

Legislative Statement on the Proposed National Assembly for Wales (Legislative Competence) (Local Government) Order 2009 – 14/07/09

The Minister for Social Justice and Local Government (Brian Gibbons): I am pleased to lay before the National Assembly the proposed legislative competence Order on local government. As highlighted earlier in the First Minister's statement, the proposed LCO forms a key part of our legislative programme for the next session. The Assembly Government highly values the roles and status of local government in Wales. The purpose of the proposed LCO is to enable the National Assembly for Wales to legislate to strengthen the role of town and community councils. It also plans to remove barriers and disincentives to people standing for election to community and unitary councils. For the sake of brevity, references in this statement to community councils should be taken to mean both community and town councils.

The policy context of the proposed LCO flows from three separate and recent reviews into different aspects of local government in Wales: the Aberystwyth report on community councils, the expert panel's examination of the recruitment and retention of councillors, and the independent remuneration panel's review of councillors' remuneration.

First, the proposed LCO would provide the Assembly with the competence to address concerns about the constraints facing community councils, which were set out in the Aberystwyth report, 'Research Study into the Role, Functions and Future Potential of Community and Town Councils in Wales', undertaken by Aberystwyth University. Having considered the Aberystwyth report, the Assembly Government is committed to bringing forward proposals to develop and strengthen the role of community councils. The overall aim will be to increase the effectiveness of community councils in their functional and representational role, and to facilitate their ability to work in partnership with other bodies. The proposed LCO would furnish the Assembly with the competence to consider a range of proposals, which the Assembly Government will bring forward in a proposed local government Measure later in this session.

The proposed LCO is also designed to enable the Assembly to respond to the work of two review panels: the Councillors Commission's expert panel in Wales, which has been looking at a range of issues connected to the recruitment and retention of councillors, and the Independent Remuneration Panel for Wales, which is reviewing the remuneration structure for councillors in Wales, including salaries, allowances and pensions that are payable to councillors.

The Assembly Government wants to enable the Assembly to legislate to encourage broader and increased participation in local government. It has been a concern for some years that the pool of people from which serving councillors are drawn is rather narrow and several key sectors are seriously under-represented. That situation denies our councils the full range of experience and expertise that they need to carry out their diverse roles.

The Assembly Government wants to ensure that councillors at both community and unitary council level are drawn from the widest range of people and are more typical of the communities that they serve. The expert panel and the remuneration panel have been considering issues that we believe present barriers and disincentives to people standing for election to these councils. We are awaiting the final reports of the two panels and will consider their conclusions and any recommendations they might make very carefully. A local government Measure later in the session would be a vehicle for the Assembly to legislate to put into effect proposals stemming from the work of the two panels.

The National Assembly for Wales already has legislative competence in relation to many aspects of local government in Wales. These are set out in field 12 of Schedule 5 to the Government of Wales Act 2006. This Order will confer a wider legislative competence on the Assembly than that currently available to the Assembly or the current subordinate legislative power of the Welsh Ministers. Neither the Assembly nor the Welsh

Ministers currently have the power to legislate for significant changes to the law covering the topics addressed in the proposed LCO: community councils, community reviews, relationships between tiers of local government, councillor allowances, and the recruitment and retention of councillors.

The legislative competence that would be conferred by the proposed Order is a necessary prerequisite to enable the Assembly to make changes to the law in these areas by way of Measures. Our intention is to make proposals for appropriate legislation in a local government Measure later in the session. The details of when the proposed Measure will be introduced will be finalised nearer the time. The aim of the proposed LCO is clearly in line with the Assembly Government's commitment to strengthening the structures and work of local government in Wales at all levels. The proposed LCO will also enable us to ensure that local councils reach out to, and engage with, all sectors of the communities they serve.

These are important issues relating to the quality of our democracy and the services provided to local people. I look forward to working with Assembly Members and others with an interest in the health of local government on scrutinising the proposed LCO and, in due course, informing the development of our proposals for a proposed Measure on local government.

