Members as we work together for the benefit of our constituents throughout Wales.

Visits to Wales

80. Three of our 36 evidence sessions were held in Wales and Liverpool in this Session. We also held additional informal meetings with individuals and organisations in Wales, and as part of our inquiry into the provision of cross-border public services for Wales, in Liverpool.³⁰ During the Session we visited individuals and organisations in Aberaeron, Llandysul and Aberystwyth, as part of our inquiry into globalisation and its impact on

²⁸ Seventh Report from the Innovation, Universities, Science and Skills Committee, *Pre-legislative Scrutiny of the Draft Apprenticeships Bill*, HC 1062-I, II, Session 2007-08

²⁹ Standing Order 137A, Select committees: power to work with other committees

³⁰ See annex A

Wales. Following our evidence session in Liverpool, we were very grateful to have the opportunity to visit The Walton Centre for Neurology and Neurosurgery NHS Trust, and Alder Hey Children's NHS Foundation Trust, as we wanted to hear how these hospitals serve patients from North Wales. We are very grateful that staff and patients were able to take the time to meet with us, and the points they raised have assisted our consideration of the health needs of the north Wales population. We would like to express our admiration and thanks for all the work undertaken by the staff in those hospitals.

Welsh language

81. Under certain circumstances, the Committee is entitled to conduct its proceedings in Welsh, including taking evidence in Welsh when a witnesses requests. During 2007-08, we held a joint evidence session with the Proposed Domiciliary Care LCO Committee of the National Assembly for Wales, in Cardiff Bay. Proceedings in the Assembly are undertaken in both English and Welsh, and Members of the Welsh Affairs Committee were pleased to have the opportunity to question witnesses in Welsh. However, the entitlement given to us by the House to conduct evidence sessions in Welsh does not extend to the production of bi-lingual reports.

Events

82. The Committee has also hosted events which have a national or cultural significance for Wales. The Committee hosted a breakfast meeting between Higher Education Wales and Welsh MPs, and a National Library of Wales launch of its digital archive. Following our visit to the Basque Country as part of our inquiry into globalisation, we were happy to host a lunch for the President of the Basque parliament during her visit to Westminster.

Conclusion

83. During 2007-08 the Committee scrutinised Government policy as it affects Wales across a number of departments. We have contributed to the on-going debate on energy supply, and the role Welsh energy sources could play in the future supply and security of UK energy. Our work on Globalisation and its impact on Wales has given us the chance to consider how Wales may take advantage of the many opportunities arising from the expansion of markets for Welsh goods and services. However we recognise that the Welsh economy must continue adapt and invest in the education and skills of its people to ensure we can meet the challenges of competition from developing economies across the globe as well as the challenge of the current global financial crisis.

84. Our work on the provision of cross-border services for Wales has still to be completed, but we hope that our examination of the consequences of the divergence of policies between Wales and England in areas of health, education and transport will help to ensure that Welsh and English citizens, particularly those living along the border, are not adversely affected and that the UK government and the Welsh Assembly government give full and proper consideration to the need for co-ordination of policies to ensure that there are no unnecessary barriers to the most effective cross-border relations.

85. We have undertaken scrutiny of four proposed Legislative Competence Orders originating from the Welsh Assembly Government during the session. We consider that

our effective and thorough examination of these proposed Orders has helped to produce high quality legislation. We look forward to developing our relationship with colleagues in the National Assembly for Wales as more proposals come before us.

86. We are proud of our role in ensuring that Wales gets a fair hearing within the devolution settlement. Devolution has brought democracy closer to the people of Wales and has shown clear benefits. The interface between devolved and national governments is more important than ever and we seek to ensure that the increasing differences between the two countries do not result in gaps in provision and that the Welsh people and Welsh institutions are not penalised by differing policies in the two administrations.

