

Gwenda Thomas AC/AM
Y Dirprwy Weinidog dros Wasanaethau Cymdeithasol
Deputy Minister for Social Services



Llywodraeth Cynulliad Cymru
Welsh Assembly Government

Eich cyf/Your ref
Ein cyf/Our ref - LF/GT/003/08

Karen Sinclair
Chair, Vulnerable Children &
Child Poverty LCO
Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

22nd January 2008

Dear Karen,

Vulnerable Children Legislative Competence Order – Physical punishment of children

At my evidence session before your Committee on 25 October, I undertook to clarify whether the proposed Vulnerable Children Legislative Competence Order would enable the Assembly to legislate on the physical punishment of children and the point was raised again at the committee on 29 November. You will be aware of recent press reports about the UK Government's view that the law regarding physical punishment of children could not be within the Assembly's legislative competence because it relates to criminal law, which is not devolved, and therefore would not primarily relate to any of the fields currently in Schedule 5 of the Government of Wales Act 2006.

The Welsh Assembly Government does not accept this argument. In our view, a power for the Assembly to legislate so as to protect children from harm caused by parents or people with parental responsibility physically punishing them could relate to an appropriately worded matter in the social welfare field – a field which is in Schedule 5. There is an important distinction between criminal justice in general – which is not devolved – and criminal sanctions, which may or may not be devolved. It is not necessary that the Assembly should have legislative competence in respect of the criminal law generally in order to make provision changing an aspect of the criminal law. The Government of Wales Act 2006 contains no prohibition on an Assembly Measure altering the criminal law or common law. In fact, it expressly refers to Assembly Measures creating criminal offences within certain limits, which would include the current penalties for common assault. An Assembly Measure can make any provision that an Act of Parliament can make; and it was the Children Act 2004 which removed the defence of reasonable punishment in the case of other offences against children.

However, the UK Government has requested that the relevant Matter be redrafted to make it clear that it does not cover this issue. It is clear that if the current draft is not amended the whole of our Vulnerable Children LCO would be endangered, and we will not be able to secure the necessary powers to deliver the important One Wales commitment to reform and consolidate the law relating to vulnerable children in Wales, improving preventative

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measures and tackling child poverty. For this reason, the Welsh Assembly Government has agreed that the proposed Order be amended to meet the UK Government's insistence that it should not confer legislative competence on the Assembly to enable the removal of the defence of reasonable punishment in relation to the physical punishment of children. This is without prejudice to any future request for legislative competence.

Discussions are progressing with Whitehall on the text of the proposed LCO, since before it can be sent to Parliament for pre-legislative scrutiny it needs to be agreed with the UK Government. I will lay a copy of a revised proposed Order as soon as an agreed text is available

A handwritten signature in cursive script, appearing to read 'Gwenda'.

Gwenda Thomas AC/AM