Darren Millar: First, I thank the Minister for his statement today and for the opportunity to receive a briefing on this important proposed legislative competence Order. Local democracy is something that my party is very passionate about, and I am pleased to see it on the agenda here again in the Assembly. As someone who believes in real devolution, I think that it has been incredibly sad over the past 10 years to see how successive Assembly Governments have been micromanaging the affairs of local government with increasingly prescriptive guidance and ring-fenced grants, which effectively result in fewer opportunities for locally elected councillors to determine what is best for them and their communities. Town and community councils in particular often feel powerless to address the issues that matter in their localities. There is no doubt that their role needs to be enhanced and strengthened. That is why I am pleased to say that my party welcomes this proposed LCO. We look forward to scrutinising the details at committee stage.

In his statement, the Minister made reference to three reviews that have helped to shape the proposed LCO so far, one of which was published in 2004—the Aberystwyth report. The other two—the expert panel's examination of the recruitment and retention of councillors and the independent remuneration panel's review of councillor remuneration—have yet to report. Given this, I wonder whether the proposed LCO is a little premature, particularly given that these reviews could end up proposing the need for even broader powers than those within the scope of this proposed LCO. Surely we should wait for the outcome of these reviews prior to seeking further legislative competence in this area. Perhaps you could comment on that in your response, Minister.

Having looked in more detail at the papers provided with a written statement issued yesterday, I am also concerned that the Assembly Government is seeking to make it more difficult for the ordinary citizen to trigger community polls or local referenda. Under the current arrangements, I understand that it takes either 300 or 30 per cent of electors in a community to trigger a local referendum, and yet I understand that you intend to raise this threshold if powers are conferred on the Assembly. Can you clarify your position in that respect please, Minister? Where would you set the threshold in future? My party, for one, certainly wants to put powers back into the hands of the ordinary citizen wherever possible, not take away those that exist.

On the subject of allowances for town and community councillors, Wales has been served extremely well on a voluntary basis by town and community councillors over the years.

Therefore, I am quite sceptical as to whether there would be public support for allowances for councillors, particularly on town and community councils, at the moment. We also know that many small community

councils have tiny precepts that would find it difficult to fund such allowances. Perhaps you can tell us whether you are planning to introduce allowances for this particular tier of government. I question whether any formal remuneration is necessary or desirable.

The 'Research Study into the Role, Functions and Future Potential of Community and Town Councils in Wales' report by the University of Wales, Aberystwyth recommended the introduction of direct grants from the Welsh Assembly Government to town and community councils. I note that this is something within the proposed legislative competence Order—there is a line in it that would enable the Assembly Government to pay grants directly. Perhaps you could advise us as to how such grants would be resourced and whether you would rob Peter to pay Paul by deducting any cash that you wanted to make available to town and community councils from the revenue support grant, which is payable to local authorities. If that is something that you are proposing, it would be unacceptable, in my opinion, because I understand that the intention in the first instance is to use grants specifically to fund community council by-elections, which I think is commendable. We have all seen, far too often, times where individual community councils have co-opted people unnecessarily because they have not advertised appropriately positions that are available. Obviously, there will be a cost implication to that, and it should be easy to establish from the number of by-elections over a typical four-year term. Perhaps you could refer to that in your response.

I also welcome the Minister's intention to bring forward proposed Measures to encourage broader participation in local government. It has been said before that, all too often, local government representatives and councillors are pale, male and stale, which I think is quite a true statement and clearly needs to be addressed. The sooner that we get some Measures coming forward that deal with that, the better. I do not think that simply co-opting younger people, who are below the voting age, onto community councils is necessarily the right way to address that.

Finally, during the debate on the Health, Wellbeing and Local Government Committee report into scrutiny arrangements in local government, you indicated your intention to bring forward a proposed Measure in that particular area. Is this proposed LCO necessary to deliver more powers to the Assembly to deal with the support for scrutiny arrangements in local government, or is that something that you can fast-track and run in parallel? Perhaps you could also tell us when you expect to be able to lay before the Assembly the proposed local government Measure that you mentioned in your statement.