Annex A

Table 1 Subjects covered by the Welsh Affairs Committee in 2007-08

Subject	Evidence Sessions held in 2007-08	Sub Committee	Outcome
Energy in Wales: follow-up inquiry	2	No	Report, December 2007
Globalisation and its impact on Wales	12	No	Report, February 2009
The proposed Legislative Competence Order in Council on additional learning needs	2	No	Report, December 2007
The proposed National Assembly for Wales (Legislative Competence) Order in the Field of social welfare 2008	2	No	Report March 2008
The proposed draft National Assembly for Wales (Legislative competence) (social welfare and other fields) Order 2008	1	No	Report June 2008
The provision of cross-border services for Wales	16	No	Interim Report on Health Services, July 2008; Report on Further and Higher Education, January 2009
The proposed draft National Assembly for Wales (Legislative Competence) (Housing) Order 2008	2	No	Report October 2008

Work of the Wales Office	1	No	Evidence published June 2008
Wales Office Annual Report	1	No	Evidence published 13 October 2008

Annex B

Table 2 Visits by the Welsh Affairs Committee in 2007-08

Location	Purpose of visit
Aberaeron, Llandysul and Aberystwyth	Inquiry into Globalisation and its impact on Wales
National Assembly for Wales, Cardiff Bay	Inquiry into the proposed National Assembly for Wales (Legislative Competence) Order in the Field of social welfare 2008
Liverpool	Inquiry into the provision of cross-border public services for Wales
Catalonia and the Basque County	Inquiry into Globalisation and its impact on Wales
Dublin	Inquiry into the provision of cross-border public services for Wales

Annex C

Welsh Affairs Committee Sessional Return Session 2007-08

The Committee was nominated by the House of Commons on 19 July 2005.

Members	Meetings attended
Francis, Dr Hywel (Chairman)	42 out of 42
Crabb, Mr Stephen (discharged 17.12.07)	4 out of 8
David, Mr Wayne (discharged 8.11.07)	0 out of 2
Davies, David T. C.	8 out of 42
Griffith, Nia	18 out of 42
James, Mrs Sian C	23 out of 42
Jones, Mr David	35 out of 42
Jones, Mr Martyn	16 out of 42
Michael, Alun (added 8.11.07)	31 out of 40
Owen, Albert	25 out of 42
Pritchard, Mark (added 17.12.07)	19 out of 34
Williams, Hywel	28 out of 42
Williams, Mark	30 out of 42

Overall Attendance: 60.4 %

Total number of meetings: 42

Of which:

Number of meetings at which oral evidence was taken	36
Number of times oral evidence was taken partly or wholly in private	0
Number of wholly private meetings	5
Number of concurrent meetings with other committees	1

Other activities

Informal meetings (including overseas visitors)	2
Conferences/Seminars hosted	0

Staff

Details of the permanent staff of the Committee during the Session can be found in the Committee's publications.

Specialist Advisers during the Session

Professor Stuart Cole, Anne Crowley, Ellen Helsper, Mr Robert Humphreys, Professor Marcus Longley, Professor Terry Marsden, Professor Kevin Morgan, Professor Max Munday, Professor Keith Patchett, Dr Diane Seddon, Professor Steve Wilcox, Professor Kevin Williams and Christopher Yewlett.

Witnesses

Oral evidence was given during the Session by the following categories of witnesses:

Number of appearances by:	
Cabinet Ministers	1
Other Ministers	5
Members of the House of Lords	1
Welsh Assembly Government Ministers	2
Members of the National Assembly for Wales	1
Number of appearances by officials from, or representatives of:	
Department for Children, Schools and Families	1
Department for Transport	1
Wales Office	5

Welsh Assembly Government	1
Number of appearances by officials from, or representatives of, public bodies and non-Ministerial departments comprising:	
Higher Education Funding Council for Wales	1
Children's Commission for Wales	1
Passenger Focus	1
Appearances by other witnesses	66

Overseas Visits

Date	Destination	Members	Staff	Purpose	Cost
20-24.4.08	Barcelona and Bilbao, Spain	Francis, D Jones, M Jones, Owen, H Williams, M Williams	2	Globalisation and its impact on Wales	£11,863.11
19-21.10.08	Dublin	Francis, Owen, Pritchard, H Williams, M Williams	2	Provision of cross-border public services for Wales inquiry	£6975.00 (estimated outturn)

Visits to European Institutions

None.

UK Visits

Date	Destination	Members	Staff	Purpose	Cost
3-4.12.07	Ceredigion	Francis, Griffith, James, D Jones, M Jones, H Williams, M Williams	3 ^A	Globalisation and its impact on Wales	£3,534.72
17.1.08	Cardiff	Francis, James, H Williams	2	Orders in Council	£1,821.00
30-31.3.08	Liverpool	Francis, D Jones, M Jones, Owen, Pritchard, H Williams	4 ^A	The provision of cross-border public services for Wales	£2,648.90

