



Affordable Housing Legislative Competency Order – definitions

5 March 2008

The Affordable Housing Legislative Competency Order (LCO) Committee has raised the issue of whether or not to use definitions in the forthcoming order and whether the Assembly Government should include its own definitions or rely on those within existing primary legislation.

Shelter Cymru welcomes the opportunity to comment and can provide the following response.

On a general level, there are positive and negative implications to including separate definitions (of social housing, landlord etc.) within Welsh measures as well as with regard to relying on the definitions within existing legislation, such as the Housing Act 1985, Housing Act 1996. Clearly, if the LCO itself doesn't refer to existing legislation, it will be necessary for the detail (e.g. any definitions) to be contained in any subsequent Assembly Measures.

We do not believe that the LCO itself should include definitions as these can be contained in the subsequent measure. This could be achieved quite simply by adopting the text of the relevant Westminster legislation or developing Welsh definitions; allowing the Assembly the freedom to define the relevant terms as it wishes. The Assembly could of course use sections of the existing legislation e.g. some existing definitions, in addition to its own definition of some relevant terms, such as social landlord etc.

This would be similar to the line taken with other LCO's in that definitions are not included but left to the measures themselves. For example - the Environmental Protection and Waste Management LCO simply uses the terms "waste" and "hazardous substances" as matters without referring to these as being defined in any previous legislation.

Introducing new definitions means that the Assembly would avoid the impact of amendments to Westminster legislation. This of course may not always be desirable as such amendments might be useful and in this scenario the Assembly would have to seek LCO's to further amend the specified matters. If reference is made to Westminster legislation, the Assembly could rely on it and also existing case law. Again, this may be both a benefit and a hindrance (e.g. the Assembly may not agree with the court's interpretation of a particular clause).