Brian Gibbons: Thank you for the generally positive welcome. There were a fair number of questions, and there was a slight pale, male and stale sting in the tail. However, I will try to pick up the particular issues.

The purpose of the exercise is to strengthen the role and relevance of community and town councils and to create a more dynamic, democratic life in our communities across Wales, which is at the heart of what we are trying to achieve.

I am not sure whether I agree that the proposed LCO is premature. The proposed LCO seeks legal competence over a range of matters. At this stage, it does not go into the detail of what we want to decide. We roughly know the areas in which the expert group on councillors is involved; therefore, in getting the legal competence over this matter, we are covering that area. However, we are not bringing forward detailed proposals in advance of the report of the expert group. Equally, the independent panel on the remuneration of local authorities has indicated that it would like greater flexibility in the way that it addresses these issues without being particularly prescriptive, but as we do not have the legal competence, its flexibility is obviously constrained. If we are able to have legal competence, it increases the range of options that the panel has in trying to come up with a set of proposals, which will encourage greater participation in elected democracy in Wales.

The purpose behind the proposals in relation to the elections is almost the opposite to your concern. We want to make it easier to establish community and town councils in Wales and, if anything, to make it harder to disband them. Therefore, we are on the same base in relation to that. I can assure you that that is not our intention; we have the opposite intention. Around 30 per cent of the population of Wales does not have town and community councils. We would hope that this particular proposal would make it easier for those communities to have a community and town council.

The aim is also to give them some resilience if they have to make difficult choices. Sometimes, community or town councils have been disbanded because they have made some difficult choices about local matters and interest groups have banded together to vote them out of existence. We do not want community and town councils to be readily disbanded over a particular controversial area. Therefore, we are largely in agreement with that.

I dealt with the matter of the remuneration. We do not expect community and town councillors to be remunerated. However, the independent panel on the review of unitary council remuneration has signalled that it would like greater flexibility essentially targeted at their situation.

The main way of funding community and town councils is through the local precept. That restricts the amount of funding that can go to town and community councils. It also makes it more difficult for them to access other sources of money, such as Community Facilities and Activities Programme funding or even lottery funding at times. Therefore, as well as freeing up our capacity to give direct grants to community and town councils, it should hopefully provide greater legal certainty for community and town councils to be able to access sources of funding other than through the precept.

It is important that we broaden the number of participants that are involved in community and town councils. While one particular proposal to allow young people to sit on community and town councils is not going to change the political culture of Wales overnight, we have to make our democracy more relevant to young people, because we know that all of the polling evidence and research evidence shows that young people are not engaging with democracy. The only way that we can encourage them to participate in democracy is to give them a clear role. The proposals in this LCO are a way of doing that.

The scrutiny point raised by Darren is something that will be covered by the Local Democracy, Economic Development and Construction Bill, which is going through the Houses of Parliament at the moment and, we hope, will be completed by the summer, although our understanding is that it might not be completed until October. However, we hope that that process will be complete before the autumn and that Royal Assent will be achieved. That will then give us the legal competence to address the issues of scrutiny that the Health, Wellbeing and Local Government Committee raised in its report.

David Lloyd: I thank the Minister for his statement on this proposed legislative competence Order for local government and I thank his officials for the briefing this morning. Naturally, Plaid supports philosophically any legislative competence Order as any extension of the powers of the Assembly is to be welcomed. As the Minister outlined in his statement, when it comes to community councils, neither the Assembly nor the Welsh Ministers have powers at present to legislate over community councils, community reviews, relations between tiers of local government, council allowances and the recruitment and retention of councillors. In the absence of those powers, there is little we can do. Therefore, we philosophically need those additional powers in order to address some of the issues that a couple of reviews in a previous local government committee and the current Health, Wellbeing and Local Government Committee have brought to our attention as an Assembly.