^A Includes 1 shorthand writer

Reports and Oral and Written Evidence

Title	HC No. (2007–08)	Date of publication	Government reply
First Report: <i>Energy in Wales: follow up inquiry</i>	177	17.12.07	Wales Office Response received 27.3.08
Second Report: <i>The proposed Legislative Competence Order in Council on additional learning needs</i>	44	21.12.07	Wales Office Response received 29.2.08
Third Report: <i>Work of the Committee in 2007</i>	325	21.2.08	Not applicable
Fourth Report: <i>The proposed National Assembly for Wales (Legislative Competence) Order in the Field of social welfare 2008</i>	257	5.3.08	Wales Office Response received 19.6.08
Fifth Report: <i>The proposed draft National Assembly for Wales (Legislative Competence) (social welfare and other fields) Order 2008</i>	576	26.6.08	Wales Office Response received 9.7.08
Sixth Report: <i>The provision of cross-border health services for Wales: Interim Report</i>	870	10.7.08	26.1.09
Seventh Report: <i>The proposed draft National Assembly for Wales (Legislative Competence) (Housing) Order 2008</i>	812	7.11.08	9.1.09
First Special Report: <i>The proposed Legislative Competence Order in Council on additional learning needs: Government response to the Committee's Second Report of Session 2007–08</i>	377	29.2.08	Not applicable
Second Special Report: <i>Energy in Wales: follow-up inquiry: Government Response to the Committee's First Report of Session 2007–08</i>	435	14.10.08	Not applicable
Third Special Report: <i>The proposed National Assembly for Wales (Legislative Competence) Order in the Field of social welfare 2008: Government Response to the Committee's Fourth Report of Session 2007–08</i>	715	19.6.08	Not applicable
Fourth Special Report: <i>The proposed draft National Assembly for Wales (Legislative Competence) social welfare and other fields) Order 2008: Government Response to the Committee's Fifth Report of Session 2007–08</i>	993	23.7.08	Not applicable

Title	HC No. (2007–08)	Date of publication	Government reply
Oral and Written Evidence: <i>Work of the Wales Office</i>	419-i	17.6.08	Not applicable
Oral and Written Evidence: <i>Wales Office Annual Report 2008</i>	964-i	13.10.08	Not applicable
Oral and Written Evidence: <i>Wales Office Annual Report 2007</i>	1017-i	18.12.07	Not applicable
Uncorrected Oral Evidence published on the Internet: <i>Globalisation and its impact on Wales</i>	34	6.11.07	Not applicable
Uncorrected Oral Evidence published on the Internet: <i>The provision of cross-border public services for Wales</i>	401	4.3.08	Not applicable
Written Evidence published on the Internet: <i>The National Assembly for Wales (Legislative Competence) (Agriculture and Rural Development) Order 2008</i>		11.11.08	Not applicable
Written Evidence published on the Internet: <i>Globalisation and its impact on Wales</i>	34	6.11.07	Not applicable
Written Evidence published on the Internet: <i>The provision of cross-border public services for Wales</i>	401	4.3.08	Not applicable

Government replies to Reports for Session 2006–07

None.

Formal Minutes

The Formal Minutes of the Committee were published electronically after each meeting of the Committee. They are available on the Committee's website at <http://www.parliament.uk/welshcom>.

Divisions

None.

Debates

Committee reports were tagged on the Order Paper as being relevant to debate in the Welsh Grand Committee on 18 June. Further details can be found in the Committee's Sessional Report.

Number of oral evidence sessions for each inquiry during the Session

Inquiry	Number of oral evidence sessions
An overview of the work of the Wales Office from the Secretary of State	1
Cross-border provision of public services for Wales	16
Globalisation and its impact on Wales	12
The National Assembly for Wales (Legislative Competence) (Housing) Order 2008	2
The proposed Legislative Competence Order in Council on additional learning needs	2
The proposed National Assembly for Wales (Legislative Competence) (social welfare and other fields) Order 2008	1
The proposed National Assembly for Wales (Legislative Competence) Order in the Field of social welfare 2008	1
Wales Office Annual Report 2008	1
Total	36

Formal Minutes

Tuesday 10 February 2009

Members present:

Dr Hywel Francis, in the Chair

Mark Pritchard
Hywel Williams

Mark Williams

Draft Report (*The Work of the Committee Session 2007-08*) proposed by the Chairman, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 86 read and agreed to.

Annexes A to C read and agreed to.

Resolved, That the Report be the Fourth Report of the Committee to the House.

Ordered, That the Chairman make the Report to the House.

[Adjourned until Tuesday 24 February at 10 a.m.]