Most of this proposed LCO relates to community councils, although it does not deal with these exclusively as there are elements that pertain to county councils. However, most of it seems to be directed at community

councils. There are about 700 town and community councils in Wales. They have tax-raising powers, unlike the Assembly, so they are an important legislative benchmark, and perhaps a spot of tax-raising powers is something for the Assembly to aspire to.

There is certainly a need to strengthen what town and community councils do. If we have them, let us have them make a difference. There is a point in the proposed LCO about the need for the performance of community councils to be properly validated. I would imagine that any subsequent Measures—I would be grateful if the Minister could confirm this—would aim to properly evaluate and validate the performance of community councils.

As regards the general state of democracy at community level, could the Minister confirm his intention to accept or pursue further Measures that would seek to address concerns about empty seats in community councils, the level of uncontested seats at community council level, and the co-option that sometimes happens at community council level? Can he confirm that all those sorts of issues could be addressed in any Measures that would follow from this proposed LCO?

On the areas that pertain to county councils, I have already mentioned, as did Darren Millar, the work on local government scrutiny done in two different reports—one by the former Local Government and Public Services Committee and the other by the current Health, Wellbeing and Local Government Committee. Those reports highlighted all the background support that members of local government need to carry out effective scrutiny. We have it here in the National Assembly for Wales to a large degree, and many of us would like to see county councillors have that same level of officer support so that they can scrutinise the work of local government effectively. Better scrutiny means better democracy at the end of the day. Can the Minister therefore confirm whether, in any subsequent Measures, it is his intention to ensure that independent scrutiny support flows from this proposed legislative competence Order on local government, or whether there are alternative pathways to securing a key plank of the recommendations of at least two committee reports on local government scrutiny, that is, the importance of independent scrutiny support for county councillors?

Brian Gibbons: I suppose that it was as well to get the party political plug in at the beginning. As the party that has delivered devolution for Wales and is the party of devolution in Wales, we would welcome anything that broadens the Assembly's competence. This proposed LCO will definitely work, as you conceded in your remarks, to achieve that.

The point that you made about validating the activity of community councils is important. If we want community councils to have a more dynamic role, with greater powers in their community, then, depending on the scale of the challenge that they are taking on, it would provide reassurance to local taxpayers and the local unitary authority if the community council were able to be validated as being competent to a certain level. If that were the case, there may be greater willingness to devolve more powers to the local authority. Therefore, as well as helping community councils to strive towards excellence, it would be an important means of giving reassurance about their competence to manage further duties and responsibilities if they were given the opportunity.

I think that you are right that the capacity of community councils to be a truly vibrant and dynamic local democracy is continually compromised by empty seats and the closed-shop arrangements that often persist around co-option. It can be difficult for people from wider community groups, if they are not from among the politically active in the community, to get a foot in the door. We need to be able to open those doors to the widest range of community activists and other concerned citizens. I think that this proposed LCO will give us an opportunity to ensure that the process by which unfilled or uncontested seats are filled will be much more open.

That links to the point that you made about scrutiny: effective scrutiny is likely to be a consequence of the amount of resource and capacity that goes into it. However, if our elected members are more typical of the communities that they serve, I think that the quality of scrutiny will improve. You can imagine that many people who have duties as carers, for example, would find it difficult to serve on local authorities, but if we were able to bring in new flexibilities in how people can serve on town and community councils or even unitary authorities, which gaining this legal competence would allow us to do, then we would get a more typical population involved in the scrutiny process. That has to be a good thing.

Peter Black: Thank you, Minister, for bringing this proposed LCO before us today and for the briefing that your officials gave earlier—it was very helpful and useful. I welcome the proposed legislative competence Order that we have before us insofar as it goes. The 2003 review into community councils, which is referred to in your statement, and which you intend to implement through these powers, is unfinished business from the first partnership Government. It was part of the commitments in the agreement between the Liberal Democrats and Labour, so I welcome that we are now going to try to get the powers to implement some of the outstanding proposals included in it. I do not want to pre-empt the other outstanding reviews, although I will, of course, have views to express on allowances and the other issues when they are brought before us. This is an attempt to bring down powers, as opposed to an opportunity to discuss how those powers are going to be used.

I want to make what I consider to be an important point about the general scope of the proposed LCO before us. Darren Millar asked whether the proposed LCO is premature. I think that it is not so much premature as unambitious. I say that because, from the statement that you have given to us, Minister, I note that you have some ambitious targets and ideas, but those do not seem to work their way through to what you are trying to do in the proposed LCO. I will pull out a few issues. You say that you want to remove barriers and disincentives to people standing for election to community councils and unitary authorities in Wales. You want to ensure that both community and unitary authority councillors are drawn from the widest range of people possible and are more typical of the communities that they serve. You want to ensure that local councils reach out and engage with all sectors of the communities that they are set up to serve, and to improve the quality of our democracy. How can you do that if you do not reform the voting system? In the proposed LCO, you have specifically excluded the local government franchise, electoral registration and administration and the voting system for the return of members in an election from matter 12.9. It seems to me that if you are genuinely serious about engaging people, widening the number of people who get involved in local government, and making local councils more relevant and representative of the community, then a fair voting system is the way forward. I am not just saying that from an ideological Liberal Democrat point of view, because it has been proven in other parts of the UK, such as Northern Ireland and Scotland, that if you do that you get councils that are more representative of the community. You also get councils in which there is greater consensus and scrutiny is more effective, because the party divisions that have bedevilled local government in many parts of the UK do not apply to the same extent.

The other issue is that we are under the shadow of the assurance that you gave in relation to reorganisation of local government that nothing will happen until after 2011. I think that everyone is expecting something to happen after 2011 in relation to reorganisation of local government. If the powers that are already available to you as a Government to reorganise local government are used in the future to create bigger councils without fair voting, any reasonable person might think that an element of gerrymandering might be involved in order to re-establish Labour's stranglehold on local government. That would be unfortunate and not how we should move forward.

I had also hoped that you would have taken the opportunity to get the widest possible powers in relation to legislating on local government. However, yet again, you have not done that, because you have not tackled this issue of fair voting and have shoved it on the back burner, presumably until we have the next coalition

negotiations in 2011. That is no way to run Wales or to plan for the future in terms of organising how we are governed in this country. Therefore, will you reconsider the exclusion of fair voting from this proposed LCO? If you genuinely have the ambitions that you set out in the statement, I would hope that you would take that on board and put your money where your mouth is.

Brian Gibbons: Much of Peter's contribution was about what is not included in the proposed LCO rather than what is. His contribution was entirely legitimate; there is no doubt that many people are looking at the electoral system and considering whether it needs to change and so on. However, it would be premature and widely overambitious for Peter to argue, at this juncture, that there is a clear consensus, or even an emerging consensus, on the best way forward. Indeed, if we were to adopt Peter's counsel in this regard, we would, given the lack of consensus, be condemning this proposed LCO to impotence, as it would struggle to attract support for the important issues that it wishes to address. So, there is an element of timing here. As Peter said, there is a lot of unfinished business. If we were to take his advice, that unfinished business would remain unfinished for the very reason that he has outlined—because that consensus does not exist. However, we all share the ambition for our democracy to be more representative.

I must admit that I took slight offence—not to the extent of asking you, Deputy Presiding Officer, to rule on it—at the use of the term 'Labour's stranglehold'. It is not acceptable, and demeans the democratic choice of those who have voted for the Labour Party throughout the decades. The Labour Party has earned respect and earned those votes. If we are not always attracting support at the moment, then we need to reflect on that. However, to describe it as a stranglehold is an insult to those who exercised their democratic franchise openly and freely in this country. I do not like to hear that type of talk.

The Deputy Presiding Officer: That brings today's proceedings to a close.